
(1998) 09 MP CK 0003
In the Madhya Pradesh High Court
Case No : C.R. No. 1890 of 1998 (J)

Kapoorchand Rajendra Kumar Jain	Vs	APPELLANT
Shri Parasnath Digambar Jain Bada Mandir and Others		RESPONDENT

Date of Decision : 17-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2000) 1 MPJR 199

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : Mr. R.K. Sanghi, for the Appellant; Mr. B.M. Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

This revision is directed against the order dated 16/7/1998, passed by 14th Civil Judge, Class-II, Jabalpur, in Civil Suit No. 328-A/94. The disposal of this revision shall also govern the disposal of Civil Revision No. 1631 of 1998, as learned Counsel for both the parties agreed that an identical order has been passed by the trial Court in that case.

Shri Parasnath Digambar Jain Bada Mandir, Hanumantal, Jabalpur is a registered public trust, it filed a suit through its trustees for ejectment against the applicant under the provisions of the M.P. Accommodation Control Act, 1961. The two trustees S.S. Harishchand Jain and S.S. Nirmalchand Jain died during the pendency of the civil suit, therefore, an application under Order 6 Rule 17 of the Code of CPC was made to delete the name of S.S. Harishchand Jain and in his place the name of Santosh Kumar Jain was to be added as a trustee who was elected newly. Similarly, instead of S.S. Nirmalchand Jain, his son Yogendra Kumar was sought to be added as a newly elected trustee. This application has been allowed by the trial Court rejecting the application of the applicant to the effect that Order 22 of the Code of CPC was applicable and Santosh Kumar Jain and Yogendra Kumar could not have been added as Plaintiffs to the suit without

following the procedure provided by Order 22 of the CPC.

Learned Counsel for the applicant, in this revision, argued that Order 1 Rule 10 of the Code of CPC and Order 6 Rule 17 thereof are wholly inapplicable as the original Plaintiffs S.S. Harishchand Jain and S.S. Nirmalchand Jain had died long back and their legal representatives were not brought on record as per Order 22 Rule 3 of the Code of Civil Procedure. Therefore, the impugned order is bad in the eyes of law.

Learned Counsel for the non-applicants, on the other hand, argued that Order 22 of the Code of CPC would not apply to the facts of this case, as the trustees have not filed the suit in their personal capacities, but they have been made parties to the plaint by virtue of their offices of trustees. S.S. Harishchand Jain and S.S. Nirmalchand Jain had no personal interest in the matter and after their death, they simply ceased to be trustees and new trustees were being substituted as per law by way of election. As soon as they were elected, they were brought on record by way of amendment in the plaint.

Having heard learned Counsel for the parties, this Court is of the view that this revision is liable to be dismissed. The suit for ejectment was filed on behalf of Shri Parasnath Digamber Jain Bada Mandir, the non-applicant No. 1 against the applicant. The non-applicant No. 1 is a public trust, registered under the M.P. Public Trusts Act. The other non-applicants are the trustees. Order 31 Rule 1 of the Code of CPC provides that in a suit filed on behalf of the beneficiary against a third person, the trustees can represent the person beneficially interested in the trust. Ordinarily a trust is not necessary party to the suit. The discretion has been conferred on the Court to order that all or any of the trustees be joined as a party. However, the representative character of the suit is not lost. The rule of Order 31 of the Code of CPC shall govern the case at hand.

That apart, we may examine the nature of a trust in order to find out if any of the provisions of Order 22 of the Code of CPC come into play. A trust is created for the benefit of beneficiary. In case of public trusts, the general public has a beneficial interest in the trust property. The trust property vests in a trustee so that trustee looks after it and exercises the rights of a owner in relation to third parties for and on behalf of the beneficiary. Since the property vests in a trustee, he cannot be clubbed with an agent. In fact, a trust is an example of duplicate ownership. A trustee as well as a beneficiary is supposed to exercise the right of ownership. However, a trustee is the owner in name. As between the trustee and the beneficiary, the law recognizes the truth of the matter and gives a go by to the fiction(sic) by which a trustee is treated an owner against the third parties. However, the law permits the fiction to prevail when it comes to decide the dispute between a trustee, acting on behalf of beneficiary, and the world at large. A trustee exercises the rights of the beneficiary in such a dispute. He represents and personates the beneficiary, while dealing with the world at large. Thus, he acquires a legal personality. If there be more than one trustee, then all of them conjointly form a corporate or legal personality. This principle has been

recognized under Order 31 Rule 1 of the Code of Civil Procedure. The Court has ample power to order that a suit on behalf of the beneficiary shall be represented by one or more trustees. Where there be order of the Court or if the requirement of the law, all trustees have to be joined as parties to the suit. The trust would not fail because one of the trustees had died after filing of the suit. The body of trustees is not dissolved. The trust vested in the remaining trustees shall continue. The rights and the duties of the trustees are not abrogated by the death of one of trustees. So in this case, the remaining trustees after the death of two trustees could continue the suit. The right to sue for and on behalf of the beneficiary continued. There was no abatement. This principle was recognized by the Privy Council in the case of *Raja Anand Rao v. Ramdas Daduram and others*, reported in AIR 1921 P.C. 123, wherein their Lordships stated that a suit, filed u/s 539 of the CPC Code, 1882, could continue even after the death of person whom the Court granted permission to sue. It could be continued by a member of the public. This case was referred to with approval of the decision in the case of *Charan Singh and Another Vs. Darshan Singh and Others*, (at para 5 page 373). In somewhat similar circumstances, the Supreme Court in the case of *Krishna Singh v. Mathura Ahir and others*, reported in AIR 1980 SC 707, held that the death of Mahant during the pendency of a suit for ejectment brought by him against a trespasser would not cause the suit, to abate. It is true that the obligations of a Mahant are not that of a trustee but his office is akin to the office of a trustee. Therefore, the principle laid down in that case would apply.

For all these reasons, this Court is of the view that after the death of two trustees, S.S. Harishchand Jain and S.S. Nirmalchand Jain, the rest of the trustees could continue the suit. There was no question of abatement. The newly elected trustees could be joined as parties to the suit under Order 1 Rule 10 of the Code of Civil Procedure. It was not necessary to apply under Order 22 Rule 3 of the Code of Civil Procedure.

The result of the aforesaid discussion is that there is no merit in this revision. The revision is, therefore, dismissed.