

(2015) 03 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Second Appeal No. 232/2004

Arjun Prasad and Others

APPELLANT

Vs

Bihari Ji Ka Mandir Pujari Madan Lal and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0001

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : A.K. Acharya, for the Appellant; Sachin Acharya and Rajvendra Saraswat, Advocates for the Respondent

Judgement

Dr. Vineet Kothari, J.—This second appeal is arising out of the judgment and decree dated 18.10.2003 passed by the learned Additional District Judge, Sojat Camp Jaitaran, District Pali in Civil Appeal Decree No. 29/1998 "Arjun Prasad and Ors. Vs. Bihari Ji Ka Mandir and Ors." who partly allowed the appeal filed by the defendant-Arjun Prasad and Anr. and modify the judgment and decree dated 16.11.1998 passed by the learned Civil Judge (Junior Division), Jaitaran, District Pali in Civil Original Suit No. 107/1996 (125/1979) "Shri Bihari Ji Ka Mandir Vs. Arjun Lal and Ors." by which, the learned Civil Judge (Junior Division) had decreed the suit filed by the plaintiff seeking declaration, permanent injunction, possession of the land and demolition of the shop.

2. The present second appeal has been filed by the appellants, who were the defendants, against the concurrent findings of the two Courts below against them.

3. The learned Trial Court, after framing of the relevant issues arising out of the plaint and written statement, recording of evidence, vide its judgment and decree dated 16.11.1998, the learned Trial Court had decreed the suit of the plaintiff. The learned Trial Court had decided Issues Nos. 1, 2, 4 and 5 in favour of the plaintiff. The relevant portion of the discussion made by the learned Trial

Court is reproduced herein below for ready reference:--

4. On appeal preferred by the defendants, the learned First Appellate Court though did not interfere with the findings of the learned Trial Court given on each of the issue but, while partly allowing the appeal of the defendants by its judgment and decree dated 18.10.2003, modified the final order. The reasoning given by the learned Appellate Court for modification of the final order is quoted herein below for ready reference:--

5. Today, the learned counsel Mr. A.K. Acharya appearing for the appellants-defendants submitted that the suit premises in question have been vacated by the appellants-defendants Arjun Prasad S/o Madho Lal and Soni Devi Wd/o late Madho Lal, who has now expired and the possession of the same has been handed over to the plaintiff-Madan Lal S/o Hari Ram.

6. However, upon verification of the facts from the plaintiff Madan Lal, a very old man present in the Court, it is borne out that the locks of the appellants-defendants are still put on the premises in question and the peaceful and vacant possession of the suit property is yet to be handed over to the plaintiff-Madan Lal.

7. On the last occasion, i.e. 19.02.2015, the Assistant Commissioner of the Devasthan Department was summoned by this Court along with the relevant record of the Temple in question on the next date of hearing. The last order dated 19.02.2015 passed by this Court is quoted below:--

"The case is set down for final hearing, however, nobody is present on behalf of appellants/defendants, however, the name of Mr. A.K. Acharya, is shown in the cause list as counsel for the appellant.

While admitting the present second appeal, a coordinate bench of this Court issued notices to the Assistant Commissioner, Devasthan Department also since the Temple, known as represented by Sh. Madanlal S/o Hari Ram, who is claiming himself to be the "Pujari" of the said temple.

The dispute is about the possession of the suit shops in question and the defendants succeeded in obtaining "Patta" for the said disputed shops from the Municipal Board, after once the same got demolished due to heavy rain.

Dr. Sachin Acharya, learned counsel for the respondents is present and he is ready to argue the case.

In the circumstances of the case, the learned counsel for the respondents/plaintiffs is directed to produce the photographs of the said temple and the disputed property and the Assistant Commissioner, Pali is directed to remain present before this Court on the next date along-with relevant record of the said Temple and the Trustee of the said temple, if any, may also remain present in the Court on the next date of hearing for assistance for deciding the present case finally after taking in to account the interest of Deity and Trust also.

A copy of this order be sent to the Assistant Commissioner, Pali, forthwith to

appear before this Court along with relevant record on the next date of hearing on 12.03.2015.

List the case again on 12.03.2015 for hearing on the top of the list. Office to list the case after showing the name of Mr. Rajesh Choudhary, and Mr. O.P. Boob, learned counsels for the Devasthan Department. "

8. Today, as directed, the Assistant Commissioner along with his counsel Mr. Rajesh Choudhary is present before the Court.

9. In view of the statement of the learned counsel for the appellants-defendants Mr. A.K. Acharya that the possession of the suit premises in question has been handed over to the plaintiff and, therefore, the present second appeal has become infructuous and is not required to be pressed on merits and, therefore, the appeal deserves to be dismissed as such.

10. In view of the discussion foregoing, the present second appeal filed by the appellants-defendants-Arjun Prasad S/o late Madho Lal and Soni Devi Wd/o late Madho Lal is dismissed as having become infructuous and not pressed on merits. No orders as to costs.

11. If there is any lock of the appellants-defendants on the premises in question and the plaintiff-decree-holder is yet to receive vacant and peaceful possession of the premises in question, in the circumstances of the case, the Assistant Commissioner, present-in-person before the Court, is directed to make necessary arrangements for breaking open the said locks and handing over the vacant and peaceful possession of the premises in question to the plaintiff-decree-holder-Madan Lal forthwith.

12. However, this order shall not preclude the Trust for the said temple of Deity whenever formed, to take the possession of the suit property from the said Madan Lal of his legal representatives, subject to their rights under the claimed Patta in his favour and the said property found to be the property belonging to Deity/Trust. The Appellate Court below has also directed possession to be given to him subject to his (Madan Lal) continuing to do the work as "Pujari " in the said temple and rightly so.

13. A copy of this order be sent to both the Courts below and the parties concerned forthwith.