

(1975) 07 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 33 of 1973

Banwari Lal and Others

APPELLANT

Vs

Bhagwati Prasad and Others

RESPONDENT

Date of Decision : 02-07-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Rajasthan Public Trusts Act, 1959 — Section 17

Citation : (1975) WLN 257

Hon'ble Judges : P.N. Shinghal, C.J.; M.L. Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.N. Shinghal, C.J.—This appeal by the defendants is directed against the order of learned Additional District Judge, Sikar, dated November 13, 1972, restraining them from entering upon the disputed school building and using its library, furniture, record and all other properties, and from doing any act, directly or indirectly, so as to interfere with the rights of the plaintiffs-respondents. An order has also been made appointing Mr. Manmath Kumar Misra, Advocate, Sikar, as the receiver of the disputed school building along with its assets, with authority, to take possession of the school building and properties lying therein from the possession of the receiver appointed by the Bombay City Civil Court, and to make an inventory of all the furniture, books, record, implements and other accessories, and to submit a compliance report, along with the list of properties, to the trial court, within a period of two months. A cross-objection has been filed against that order by the plaintiffs-respondents.

2. The controversy arose in a suit which was instituted by the plaintiffs respondents for declaration and permanent injunction. It was alleged that plaintiffs Nos. 1 to 4 were the trustees of the "Jhuniunu Pragati Sangh, Bombay", which was a public trust registered under the Bombay Public Trusts Act, 1950, with its head office in Bombay. It was pleaded that the trust was

established in 1953, for some charitable objects, including imparting of education, and that it started a Montessori school in 1960, in Jhunjhunu, under the name and style of "Adarsh Bal Niketan, Jhunjhunu". It was pleaded further that the school was initially started in a rented building, but the trust thereafter purchased lands for the construction of a school building. The building is alleged to have been constructed in 1965, at a cost of Rs. 1,25,000/-, and the plaintiffs claim that the school was then shifted to the new building of the trust, and continued to function with the help of the grant-in-aid received from the State Government. The plaintiffs contended that Banwarilal, defendant No. 1, was appointed as the Headmaster of the school on July 1, 1965, while Bhimraj Sharma, defendant No. 3, was appointed as one of the teachers. The Managing Committee of the trust was however dissatisfied with the manner in which the defendants, as the teachers of the school, behaved and discharged their functions. It was pointed out that they did not even conduct the terminal examination for the year 1970 & the earlier result was also highly unsatisfactory. The plaintiffs pleaded that as the defendants & the other teachers started flouting the instructions of the trustees, the Managing Committee decided to close down the school from the beginning of the academic year 1971-72, and served notices on all the teachers terminating their services from June 30, 1971. The defendants disregarded the orders of the Managing Committee and the trustees, and continued to come to the school building, threatened to interfere with the building and the property of the school, and illegally formed another society which was named as "Adarash Bal Niketan Society". They claimed that they were the owners of the school building and its other property, to the detriment of the rights of the plaintiffs, and began to run a parallel school called "Adarash Bal Niketan, Jhunjhunu". On these and other averments the plaintiffs prayed for a declaration that they were the owners in possession of the school building, its library and furniture etc. They also prayed that the defendants may be restrained from entering with the running of the plaintiffs' "Adarash Bal Niketan School".

3. It may be mentioned that plaintiffs Nos. 1 and 3 at first instituted a suit in City Civil Court, Bombay, on July 4, 1971 against the first three defendants, for similar reliefs and that court passed an interim order restraining the defendants from entering upon, or remaining in the disputed school building, and from interfering with the rights of the plaintiffs. A receiver was also appointed to take possession of the school building and property. The defendants filed an appeal against that order in the High Court of Judicature at Bombay. It was allowed on the ground that the City Civil Court, Bombay had no jurisdiction to entertain the suit, and a direction was given for returning the plaint for presentation to the proper court. It was further directed that the ad interim injunction and the order of appointment of receiver shall continue but remain in force for a period of eight weeks so that the plaintiffs may be able to apply for orders in the mean time. It was then that the plaintiffs filed a fresh suit, along with the original plaint, in the court of the District Judge of Jhunjhunu. They also presented an application

under Order 39 Rules 1 and 2 and Order 40 Rule 1 C.P.C. As those applications were allowed to the extent mentioned above, the defendants have preferred the present appeal, and the respondents a cross-objection.

4. It has been argued by the learned Counsel for the appellants that the ""Adarash Bal Niketan" was a trust "created" by the public of Jhunjhunu for an educational purpose, and that it was therefore a public trust within the meaning of Section 2(11) of the Rajasthan Public Trusts Act, 1959, and should have been registered u/s 17 of the Act. This argument has been advanced for the purpose of assailing the impugned order of trial court on the ground that, in the absence of any such registration, the suit was not maintainable, and the plaintiffs has no prima facie case in their favour. We requested the learned Counsel for the appellants to refer to any such plea in the written statement, but all that the learned Counsel could do was to invite our attention to paragraph 36 of the written statement. We have gone through it, and we are constrained to say that it does not contain any plea to the effect that the trust in question was "created" by the public of Jhunjhunu so as to attract the application of Section 17 of the Act. Our attention has no doubt been invited to *Anant Prasad Lakshminivas Generiwal Vs. State of Andhra Pradesh and Others*, and it has been urged that as the bulk of property of the plaintiffs' Bombay Trust lay in Rajasthan, it was necessary for the plaintiffs to register the trust in Rajasthan. We have gone through that case, but it was based on different facts. We also find that their Lordships of the Supreme Court have taken the view that it was abundantly clear that where the trust is situate in a particular State, the law of that State will apply to the trust, even though any part of the trust property, whether large or small, is situate outside the State where the trust is situate. We are therefore unable to uphold the argument which has been advanced by the learned Counsel for the appellants.

5. It has next been argued that the learned trial judge erred in taking the view that the plaintiffs had succeeded in making out a prima facie case in their favour. It has been urged that the entire property consists of rooms built by individual donors whose names are inscribed on the rooms built by them, so that there was nothing to show, ex facts, that the property in question belonged to the plaintiffs. Our attention in this connection has been invited to a certified copy of an entry in the register of Public Trusts, Bombay, to show that, according to that entry, the trust of the plaintiffs did not hold any Immovable property. We have examined the copy, but we are unable to uphold it at the present stage of the controversy as positive evidence of the nature contended by the learned Counsel for the appellants. The entry does not bear any date, and does not refer to the year in which it has been made, so that we are unable to think that it was sufficient proof in rebuttal of the plaintiffs' claim that the property was built in 1965. Even otherwise, it appears to us, prima facie, that the mere entry cannot have the effect of rebutting the evidence which has been referred to in the impugned order of the trial court and on the basis of which it has been led to the conclusion that the plaintiffs have been at least to make out a prima facie case in their favour.

6. It has been argued further that an error of fact has been committed by the trial court in what has been stated by it in paragraph 12(8) of the impugned order. It has been stated there that in an application signed by defendant Banwarilal for grant-in-aid, it had been stated that the "Adarash Bal Niketan" was being run by the Jhunjhunu Pragati Sangh and that the Singh was the owner of the school building. We have examined the argument and we find that if the relevant portion of the application is read in its proper context, it would appear that what has been stated by the learned trial judge is substantially correct. It appears from the averment in the application that defendant Banwarilal has, at any rate, admitted that the "Adarash Bal Niketan" belonged to the Jhunjhunu Pragati Sangh. We do not therefore find any justification for the argument of the learned Counsel.

7. It has also been argued that the order for the appointment of receiver has not been made with due care and attention and that it does not fulfil the five requirements stated in *T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others*, Reference in this connection has been made to the decisions in *Srimati Prosonomoyi Devi and Anr. v. Beni Mahab Rai and Anr.* ILR All 556 . *Satis Chandra Giri Vs. Benoy Krishna Mukhopadhyaya and Others*, *Bokaro and Ramgur Ltd. Vs. State of Bihar*, and *Srinivasa Rao v. Baburao and Anr.* AIR 1970 Mys 141. It has also been argued that the trial court has not exercised a sound judicial discretion in its impugned order. We have gone through the order and we find that all the relevant facts bearing on the application have been taken into consideration, as far as that was permissible at the stage at which the trial court was required to dispose of the application. It appears to us that, in the facts and circumstances of this case, when it appeared prima facie that the defendant were trespassing on the school premises, there was no justification for allowing them to continue, for that would have put a premium on their continuacy. In fact when the trial court had reached the conclusion that the plaintiffs had succeeded in making out a prima facie case, and had been able to show that considerations relating to balance of convenience and irreparable loss were in their favour, there was nothing wrong in taking the view that the alleged trespass by the defendants was of such a nature that it would have endangered the moveable and Immoveable properties to which the plaintiffs have laid their claim in the suit. We have gone through the cases cited by Mr. Singhvi, but they are clearly distinguishable on facts. There is however no quarrel in regard to propositions of law laid down therein, and we have in fact examined the present controversy in the light of those propositions.

8. No other point has been argued and, as we see no merit in the appeal, we have no hesitation in dismissing it with costs.

9. This leaves the plaintiffs' cross objection for consideration. It has been urged by their learned Counsel that when the plaintiffs had succeeded in establishing a prima facie case, and in proving further that the balance of convenience was in their favour and they were likely to suffer an irreparable loss, it was expected

that the trial court would appoint them as the receiver of the property in the facts and circumstances of the case. It has been pointed out that this aspect of the matter has not been examined by the trial court at all. We have gone through the impugned order, and we find that there is justification for this argument as the trial court has apparently brushed aside the request for the appointment of the plaintiffs as receiver by stating merely that it would not be advisable to hand over possession of the school building to any of the parties until the final disposal of the suit. We have therefore re-examined this aspect of the matter, and we find that as the plaintiffs had been able to show, prima facie, that they did not merely want to restart the school, but had actually done so, and wanted to shift the school to its original premises during the pendency of the suit, it would have been proper to appoint those of the plaintiffs as receiver of the property who were the trustees of the Jhunjhunu Pragati Sangh, after providing the necessary safeguards for its preservation during the course of the trial so that the defendants may not suffer in any manner in case they are successful in the trial. We therefore allow the cross-objection, and modify the impugned order of the trial court to the extent that we direct that those of the plaintiffs who are the trustees of the Jhunjhunu Pragati Sangh shall be appointed as the receiver of the Immovable and moveable properties in dispute, and we direct further that the trial court shall make a detailed order as to how they shall discharge their responsibility as receiver in the best interest of both the parties.

10. In the result, while the appeal fails and is dismissed with costs, the cross-objection is allowed to the extent mentioned above.