

(2023) 03 CHH CK 0060
In the Chhattisgarh High Court
Case No : Writ Petition (227) No. 538 Of 2021

Lakshman Prasad Gupta

APPELLANT

Vs

Bhagwan Shiv Mandir Parivar Takhatpur

RESPONDENT

Date of Decision : 20-03-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 1 Rule 10, Order 1 Rule 10(2)

Citation : (2023) 03 CHH CK 0060

Hon'ble Judges : Deepak Kumar Tiwari, J

Bench : Single Bench

Advocate : Arvind Shrivastava, Hamida Siddiqui, Rishi Rahul Soni, Laxmeen Kashyap

Final Decision : Dismissed

Judgement

1. This petition has been filed against the order dated 28.08.2021 passed by Civil Judge, Class-2, Takhatpur whereby application preferred by the defendant/respondent No.3 – Balram under Order 1 Rule 10 (2) CPC for impleading him as defendant party, was allowed.

2. Facts of the case, in brief, are that the petitioner filed a civil suit for declaration of title and permanent injunction in respect of the lands bearing Khasra No.397, Area 0.721 Hectares and Khasra No.402, Area 0.401 Hectares situated at Village Belsari, Tehsil Takhatpur, District Bilaspur as the said property was obtained through Will by his late father Madanmohan @ Khorbahra on 25.03.2007. However, respondent No.3 filed an application before the Court below on the ground that he is necessary party in the civil suit and the civil suit has been filed without disclosing the real facts. It is also alleged that Will was also executed in his favour by father of the petitioner Madanmohan on 16.09.2006. Thereafter, on the basis of document available on record, the trial Court observed that proposed defendant has also interest on the suit property and he is necessary party and thereby allowed the application. Hence, this petition has been filed.

3. Learned counsel for the petitioner submits that impugned order is bad in law as in the said application there is no proper justification to implead him as a party. He also submits that the concerned property of Shiv Mandir has been given to him in the partition by his late father in share of the plaintiffs through document dated 25.03.2007. He submits that impugned order is contrary to the established judicial precedents and legal principles as neither the averment nor the relevant document supports the claim of respondent No.3, therefore, impugned order deserves to be set aside.

4. On the other hand, learned State counsel and counsel for respondent/defendant No.3 support the impugned order. Learned State counsel submits that the civil suit itself has been wrongly filed because the suit property belongs to deity as it is Shiv Temple and thus suit for declaration of title and permanent injunction in the name of person itself is not maintainable.

5. Heard learned counsel for the parties and perused the documents annexed with the petition.

6. The Civil Suit has been filed for declaration of title and permanent injunction for the property which has been declared in the name of deity as Shiv Temple. The analysis of concept of legal character of Shebaitship (Sarvarkar in this case) has been observed in the matter of Murti Shri Sinhwahini Devi Vs. State of Chhattisgarh and Ors reported in 2010 SCC OnLine Chh 94, relevant portion of the said judgment is reproduced hereunder:-

"12. Before dealing with the substantial question of law formulated as above, it would be profitable to refer to the concept, legal character and incident of Shebaitship (referred as Sarvarakar in the present case).

In the Hindu Law of Religious and Charitable Trusts, Tagore Law Lectures, by B.K.Mukherjea, Fifth Edition, Reprint 2003, in paragraph 5.1A of Chapter 5, namely, Management of Debutter-Shebaitship-Its Legal Character and Incidents, it has been described as under:

"5.1A. Shebait the human ministrant of the deity.-

..... "it is in an ideal sense that the dedicated property vests in an idol," and in the nature of things the possession and management of it must be entrusted to some person as Shebait or manager.

"It would seem to follow," the Judicial Committee observed in Prosonna Kumari Debya v Golab Chand Baboo, (1875) LR 2 IA 145, "that the person so entrusted must, of necessity, be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued for want of necessary funds to preserve and maintain them." This human ministrant of the deity, who is its manager and legal representative, is known by the name of Shebait in Bengal and Northern India. He is called the Dharmakarta in the Tamil

and Telugu districts, Panchayetdar in places like Tanjore and Urallen in Malabar. He is the person entitled to speak on behalf of the deity on earth and is endowed with authority to deal with all its temporal affairs. As regards the temple property, the manager is in the position of a trustee, but as regards the service of the temple and the duties that appertain to it he is rather in the position of the holder of an office of dignity. *Ramanathan Chetti v Murugappa*, (1906) LR 33 IA 139. For convenience I will call the manager by the general name of Shebait, though I am aware that a distinction has been made in some cases between a Shebait and a Dharmakarta. See *Srinivasa v Evalappa*, LR 49 IA 237."

7. Further, the judgment passed by the Hon'ble Supreme Court in the matter of *Mahant Ram Saroop Dasji vs. S.P. Sahi*, Special Officer-in-charge of Hindu Religious Trusts and others reported in AIR 1959 SC 951 deals with the basic difference between religious endowments which are public and those which are private. This Court deems it appropriate to reproduce the relevant portion of paragraph 10 of the said judgment which reads thus:-

"10.In a private or family debutter the beneficiaries are a limited and defined class of persons, as for example, the members of a family. If the trustee or shebait is guilty of mismanagement, waste, wrongful alienation of debutter property or other neglect of duties, a suit can certainly be instituted for remedying these abuses of trust. Under the general law of the land the founder of the endowment, or any of his heirs is competent to institute a suit for proper administration of the debutter, for removal of the old trustee and for appointment of a new one..."

8. Now reverting back to the facts of the present case which reflects that the petitioner/plaintiff filed the suit for declaration of title and permanent injunction. However, defendant No.3 has also filed Will dated 16.09.2006 which is annexed in this petition, from which it appears that father of the petitioner namely Madanmohan @ Khorbahra and defendant No.3 – Balram has given the suit property to the deity as Shiv Temple in which it is categorically mentioned that the suit property shall not be alienated by anybody and it will be solely used for the purpose of maintenance of the temple. Therefore, considering that petitioner filed the civil suit for the property which has been executed by his late father in favour of other son namely Balram Prasad Gupta and considering the scope of Order 1 Rule 10 CPC, this Court is of the view that the trial Court has rightly allowed the application to implead defendant No.3 as a party and thus the impugned order is just and proper and does not call for any interference by this Court.

10. Accordingly, this petition is dismissed.