
(2011) 08 SHI CK 0203

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 305 of 1997

Kishori Lal and Another

APPELLANT

Vs

Smt. Rohni Sharma and Others

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92, 96

Citation : (2011) 08 SHI CK 0203

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Ahuja, J.—This is a Regular First Appeal u/s 96 CPC filed by the Appellants against the judgment and decree of the Court of Learned Additional District Judge, Solan, dated 24.4.1997, vide which the suit of the Appellants was dismissed.

2. Briefly stated, the facts of the case are that the Appellants hereinafter also referred to as the Plaintiffs filed a suit u/s 92 CPC against the original Respondent Garud Dhawaj Sharma, now represented by his legal heirs, hereinafter also referred to as the Defendant.

3. It was alleged by the Plaintiffs that they have instituted the suit u/s 92 CPC It was alleged by the plaintiffs that they are residents of Solan and are members of the Hindu community having Sanatanistic religious belief and faith and are worshippers of deity and temple known as "Durga Devi Mandir" also known as "Solan Devi Temple", situate in Ganj Bazar Solan, comprised in Khasra Nos. 416, 419 and 420. It was alleged that the Deities Sh. Durga, Sh. Shivlingam and Sh. Hanumanji are installed and attached to the said property and were dedicated to the temple by Shri Shiv Dutt and the same were dedicated to the Deity since time immemorial. They also sought permission of the Court to file the suit u/s 92 Code of Civil Procedure.

4. It was further alleged by the Plaintiffs that the said Durga Mandir is a public religious and charitable endowment, constructed over the land described above. The said temple was alleged to have been constructed more than two centuries back and the management was being looked after by a Committee under the presidentship of late Raja Solan, in which Committee several other members were also included. It was alleged that the said Committee firstly appointed one Sh. Shankar Dutt, who was in the service of the then Raja of Bagat (Solan) as Pujari and after his death, the said Committee appointed the Defendant as Pujari, who was being paid a monthly salary of ` 15/-, which was later on increased to ` 75/-besides other rations. The offerings in the terms of cash and kind, were not given to the Pujari and the cash offerings were kept by the Temple Committee for the expenses on the temple and its improvement. Defendant No. 1 was appointed as Pujari of the temple and his main job was to maintain the deities and to perform Puja-path and other religious ceremonies. In addition to the above mentioned salary, the Defendant was also provided with accommodation for his residence in the Dharamshala known as Shiv Dayal Dharamshala Trust on the express condition that he is to perform the religious ceremonies from time to time. It was also alleged that it has become necessary for the Court to frame scheme and hand over possession of the trust property and management thereof and the Trustees to be appointed by the Court. There was no written constitution about the management of the temple. Defendant No. 1 was allegedly not recognizing the said committee and has been indulging in several acts of misconduct and has converted the property to his personal use since he has constructed a double storeyed residential house on the land belonging to the temple by dismantling the Dhuna and has also closed the rooms meant for keeping the mortal remains of human beings before those are taken to Hardwar. Thus, it was alleged that in view of all this misconduct, the Plaintiffs are seeking the relief that Defendant No. 1 be removed and new trustee be appointed and the management be handed over after a scheme is framed by the Court.

5. Defendant No. 1 took up various preliminary objections and on merits, he pleaded that the suit is not competent nor maintainable since no suit for removal of the Defendant is maintainable without declaration that the temple is a public, religious and charitable property. It was pleaded that the property in dispute is not a public and religious and charitable property. He admitted that the Plaintiffs are residents of Solan and are Hindus but denied that they have any Sanatinik religion belief. It was denied that there is any deity or the temple is known as "Solan Devi Temple". It was admitted that one of the Khasra Numbers has been shown in the name of Shiv Dutt, but these are part of the temple property for over 80 years. He also pleaded that the management of the temple had been from the very beginning either in the control of the ancestors of the replying Defendant in the capacity of Shabeit/Mohtmim or in the control of the Defendant in the same capacity. It was pleaded that the deity was installed by the Defendant about 80 years back, but it was admitted that the members of the

public having faith in Sanatinik had been worshipping in the temple. It was denied that the temple in question was a public, religious and charitable endowment.

6. On the pleadings of the parties, the following issues were framed by this Court on 7.11.1985:

1. Whether the suit is barred under principle of res judicata? ... OPD
2. Whether the suit has been properly valued for the purpose of jurisdiction? If so, its effect? ... OPP
3. Whether the plaint has been properly verified? If not, its effect? ... OPD
4. Whether Durga temple situate in Ganj Bazar, Solan, is a public religious and charitable endowment? ... OPP
5. Whether deity Durga Bhagwati was installed by Sh. Shankar Dutt and the legal possession of the temple property has always been with the deity and physical possession with Shabeit/Mohtmim? If so, its effect? ... OPD
6. Whether a local committee under the chairmanship of the ruler of Bagat State was managing the affairs of the temple? ... OPP
7. Whether Defendant No. 1 has succeeded Sh. Shankar Dutt as Shabeit/Mohtmim of the temple? ... OPD
8. Whether Defendant No. 1 was appointed as a Pujari of the temple by Raja Durga Singh of Bagat and after the merger of the State, Defendant No. 1 came under the control of the local committee? ... OPP
9. Whether Defendant No. 1 has been mismanaging the affairs of the temple and, therefore, it has become necessary to frame a scheme under the provisions of Section 92 Code of Civil Procedure? ... OPP
10. Relief.

7. Parties led their evidence and the Learned trial Court vide its impugned judgment decided Issues No. 4, 5, 6, 7, 8 and 9 as against the Plaintiffs and in favour of the Defendant and consequently, dismissed the suit of the Plaintiffs.

8. I have heard Learned Counsel for the parties and have gone through the record of the case.

9. Under Issue No. 4, it has been held by the Learned trial Court that the Plaintiffs have not been able to prove that Deity-temple is a public religious and charitable endowment. Under Issue No. 5, it was also held that the Defendant has been able to prove that the Deity was installed by Shankar Dutt and the legal possession has been with Deity and Defendant No. 1 came in possession of management in the line of succession and has rightly succeeded to the rights of shebaitship.

10. A reference can be made to evidence led by the parties in this regard. It is not disputed that there is no written constitution in regard to the Managing Committee, which was managing the affairs of the temple. There is no documentary evidence on record as to who were the members of the Managing Committee or that the Raja was the Chairman of the said Committee. However, the documents proved in evidence will suggest that it was a public, religious and charitable endowment and the Defendant was only managing the same as a Pujari. The Defendant had denied the existence of the Managing Committee under the chairmanship of the then Ruler of Bagat (Solan). Statement of PW-1 Kishori Lal, Plaintiff, was not relied upon by the Learned trial Court since he was silent about the dedication of the temple to the property as to by whom it was dedicated. However, his statement was clear that idol was installed by Shankar Dutt. He again denied that it was installed by Shankar Dutt, grand-father of Defendant No. 1 more than 85 years ago, but he reiterated that this idol was installed by Raja Sahib. He admitted that the Defendant was working as Pujari throughout his life. It has also come in evidence of PW-1 that Defendant No. 1 did not stop any devotee from paying obeisance in the temple. He has also stated that during the month of Ashar annual fair is being held and a procession is also taken. He also stated that devotees of Durga Mata had contributed for the construction of temple complex from time to time. PW-2 Shiv Dutt has admitted that Defendant was Pujari of the temple in question and he was working there since 1945-46. Statements of PW-3 Shankar Dass and PW-4 Anil Kumar were not relied upon since they have not been able to show that as to when temple was constructed. PW-5 Trilok Chand was a devotee of the temple and remained Municipal Commissioner, Solan, for about ten years and he stated that a Committee has been formed by Raja Sahib for the management of the temple consisting of persons named by him and he stated that the Defendant was the Pujari of this temple. This witness was silent about the creation of religious endowment. However, he had been Municipal Commissioner and has stated that the temple is being managed by Raja Sahib under a Committee and his statement cannot be ignored.

11. PW-6 Hem Chand, a member of the Committee since 1947-48, stated that the Defendant was employed by Raja Sahib and the temple belongs to general public. PW-7 Rash Behari, Secretary, had been examined to prove the signatures on application Ext. P-17, form Ext. P-18, Ext. P-19 and plan Ext. P-20. The mere fact that he has not been able to state about the creation and establishment of the temple for public purposes does not lead to the inference that his statement cannot be relied upon.

12. PW-9 Ishwar Singh has stated that Raja Durga Singh was his cousin. He further stated that general public comes to the temple for worshipping and Defendant No. 1 was appointed as Pujari firstly by Raja Sahib and thereafter by the temple committee on salary. He could not say about the date or year when the temple committee was formed, but stated that it might have been formed about 50/60 years back. He also stated that the temple was constructed by Raja

Sahib as well as his ancestors. PW-2 Shiv Dutt has stated that the land underneath the temple belongs to their family and it was donated by his ancestors for the public for construction of a temple.

13. DW-1 Garud Dhawaj Sharma, has stated that his father has stated that his father had deputed him as Mohtmim or Pujari and he had been managing the temple. He has admitted that he was Purohit of late Raja Durga Singh erstwhile ruler of Bagat estate and was performing Puja etc., for which he was paying ` 30/- p.m. to him. He admitted that Exts. P-1 to P-7 are the writings which I had given to late Raja for getting his permission for purchasing some articles of Puja and for going out of Solan. He stated that this permission was required as some alternative arrangement was required to be made for Puja in his absence. He further stated that there was no committee for the management of the temple. He had addressed Ext. P-4 and other documents to Pradhan Durga Temple Committee, Solan. He admitted that the temple is situated on Government land and the land adjacent to it is owned by Shiv Dutt. He admitted that Ext. P-4 application, is in his handwriting. In this application written by him, he has sought the permission of Pradhan, Durga Temple Management Committee to visit his residence and had prayed for 15 days leave. He had also made complaint Ext. P-2 addressed to Shiv Dayal about the misuse of "Dhuna". He admitted that Exts. P-1 to P-7 were written by him. Ext. P-3 is addressed to Pradhan Temple Management Committee that he needs money for his expenses as well as for the Shradh of his father and he be paid the pay accordingly. Ext. P-5 addressed to Pradhan, Durga Mandir, Management Committee, shows that he had prayed for leave in regard to the marriages of his brothers daughters. Ext. P-6 is also again addressed to Pradhan, Durga Mandir Management Committee, praying for a leave of one month. All these documents have been admitted to have been written by the Plaintiff and once there was no committee, there was no question of the Defendant writing to the Pradhan of the Committee for leave, for money etc. It is true that the Plaintiffs have not been able to prove a written document about the constitution of the Committee or its Chairman, but the fact that the Defendant had been making requests addressed to Pradhan of the Temple Committee for leave, for pay etc. clearly shows that there existed some Committee headed by some Pradhan or Raja of Bagat estate, to whom the request had been made by the Defendant himself. Therefore, whatever documents have been placed on record clearly referred to the fact that it is not a personal property of the Defendant, but is a temple dedicated to the public in which the public perform Puja without any obstruction and a religious fair is also held during the year in this temple. In case, the Defendant was himself owner of the temple, neither there was any necessity to take leave or maintain the accounts or submit accounts or seek permission for leave or for payment of the pay etc. There is nothing on record to show that it was a private property of the Defendant or that it was not a public trust and has not been dedicated for a public purpose and the temple was being used as such. It is wrong for a person to set up a claim without it belonging to him or is under his ownership.

14. The evidence led clearly prove that the Defendant was a Mohtmim and had been performing the temple and the Learned Counsel for the Respondent was not able to show in any manner that it was not a public trust dedicated to the public and being used by the members of the public. I agree with the submissions made by the Learned Counsel for the Respondent that it is true that the present suit in question u/s 92 CPC could have been filed by Advocate General or two or more persons having an interest in the trust and having obtained the leave of the Court. It is not clear that if the leave of the Court was granted by the Court at the time of filing of the suit, but suffice to say that the Plaintiff has not been able to prove that there has been mismanagement of the trust or a direction of the Court is necessary for the administration of any such trust. The Defendant was entitled to live in the premises of the temple because of his duties as Pujari and had not been going out as admitted by him himself except on few occasions because since he was Pujari and had been performing Puja as such.

15. In view of the above discussion, it is clear that the Plaintiff has been able to prove that it was a public trust in which the Defendant was only a Pujari or Mohtmim and was entitled to remain as such till he was legally removed by order of any Court. Accordingly the findings to the contrary, are liable to be set aside and it is clarified that the Plaintiffs or any person of public may approach the District Collector in case of any mis-management of the temple, who may take steps for filing of the suit, if any, through the Advocate General and until that time Defendant was entitled to remain as Mohtmim and to maintain the accounts. During the pendency of the appeal, there has been direction to the Defendant to submit the accounts and he shall continue submitting accounts every month of the collection of the donation and expenditure incurred by him to the Collector, who shall keep a separate account, which may be called for by this Court or by any other Court, in any case, filed by either of the parties.

16. In view of the above discussion, the appeal filed by the Appellants is allowed to this extent that it is a public trust dedicated to the public, but the Defendant is entitled to remain as Pujari or Mohtmim and perform Puja etc. till he is lawfully removed by order of any Court. The appeal stands allowed accordingly in these terms.