
(1996) 09 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Revision Petition No. 439 of 1996

Nathdwara Mandir Mandal and Others

APPELLANT

Vs

Chandra Shekher and Others

RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92, 93

Citation : (1997) 1 RLW 94 : (1996) 3 WLC 684 : (1996) 2 WLN 259

Hon'ble Judges : Pana Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.C. Jain, J.—This revision petition is directed against the order of Shri Shiv Kumar Sharma, Civil Judge (Jr. Div.), Nathdwara dated 9.5.96 passed in Civil Original Suit No. 28/96 whereby the learned Civil Judge dismissed the application filed by the petitioners-defendants under Order 7 Rule 11 C.P.C.

2. It appears that the non-petitioners filed a suit against the petitioners and Tilkayatji in the court of learned Civil Judge, Nathdwara raising a dispute regarding the distribution of prasad and seeking relief of perpetual injunction against the Board and Chief Executive Officer to restrain them from interfering with Tilk Maharajji's right of distribution of prasad. The petitioners filed an application under Order 7 Rule 11 C.P.C. for rejecting the plaint on the ground that the suit-filed by the plaintiff was hit by Section 31 of the Nathdwara Temple Act, 1959 (Act No. 13 of 1959). Since the relief claimed by the plaintiff substantially fell within the perview of Section 31 of the Act, the suit was not maintainable in the Court of Civil Judge, Nathdwara. The learned Civil Judge heard both the parties and by the impugned order examined whether the distribution of prasad was a religious act or a secular act and after discussing the nature of the dispute involved, dismissed the application.

3. I have heard learned Counsel for the petitioner. He has very vehemently

assailed the order of the learned Civil Judge on the ground that he committed illegality or material irregularity in the exercise of his jurisdiction when he failed to correctly grasp the nature of disputes covered by Section 31 of the Act. He in particular referred to Clause (e) of Section 31 of the Act. He submitted that the nature of the present suit is such that the plaintiff ought to have filed suit in accordance with the mandate of Section 31 of the Act. Such a suit could only be filed in the court of District Judge. In the instant case, the plaintiff filed the suit in the court of Civil Judge, Nathdwara, hence, it was not maintainable. Learned Counsel has also referred to Rule 89 of the Nathdwara Temple Rules, 1973 (for short the Rules). According to Rule 89, a provision has been made to keep in tact the present practice in vogue for the distribution of prasad. He further contended that the Board is bound to follow the direction given by the Tilkayatji in connection with the distribution of the prasad. In other words, Tilkayatji has been vested with the final authority in a matter of distribution of prasad subject however to keep the present practice in vogue intact. Learned Counsel has submitted that there has been no violation of Rule 89. The plaint, therefore, does not disclose any cause of action. The learned trial court was not justified in examining the matter from the point of view whether the above act was secular or religious.

4. Learned Counsel for the non-petitioners has supported the order of the learned Civil Judge on the ground that Section 31 of the Act contains some specific species of case and provides that such categories of cases shall be instituted in the court of District Judge. If the dispute raised by the plaintiff fell beyond the domain of Section 31 of the Act, the bar of Section 31 will not be applicable and the suit will be maintainable in the court of ordinary civil jurisdiction. Learned Counsel has argued that Clause (e) of Section 31 refers to other Clauses (a) to (d) contained in Section 31 of the Act. It is neither a suit for rendition of accounts or making any inquiries in relation to the matters referred herein.

5. I have considered the rival contentions. For appreciating the controversy in proper perspective, it would be profitable to refer to Section 31 of the act which reads as follows:

(1) The State Government or any other person having interest may institute a suit in the Court of district Judge to obtain a decree:

(a) vesting any property in the Board, or

(b) declaring what portion of an endowment or of the interest therein shall be allocated to any particular subject, or

(c) removing any member of the Board or the trustee of a specific endowment, and directing the appointment of a new member of the Board or a new trustee for the specific endowment, or

(d) directing accounts and enquiries, or

(e) granting such further or other relief as the nature of the case may require.

(2) Sections 92 and 93 and Rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908) shall have no application to any suit claiming any relief in respect of the administration or management of the temple and no suit in respect of such administration or management shall be instituted except as provided by this Act.

6. Since the provisions of Section 31 of the Act are somewhat *pari materia* with the provisions contained in Section 92 C.P.C., it would be relevant to refer to the provisions of Section 92 C.P.C. Section 92 is as follows:

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree:

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), no suit claiming any of the reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied *cris pres* in one or more of the following circumstances, namely:

(a) where the original purposes of the trust, in whole or in part:

- (i) have been as far as may be, fulfilled; or
- (ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or
- (b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or
- (c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or
- (d) where the original purposes, in whole or in part, we're laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or
- (e) where the original purposes, in whole or in part, have, since they were laid down:
 - (i) been adequately provided for by other means, or
 - (ii) ceased, as being useless or harmful to the community, or
 - (iii) ceased to be, in law, charitable, or
 - (iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.

7. A look at the provisions of the two Sections, it would be clear that Section 31 of the Act has been enacted on the pattern of Section 92 C.P.C. The object of Section 31 of the Act is prevent frivolous or vexatious suits. The suit referred to in Section 31 is a suit of a special nature which presupposes the existence of a Public Trust of a religious or charitable character. Such a suit can proceed only on the ground that there has been a dispute regarding the vesting of property in Board or the allocation of an endowment or removal of any member of the Board or the Trustee of the specific endowment or the appointment of the Board or a new trustee or directing accounts and enquiries and to grant such further relief as the nature of the case may require. For the purpose of jurisdiction it is the allegation in the plaint that determine the nature of suit and the jurisdiction. If the relief claimed in any suit does not fall within in any of the categories mentioned in Section 31 of the Act, the bar or the prohibition contained in Section 31 will not come into play. Section 31 of the Act deals with disputes which essentially relate to a Public Trust or a religious or charitable institution. Certain acts with relation to such institution have been made the subject matter of a special litigation and special forum has been provided. However, the bar of Section 31 will not be attracted whether the reliefs claimed in a suit falls outside the ambit of Section 31 of the Act. Clause (e) is not an independent clause and it

is sort of the relief clause with regard to clauses, (a) to (d). In the instant case, the plaintiff has raised a dispute regarding distribution of prasad. It cannot be gain said that Rule 89 of the Rules contains a specific provision for the prasad and regulates its distribution. However, I am not inclined to express my opinion about the controversy raised in the case but I am disposed to hold that the present suit does not fall under any of the clauses mentioned in Section 31 of the Act in as much as the relief of injunction claimed in the suit is unconnected with any of the matters enumerated in Clause (a) to (d) of Section 31 of the Act.

8. For the above reasons, I do not find any substance in the petition and it is hereby dismissed.