

(2020) 02 PAT CK 0331

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4303 Of 2011

Binod Kumar Singh

APPELLANT

Vs

Bhola Roy And Ors

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 2(o), 2(10), 28, 28(2)
Specific Relief Act 1963 — Section 15, 42, 43
Code Of Civil Procedure, 1908 — Order 1 Rule 10, Order 1 Rule 10(2), Order 23 Rule 1, Order 23 Rule 1A
Constitution Of India, 1950 — Article 227

Citation : (2020) 02 PAT CK 0331

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Dr. Umashankar Prasad, Kamala Kant Tiwary, Niraj Kumar Sinha, Ganpati Trivedi, Ashwarya Shree, Chandra Kant, Manish Chandra Gandhi

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. By an order dated 4.6.2007 passed by learned Sub Judge-I, Chapra, Saran, in Title Suit No. 191 of 2006, the Secretary Bihar State Religious Trust Board, Vidyapati Marg, Patna, (Defendant No.4) has been transposed as a plaintiff by allowing an application on behalf of Defendant No. 4, which order has been assailed in the present writ application filed under Article 227 of the Constitution of India. The Board through its Secretary was impleaded as the defendant in the said suit which was filed originally by Thakur Ram Janaki Mandir Trust through the Secretary of the Trust Committee as plaintiff No. 1 and Moti Rai, the Secretary, Ram Janaki Mandir Trust Committee as plaintiff No. 2 who has been impleaded as respondent No. 11 herein. The petitioner was impleaded as defendant No. 1 in the Title Suit whereas the Secretary, Bihar State Religious Trust Board was impleaded as defendant No. 4.

3. Written statements have been filed in the Title Suit on behalf of the defendants including defendant No. 4. As can be noticed from the averments made in the present writ application and counter affidavit and other affidavits filed in this case that the suit was filed for declaration of the Title of the plaintiffs namely, Thakur Ram Janaki Mandir Trust (hereinafter referred to as 'the Trust') over Schedule-I property. Defendant No. 1 in his written statement claimed his title over the suit property. The Secretary of Bihar Religious Trust Board has filed a written statement supporting the case of the Trust stating specifically that the Trust was registered under the Bihar Hindu Religious Trusts Act, 1950. A copy of the written statement filed on behalf of the defendants No. 4 and 5 has been brought on record by way of a supplementary affidavit filed on behalf of the Board in the present proceeding. It is evident that plaintiff No. 2 filed an application before the court below seeking withdrawal of the suit and acknowledging the title of defendant No. 1. It is the case of the Board that the said attempt by the plaintiff No. 2 was opposed by the Board on the grounds inter alia, that the application seeking withdrawal was collusive; the Trust in question was registered with the Board long back which was being managed by a Trust Committee constituted by the Board and; that the suit itself was filed with the approval of the Board. It was in the aforesaid background that the application seeking transposition of defendant No. 4 as plaintiff was filed which has been allowed by the impugned order.

4. I have heard Mr. Umashankar Prasad, learned senior counsel appearing on behalf of the petitioner and Mr. Ganpati Trivedi, learned senior counsel appearing on behalf of the Bihar State Religious Trust Board.

5. Mr. Prasad, learned senior counsel appearing on behalf of the petitioner has at the very outset submitted that the Secretary of the Board is no legal entity and there is no decision of the Board within the meaning of the Act which could be the basis for the claim of defendant No. 4 to be transposed as plaintiff. He has submitted, applying the doctrine of dominus litis that a plaintiff is the master of his case and he is at liberty to withdraw his suit at any stage. According to him, in the nature of dispute, defendant No. 4 could not have been transposed as a plaintiff as in the plaint, the plaintiffs have been claiming their title which relief the Board cannot claim. It is his submission accordingly that in no case, defendant No. 4 could have been transposed as a plaintiff. He has placed reliance on decisions of this Court in case of Thakur Chaudhry and Others Vs. Brahmdeo Chaudhry and Others (AIR 1979 Patna 58) with special reference to paragraphs 7 and 9 thereof and Basudeb Narayan Singh and others Vs. Shesh Narayan Singh and others (AIR 1979 Patna 73). He has also relied on a decision of Jharkhand High Court in case of M. S. Hoda Vs. Dipti Mukherjee and Others (AIR 2006 Jharkhand 13) and has relied on the discussion in paragraph-7 thereof.

6. Referring to the said decisions Mr. Prasad has submitted that a plaintiff has right to have his dispute adjudicated upon unless he chooses to withdraw the suit or there is some other good reason available in law, the Court cannot refuse to

adjudicate upon the claim put forward by him. He has submitted that only in exceptional circumstances, a defendant can be transposed as plaintiff as normally such transposition is likely to alter the nature of the suit. He has agreed that the court below has failed to appreciate the nature of controversy involved in correct perspective before allowing the application filed by the Secretary of the Board seeking transposition as plaintiff. He has also argued that the written statement which was filed on behalf of the defendant No. 4 after his transposition cannot be given credence for the purpose of present adjudication as the same appears to be an act of after thought.

7. Mr. Ganpati Trivedi, learned senior counsel appearing on behalf of the Bihar State Religious Trust Board has submitted that there was wrong description given in the plaint of Secretary of Bihar Religious Trust Board as Defendant No. 4. He has submitted that the said incorrect description of defendant No. 4 and his subsequent transposition as plaintiff is not so prejudicial as to require this Court's interference with the impugned order on that ground. He has submitted that the Civil Procedure Code prescribes remedial measures in such situation which can be undertaken by seeking amendment of the description of the parties in the suit. He has argued that Thakur Janaki Mandir Nyas Samiti is a religious Trust within the meaning of Section 2 (10) of the Bihar Hindu Religious Trusts, Act 1950 (hereinafter referred to as 'the Act') and the Committee of the Trust was constituted under the orders of the Board. The Trust, he contends, is registered with the Board under the provisions of the Act and, therefore, the Board has the power of general superintendence over the Trust in accordance with Section 28 of the Act. He has relied on Clauses (d), (o), (p) of sub-section (2) of Section 28 of the Act to contend that it is within the powers of the Board to take measures for the recovery of lost property of any Religious Trust and to direct the Trustee of the Religious Trust to institute in a court of law, any suit or proceeding which his Trust is entitled to institute. He submits that it is the statutory obligation of the Board under Clause (p) of sub-section (2) of Section 28 of the Act to defend either on behalf of or in addition to the Trustee in a suit or proceeding in respect to Religious Trust or any other matter connected therewith and in cases where there is no Trustee or succession to the office of the Trustee is disputed, to defend such suit or proceeding itself. He has relied on a Supreme Court decision reported in (2019) 2 BLJ (SC) 331 (R. Dhansundari @ R. Rajeswari Vs. A.N. Umakanth & Ors. to submit that the powers of the Court to grant prayer for transposition are wide and can be exercised for effectual and comprehensive adjudication of all matters in controversy in suit. He would contend that the only requirement which is to be examined, while considering an application seeking transposition if the plaintiff decides to withdraw or abandon his claim is that the defendant seeking transposition, is having an interest in subject matter of the suit. He has argued that by seeking transposition, the Board has simply discharged the statutory obligations conferred on the Board under the provisions of the Act. He has further submitted that the defendant No. 1 does not have the locus standi to question the correctness of the impugned order in the absence of

the original plaintiff disputing the correctness of the impugned order.

8. Before I refer to rival submissions made on behalf of the parties with reference to the materials which have been brought on record, it would be apt to take note of certain provisions of Bihar Hindu Religious Trusts Act, 1950. This is to be noted that whereas it is the case of the Board that the Trust is registered under the Act, the said submission has been disputed by the petitioner/defendant No. 1. This is a disputed question which can be gone into at appropriate level before the court below. The preamble of the Act, for the purpose of the present adjudication, in my opinion, is significant and must be taken note of at the very outset. The preamble reads thus:-

"An Act to provide for the better administration of Hindu Religious Trusts and for protection and preservation of properties appertaining to such trusts. Whereas it is expedient to provide for the better administration of Hindu religious trusts in the State of Bihar and for the protection and preservation of properties appertaining to such trusts".

(Emphasis added)

9. Apparently, the Act has been enacted, inter alia, for the purpose of protection and preservation of properties appertaining to the Religious Trust. The Trust property has been defined under Section 2 (o) of the Act which means the property appertaining to Religious Trust. The original plaintiff, claiming to be the Secretary of the Trust Committee had filed the suit for declaration of title of the Trust over the disputed property. The plaintiff No. 2, the Secretary of the Trust Committee applied for withdrawal of the suit. The question is as to whether the Board, which was being represented as defendant No. 4 could have allowed the suit to be completely withdrawn and could have allowed the Trust to accept the claim of Title of defendant No. 1 over the suit property, despite the case of the Board that the property was a Trust Property. It is specific case of the Board that the Trust Committee, of which the plaintiff No. 2 was the Secretary, was constituted by the Board and the suit was got filed through the Trust and the Secretary under the directives of the Board. It is true that the Board would not be claiming its Title over the suit property after the transposition rather the Board, subsequent to transposition will be attempting to establish the Title of the Trust over the suit property.

10. The decisions which have been relied on behalf of the petitioner, in my opinion, do not support his contentions in the facts and circumstances of the case to assail the impugned order of the court below. In case of Thakur Chaudhry and Others Vs. Brahmdeo Chaudhry and Others (supra), this Court observed, inter alia, in paragraph-7 that a person can be added as a co-plaintiff when he can adopt the plaintiff's case. Persons having conflicting cases cannot be made co-plaintiffs and if the plaintiff and the defendant have conflicting cases, the question of making the defendant a plaintiff and the plaintiff a defendant does not arise unless such a contingency occurs when, for instance, "the

plaintiff is withdrawing from the suit".

11. It is thus clear observation of this Court in case of Thakur Chaudhry and others Vs. Shesh Narayan Singh and Others (supra) that a defendant may be allowed to be transposed in case the plaintiff is withdrawing from the suit. It can be easily seen that the original plaintiffs and defendant No. 4/transposed plaintiff did not ever have conflicting cases at any stage, before the plaintiff decided to withdraw the suit by acceding to the claim of defendant No. 1 of his Title over the suit property. The decision of this Court in case of Basudeb Narayan Singh and others Vs. Brahmdeo Chaudhry and Others (supra) is also of no help to the petitioner in view of the following observation made by this Court:-

"... It is well settled that if it is necessary for a proper adjudication of the real controversy in suit, the court may, acting under O. 1, R. 10 (2) of the Code, add or strike out parties or transpose them from one category to the other (see R.S. Maddanappa (deceased) v. Chandramma, AIR 1965 SC 1812 and Bhupendra Narayan Sinha v. Rajeswar Prasad, Bhakat, AIR 1931 PC 162). In the last case the Privy Council said that the course of adding pro forma defendants as co-plaintiffs should always be adopted where it is necessary for a complete adjudication upon the questions involved in the suit and to avoid multiplicity of proceedings. In this view of the matter, the court below had the jurisdiction to decide as to whether or not Parmila Devi should be allowed to be transposed to the category of the plaintiffs and the plaintiffs to the category of defendants. The court below has decided it in favour of the intervenor defendant. It cannot, therefore, be said that the order in this respect suffers from want of jurisdiction or illegal exercise thereof".

12. Similarly, the decision of the Jharkhand High Court in case of M.S. Hoda Vs. Dipti Mukherjee and others (supra) also does not support the petitioner's plea, in the facts and circumstances of the present case as noted above.

13. Mr. Ganpati Trivedi, learned senior counsel appearing on behalf of the Board has rightly placed reliance on Supreme Courts decision in case of R. Dhansundari @ R. Rajeswari Vs. A.N. Umakanth & Ors. (supra). In the said case, the plaintiff had filed the suit as Power of Attorney holder of the plaintiff and when the Power was enforced, the power given to him was cancelled. When the power was enforced, the plaintiff had sold most of the suit items. The purchasers, thereafter, moved an application to implead themselves as plaintiffs which was allowed. Later, the plaintiffs had filed an application to transpose some of the plaintiffs as defendants which was also allowed. After the trial had commenced and the plaintiff's witnesses had been examined, the plaintiff and one of the defendants entered into compromise and filed a memo stating that the suit was not to be pressed as settled out of the Court. It was, in such circumstance, that an application was made on behalf of other contesting defendants for their transposition on the plea that the withdrawal was collusive in nature.

14. The Supreme Court dealing with the provisions under the CPC including

Order XXIII Rule 1A read with Order 1 Rule 10 and a decision of Supreme Court in case of Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru reported in (1995) 3 SCC 147 laid down the law in paragraph-10 as follows:-

"10. A person may be added as a party-defendant to the suit though no relief may be claimed against him/her provided his/her presence is necessary for a complete and final decision on the question involved in the suit. Such a person is only a proper party as distinguished from a necessary party. In Razia Begum v. Sahebzadi Anwar Begum [1959 SCR 1111 : AIR 1958 SC 886] , in a suit instituted for a declaration of legal status as a married wife, the question arose whether another person claiming to be the third wife and sons through her are necessary and proper party, who sought to come on record under Order 1, Rule 10(2). This Court held that in a suit for declaration as regards status or legal character under Section 42 of the Specific Relief Act, the rule that in order that a person may be added as a party must have a present or direct interest in the subject-matter of the suit, is not wholly applicable, and the rule may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position to effectually and completely adjudicate upon the controversy. In such suits the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon clear proof, apart from the admission. It was therefore, held that since a declaratory judgment binds not only the parties actually before the court but also the persons claiming through them respectively within the meaning of Section 43 of the Specific Relief Act, they are proper parties. The petitioner therein was not claiming this legal status nor through the respondent. In Lala Durga Prasad v. Lala Deep Chand [1954 SCR 360 : AIR 1954 SC 75] , in a suit for specific performance the subsequent purchaser was held to be a necessary party. In this case the petitioner is merely seeking the specific performance of the agreement of sale. Section 15 of the Specific Relief Act, 1963, provides that except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by "any party thereto"; and under Section 16, though discretionary, created personal bars to relief under given circumstances enumerated in clauses (a) to (c) therein. Therefore, based on the fact situation, the court would mould the relief. The respondent is neither a necessary nor a proper party to adjudicate upon the dispute arising in the suit so as to render an effective and complete adjudication of the dispute involved in this suit".

15. The Supreme Court ruled that in appropriate cases even a pro forma defendant is to be allowed to continue with the suit as a plaintiff so as to avoid the likelihood of his right being defeated and also obviating unnecessary multiplicity of proceedings. The Supreme Court reiterated the basic requirement for exercise of power under Rule 1A i.e. to examine if the plaintiff was seeking to withdraw or to abandon his claim under Rule-1 of Order XXIII and the defendant seeking transposition is having an interest in subject matter of the suit and thereby a substantial question to be adjudicated against the other defendants.

16. In view of the discussion as above, I do not find any legal infirmity in the impugned order passed by the court below requiring this Court's interference in the present proceeding under Article 227 of the Constitution of India. The Board, in the situation as narrated above, has a statutory duty to ensure protection of the property which is being claimed to be appertaining to a Religious Trust registered under the Act.

17. In view of the above, I do not find any merit in this writ application.

18. This writ application is, accordingly, dismissed.

19. All Interlocutory Applications stand disposed of.

20. It goes without saying that if the petitioner makes an application before the court below for filing additional written statement, the court below shall proceed in accordance with law.