
(1964) 02 MP CK 0015
In the Madhya Pradesh High Court
Case No : F.A. No. 4 of 1962 (G)

Murti Chaturbhuj Maharaj

APPELLANT

Vs

Govindlal

RESPONDENT

Date of Decision : 22-02-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1964) JLJ 215

Hon'ble Judges : P.R. Sharma, J;N.M. Golwalker, J

Bench : Division Bench

Advocate : B.D. Gupta, for the Appellant; A.B. Mishra, for the Respondent

Final Decision : Allowed

Judgement

P.R. Sharma, J.—This appeal has been preferred by the plaintiffs against the dismissal of their suit for a declaration that the properties described in paras 3 and 7 of the plaint belong to the plaintiff No. 1, namely the idol of Shri Chaturbhuj; that defendant had no personal right to or interest in the suit property, that the defendant respondent No. 1 was a mere pujari of the plaintiff idol and in the capacity of a pujari was bound to work under the control of the plaintiff No. 2 Shri Rao Chaturbhuj and the remaining defendants.

2. The defendant No. 1 objected inter alia that the suit was unmentionable on account of non-compliance with the provisions of S. 92 of the Code of Civil Procedure. This contention was upheld by the trial Court.

3. It may be mentioned here that the plaintiffs alleged in paragraph 9 of the plaint that the defendant No. 1 was asserting his own right to the property described in paras 3 and 7 of the plaint. In para 15 the first two reliefs claimed by the plaintiffs relate only to a declaration of the title of plaintiff No. 1 to the property mentioned in Paras 3 and 7 of the plaint, and the fact that the defendant No. 1 had no personal right to or interest in the same. To this extent we are of the opinion that the plaintiffs suit was not at all governed by the

provisions of S. 92 of the Code of Civil Procedure. Their Lordships of the Supreme Court held in *Shri Kalimota Thakurani Vs. Ji bandhan Mukerjee*, AIR 1962 SC 1329 that in a suit for settlement of a scheme for the management of a temple it is not appropriate for the Court to investigate questions of title to property about which there is a dispute. To a suit in which an idol sues for possession of its property or property which it claims as its own the provisions of S. 92 C. P. C. will have no application (See *Kishan Bhagwan Vs. Shri Maroti Sanasthan*, AIR 1947 Nag. 233).

4. We are of the opinion that the present suit, in so far as it relates to the claim for a declaration that the properties mentioned in paras 3 and 7 of the plaint belong to the plaintiff No. 1, and that defendant No. 1 has no personal right, title or interest therein, is clearly maintainable. We would, therefore, order that the plaintiffs should be allowed to amend their plaint so as to confine their suit to the aforesaid relief's only. They shall delete from the plaint all other matters pertaining to the administration of the trust.

5. In the result this appeal is allowed, the decree passed by the trial Court is set aside and the case is remanded to the trial Court for trial and disposal in accordance with law, and the directions given by us above. Costs of this appeal shall be costs in the suit.