

(2022) 05 MP CK 0068
In the Madhya Pradesh High Court
Case No : First Appeal No. 39 Of 1987

Mahant Narayan Puri Chela Lt And Others APPELLANT
Vs
Jagdish Chandra And Others RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 145
Religious Endowments Act, 1863 — Section 2(16), 2(29)

Citation : (2022) 05 MP CK 0068

Hon'ble Judges : Rajeev Kumar Shrivastava, J

Bench : Single Bench

Advocate : N.K. Gupta, S.D. Singh, K.S. Tomar, Rajendra Jain, Atul Kumar

Final Decision : Disposed Of

Judgement

Rajeev Kumar Shrivastava, J

1. Appellants have preferred this First Appeal against the judgment and decree dated 30/07/1987 passed by First Additional District Judge, Morena in Civil Suit No.3-A/78 decreeing the suit filed by the plaintiffs/respondents.

(2) The admitted facts of the case are as under:-

(i) It is undisputed that one Temple of Kali Mai (deity) is situated at village Basaiya, District Morena (M.P.).

(ii) It is also admitted that property of temple is vested in Deity of Kali Mai.

(iii) It is also admitted that earlier the aforesaid temple was under the control of the then Aukaf Department.

(iv) SLP was preferred against the judgment dated 07/05/1999 passed by learned Single Judge of this Court, which has been set aside by Hon'ble The Apex Court and matter has been remanded back to this Court observing as under:-

"It is common ground that the High Court while passing impugned judgment and

decree dated 07/05/1999 in First Appeal No.39 of 1987 has not examined the material evidence. This itself vitiates its order.

Accordingly, we allow these appeals, set aside the impugned judgment and decree dated 07.05.1999 of the learned Single Judge and remit the matters back for re-consideration in accordance with law. As we have set aside the order of the learned Single Judge, the order passed by the Division Bench in Letters Patent Appeal is rendered non est."

(3) The brief facts of the case are as under:-

The plaintiffs are the successors of Gumanilal and Ramgovind was the Karta Khandan of joint Hindu family. During the lifetime of Ramgovind, the lands situated at village Basaiya bearing Survey Nos.804/1/3II1, 804/2/3II) and 805/6)4 were received from some Zamindar. The detailed description of lands received by plaintiffs is as under:-

(4) After death of Ramgovind, plaintiffs No.1, 2, 3, & 4 are the possession holders of equal share. The aforesaid lands are disputed lands. Various litigations took place with regard to aforesaid lands between the parties. It is also pleaded in the plaint averments that the plaintiffs are the owners and are in possession of aforesaid lands. One Kali Mai temple is situated at Village Basaiya which was under the control of Aukaf Department. A civil suit was filed for releasing the property from the Aukaf Department, which was registered as Civil Suit No.1/52. The suit was decreed and it was directed that the land of the temple be released by the State in favour of its Pujari. One Special Leave Petition was filed which was dismissed by the Hon'ble Apex Court. The plaintiffs have specifically pleaded that the lands do not belong to temple Shri Kali Mai and they are exclusively owners of same. It was also pleaded by the plaintiffs that while execution, Nazir wrongly executed the decree including excessive land and the decree passed was not in relation to suit land.

(5) The Court below while passing judgment and decree dated 30/07/1987 held that the lands mentioned in Ex.P6 and P8 are different lands. It is also held that the aforesaid lands are 61 Bigha 12 Biswa whereas, the suit lands are 60 Bigha 19 Biswa, therefore, it was held that the suit lands are not belonging either to the temple Shri Kali Mai Basaiya or Aukaf Department.

(6) Learned counsel for the appellants/ defendants has submitted that the judgment and decree passed by the Court below is against the settled provisions of law and has further submitted that the plaintiffs/respondents remained fail to establish their ownership or possession over the lands in dispute. The lands as mentioned in above para belongs to temple and Shri Kali Mai (Deity) who is the juristic person holds the right and title over the property. It is also submitted that the plaintiffs/respondents claims to be the Pujari of the Temple and the defendant/appellant is Mahant of Shri Kali Mai temple. As defendant/appellant is the Mahant of Shri Kali Mai Temple, therefore, he looks after the overall managements of said temple. In support of his arguments, learned counsel for

the appellants has relied upon the judgment passed by the Hon'ble Apex Court in the cases of State of Madhya Pradesh and others vs. Pujari Utthan Avam Kalyan Samiti and Another [(2021) 10 SCC 222], Ramjankijee Deities and Others vs. State of Bihar and Others [(1999) 5 SCC 50], State of Punjab vs. Jasbir Singh [(1996) 2 SCC 288], Gram Panchayat of Village Naulakha Vs. Ujagar Singh [(2000) 7 SCC 543], Uttam Singh Duggal & Co. Ltd. v. United Bank of India [(2000) 7 SCC 120].

(7) Learned counsel for the respondents has vehemently opposed the submissions put forth by learned counsel for the appellants and has submitted that no perversity or illegality committed by the Court below in passing the impugned judgment and decreeing the suit in favour of the plaintiffs/respondents. Hence, prays for dismissal of this appeal by relying upon the judgments passed by the Hon'ble Apex Court in the case of V. Prabhakara Vs. Basavaraj K. (Dead) by Lr. & Anr. [2021 SAR (Civ) 10887 SC] and Jt. Collector Ranga Reddy Distt. & Anr Vs. D. Narsing Rao & Ors [2015 STD (1) 299].

(8) Heard learned counsel for the parties and perused the record.

(9) Jagdish, who is the plaintiff's witness (PW-1) has stated about his Sajra Khandan (Family Tree) in paragraphs 1 to 3 of his statement. Thereafter, in paragraph 4, he has stated about the partition of disputed lands. In paragraphs 6 to 8, he has stated that he received the lands of Village Basaiya bearing Survey Nos. 1147 to 1276 from the then Zamindar – Shankar Singh. Thereafter, his name was recorded in revenue records. He has also stated that land bearing survey No.811 was also received from Zamindar – Shankar Singh. He was having in possession over the lands and he was the owner of the lands. In paragraph 9 of his statement, this witness has also stated that proceedings under Section 145 Cr.P.C. were initiated wherein aforesaid lands were attached and possession was handed over to Supurdar Shankar Singh on 17/02/1972. Earlier to that, plaintiffs were in possession over the lands. In paragraph 10 of his statement, he has stated that one Writ was preferred against the order of SDM which was dismissed by the High Court on 10/11/1975. He has stated in paragraph 11 that Kamalpuri and Narayanpuri were granted possession over the disputed lands against which he preferred a Revision before the Sessions Court and the same was also dismissed.

(10) In paragraph 13 of his statement, this witness has further stated that lands do not belong to Aukaf Department. Further, he stated that he has filed a certificate issued by Collector, Morena which reflects that the lands do not belong to Aukaf. He has also stated that he has filed documents Ex.P1 to Ex.P14 in support of his suit.

(11) On perusal of Ex.P1 to P14, it reflects that the aforesaid documents are in relation to possession only and they do not disclose their ownership. Similarly, on perusal of Ex.P15 to P29, it reflects that these are again the documents showing possession and no document has been filed with regard to ownership.

(12) Plaintiff's Witness – Jagdish (PW1) in paragraph 15 of his statement has stated that he was dispossessed forcibly taken over in the year 1972 which resulted into loss of Rupees Four Thousand to him. Since then, he has not got any possession over the land. This witness in paragraph 20 of his cross-examination has specifically stated that his father had requested to get the aforesaid lands leased from the then Tahsildar. He is not having any copy of lease deed rather, he has produced a certificate issued by the Collector, which is not the proof of ownership. In paragraph 21, he has denied about the endorsement in any certificate as Maurishi Krishak. Similar statement has been given in paragraph 22 of his statement. In paragraph 23, this witness has stated that with regard to ownership, he has filed one certificate only and no any other document is available with him. Again, a certificate filed is not the proof of ownership.

(13) In paragraph 26 of his cross-examination, he has stated that when lands were attached in compliance of order of SDM, no receipt was given to him with regard to taking possession of lands. He has also stated that he paid the Lagaan / revenue and was having relevant entry book but that was burnt in the year 1972. In paragraph 27, he has stated that as per partition between the plaintiffs, no entry was made in the revenue records. In paragraph 28 of his statement, he has stated that his ancestors were the Pujaris of the temple and Kamalpuri was the Mahant of said Temple. Earlier, there were disputes relating to Chadhotri of Shri Kali Mai temple.

(14) This witness in paragraph 31 of his statement has stated that one suit was filed with regard to partition of Chadhotri wherein being Pujari, he got 16 Ana and Mahant got 10 Ana. He has also admitted in paragraph 32 that the lands were handed over to one Shankar Singh, who was the Supurdar.

(15) On perusal of paragraph 33 of statement of this witness, it is apparent that this witness has not said anything about cultivation done by him over the disputed lands.

(16) This witness, in paragraph 34 of his statement, has stated that Shankar Singh was the Zamindar, and he used to cultivate his lands. Shankar Singh has not sold out any land to him rather, he got the land as batoi to cultivate the lands. In paragraph 35, he has stated that lease was given to his father, but he has not received any copy of the lease deed. This witnesses remained fail to convey survey numbers of disputed lands. Similarly, he has stated that an oral partition was taken place between them.

(17) On behalf of plaintiffs, Matre (PW2) and Jeevaram (PW3) in their pleadings shown their ignorance about the survey numbers of disputed lands and in paragraph 5 of cross-examination of Matre (PW2), he has stated that Shri Kali Mai temple was under the control of Government and in paragraph 7 denied the knowledge of possession of Jagdish over the disputed lands.

(18) Plaintiffs' Witness – Bhagwat Swaroop (PW4) has stated in paragraph 1 of

his examination that he was posted as Patwari at Mouja Basaiya from year 1960 to 1964. This witness has stated in paragraph 4 of his cross-examination that in Village Basaiya, one ledger (Khata) is maintained in the name of Shri Kali Mai. He has stated further that the lands described in paragraph 3 of his statement belongs to Mata Basaiya and temple was under the control of Government.

(19) Plaintiffs' Witness – Shankar Singh (PW5) has stated that Mahants were not doing the cultivation rather, they engaged some persons to cultivate the lands. He has also stated in paragraph 8 of his statement that from 61 Bigha land, he had not given any land to Jagdish or his ancestors rather, the land was of Aukaf Department. He has also stated that "ckck tSlS vkSj ykSxksa ls tehu tqrkrs Fks oSlS gh txnh'k ls Hkh tqrokrs FksA"

(20) Similarly, plaintiffs' witness - Kaptan Singh (PW6), has stated that the total land was 61 Bigha. In paragraph 5 of his cross- examination, he stated that he had no knowledge that who was the owner of 61 Bigha land.

(21) From the evidence of Kaptan Singh (PW-6), it is clear that the plaintiffs were neither in possession over the disputed lands nor they were having ownership over the disputed lands. Even plaintiffs themselves have denied about the existence of any revenue records with regard to ownership. Plaintiffs have tried to claim their ownership only on the basis of a certificate issued by Collector, which could not be considered as an evidence to prove the ownership. No relevant revenue record has been filed showing ownership of plaintiffs and the exhibited documents produced by the plaintiffs show the possession only and there is a specific admission on the part of the plaintiffs and their witnesses that the overall lands were 61 Bigha and belonging to Shri Kali Mai Temple. Plaintiffs remained fail to establish that there are two sets of lands, one 60 Bigha 19 Biswa and another 61 Bigha and 12 Biswa. Rather, it reflects from the evidence produced by the plaintiffs that all the aforesaid lands belongs to Shri Kali Mai Temple.

(22) On behalf of defendant, Mahant Kamalpuri (Defendant Witness – 1) has stated in para 1 of his examination that he is the Mahant of Basaiya temple. Earlier, his guru Tejpuri was the Mahant of said Temple. Since Tejpuri was Mahant of the said temple, therefore Government had taken over the control over the same. In paragraph 2, he pleaded that he has seen the disputed land i.e. 60 Bigha 19 Biswa and the owner of aforesaid land is Shri Kali Mai. This witness in paragraph 3 of his statement pleaded that the State Government was looking after the management of Temple and the aforesaid land was also in the possession of Government since year 1939. This witness has again stated in paragraph 23 that the land was the property of Shri Kali Mai Temple.

(23) Madhau Singh (Defendant Witness – 2) has stated that one Committee was constituted by the Gwalior State for Shri Kali Mai temple wherein he was a member and the then Tahsildar was the President. The statement of this witness again reflects that Shri Kali Mai Temple was the Aukaf property.

(24) In the case of Sri Sri Lakshamana Yatendrulu & Ors Vs. State of Andhra Pradesh & Anr. [1996 AIR 1414], the Hon'ble Apex Court has observed as under:-

"As seen, Mahant being an aesthetic sanyasi, he renounces mundane affairs and totally cuts off his ties with his natural family. In H.H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious & Charitable Endowments, Mysore [(1963) Supp. 2 SCR 302], this Court had held at page 312 that "generally a mathadhipati is a sanyasin who has renounced the worldly affairs and severed his ties with his family". Therefore, the question of hereditary succession to the office of mathadhipati does not arise. He is, therefore, neither hereditary trustee nor a trustee in the sense envisaged under Sections 2(29) and 2(16) of the Act respectively.

(25) A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of law, a "juristic entity". It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would in such circumstances, on analogy, be given to the manager of the estate of an infant heir. The juristic person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the pran pratishtha ceremony and it is not correct that the supreme being of which the Idol is a symbol or image is the recipient and owner of the dedicated property, and the correct legal position is that the idol as representing and embodying the spiritual purpose of the donor is the juristic person recognised by law and in this juristic person the dedicated property vests.

(26) Neither God nor any supernatural being could be a person in law. But so far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person. The true legal view is that in that capacity alone the dedicated property vests in it.

(27) On perusal of record, it is proved that one Kali Mai temple is situated at Village Basaiya. There was a dispute between Mahant and Pujari of Temple who were parties to the litigation. There were various litigations arose between the litigants since year 1932. Proceedings under Section 145 Cr.P.C. were initiated and the land relating to Shri Kali Mai Temple was handed over to one Supurdar Shankar Singh. Despite, various litigations in relation to possession over the land, no final conclusion could be drawn yet. It is also apparent from the record that the dispute was basically between Mahant and Pujari with regard to Chadhotra and property of Shri Kali Mai Temple. It is also apparent that aforesaid unnecessary litigation has been created a hindrance in the development of Temple and social services of general public at large. Earlier, the Temple was of Aukaf property. It is also apparent from the perusal of record that no Mahant or Pujari has been appointed by adopting due process of law which is one of the reasons of such continuous prolonged litigation between the parties.

(28) As the plaintiffs and defendant remained fail to prove their ownership over the disputed lands and also remained fail to prove that there was two sets of land and plaintiffs also remained fail to prove that there is any right of ownership on the basis of Maurishi Krishak or adverse possession as nothing is pleaded regarding aforesaid in the plaint, therefore, only conclusion could be drawn that the land in dispute belongs to Deity of Kali Mai Temple who is the juristic person. Furthermore, admission on the part of plaintiff before the Court below that his father requested to the then Tahsildar for grant of lease with regard to disputed land also shows that there was no any ownership of plaintiff over the disputed lands.

(29) Accordingly, the suit of the plaintiffs is hereby dismissed and the appeal is allowed upto the extent indicated above. The judgment and decree passed by the Court below is hereby set aside. Decree be drawn accordingly.

(i) The Collector Morena is directed to take over the possession over the temple as per the provisions of the Religious Endowments Act, 1863 (in short "The Act of 1863") henceforth.

(ii) The Collector Morena is further directed to take lawful action for overall managements of all the lands and related properties of the said temple belonging to the Deity under the aforesaid Act of 1863 henceforth.

(iii) Since there are continuous prolonged unnecessary litigations between the litigants showing their contrary rights and interests to the Deity of the said Temple, therefore, as per the letter and spirit of the Act of 1863, since the parties have lost their qualifications to continue as Mahant or Pujari, therefore, the Collector, Morena is hereby directed to take appropriate steps for fresh appointment of Mahant, Pujari etc. in accordance with law as well as provisions enshrined in the said Act of 1863.

(iv) It is also made clear that the appointment of such person(s) shall stand ceased as soon as person disqualifies the qualifications of holding Mahant or Pujari.

(v) It is further made clear that Chadhotra as well earned property incurred, shall only be the property of Deity and the same shall only be utilized for the development and management of Temple and for performing customary as well as religious rites & rituals i.e. Bhandara, Pooja Archana etc. etc. at Kali Mai temple.

(vi) The Collector, Morena is hereby directed to submit a detailed compliance report within a period of 15 days from the date of receipt of this judgment before the Principal Registrar of this Court.

With the aforesaid observations, this first appeal stands disposed of.

Let a copy of this order be sent to the Collector, Morena for information & compliance.