
(2013) 08 RAJ CK 0099

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 164 of 2013

Ambalal and Others

APPELLANT

Vs

Shri Dadhimati Mataji Mandir Pranyas and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11, Order 9 Rule 9
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Citation : (2013) 08 RAJ CK 0099

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : M.R. Singhvi, assisted by Mr. Mohit Singhvi, for the Appellant; L.R. Mehta and Mr. Rajesh Joshi, for the Respondent

Final Decision : Partly Allowed

Judgement

Arun Bhansali, J.—This appeal is directed against order dated 18.01.2013 passed by the learned Additional District Judge, Nagaur, whereby, the application under Order XXXIX, Rule 1 and 2 CPC filed by respondent-plaintiff has been accepted and appellants and its supporters have been restrained from obstructing the plaintiff from placing a new face, crown, chhatra etc. on the idol of Mataji in the temple and it has been clarified that the silver face, which is there at present can be removed by the plaintiff and it can place a new face on the idol and the old face shall remain deposited with the Trust till disposal of the suit. The facts in brief are that Shri Dadhimati Mataji Mandir Pranyas, Ghoth Manglod, Tehsil Jayal, District Nagaur (hereinafter referred to as "the Trust") filed a suit for permanent injunction alongwith an application under Order XXXIX, Rule 1 and 2 CPC with the averments that the Trust was registered with the Assistant Commissioner, Devasthan Department, Jodhpur vide judgment dated 28.07.1979; Vice President Ramkunwar Rinwa has been authorized to file the suit; the idol of Shri Dadhimati Mataji installed at the Trust is Kuldevi of Dadhich Brahmins; the temple was constructed by Dadhich Brahman Samaj in the ancient times and

from that time itself the temple and sewa pooja archana of the idol was performed by them; construction and repair of the temple etc. is being done by the Dadhich Samaj and the Pujaris appointed by them are performing sewa puja of the idol; earlier the management was done by Shri Dadhimati Mataji Mandir Samiti, Ghoth Manglod of the Dadhich Samaj, which was registered under the provisions of Rajasthan Societies Registration Act, 1958 on 18.04.1973 and the said Samiti was replaced by the Trust; it was claimed in the plaint that the work relating to appointment of Pujaris for sewa pooja of the idol and handing over of the idol, its gold, silver ornaments, shrangar articles and pooja articles to the Pujaris as Trust is being done by the office bearers of the trust; on 16.12.2005 the newly elected President took charge when a charge list was prepared of the goods, which were lying with the Pujaris in trust and the list was duly signed by defendant No. 5 Shri Gopal Krishan; it was claimed that on night intervening 22.02.2012 and 23.02.2012 unknown people entered the temple and took away the face placed on the idol, silver crown, silver chhatra and gold jewelry; regarding which, report was made to the police and the same is being investigated; thereafter it was claimed that for the purpose of maintaining the shrangar etc. of the idol and respecting the religious feelings of the followers and visitors of Mataji and exercising its legal rights the Trust wanted to place a silver face on the idol, which was lying with the Trust from the time of placing the new face (which was stolen) and wanted to perform the said ceremony with the religious rites and when the same was tried by the trustees, the defendants who have formed a illegal group by taking law in their hands are illegally obstructing and not allowing them to perform the said work and are threatening them that if another silver face is placed then trustees would be killed; the cause of action for filing the suit arose when the silver face got stolen on the night intervening 22.02.2012 and 23.02.2012 and when the trustees wanted to place a new face, which is being prevented by the defendants. Ultimately, the following reliefs were claimed in the suit.

2. Alongwith the suit an application under Order XXXIX, Rule 1 and 2 CPC was filed with the same averments and seeking the following relief:-

3. The learned trial court issued notices in the suit as well as temporary injunction application on 29.02.2012 for 03.03.2012, however, on an application made by the Trust, the matter was taken up on 01.03.2012 and an ad interim order was passed restraining the defendants from placing a new face on the idol and to maintain status quo as it existed on that day. Further, Commissioner was appointed for giving report on the status of the idol.

4. On 19.03.2012 a reply to the application under Order XXXIX, Rule 1 and 2 CPC was filed by the defendants strongly resisting and disputing the averments contained in the application under Order XXXIX, Rule 1 and 2 CPC. The right of the Trust was questioned and it was stated that the registration of the Trust was not final as S.B. Civil Writ Petition No. 7793/2011 (Sukhram Didel etc. v. Devsthan Commissioner) was pending before this Court. The averments

regarding the idol being the Kul Devi of only Dadhich Brahaman Samaj was disputed and the facts regarding construction and management of the temple from ancient times by the predecessors of plaintiff was also denied. The right of plaintiff to appoint Pujaris was also denied. It was claimed that they have hereditary right to perform the pooja. The facts regarding the ownership of the silver face, crown, chhatra and shrangar articles etc. was denied. It was claimed that the temple is being managed by a Society, which is named Shri Chokhala Mandal Trust Samiti, Ghoth Manglod, Dadhimati Mata Ji Ka Mandir, which is registered with the Registrar under the Societies Registration Act. It was claimed that suit was filed by Shri Dadhimati Mataji Mandir Samiti against the Pujaris being Civil Original Suit No. 82/1977 questioning the formation of the said Chokhala Mandal, which suit was dismissed in default on 21.09.1990 and, therefore the present suit was barred under Order IX, Rule 9 CPC.

5. Reliance was placed on a Committee formed under the Chairmanship of Collector, Nagaur, which included the members of Chokhala Mandal and of the Trust vide minutes dated 20.02.2006 and it was prayed therein that the reconstruction etc. of the temple shall be undertaken by the said committee. Reference was also made to suit filed by the Pujaris for deciding their turn to perform the sewa pooja at the temple wherein the office bearers of the Mandir Samiti were defendants and injunction was issued in that suit restraining the defendants from interfering with the cash and other goods offered to the idol etc.; it was also pointed out that another suit was filed by the Trust seeking declaration regarding right to appoint and manage pooja etc. which suit was also dismissed in default. It was alleged that the theft took place at the temple on account of the attitude of the trustees and that in fact the first information to the Police was given by the defendants and when the FIR was not lodged, they have filed a complaint u/s 156(3) Cr.P.C. It was claimed that it is the right of the Pujaris and general public who placed the silver face at the idol and if that is interfered with the same would result in irreparable injury to them. It was also pointed out that on 15.03.2012 in absence of the defendants without informing them, the followers and visitors of the goddess have placed a silver face on the idol, when none was present on behalf of the trustees. Ultimately, it was prayed that the application under Order XXXIX, Rule 1 and 2 CPC be dismissed.

6. On the same day i.e. 19.03.2012 an application seeking mandatory injunction was filed by the plaintiff in the same proceedings, wherein, it was alleged that despite passing of the injunction order dated 01.03.2012 for maintaining status quo a group of people including the defendants have placed a silver face on the idol and a First Information Report, in this regard, has been filed. It was claimed that only the Trust has the right to place silver face on the idol and the act of putting the silver face is against law and has resulted in hurting the religious feeling of Dadhich Brahaman Samaj and, therefore, by way of mandatory injunction the silver face be directed to be removed and the Trust be permitted to place new silver face on the idol. Ultimately, in the said application the following prayer was made:-

7. By filing reply dated 26.03.2012, the prayer was made by the plaintiffs for grant of mandatory injunction was opposed by the defendants and the allegations made above with regard to placing of the new face on the idol were denied. It was prayed that the application seeking mandatory injunction be dismissed.

8. The learned trial court after hearing the parties and after noticing all the contentions raised by the parties held on the issue of prima facie case in one paragraph as under:-

9. The learned trial court further came to the conclusion that balance of convenience was in favour of the plaintiff and irreparable injury would be caused to them in case injunction was not granted and ultimately passed the following order:-

10. It is contended by learned counsel for the appellants that the order impugned passed by the learned trial court is ex facie against the settled principles of law laid down regarding grant of injunction; the plaintiff had not approached the Court with clean hands, inasmuch as, they had suppressed material facts from the Court regarding various previous litigations, which had material bearing on the issues raised in the present litigation. The formation of Committee by the District Collector by agreement of the parties dated 20.02.2006 titled "Jirnodhar Samiti" has also been suppressed; the present suit itself was ex facie barred by provisions of Order II, Rule 2 and/or Order IX, Rule 9 CPC as both the suits filed by the plaintiffs in the past were dismissed in default; the temple was a public temple and was not confined to the Dadhich Brahman Samaj as claimed by the plaintiff; the application seeking mandatory injunction was in fact beyond the scope of the suit, inasmuch as, in view of the subsequent event on 15.03.2012 application for mandatory injunction was filed in Civil Misc. Case, however, no amendment in the plaint was made and, therefore, the said relief was clearly beyond the scope of the suit; the learned trial court has granted final relief by way of injunction, inasmuch as, now nothing remains to be decided in the suit; it was further contended that the learned trial court has heavily relied on the so called receipt dated 16.12.2005 allegedly issued by Pujari Gopal Krishan, however, it has very conveniently ignored the affidavit filed by said Pujari Gopal Krishan indicating that he has not appended his signatures on the alleged list dated 16.12.2005 and his signatures thereon have been forged. It was submitted that though the said affidavit was filed in present proceedings, the same was wrongly placed in the record pertaining to another misc. application filed by the plaintiff, which application was simultaneously argued and was decided on the same day and attention of the Court was drawn to the said affidavit.

11. Reliance was place on a large number of judgments in support of the contentions noticed hereinbefore; Suraj Ratan Thirani and Others Vs. The Azamabad Tea Co. and Others, , Parasram Harnand Rao Vs. Shanti Parsad Narinder Kumar Jain and Another, , Smt. Malti Vs. Ramesh Kumar, , Gordhan Das

through his Legal Representatives Vs. Som Dutt, Smt. Mohnit Devi v. Rajasthan State Financial Co. Jaipur 1978 WLN (UC) 556, Satyanarayan v. Shanti Lal (1993) 1 RLR 753, U.I.T. and Another Vs. Smt. Leela Devi, , Inderjeet Vs. Kulbhushan Jain, and Dorab Cawasji Warden Vs. Coomi Sorab Warden and others,

12. Ultimately, it was prayed that the order impugned deserves to be quashed and set aside.

13. Replying to the submissions made on behalf of the appellants, it was submitted by learned counsel for the respondent that the Rajasthan Public Trust Act, 1959 is a self contained code and the registration of the plaintiff Trust having been done under the provisions of the said Act the Trust is the only effective body to exercise all the rights, which have been granted to the trustees under the Trust deed; the Trust deed clearly provides for managing the temple and the idol and, therefore, the defendants have no right/locus standi to interfere either with the management of the temple or with the upkeep and maintenance of the idol. The Trust had the sole right to manage the temple and the respondents cannot interfere in the management. Mere pendency of the writ petition and that also not at the instance of the appellants, which writ petition also has been filed after the appeal filed before the Commissioner, Devasthan after a passage of 31 years i.e. in the year 2002 from the date of registration of the Trust was dismissed on 25.04.2010 on merits, is of no consequence. It was pointed out that the appellants have nowhere raised any issue regarding maintainability of the suit by filing application under Order VII, Rule 11 CPC.

14. It was contended that once it was proved on record by way of Commissioner report and which fact is not in dispute that there was no face on the idol on the date of filing of the suit and status quo was ordered by the learned trial court and thereafter the same was violated on 15.03.2012, the plaintiff were entitled for restoration of status quo ante so as to seek removal of the unauthorized face put on the idol and then a further injunction in permitting it to place a new face on the idol. It was submitted that it is not even the case of the appellants that they are entitled to manage the temple as they have claimed themselves to be hereditary Pujaris. It was claimed that the agreement dated 20.02.2006 even if executed does not take away the right of the trustees to manage the Trust and the said agreement does not have any statutory force. Regarding filing of the suits, it was submitted that nowhere in the pleadings the maintainability of the present suit has been questioned and that once the discretion has been exercised by the learned trial court in granting the injunction, this Court should not interfere and the interest of the temple is paramount. Ultimately, it was prayed that the appeal be dismissed.

15. Reliance was placed on the judgments of Hon''ble Supreme Court in the case of State of U.P. and Another Vs. Jagdish Saran Agrawal and Others, to contend that dismissal of the suit for non-prosecution does not operate as res judicata and Tanusree Basu and Others Vs. Ishani Prasad Basu and Others, to support the grant of mandatory injunction.

16. I have considered the rival submissions made by learned counsel for the parties.

17. While the plaintiff Trust, which is registered under the provisions of Rajasthan Public Trust Act, 1959 and on that basis claims its right to manage the temple and the control alongwith a right to appoint Pujaris etc. and further claims ownership of the entire silver and gold jewelery alongwith the Shrangar articles of the idol, the respondents are not only questioning the right of the Trust as claimed but have also set up a rival claim in this regard in the name of Chokhala Mandal and their own personal right to manage the idol and perform its sewa pooja as hereditary Pujaris including the right to place the face on the idol.

18. From the application and the reply filed by both the parties, it appears that the inter se dispute between them is not new, inasmuch as, suits were filed by Dadhimati Mataji Mandir Samiti, to which, the plaintiff Trust claims itself to be the successor and by the Pujaris against defendants including the office bearers of the Trust. The three litigations, which have been relied on by the appellants in their reply may be briefly noticed as under:-

(a) Civil Original Suit No. 82/77 Dadhimati Mataji Mandir Samiti v. Girdhari Ram seeking declaration that the Society Chokhala Mandal is void against the rights of plaintiff and injunction against them from interfering with the management of the temple, the said suit was dismissed in default on 21.09.1990.

(b) Civil Original Suit No. 24/1979 (2/1994) filed against various persons including Dadhimati Mataji Mandir Samiti seeking declaration regarding their inter se turn to perform sewa pooja of the idol and restraining the defendants from interfering with the right to receive the offerings to the idols. In the said suit several issues were framed relating to right of the Samiti to manage the temple based on the written statement filed by the Samiti. However, all the issues were decided against them and vide judgment and decree dated 12.05.1994 the suit filed by the Pujaris appellants was decreed.

(c) Suit No. 53/1991 filed by the Trust seeking declaration against the respondents, the said suit was also dismissed in default on 22.07.2006.

19. It is not in dispute that an agreement dated 17.02.2006 was executed and in pursuance of the said agreement a Jirnordhar Samiti in relation to the temple was formed, wherein, the appellants were also included and it was provided that the said Samiti would have the right to acquire funds and undertake the renovation of the Trust properties.

20. As would be noticed from para 11 of the order impugned (as quoted hereinabove), the learned trial court solely relying on the charge list said to have been executed by Pujari Gopal Krishan has found prima facie case in favour of the plaintiff, however, apparently, the affidavit filed by Gopal Krishan seeking to deny the signatures on the said charge list has not at all been taken into consideration.

21. Further, though normally the plea raised by the defendants regarding the suit being barred under the provisions of Order II, Rule 2 or Order IX, Rule 9 or Section 11 CPC needs to be examined after the parties had led oral and documentary evidence, at the time of final decision of the suit. However, in the present case, when specific plea was raised by the appellant-defendants in reply to application under Order XXXIX, Rule 1 and 2 CPC and sufficient material was placed on record, it was incumbent on the learned trial court to examine the said plea, at least prima facie, while examining the issue of prima facie case in favour of the plaintiff.

22. The action of the trial court in merely noticing the contentions of both the parties; thereafter without dealing with the said contentions and by relying on one singular fact of the charge list reaching to a conclusion on prima facie case in favour of the plaintiff in the present case is against settled judicial practice. The learned trial court has failed to record any cogent reason for reaching the conclusion on prima facie case and as noticed above has merely relied on the so called charge list signed by one Pujari Gopal Krishan and that also without considering his affidavit denying the same.

23. The right of the Trust and the trustees to manage the Trust properties and to ensure proper sewa pooja of the idol cannot be disputed, however, the same has to be examined in the context of rival claims made by the opposite party and mere registration of Trust cannot confer a absolute right in this regard so as to ignore the rights of other parties, if any, which was required to be examined, though prima facie by the learned trial court, while deciding the application.

24. As the learned trial court has dealt with the issue in a most cursory and slipshod manner, the finding recorded on prima facie case by the impugned order cannot be sustained and the same is, therefore, set aside and the matter is remanded back to the trial court to decide the application afresh after hearing both the parties.

25. So far as passing of the mandatory injunction in the facts and circumstances of the case; filing of the application during the pendency of the previous application; seeking the mandatory injunction without amending the plaint are concerned, apparently the said issues have not been raised either in the reply or otherwise before the learned trial court and, therefore, the said aspects are not required to be determined by this Court as the matter is being remanded back.

26. Before parting with the case, one glaring aspect needs to be noticed that though the appellants have categorically stated that on 15.03.2012 they have not placed the silver face on the idol, however, apparently, in their obsession to oppose the plaintiff in every respect, they are bent upon questioning the right of the Trust in placing a new face on the idol and on that count are in fact supporting a totally unauthorized placing of the face on the idol. The said aspect needs introspection by the appellants. With the above observations, the appeal filed by the appellants is partly allowed. The order dated 18.01.2013 passed by

the learned Additional District Judge, Nagaur in Civil Misc. Case No. 23/2012 is set aside and the matter is remanded back for decision afresh. The parties are directed to appear before the learned trial court on 08.08.2013 and the learned trial court is directed to decide the application afresh most expeditiously without being influenced by any of the observations made hereinbefore.