
(1986) 04 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Revision Petitions No's. 10 and 13/80

Mehta Vharity Trust and Others

APPELLANT

Vs

Gulam Rasool and Others

RESPONDENT

Date of Decision : 17-04-1986

Acts Referred:

Rajasthan Public Trusts Act, 1959 — Section 21, 22

Citation : (1986) 2 WLN 433

Hon'ble Judges : D.P. Gupta, C.J

Bench : Single Bench

Judgement

Dwarka Prasad Gupta, C.J.—These two revision petitions arise out of two orders passed by the District Judge, Pali in the same suit deciding issues Nos. 7, 8 and 9 by the order dated October 5, 1979. The learned District Judge decided issue No. 8 and held that the plaintiffs' suit was not barred by limitation. Issues No. 7 and 9 were decided by the learned District Judge by his order dated October 9, 1979 holding that the suit filed by the plaintiffs was maintainable and the suit was not barred by limitation.

2. It appears that the defendant No. 1 the Mehta Charity Trust got the aforesaid Trust registered as a Public Trust u/s 19 of the Rajasthan Public Trust Act, 1959. The Asst. Commissioner, Devasthan Rajasthan by his order dated September 12, 1975 directed that the Trust be registered and in accordance with the finding recorded by him u/s 19 entries were made in the Register of Public Trusts u/s 21 of the Act on September 22, 1975. Noor Mohammed and Mst. Marium contested the title of the Trust in respect of the land in dispute in the present suit, out of which these revision petitions arise but their objections were rejected by the Assistant Commissioner. Noor Mohammed filed an appeal against the order passed by the Assistant Commissioner u/s 19 but the appeal was dismissed by the Commissioner Devasthan Department, Rajasthan, Udaipur on September 27, 1976. Thereafter, the present suit was filed by the Gulam Rasool and Mst. Marium u/s 22 of the Act for cancellation of the entry No. 133 dated September

12, 1975 recording registry of the Mehta Charity Trust, Pali. The defendants in their written statement took several objections and claimed that the land which was alleged to be belonging to the Mehta Charity Trust, was the property of the defendants. They also took the objection that the suit was barred by limitation as the same was not filed within six months from the date of publication of the entry u/s 21 by the Assistant Commissioner and that the plaintiffs cannot get any benefit in respect of limitation, for period upto decision of the appeal, if they did not file any appeal against the order dated September 12, 1985 by the Assistant Commissioner. One important objection which was taken by the defendant-petitioners was that the plaintiffs claimed the interest in the land in dispute adverse to the Trust and as such they are not entitled to maintain the suit u/s 22 of the Act. The last mentioned objection is subject matter of issue No. 9. As mentioned above, the learned District Judge decided issue No. 9 in favour of the plaintiffs as also issues Nos. 7 and 8 which relate to the question of limitation.

3. Section 22 of the Act runs as under:

22. Civil Suit against entries made u/s 21-(1) Any working trustee or person having interest in a public trust or in any property found to be trust property aggrieved by any entry made u/s 21 may, within six months from the date of the publication thereof on the notice board of the office of the Assistant Commissioner under Sub-section (1) of Section 21 institute a suit in a civil court to have such entry cancelled or modified;

(2) In every such suit the civil court shall give notice to the State Government through the Assistant Commissioner and the State Government, if it so desires, shall be made a party to the suit;

(3) On the final decision of the suit, the Assistant Commissioner shall, if necessary, correct the entries made in the register in accordance with such decision.

4. After the Assistant Commissioner makes an enquiry in respect of an application for registration of a public trust and when he records a finding that the trust deserves to be registered and passes an order u/s 19 of the Act, thereafter he is empowered u/s 19 of the Act to cause entries to be made in the register of public trust in accordance with his finding recorded u/s 19 and then a notice containing the entries made in the Register have to be published on a notice board of the office of the Assistant Commissioner and a conspicuous place in the city, town or village where the principal office or the principal place of business of the public trust is situate. The right to file a civil suit in respect of the entries made in the Register u/s 21 as a consequence of the order passed by the Assistant Commissioner u/s 19 is confined to any working trustee or person having interest in a public trust or in any property found to be trust property would also include within its ambit persons who have interest adverse to the public trust. Can persons who claim property entered as Trust property as their own which has been entered as trust property u/s 21 maintain the suit u/s 22?

5. In *Abdul Karim Khan v. Municipal Committee, Raipur (1)*, while dealing with similar provisions contained in Section 8 of the Madhya Pradesh Public Trust Act, 1951 their Lordships of the Supreme Court held as under:

It is true, Section 8(1) permits a suit to be filed by a person having interest in the public trust or any property found to be trust property. The interest to which this Section refers must be read in the light of Section 5(2) to the interest of a beneficiary or the interest of a person who claims the right to maintain the trust or any other interest of a similar character. It is not the interest which is adverse to the trust set up by a party who does not claim any relation with the trust at all.

6. In my view similar interpretation should be given to the provisions of Section 22 of the Rajasthan Act and a person having interest in the public trust or in any property found to be trust property must be considered to be the interest of a beneficiary or of a person who claims a right to maintain the trust or other interest of similar character. If a person claims that the property is not a trust property and sets up a title adverse to that of the trust, then such a person cannot maintain a suit u/s 22 because interest of such person in the property cannot be held to be interest in trust property. In the present case according to the plaintiffs the property was not trust property at all, but they setup a title adverse to the trust and claimed the property to be their own. The plaintiffs, if they considered that a cloud has been created in respect of their title to the property in dispute on account of the entries made in the Register of public trust u/s 21 of the Act, they should have sought a declaration in respect of their ownership or title to the suit property and in that event it was not necessary for them to get the entries in the Register of public trust cancelled, but they could have obtained a declaration that such entries made u/s 21 shall not affect the rights of the plaintiffs in respect of suit property and that the said property was not trust property at all. In my view, learned District Judge was not justified in holding that the suit filed by the plaintiffs was maintainable. No such suit by the person claiming a title adverse to the public trust could be maintained u/s 22 of the Act for the cancellation of the entries made u/s 21 as such a suit presupposes the existence of the public trust and the property thereof. In this view of the matter the suit filed by the plaintiffs was not maintainable u/s 22 of the Public Trust Act and deserves to be dismissed. Learned Counsel for the plaintiffs submitted that the plaintiffs may be allowed to withdraw the suit with permission to file a fresh suit. As I have come to the conclusion that their suit as filed by the plaintiffs is not maintainable u/s 22 of the Public Trust Act, there can be no objection to the withdrawal of the suit. As the present suit fails on the ground that a suit filed by the plaintiffs is not maintainable u/s 22 of the Act, the plaintiffs may, if they so like, file a separate suit if such a suit is permissible under the law. But in the present case there is no such necessity to grant any such permission to the plaintiffs for filing a fresh suit in respect of the subject matter of the suit.

7. In view of the fact that the plaintiffs suit is not maintainable, it is not

necessary to decide the question as to whether the suit is barred by limitation. Issue No. 9 is, therefore, decided against the plaintiffs and it is not necessary to decide issues Nos. 7 and 8 in view of the decision of issue No. 9. However as the learned Counsel for the plaintiffs prays that the plaintiffs may be allowed to withdraw the suit, the suit is dismissed as withdrawn and the orders passed by the learned District Judge, Pali dated October 5, 1979 and October 9, 1979 are set aside. As the suit itself has been withdrawn both the revision petitions are disposed of accordingly.