

(2007) 04 PAT CK 0095

In the Patna High Court

Case No : Appeal from Original Order No. 205 of 2001

Mahanth Sarvesh

APPELLANT

Vs

The Bihar State Board of Religious Trusts and Others

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 28, 28(2), 33, 33(1), 33(3)
Succession Act, 1925 — Section 192

Citation : AIR 2007 Patna 189 : (2007) 2 BLJR 1493 : (2007) 3 PLJR 130

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Kundan Bahadur Singh, for the Appellant; Ambui Navan Choubey, for the Respondent

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Heard learned counsel for the appellant and learned counsel for the respondents.

2. The instant Miscellaneous Appeal filed under the provision of Section 55 of the Bihar Hindu Religious Trusts Act, 1950. (hereinafter referred to as "the Act" for the sake of brevity) is directed against order dated 05.02.2001, by which the learned Additional District Judge VI. Patna, dismissed Misc. Case (Religious Trust Board) No. 56 of 1997, which was filed by the original appellant Mahanth Chandramani Das and affirmed order dated 15.07.1996, passed by the Chairman of the Bihar State Board of Religious Trusts (respondent No. 2), by which the original appellant was removed from the post of Trustee of the Trust in question in compliance of Section 28(2)(h)(iii) of the Act.

3. The Trust in question is a famous and very important Trust, namely, Baba Bhikham Das Thakurbari (hereinafter referred to as "the Trust" for the sake of brevity), situated in Mohalla Bakarganj. Bari Path in the heart of Patna and is also registered in the Bihar State Board of Religious Trusts (respondent No. 1) (hereinafter referred to as "the Board" for the sake of brevity). It is not in

dispute that earlier Mahanth Ram Krishna Das was the Trustee and was also recorded in the Board as such and subsequently he died on 19.02.1961, whereafter, a dispute arose between two of his Chelas, namely, Mahanth Chandramani Das (original appellant) and Ram Rajeshwar (original respondent No. 4). The original appellant claimed to be the Trustee on the basis of an alleged Will dated 02.08.1960, said to have been executed by Mahanth Ram Krishna Das in favour of the original appellant and also on the basis of the customs of the Trust. Hence, after the death of Mahanth Ram Krishna Das, the original appellant filed Letters of Administration Case No. 17 of 1963 on the basis of the aforesaid Will and due to contest the said case was converted into Title Suit No. 22 of 1966. Similarly, the original respondent No. 4 Ram Rajeshwar also filed a petition u/s 192 of the Indian Succession Act, which was registered as Misc. (Succession) Case No. 188 of 1961 on the basis of Vasivatnama and Mokhtarnama, purported to have been executed by the same Mahanth Ram Krishna Das in his favour on 21.12.1952. Both the aforesaid cases, namely. Title Suit No. 22 of 1966 as well as Misc. (Succession) Case No. 188 of 1961 were heard together, whereafter two separate judgments were passed by the learned Additional District Judge-II. Patna, on 28.05.1977. By one of them, the court below allowed Misc. (Succession) Case No. 188 of 1961 filed by respondent No. 4, whereas by the other. it dismissed Title Suit No. 22 of 1966 filed by the original appellant. The original appellant challenged the order passed by the court below in Misc. (Succession) Case No. 188 of 1961 in Civil Revision No. 806 of 1977, which was subsequently withdrawn. However, the original appellant also filed First Appeal No. 500 of 1977 challenging the order of the court below passed in Title Suit No. 22 of 1966 (3 of 1973).

4. A Division Bench of this Court considered the aforesaid First Appeal No. 500 of 1977 and after considering the facts of the case and the provisions of law applicable thereto, came to the conclusion that the original appellant could not prove that the Will was executed by Mahanth Ram Krishna Das and also that he was physically and mentally fit to execute the said Will and. accordingly, the said First Appeal filed by the original appellant Mahanth Chandramani Das was dismissed by judgment dated 11.11.1998, which is reported in Shri Mahanth Chandramani Das Vs. Shri Ram Rajeshwar Das and Another, . The said order passed in the First Appeal was challenged by the original appellant before the Hon"ble Supreme Court. but there also he lost.

5. It transpires that considering the facts and circumstances of the matter and the finality attained by the order of the learned Additional District Judge II. Patna in Misc. (Succession) Case No. 188 of 1961 in favour of original respondent No. 4 and rejection of the claim of the original appellant in T.S. No. 22 of 1966, the Chairman of the Board passed his order dated 15.07.1996 by which the original appellant was removed from the post of Trustee of the said Trust and temporarily appointed respondent No. 4 as the Trustee till further orders. The said order had been challenged by original appellant Mahanth Chandra Mani Das in Misc.Case (Religious Trust Board) No. 56 of 1997 and after considering the facts and

circumstances of the case, the learned Additional District Judge, VI, Patna, dismissed the said case on contest by the impugned order dated 05.02.2001, which is under challenge in the instant Miscellaneous Appeal.

6. Now, during the pendency of this appeal, both the contestants, namely, Mahanth Chandramani Das (original appellant) as well as Ram Rajeshwar (original respondent No. 4) died on 15.12.2004 and 01.01.2003 respectively and out of them the name of respondent No. 4 was expunged by order of this Court dated 05.03.2003, as no step was taken by the appellant to substitute his Chela in his place, whereas, the alleged heir of Mahanth Chandramani Das (original appellant) has been substituted. Keeping up with the traditions of the Mahanths of the said Trust, four Chelas of the original appellant and original respondent No. 4 are fighting among themselves claiming to be the successor Mahanth of the said Trust and one of them is Mahanth Sarvesh, who has been substituted as appellant in the instant Miscellaneous Appeal, although the genuineness and legality of his claim has neither been tested by any Court or Authority nor his claim against the other contestants is the subject matter of the instant appeal.

7. So far the claim of the original appellant on the basis of testament is concerned, it has been rejected upto the Hon"ble Supreme Court as the Will produced by him could not be proved to be a genuine and valid document and hence he had no right of succession to the post of Trustee on the basis of the said Will. However, so far the question of succession to the post of Mahanth of the Math on the basis of customs according to the provision of Hindu Law is concerned. Title Suit No. 225 of 1978 was being fought between the original appellant and original respondent No. 4 in the civil court and it is stated at the Bar by learned Counsel for the parties that the same is still pending before learned Subordinate Judge, Patna, although twenty nine years have lapsed. Furthermore, both the original contestants of the title suit having, died and fresh claimants having sprouted, the said title suit has clearly lost its efficacy.

8. Apart from the aforesaid aspect it is apparent from the order of respondent No. 2 dated 15.7.1996 that it was not passed by the Board as required by law and was passed only by its Chairman and there was nothing to show that the Board had delegated its power to its Chairman, hence, it clearly does not conform to Section 28 of the Act. It is also apparent from the said order that the Chairman had not applied his mind to the facts and circumstances of the case in its entirety although such matters had to be dealt with keeping in view larger interest of the Society and the beneficiaries, namely, the devotees of the Math. These aspects of the matter have also not been considered in its proper perspective by the learned Additional District Judge in his impugned order dated 05.2.2001.

9. The provision of Section 28 as well as Section 33 of the Act has been amended by Bihar Hindu Religious Trust (Amendment) Act. 2006 (Bihar Act No. 1 of 2007) which had come into force with effect from the date of its publication in the Official Gazette. i.e. 05th January, 2007. In clause (S) of Sub-section (2) of

Section 28 of the said Act another power and duty of the Board had been added which is as follows:

To appoint trustees in vacancies created by the removal u/s 28(2)(h) of the Act subject to the wishes of the founder or to the mutual compromise between the Board and the Trust approved by the competent Court.

10. By the said Amending Act the words "not exceeding one year" has been added in Sub-section (1) of Section 33 of the Act, whereafter the said sub-section now reads as follows:

Where there is a vacancy in the office of trustee of a religious trust and there is no one competent to be appointed as trustee under the terms of the deed of such trust or where there is a bonafide dispute as to the right of any person to act as trustee and in the opinion of the Board there is likelihood of a breach of the peace or serious interference with the management of the property of such trust, or where there is a vacancy caused by the order of the Board passed under clause (h) of Sub-section (2) of Section 28 of this Act the Board may subject to any order of a competent Court appoint any person to act as trustee of the said trust for such period not exceeding one year and upon such condition as it thinks fit.

11. By the said Amending Act a new Sub-section (3) has also been added to Section 33 of the Act giving another power to the Board, which is as follows:

During the period of one year if the dispute over the bonafide Trustee is not decided by a competent authority, the Board shall settle a scheme for the Trust u/s 32 of the Act subject to any subsequent order of a competent court.

12. It is not disputed that there was a contest between the original appellant and the original respondent No. 4 as to the right to act as Trustee of the Trust and there was serious allegations of interference with the management and also serious allegations for mismanagement of the property of the Trust. It is also not in dispute that both the original claimants namely the original appellant and original respondent No. 4 have died and there is a vacancy existing in the office of the trustee of the Trust. It also does not remain in dispute that the condition of the once flourishing Math throbbing with healthy religious activities, rites and rituals and thronged by thousands of devotees has not even remained a shadow of its original self devoid of any such activity or devotee and even the properties of the Trust having deteriorated immensely due to the self aggrandising attitude of the claimant Trustees and their long litigation spanning more than forty five years, which is being followed by their respective alleged Chelas.

13. Considering the provisions of law the facts of the case mentioned above, as well as the condition of the Trust and also realising the illegalities in the earlier order of the Board as well as in the impugned order of the learned court below, this court hereby sets aside the impugned order dated 05.2.2001 passed by the learned Additional District Judge, VI. Patna. in Misc.Case (Religious Trust Board)

No. 56 of 1997 as well as the order of the Board dated 15.7.1996, which was under challenge in the aforesaid Miscellaneous case. The instant Miscellaneous Appeal is accordingly allowed with a direction to the Board (respondent No. 1) to appoint a competent person in terms of Section 33(1) of the Act to act as the trustee of the Trust in question within two weeks from the date of receipt/production of a COPY of this order for a period of one year unless the dispute is decided by a competent court or authority within that period and if the dispute is not decided by the said Court/Authority within the said period of one year the Board shall settle a scheme for proper administration of the Trust u/s 32 of the Act, which "will be subject to any subsequent order of a competent Court, in accordance with Section 33(3) of the Act.

14. Before parting with this -judgment, it will be necessary to mention here that this Court expects that the Board as well as its Administrator Mr. Kishore Kunal, who is personally present in this Court, will not only bring the Math in question to its lost glory of healthy religious activities, rites and rituals, but will also see that the Math is developed into an ideal place of worship for the actual beneficiaries, namely, its devotees and that its properties and income are being used for the real purposes of such a trust, namely, service to the humanity, which the Board under its above named Administrator have done in similar trusts of Bihar in the recent past.