

(2001) 02 PAT CK 0073
In the Patna High Court
Case No : C.R. No. 1108 of 2000

Mahanth Ram Kishore Das and Others

APPELLANT

Vs

Bihar State Board of Religious Trusts and Another

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Citation : (2001) 02 PAT CK 0073

Judgement

P.K. Deb, J.—This revision petition has been preferred against the concurrent findings of both the Courts below regarding the injunction.

2. The petitioners filed Title Suit No. 11 of 1996 for a declaration that the trust of the family deity was a private trust and the lands mentioned in Schedule-"1" and Schedule- "2" are respectively properties of the private trust of the Plaintiffs and the defendants-respondents, that is, Bihar State Board of Religious Trusts and others have no control for supervision over the private trusts and the plaintiffs had further prayed for permanent injunction restraining the defendants from interfering with the property of the plaintiffs and the private deity of the family concerned. During the pendency of the suit, Plaintiff No. 13, Mahanth Ram Kishore Das, Chela and Wares of the late Mahanth Nand Kishore Das filed a petition for temporary injunction to restrain the defendants from interfering with the possession of the plaintiffs-appellants over the suit property and for taking any action against the plaintiffs or their properties for compelling the plaintiffs to submit return and budget fee before the Religious Trusts Board. On that petition, objection was filed from the Trust Board and after hearing both the parties, injunction was refused by the original Court. It appears that by an unregistered Samarpannama dated 21.5.1939, late Mahanth Nand Kishore Das endowed the properties in the name of the deity. Mahanth Nand Kishore Das remained as Shebait of the deities, Mahanth Ram Kishore Das, Defendant No. 13 through his father and guardian Nathuni Singh in confirmation of the earlier Samarpannama executed another Samarpannama dated 21.1.1954 and Mahanth Ram Kishore Das remained as Shebait. A criminal case was filed against Mahanth Ram Kishore Das u/s 57(1) of the Bihar Hindu Religious Trusts Act for non-submission of

return and budget. Mahanth Ram Kishore Das was acquitted by the Sessions Court, Patngf by the order dated 19.6.1970 in Cr. Appeal No. 136 of 1968.

3. A ceiling case was filed wherein the Samarpannama was held to be valid and thus, it was considered to be a public trust and on previous occasion the predecessor of plaintiff No. 13 had given returns to the Religious Board and the said Trust was registered long back in the year 1951-52 with the Trust Board. Considering all those aspects, it was held that only because plaintiff No. 13 had been removed for his mismanagement from the post of shebait and the Collector was appointed temporarily as shebait the plaintiffs are not entitled to get any relief of injunction with any restraint order. The original Court's order had been upheld by the appellate Court also. When concurrent findings are there by the Courts below there remains little scope for the High Court to interfere with it unless it can be shown that the orders are without jurisdiction or an apparent error on the records have been made resulting in miscarriage of justice.

4. The main contention of the learned Counsel for and on behalf of the petitioners is that in the plaint it itself, has been pleaded that only on misconception returns and budget fees were filed earlier by the predecessor of plaintiff No. 13 but practically, it remained as private trust and it was never considered as public trust for coming within the purview of the Religious Trust Act or the Board. It is the contention that the Act has got no application because on the facts of the present case when there is nothing to show that any public in general or a sect or a community has got any interest either for pujas or for any other purpose in the deity. It remained as a family deity all along till today and no public has got any access nor any sect or community. It was a private trust and it remained so till today. The distinction between the private and the public trust has been considered by this Court & also in the Apex Court in various judgments and reference has been made by the learned Counsel in this respect to a judgment of the Apex Court as reported in Ram Saroop Dasji Vs. S.P. Sahi, Special Officer-in-charge of The Hindu Religious Trusts and Others, and also a judgment of this Court as reported in Bihar State Board of Religious Trust Vs. Acharya Mahanth Amrit Das and Another, . Whether it is a private or public trust, it would depend upon the adjudication. At this stage, it cannot be definitely said whether it a public or a private trust. It has to be seen whether prima facie the plaintiff could show that it was a private trust or not. It appears that the plaintiff No. 13 and his predecessor had submitted to the jurisdiction of the Board by filing returns and. budget fees. Whether by that alone there becomes admission on the part of the plaintiffs or not is a matter of adjudication. But, it appears that at every step, the plaintiff No. 13 was challenging the action of the Board time to time. It further appears that a vital document which was filed by the plaintiff before the Court below had not been considered by any of the Courts. That was an order passed by the Revenue authority in Compensation Case No. 32/1956-57 wherein the Revenue authority had held the property to be belonging to private trust. Definitely such a document has got a vital importance in support to the case of the plaintiffs and non-consideration of that document definitely vitiates in

holding that the plaintiffs has got no prima facie case.

5. Be it what it may, considering my limitation in interfering with the concurrent findings of the Courts below, this much can be said that definitely the plaintiffs-petitioners had suffered for non-consideration of a vital document filed on their behalf before the Courts below. At least the Appellate Court should have considered that order when the same was on the record itself. Thus without going into the merits more, I must hold that the matter of injunction cannot be effectively decided without consideration of the vital document, as mentioned above and as such the order passed by the Appellate Court in Misc. Appeal No. 9/99 is hereby set aside and the same is sent back to the 1st Additional District Judge, Sitamarhi for reconsideration of the injunction matter in the light of the observations made above.

6. The revision petition is, thus, disposed of with the directions, as mentioned above.