(1991) 03 MP CK 0051

In the Madhya Pradesh High Court

Case No : M.A. No. 30 of 1990

Mukut Singh Sikarwar and Others APPELLANT

Vs

Moorti Shri Dwarkadhishji and Others RESPONDENT

Date of Decision : 04-03-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Madhya Pradesh Public Trust Act, 1951 — Section 2(4), 27(4), 8

Citation : (1992) 37 MPLJ 273 : (1992) MPLJ 273

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Judgement

T.N. Singh, J.

Although it is an appeal challenging the order passed on 20-2-1990 by the trial Court purporting to act under Order 39, Rules 1 and 2, Civil Procedure Code, the contentions pressed assailing that order are of far-reaching effect. Maintainability of the suit itself is challenged in this appeal.

Apparently, there are two sets of suitors vying with each other to obtain control and management of a place of worship. Admittedly, however, substantial property valued at several lakhs of rupees, according to plaintiffs own case, is the subject-matter of a Trust. At paragraph 2 of the plaint, the plaintiff/ respondent has stated that by registered document executed on 28-11-1901, late Kanhaiyalal had entrusted the Mandir and the property attached thereto to five panchas. How the management of the temple continued thereafter or who were the subsequent trustees during the period of twenty years following death of the settlor is not clearly stated, but at para 4, there is sudden jump to 1956. It is stated that on 19-3-1956, "Managing Committee" had constructed three shops when the Secretary was Durga Prasad who had obtained order on 19-3-1956 from the Municipal Committee. Thereafter, for 25 years, one Nathulal son of Vedmal made some more constructions in the premises. However, what has come on record is that the plaintiff, which has described itself as a society having

Registration No. 8985, was registered on 244-1980 under M.P. Society Registrikaran Adhiniyam, 1973, for short, the 1973 Adhiniyam. The Certificate is issued to "Murti Shri Dwarakadhishji Maharaj, Virajman Mandir Thakur Dwarakadhishji, Morar, Gwalior". Another document which has come on record is said to be an order passed by Registrar of Public Trusts on 14-7-1981 under the provisions of the M.P. Public Trusts Act, 1951, for short, the 1951 Act. In that document, names of all the 11 defendants/appellants figure as trustees and indeed, defendant/appellant No. 1, Col. Mukut Singh Sikarwar is named as Chief Turstee. . .

Shri R. D. Jain, appearing for defendants/appellants, has rightly complained that the suit, as framed, is barred by Section 2(4) read with Section 27(4) of 1951 Act. He has contended that on plaintiff''s own admission, the property in question in respect to which management rights were only claimed by the plaintiff/ Society, was ''''public trust" within the meaning of Section 2(4) of 1951 Act, which I quote :

Public trust "means an express or constructive trust for a public, religious or charitable purpose and includes a temple, a math, a mosque, a church, a wakf of anyother religious or cheritable endowment and a society formed for a religious or charitable purpose."

Therefore, the instant suit which purports to be suit u/s 92, Civil Procedure Code, is barred u/s 27(4) of the said Act. It is his contention that plaintiff/society is not registered under 1951 Act and admittedly its registration is under the 1973 Act, which exercise was misconceived and that it vested in the plaintiff no manner of right in regard to management of the trust property. Even if a "Society" formed for a religious or charitable purpose as per Section 2(4), that is required to be registered under 1951 Act. His further contention is that the 1951 Act is a Special Law and that prevails against 1973 Adhiniyam. In that connection, he has placed reliance on this Court''s decision in Shri Ramjanki Mandir Trust and Another Vs. State of Madhya Pradesh and Others,

4A. Reading the plaint as a whole, there is little doubt that declaration is prayed by the plaintiff/Society in the suit instituted claiming rights of possession and management of the property of the trust. Another declaration is claimed against defendants/appellants to declare their "Society" void. Permanent injunction is also prayed to protect the control, management and possession by the plaintiff/ society of the property, movable and immovable, of the said trust with the Mandir of Thakur Dwarakadhishji Maharaj. The averment made in the plaint and the reliefs claimed bring the suit squarely in the parameters of Section 92 as vesting in the society of the trust property is claimed thereunder and direction is prayed for declaring the defendants/appellants as the void Trustees. Claim is also made for declaration of the right of the plaintiff/society as entitled to be in possession of the property as per clause (cc) of Section 92.

Learned counsel appearing for the plaintiff/respondent has, however, drawn my attention to certain averments in the plaint to submit that the proper procedure envisaged u/s 5 of 1951 Act was not followed in passing the order aforesaid, dated 14-7-1981. He has submitted that the "finding" recorded in the impugned order by the Registrar is, thus, void and that is not a "finding" as contemplated u/s 6 of the said Act. He has also submitted that there is a scope for this suit, to be converted to a suit contemplated u/s 8 of the Act. It is his submission also that publication of the finding as contemplated u/s 7(1) being not made in accordance with provisions thereof the plaintiff/respondent will not have the bar of limitation contemplated u/s 8, operative against it.

Shri R. D. Jain has relied on Abdul Karim Khan and Others Vs. Municipal Committee, Raipur, to oppose the prayer which Shri N. K. Jain has made. He has submitted that any person who is disputing the existence of a trust is debarred to pursue the relief contemplated u/s 8 of the 1951 Act. That decision evidently is distinguishable on facts because in this case, the trust is admittedly by the plaintiff. The question only is of proper constitution of the trust. That question can be, and has to be, examined in the suit instituted u/s 8. Because, no other remedy exists for doing that, that statutory remedy in that regard has been, therefore, explicitly contemplated under that Special Law.

After giving my anxious consideration to the contentions made on both sides, I have taken the view that the suit, as framed, is definitely barred and at the same time, I am also of the view that the plaintiff/respondent shall be entitled to appropriately amend its plaint and change the claim of the suit pursuing the remedy contemplated u/s 8 of the Act. This view I have taken having regard to the fact that the persons who have formed the plaintiff/society are definitely persons having interest in the trust because of the finding of the trial Court they are currently in management of trust property. What is lacking in them obviously is a legal competence claiming right to management under the 1951 Act of the said property because they are not persons recognised as trustees under the 1951 Act by the competent authority, namely, the Registrar of Public Trusts.

For all the aforesaid reasons, the appeal is allowed and directions are made further for proper disposal of the suit by the trial Court. When records go down, it shall be open to the members of the plaintiff/society to make appropriate application for necessary amendment to be made for changing the frame of the suit. On that parties shall be heard and appropriate order passed to dispose of the suit, according to law. Because the question of interim management is involved, status quo for a period of three months shall be maintained so that if the suit is converted into a suit u/s 8, it may be possible for the trial Court to pass thereafter appropriate order for further interim management. No costs.