

(2007) 10 PAT CK 0008

In the Patna High Court

Case No : M.A. Nos. 386 of 2006 and 10 of 2007

Niranjan Kumar Ranjan and Others

APPELLANT

Vs

Sri Sri 108 Bhagwati Maharani and Others
 Sri Sri 108
Bhagwati Maharani and Others Vs Bihar Hindu Religious Trust
Board and Others

RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Citation : (2007) 10 PAT CK 0008

Judgement

S.N. Hussain, J.—Heard learned Counsel for the appellants, learned Counsel for the Bihar Hindu Religious Trust Board (hereinafter referred to as the "Board" for the sake of brevity) as well as learned Counsel for the private respondents in both the aforesaid miscellaneous appeals which have been heard together and are being decided by this common order.

2. I.A. No. 32 of 2007 has been filed by the appellants in M.A. No. 10 of 2007, which is barred by the Law of Limitation, for condoning less than a month's delay in the filing of the said miscellaneous appeal. Considering the averments made by learned Counsel for the appellants and the statements made in the interlocutory application, it appears that sufficient cause has been shown for condoning the delay in the filing of the said miscellaneous appeal. Accordingly, I.A. No. 32 of 2007 is allowed and the delay in the filing of the said miscellaneous appeal is condoned.

3. M.A. No. 386 of 2006 has been filed by the plaintiffs challenging order dated 07.09.2006 by which the learned Subordinate Judge Ist Court. Katihar refused to grant ad-interim injunction in favour of the plaintiffs for restraining the defendants from interfering with the plaintiffs' management of the suit properties and religious functions and merely directed both the parties to maintain status quo with respect to the suit land including the management of the Mandir till the disposal of the suit bearing Title Suit No. 90 of 2005. In the said miscellaneous appeal defendant-respondent No. 1 is the Board. whereas

defendant-respondent No. 2 is the Chairman of the Committee appointed by the Board and the remaining defendants-respondents Nos. 3-22 are members of the said committee. However, defendants-respondents No. 23 & 24 do not appear to be concerned with the injunction matter.

4. M.A. No. 10 of 2007 has been filed by defendants No. 2-22, the members of the committee appointed by the Board including its Chairman, also against the said order 07.09.2006 passed by the learned Subordinate Judge Ist Court Katihar in Title Suit No. 90 of 2005 by which both the parties were directed to maintain status quo over the suit land including the management of the Mandir till the disposal of the suit. In this miscellaneous appeal respondents No. 1 to 5 are the plaintiffs, respondent No. 6 is defendant No. 1, namely the Board, whereas respondents No. 7 and 8 are defendants No. 23 & 24 of the suit not concerned with the injunction matter.

5. The aforesaid Title Suit No. 90 of 2005 was filed by the plaintiffs on 12.08.2005 for the following reliefs with respect to the suit properties measuring about 22 acres:

(a) Let be decided by the Court that Sri Sri 108 Maharani Durgajee is a family deity of the plaintiffs.

(b) Let it be decided that no trust of the public nature for religious or Charitable purpose has been created by the Donor.

(c) Let it be further declared that Sri Sri 108 Durgajee is a Private Deity of the Plaintiffs.

(d) Let the defendant be restrained by the order of the court from interfering with the Puja of the family deity and the management of the suit property by the plaintiffs by order of permanent injunction.

(e) Let the cost of the suit be awarded to the plaintiffs.

(f) Let any other relief and reliefs, which in the opinion of the court, the plaintiffs be found to be entitled, be also awarded.

6. Immediately after the filing of the aforementioned title suit, the plaintiffs filed an injunction petition in the court below on 01.09.2005 for restraining the defendants from making any interference with the puja and other related activities being performed by the plaintiffs on the eve of Dashara and also from making any interference with the management of the plaintiffs over the suit properties.

7. The plaintiffs claimed that the suit properties originally belonged to one Shankarwati Ojhain, who was a khatiyani raiyat of the suit land, and since she was an issueless widow, she adopted ancestor of the plaintiffs Mohan Lal Mishra as her Karta Putra for taking her care and performing her last rites after her death, and subsequently by a registered deed of gift dated 02.06.1893 gifted her entire property, both movable and immovable, including cattle stock to the said

Mohan Lal Mishra, out of which 34 1/4 bighas of land was ear marked for the worship of family deity Maharani Durgajee and casting an obligation on the donee Mohan Lal Mishra to perform Puja-path and Raj-Bhog of the family deity according to customs and tradition prevalent in the family. It is also claimed by the plaintiffs that after the execution of the aforesaid deed of gift the entire property of the said Shankarwati Ojhain devolved upon Mohan Lal Mishra, but during revisional survey operation of 1956-60, the plots concerning place of worship of family deity, namely plots No. 1568, 1569 and 1570 under Khata No. 492 of Mouza Phulwaria were wrongly recorded as Gairmazarua Aam Bihar Sarkar for correction of which Title Suit No. 154 of 1961 was filed by the plaintiffs imp leading villagers also as defendants in representative capacity and the said suit was decreed on 23.7.1964 by the learned Munsif. Sadar, Katihar, holding that the suit land belonged to the plaintiffs and thereafter the said lands were also recorded in the name of the plaintiffs, as the remaining lands under the gift were already recorded in the name of the plaintiffs since much before. It is further case of the plaintiffs that no public trust for religious purpose was ever created either by the said Shankarwati Ojhain or by anyone else with respect to the aforesaid suit properties and gifted her entire properties to the said Mohan Lal Mishra including the said 34 1/4 bighas of land, casting an obligation on the donee for worship of the private family deity according to family customs and tradition out of its income. It was also averred on behalf of the plaintiffs that the said Mohan Lal Mishra and after him his heirs and successors, namely the plaintiffs, have been performing Puja- Path and RajBhog of the deity according to family customs and traditions as mentioned in the aforesaid deed of gift, but recently some interested persons, namely defendants No. 2 to 22, designated themselves as a committee for looking after the said deity and its lands and collusively got approval of the Board and on that basis they are trying to oust the plaintiffs and are interfering with the performance of PujaPath and Raj-Bhog by the plaintiffs on the eve of Ashwini Navratra.

8. The claim of defendant No. 1, the Board, is that Maharani Durgajee was not a family deity of Shankarwati Ojhain and the trust is a public trust and the deity is being worshipped by general public of the locality in the temple in question situated on Gairmazarua Aam land and hence the Board has registered it as a public trust and has recognised a committee constituted by the people of the locality which is functioning and managing the affair of Puja-Path and Raj-Bhog of the temple. The said averments on behalf of the Board had been fully supported by defendants 2nd Party who added that at present the said committee is looking after the management of the temple having approval from the Board. They also claimed that the plaintiffs have no right to manage the suit properties or perform other activities regarding the deity and the Mandir and they had committed several irregularities.

9. Learned court below while deciding the said injunction matter observed that according to the claim of the plaintiffs they are coming in possession of the suit land on which the temple is situated since the date of gift dated 02.06.1893, but

as per the claim of the defendants, defendants 2nd Party, were the trustees of the temple appointed and recognised by defendant No. 1, the Board, and hence the learned court below was not clear who was the actual trustee and found it very difficult to pass any order regarding injunction and only directed to maintain status quo over the suit land including the management of the said Mandir till the disposal of the suit.

10. This order of status quo instead of solving the problem has created more problems than before as both the parties are now interpreting status quo as per their own claims giving rise to serious situation over the suit properties specially during puja festivals as a result of which both the parties challenged the said order in this Court vide the aforesaid two miscellaneous appeals. The learned court below confused itself and failed to realise that it was not going to finally decide any issue in the suit, rather it was to arrive at a prima facie finding with respect to injunction so that the Puja-Path of the deity and the proper maintenance and functions of the Mandir may continue as before till the final decision of the suit.

11. From the respective claims of the parties, the arguments raised by their counsel and the materials on record, it is quite apparent that the deed of gift dated 02.06.1893 executed by Shankarwati Ojhain in favour of Mohan Lal Mishra with respect to all her properties, both movable and immovable, is not in dispute. From the recitals of the aforesaid deed, it is quite apparent that out of the entire gifted properties, 34 1/4 bighas of lands were ear marked by the donor for worship of the family deity Maharani Durgajee and an obligation was created upon the donee to perform Puja-path and Raj-Bhog of the deity according to family customs and tradition. In the said circumstances, no public trust was created by the said deed, nor there is any material to show that any public trust was ever created with respect to the suit lands either by the said donor or by anyone else. Furthermore, the said properties remained recorded in the name of the said Mohan Lal Mishra and after him his heirs and successors and when some of the said lands were recorded as Gairmazarua Aam Bihar Sarkar land during the revisional survey operation Title Suit No. 154 of 1961 was filed by the plaintiffs imploding the villagers also and their suit was decreed and their right and title over the suit land was declared by judgment and decree dated 23.07.1964 which has never been challenged till date. The other lands throughout remained recorded in the name of the said donee and his heirs and successors without any objection from any quarter. This also shows that the terms of the said deed were throughout acted upon.

12. It further transpires from the record that the problem started from the year 2003 when an application was made before the Board for registering the said Mandir and the property as a public trust on the basis of which the said trust was recorded in the Board as Trust No. 3689 in the year 2005 without any notice or information to the plaintiffs. It also transpires that the defendants submitted returns in the Board in the year 2003 for the period 1989 to 2003, although the

trust was not registered by that time. Some notices have also been produced by the defendants 2nd party showing that notices were sent by the Board to the plaintiffs since 1970, but neither the said notices are in the record of the Board, nor the Board has produced the same, nor even the Board had any occasion to send such notices to the plaintiffs prior to the registration of the trust in the Board, hence they cannot be relied upon.

13. It also transpires from the record that on 17.2.2005 the President of the Board passed an order dated 17.02.2005 removing one Surendra Mishra from the post of trustee and appointing a committee of defendants 2nd Party with defendant No. 2 as its Chairman. There is no material to show that the said Surendra Mishra was earlier the trustee and hence there was no occasion for his removal, whereas the persons, who were the heirs and successors of the original donee, were not even noticed. Hence the said order was challenged by the plaintiffs in this Court vide CWJC No. 2544 of 2005 and during pendency of the said writ petition, the aforesaid order of the Chairman dated 17.02.2005 was recalled by the Board on 20.7.2005, on the basis of which the said writ petition was withdrawn by the plaintiffs on 01.08.2005. However, immediately after the withdrawal of the writ petition, the Board passed its order dated 02.09.2005 exactly similar to the order of the Chairman dated 17.02.2005 appointing the same Committee to look after the trust. Apart from the aforesaid fact, the said order dated 02.09.2005 was passed by the Board during the pendency of the injunction petition filed by the plaintiffs in the learned court below, although it was the duty of the Board and its authorities to wait for the order of the court in the injunction matter as the question involved was sub judice. The said haste-post-haste attitude adopted by the respondents concerned without any notice or information to the plaintiffs clearly shows that there was something fishy in the entire episode.

14. The claim of the defendants that the Mandir was situated on Gairmazarua Aam land is also falsified by the judgment passed by the Civil Court of proper jurisdiction in Title Suit No. 154 of 1961 holding that the suit property belonged to the plaintiffs. Although the plaintiffs have been able to show that they were duly recorded in the record of rights etc. with respect to the suit properties and were managing its affair, but there is absolutely no material on behalf of the defendants to show that before 2005, the property and the Mandir was managed by anyone other than the plaintiffs. Even for the period since 2005, there is nothing on record to show that defendants 2nd party are managing the affairs of the Mandir and its properties or they are holding Puja-Path and Raj-Bhog of the deity.

15. In the aforesaid facts and circumstances the defendants have miserably failed to show by any material whatsoever that any public religious endowment was made or any public trust was created by any one with respect to the suit properties, hence the entire claim of the defendants is without any basis. On the other hand the evidences adduced by the plaintiffs as discussed above specially

the deed of gift of 1893 clearly shows that merely some provisions were made for Puja-path etc. of the private family deity by the income of 34 1/4 Bighas of lands (suit lands) by the donee who was admittedly the owner of the entire gifted properties including the suit property. Hence the Board had no jurisdiction or authority to interfere in such matters as the definition clause of Section 2(1) of the Bihar Religious Trust Act 1950 (hereinafter referred to as the "Act" for the sake of brevity) does not include within its ambit private trusts or private endowments created for the worship of family deity and hence the Act and its provisions cannot be applied to such trusts nor the Board can legally pass any such order as has been passed in this case mentioned above. Reference in this regard may be made to a decision of the Hon'ble Apex Court in case of Ram Saroop Dasji Vs. S.P. Sahi, Special Officer-in-charge of The Hindu Religious Trusts and Others,

16. Furthermore mere permission to the public to attend functions held in the temple of a family deity and give offerings and do worship of the deity cannot be indicative of the temple being for the benefit of the general public because celebrations and festivals are part and parcel of the Puja of the deity as per the religious belief of Hindus and it would be against their sentiments to turn away persons who came to do worship and darshan. Similarly feeding of Sadhus and poor persons and giving hospitalities to wayfarers cannot also be indicative of the temple being public temple and its properties being subject to a public trust. Reference in this regard may be made to another decision of the Hon'ble Apex Court in case of The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseshwar Das,

17. From the aforesaid case laws and the provisions of law it is quite apparent that even if the aforesaid privileges were given to the outsiders the trust can not be legally deemed to be a public trust unless there is an endowment by any person of his property for public trust which is completely absent in the instant case, rather it has been satisfactorily shown by the plaintiffs that the lands in suit along with other lands were gifted by the donor to the predecessors of the plaintiffs by a registered document creating an obligation upon him to maintain the Mandir and do the Puja-Path etc. of the family deity as per the customs and traditions of the family. In the said circumstances, the plaintiffs have a prima facie case in their favour.

18. In view of the deed of gift of 1893 and also in view of the judgment and decree passed in Title Suit No. 154 of 1961 as well as the entries of the Government records and records of rights which were never challenged by any one, it is quite clear that there was no question of any dispute with regard to suit properties. However, if the Board had any doubt about the same and it had any reason to believe that the disputed land was a public trust property the proper course would have been to get a proceeding u/s 43 of the Act initiated in which the dispute could have been decided after giving due notice to the persons concerned. The Board had no authority to arbitrarily assume that the property in

question was a trust property belonging to any public religious trust. But the Board has done exactly what it should not have legally done in the year 2005 without any notice to the plaintiffs merely on the basis of some statements of private defendants, which was not supported by any material to show that the said defendants or the public had ever managed the affairs of the deity or the lands in question or that they are even managing it now, whereas on the other hand the plaintiffs have been able to show that they had been managing the property and the affairs of family deity and were holding all the religious functions and they are still performing the same as per the deed of 1893, which has not been disproved by the defendants by any material. In the said circumstances, balance of convenience is also in favour of the plaintiffs.

19. So far the question of irreparable loss is concerned, it is quite apparent that the plaintiffs' claim over the suit properties as well as performance of religious functions of the deity are based upon a registered document which cannot be ignored, whereas the claims of the defendants are based on no document at all as they have failed to show that either there was any public endowment or that the owner of the land in question had ever created any public trust. Hence, prima facie it appears that the private defendants are trying to dispossess the plaintiffs from the suit properties including the Mandir due to which the plaintiffs were constrained to file the title suit and the injunction petition and hence if they are not restrained, more than a century old customs and functions of the family is bound to be disturbed. In the said circumstances, the plaintiffs would obviously suffer irreparable loss which could not be compensated in terms of money, whereas the defendants, who have failed to show any right, title or interest whatsoever in the suit property, nor they have been able to show that they have been arranging the religious functions and managing the suit properties for any period, will not suffer any loss much less any irreparable one if an order of injunction is passed against them.

20. In the aforesaid circumstances, Miscellaneous Appeal No. 386 of 2006 filed by the plaintiffs is allowed and Miscellaneous Appeal No. 10 of 2007 filed by defendants 2nd Set is dismissed. Furthermore, the impugned order of the learned court below dated 07.09.2006 is set aside and the defendants are restrained from making any interference with Puja Path and other related activities being performed by the plaintiffs with respect to the deity in question and also from making any interference with the management of the suit lands by the plaintiffs during the pendency of the title suit, but in the facts and circumstances of this case, there would be no order as to cost.

21. However, before parting with this order, it may be mentioned that the aforesaid prima facie findings have been arrived at only for the purposes of injunction which should not affect the final decision of the title suit which has to be taken by the learned court below in accordance with the pleadings of the parties, evidence adduced by them and the specific provisions of law. Furthermore, since the main issue revolves around the question as to whether

the property in question is a public trust understandably religious sentiments of all concerned is involved, hence the learned trial court is directed to expedite the hearing and disposal of the suit without giving any unnecessary adjournments to any of the parties.

22. Let a copy of this order be handed over to learned Counsel for the appellants and learned Counsel for the Board.