
(2013) 04 PAT CK 0081
In the Patna High Court
Case No : First Appeal No. 630 of 1974

Bihar State Board of Religious Trust	Vs	APPELLANT
Mahanth Ramgun Dasjee and Others		RESPONDENT

Date of Decision : 24-04-2013

Acts Referred:

Citation : AIR 2013 Patna 106

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Advocate : Ganpati Trivedi, Bhupendra Kumar Sinha and Prem Ch. Thakur, for the Appellant;

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The defendant No. 1, Bihar State Board of Religious Trust has filed this First Appeal against the judgment and decree dated 13.07.1974 passed by the learned 2nd Additional Subordinate Judge, Chapra in Title Suit No. 48 of 1967/17 of 1974 whereby the court below decreed the plaintiff-respondent No. 1's suit. The plaintiff-respondent No. 1, Mahanth Ramgun Dasjee filed the aforesaid suit for declaration that the properties in suit are his private properties wherein the public have got no interest and the action taken by the defendants under the provisions of the Bihar Religious Trust Act, 1950 are illegal, void and ultra vires and further prayed for recovery of Rs. 731.40, the amount of tax illegally realized by the defendant from the plaintiff.

2. The plaintiff claimed the aforesaid relief alleging that one Mahanth Khendhar Dasjee founded and established a Math at village Satua Sareys. Bariatha Math in the District of Chapra is a branch of this Math. The above said Math is maurasi i.e. hereditary Math and the chief disciple invariably succeeds to the office of the Mahanth after the death of Mahanth. After the death of Sri Khendhar Dasjee, his disciple Sri Dharan Dasjee succeeded and after his death, Ram Dasjee succeeded to the Gaddi as he was the Chela of Mahanth. Ram Dasjee died leaving behind his disciple, Narhar Dasjee who also died before cadastral survey leaving behind

his disciple, Sri Dasjee. Said Sri Dasjee acquired most of the properties in suit and the same were recorded in cadastral survey record in his name. In revisional survey record also, he was recorded as such. None of the Mahanth dedicated any property to the deities named Radha Krishna installed in the aforesaid two Maths.

3. The further case is that the dominant purpose of the Math was to find a place of abode for the Mahanth and their associates sadhus and to organize Vaishnavite discipline among themselves for self-development. Puja-path, Rajbhog were performed by Mahanth or the pujari appointed by Mahanth and the right to worship is confined only to the Mahanth so succeeding and their associate Vaishnavites and the public had no right. Since the worshippers or the beneficiaries are definite and ascertained individuals, it is not a public trust. Most of the suit properties were acquired by Sri Dasjee in his own name and for his personal gain and never possessed by the deities nor are recorded in the name of deities. The defendants illegally issued letters to the plaintiff coercing the plaintiff to submit return of accounts and illegally realized the amount.

4. The defendant No. 1-appellant filed written statement alleging that the Math in question is not hereditary Math but is a panchayati Math and the Mahanth of the Math is elected by the local public and sadhus of Vaishnav sect. The properties were not acquired by Mahanth Sri Dasjee but were donated and gifted by the public to the Math for religious and charitable purposes. Sri Dasjee was in possession of such properties as trustees and head of the institution so his name was recorded. In fact, the properties were dedicated to the deities installed in the Math and the beneficiaries are the deities and the followers of Vaishnav sect. The properties were acquired by income of the dedicated properties or by the offerings made to the deities for religious and charitable purposes and for feeding the sadhus and farers. The Math was opened to worship by public in general and it was not confined to Mahanth or pujari alone. The plaintiff is not the owner rather he is trustee of the suit property. Since it is public trust properties, the defendant has rightly issued the letters and the plaintiff submitted the return out of his own free will.

5. On the basis of the aforesaid pleadings, the following issues were framed:

I. Is the suit as framed maintainable?

II. Has the plaintiff got any cause of action and right to sue?

III. Is the court fee paid insufficient?

IV. Is the suit hit by section 78 of the Bihar Hindu Religious Trust Act?

V. Is the suit barred by limitation and estoppel?

VI. Whether the temple and the properties in suit are the personal properties of the plaintiff and are not trust properties to which the provisions of the Bihar Hindu Religious Trust Act apply?

VII. Whether the defendants have right to make assessment on the plaintiff with

regard to the properties in question?

VIII. Is the plaintiff entitled to a decree for realization of the amount as claimed?

IX. To what relief or reliefs is the plaintiff entitled?

6. After trial, the court below considering the evidences and materials recorded the finding that the properties in suit are the personal properties of the plaintiff and the defendant No. 1 failed to establish that the properties in suit are the public trust properties within the ambit of Bihar Hindu Religious Trust Act. The Lower Court also held that the suit is not barred by law of limitation.

7. The learned counsel, Mr. Ganpati Trivedi appearing on behalf of the appellant submitted that in fact, the Math is not hereditary Math rather it is panchayati Math and the plaintiff himself had admitted that he was elected by public and not nominated by Guru. Therefore, the decision relied upon by the court below i.e. The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseshwar Das, is not applicable in the present case. According to the learned counsel, the appellants had adduced evidences to the effect that the public at large were performing puja path as a matter of right and they are participating in election of the Mahanth. Therefore, in fact, it is a panchayati Math but the learned court below wrongly relying on the decision of the Apex Court referred to above decreed the plaintiff's suit. The learned counsel further submitted that after submission of the return by the plaintiff to the appellant, the suit has been filed much after, therefore, the suit itself is barred by law of limitation but the trial court wrongly held that the suit is not barred by law of limitation. The learned counsel strongly relied upon the observation made by the Hon'ble Supreme Court at paragraph 17 in the aforesaid case of Bihar State Board of Religious Trust (supra) and submitted that according to the Hon'ble Supreme Court, if the beneficiaries are of particular sect then also it will be a public trust and not private trust. The learned counsel further submitted that the fact of the said decision are entirely different as such, it is not applicable in the present case. The trial court has misread the evidences. On these grounds, the learned counsel submitted that the impugned judgment and decree are liable to be set aside and the plaintiff's suit be dismissed.

8. As stated above, nobody appeared on behalf of the respondents.

9. In view of the above contentions of the learned counsel for the appellant, the point arises for consideration in this appeal are as follows:

I. "Whether the properties in suit belonged to the plaintiff or the plaintiff is in possession as Mahanth of the Math which is public trust" and "whether the impugned judgment and decree are sustainable in the eye of law?"

II. "Whether the plaintiff's suit is barred by law of limitation?"

Point No. 1

10. According to the plaintiff, a Math was established by the founder and the post

of Mahanth was descending from Guru to Chela. Sri Dasjee had acquired the substantial part of the suit properties out of his own labour and the properties are recorded in his name which was never dedicated to the deities installed in the Math by any of the Mahanth from the founder till today. The properties have also been recorded in the name of the plaintiff and not in the name of the deities. The Math is hereditary Math. On the other hand, the defendant's case is that the Math is a Panchayati Math and is public trust. The properties were dedicated to the deities installed in the Math.

11. In support of their respective cases, the parties have adduced evidences in this case. P.W. 2 has stated that the temple is inside the Math building and Mahanthjee worships the deities. This witness has further stated that the deities are not open to worship by the public in general. This witness has also clearly stated that he had never seen anyone making any offering to the deities in the Math. Likewise, the other witnesses P.W.'s 3, 4, 6, 9 and 10 have stated that most of the properties are the self-acquired properties of Mahanth and the public have got no concern with the affairs of the Mahanth and public have no right to freely worship the deities. Exhibit 12 is C.S. Khatiyani and Exhibit 12/A is R.S. Khatiyani. It shows that properties were recorded in the name of Mahanth Sri Dasjee in C.S. khatiyani as well as in the R.S. khatiyani. It is not denied that said Sri Dasjee was the Guru Mahanth of the plaintiff as claimed by the plaintiff.

12. On the contrary, D.W. 2 has stated that the suit properties were given to the Mahanth in Brit which he learnt from his grandfather. D.W. 3 has stated that the property belonged to the Thakurjee installed in the Math. He in his cross-examination admitted the fact that he does not know who gave the land in Brit and who gifted the land to Mahanthjee or Thakurjee. D.W. 4 has stated that the Math and the temple is public Math and temple and the property belonged to Thakurjee. D.W. 5 has stated that the property is the property of Thakurjee. The other witnesses D.W.'s 1, 6 to 9 have only stated that the local people come to worship the deities without any hindrance and they also make offerings. It may be mentioned here that except these oral evidence, not a single chit of paper has been filed by the appellant to show that who dedicated the properties, how the properties were acquired and how the Math is Panchayati Math.

13. The plaintiff has produced Exhibit 6 series i.e. mortgage deed dated 30.07.1940 and 05.12.1939. The jarpesgi bond, Exhibit 7 series i.e. the bond dated 07.11.1932, 20.06.1938 which clearly indicates that these properties were dealt with by the plaintiff as his personal property. As stated above, the defendants have not produced any chit of paper to show that who dedicated the property. Except the pleading and the evidences of the witnesses to the effect that the properties were dedicated to the deities, there is nothing reliable on record to accept this contention. The only oral statement cannot be accepted particularly when the documents have been produced by the plaintiff as stated above which clearly indicates that the properties were recorded in the name of Mahanth as far back as in cadastral survey and till today i.e. the revisional

survey. So far the Panchayati Math is concerned, the learned counsel gave much emphasis on Exhibit D which is a judgment of Title Suit No. 53 of 1936 filed by one Mahanth Ram Swaroop Das against the present plaintiff, Ramgun Das and submitted that in the said case, there was dispute regarding Mahanthship and the present plaintiff claimed in that case that he was elected which clearly indicate that the Math is Panchayati Math. From perusal of the Exhibit D, it appears that Mahanth Sri Dasjee was admittedly the last Mahanth who died sometime in the year 1927. According to the plaintiff of that case he was bairagi chela nominated by the Mahanth as his successor Mahanth. After death of Sri Dasjee, he was selected as Mahanth in the assemblesse of the Mahanth of the neighbourhood and the chelas and other respectable people of the locality in the Bhandara. The defence was that plaintiff of that case was not the chela nominated by Sri Dasjee as his successor but defendant is the only chela of Sri Dasjee who performed his Bhandara and was elected Mahanth and got the Chadar. On the basis of these facts pleaded in that case, the learned counsel submitted that the Math was Panchayati Math and the Mahanths were elected by the Mahanths and the public at large also participated in the election. So far this submission is concerned, I find no force because except this statement made in the said Exhibit D, there is nothing to indicate that in fact in the election, the public at large also took part in the election. There is no evidence on record either in this case or in the said case as it would be evident from Exhibit D that the Chadar was given by the public at large or that still today any other person except a chela has been either nominated or selected as Mahanth. On the contrary, from perusal of the said judgment, Exhibit D, it appears that the Presiding Mahanth is elected by an assembly of Mahanths. In the said judgment, it was also found that the plaintiff was living with Mahanth Sri Dasjee from very long time and was in possession of the Math properties after Sri Dasjee's death. There is no evidence that the public were participating in election. In my opinion, therefore, on the basis of Exhibit D, it cannot be said that the Math is Panchayati Math.

14. In view of the above facts, it is clear that the original Mahanth, Khendhar Dasjee had established the Math and installed the deities. He was succeeded to the Mahanthship by his chela and thereafter succession to the Mahanthship had been from Guru to chela. From the evidence, it is also clear that the appointment of a successor has been all throughout from Guru to chela. The outgoing Mahanth always nominated his successor from amongst his chelas and the public had at no time any voice in the selection or nomination. The properties have always been recorded in the names of the Mahanths as proprietors and not in the name of the deities in the khewats and khatiyans. The Mahanths have been in possession and management of the Math and the properties all throughout. The Mahanths acquired the properties from time to time in their own names as proprietors and nothing in the names of the deities or the Math. There was no objection at any time from anyone and Mahanth dealt with properties through deeds and mortgage and other manner.

15. In the case of The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseshwar Das, , the Hon''ble Supreme Court has held as follows:

9. From the rest of the evidence the following facts as summarised by the High Court, emerged:

1. that the temple was constructed by Gaibi Ramdasji and it was he who installed the deities therein;
2. that he was succeeded to the Mahantship by his chela, and thereafter succession to the Mahantship had been from guru to chela;
3. that the appointment of a successor has been all throughout from guru to chela, the reigning Mahant appointing or nominating his successor from amongst his chelas and the members of the public have had at no time any voice in the selection or nomination;
4. that the properties have always been recorded in the names of the Mahants as proprietors and not in the name of the deities in the D registers, Khewats and Khatiyans;
5. that the Mahants have been in possession and management of the asthal and the properties all throughout;
6. that the Mahants acquired properties from time to time in their own names as proprietors and never in the names of the deities or the asthal, without any objection at any time from anyone and dealt with some of them through deeds of sales, mortgages, leases, etc.

16. From the above decision, it appears that the fact found by the Hon''ble Supreme Court in that case is the same which is found in the present case. In my opinion, therefore, the submission of the learned counsel for the appellant that the aforesaid decision is not applicable in the present case cannot be accepted.

17. The learned counsel for the appellant submitted that here the beneficiaries are not the Mahanths only but the sadhus and farers are also entertained and the public also at large and, therefore, the beneficiaries are not particular individual or a particular group but the beneficiaries are of a sect as such, it is public trust. So far this submission is concerned also, I do not find any merit because of the fact stated hereinabove to the effect that the properties were never dedicated to the deities. There is no evidence as to who donated the properties to the Mahanth. There is no evidence that public took part the selection or election of the Mahanth and other facts detailed above.

18. The learned counsel for the appellant submitted that the plaintiff voluntarily submitted return, therefore, he is estopped from saying that the property is not the public trust property rather it is his personal property. So far this submission is concerned also, I find no force because only on the basis that he submitted the return the character of the property cannot be changed or that it cannot be held

that the trust is a public trust or that the property is the property of deities. As stated above, the fact of the case before the Apex Court quoted above is the same in the present, case and in the same facts and circumstances, of the case the Hon''ble Supreme Court held that the trust was a private trust. Accordingly, therefore, I find that the appellant has failed to establish that the property was ever dedicated by anyone in the name of the deities or that the public at large had right to either elect or select Mahanth or the outsider or the public at large had any role to play in the management of the property.

19. In view of my above discussion, I come to the conclusion that the property is not the property of the deities rather it was the property of the original founder of the Math which is devolving from Guru to chela as such, it is not a public trust and the Bihar Hindu Religious Trust Act, 1950 is not applicable. The finding of the trial court, therefore, on this point is hereby confirmed.

Point No. II

20. So far the question of limitation is concerned, it may be mentioned here that the plaintiff has prayed for declaration of title on the property. On the contrary, the defendant's case is that it is the public trust. We have found above that in fact, the property is private property and it was never dedicated to the deities and the Math is not public trust. Only because the return was submitted by the plaintiff, it cannot be said that the right and title of the plaintiff extinguished. It is for the appellant to show that the right and title of the plaintiff has been extinguished because of filing of the return. There is no such provision in any statute to the effect that if the return is filed before the Board of Hindu Religious Trust, the right of the plaintiff will be extinguished and the property will be held to be either property of the deities or the Math to be the public trust. In my opinion, therefore, the plaintiff's suit for this relief is not barred by law of limitation. I also find that filing return by the plaintiff, no right has been created in favour of the Board as such, the appellant is not entitled to ask the plaintiff to submit the return. In the result, I find no merit in this First Appeal and accordingly, this First Appeal is dismissed. Considering the facts and circumstances of the case, no order as to cost.