

(2020) 03 RAJ CK 0130
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13821 Of 2019

Pandit Ashok And Ors

APPELLANT

Vs

Commissioner, Devasthan Dept., Government Of Rajasthan,
Udaipur

RESPONDENT

Date of Decision : 18-03-2020

Acts Referred:

Citation : (2020) 03 RAJ CK 0130

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Manoj Bhandari, D.K. Joshi, Vikas Balia

Final Decision : Dismissed

Judgement

This writ petition is directed against the order dated 5/9/2019 passed by the Civil Judge, Nohar, District " Hanumangarh, whereby, the trial court has interpreted the decree dated 25/3/2019 based on the compromise dated 8/9/1978.

The dispute between the parties pertains to the right to worship/conduct "Seva Puja" and appropriate offerings at two points, Nahar Singh Ji ka

Kund (dq.M) and Nahar Singh Ji ka Chirag (fpjlx) at Gogamedi temple. The dispute has a chequered history, as is usual with civil litigation specially

pertaining to rights in relation to temples, apparently as the stakes in the offerings increase over a period of time and same starts taking precedence over the worship at the temple.

The suit was instituted by the original plaintiffs Akhe Ram and others, wherein, the compromise dated 8/9/1978 was executed between the plaintiffs

and defendants and based on the said compromise a decree dated 25/3/1980

was passed. The State Government issued notification dated 27/4/1981

(Annex.8) publishing the lists of Govt. Temples under the Rajasthan Public Trust Act, 1959 (the Act, 1959). Whereafter, the Devasthan

Department distributed the points of worship between the Brahmin Pujaris (petitioners) and Chayal Pujaris (respondents), which lead to filing of writ

petition by the decree holders - petitioners being S.B.Civil Writ Petition No. 6836/2008 before this Court and against the judgment of the learned Single

Judge in the said case, D.B.Special Appeal (Writ) No. 175/2013 was filed, whereby, the Division Bench by its order dated 26/8/2013 gave certain

directions. Following the said directions, the executing court was approached. Based on the directions of the Division Bench, the executing court

framed points of determination and after hearing the parties and referring to the pleadings of the parties, came to the following conclusion:

08.09.1978 25.03.1980

25.03.1980

25.03.1980

25.03.1980

25.03.1980

It is submitted by learned counsel for the petitioners that the executing court committed error in interpreting the decree in the manner it is indicated in

the order. It was submitted that the consent decree is a contract between the parties and while construing the decree, the court was required to take

into consideration the pleadings as well as proceedings leading to the decree as laid down by Hon^{ble} Supreme Court in Bhavan Vaja & Ors. vs.

Solanki Hanuji Khodaji Mansang & Ors. : AIR 1972 SC 137 1 and Parayya Allayya Hittalamani vs. Parayya Gurulingayya Poojari & Ors. : AIR 2008

SC 241. However, the executing court has ignored the crucial documents and has interpreted the decree in a manner which is contrary to the intention

of the parties and against the settled practice pertaining to worship and entitlement to the offerings at two points of worship i.e. Kund

and Chirag.

Submissions were made that the respondents -Chayals are Muslims by religion and essentially were guards at the temple and the attempt made on

their part to claim themselves as Pujaris and entitled to the offerings throughout

the year other than the period from 1977 to 1980

1977, which right has been conceded by the respondents, is contrary to their fundamental religious belief of

opposition to idol worship and, therefore, the entire determination made by the executing court deserves to be quashed and set aside.

With reference to the pleadings in the suit and the language of the compromise as well as the decree, it was submitted that the respondents have

conceded the hereditary/ancestral right of the petitioners to collect the offerings at 1977Chirag1977 and 1977Kund1977 and, therefore, the interpretation

put to the phrase 'iwue Is iwue' in the compromise/decreed confining the same to one month is distortion of the compromise and the decree and,

therefore, the order impugned deserves to be quashed and set aside.

Submissions were made that in fact a compromise was executed between the parties on 22/9/1977 (Annex.5) which was also evidenced/counter

signed by the Assistant Commissioner, Devasthan Department and the Civil Judge, wherein, no such indication pertaining to 1977Poonam se

1977Poonam1977 was indicated, however, instead of passing a decree on the said compromise, another compromise dated 8/9/1978 (Annex.6) was

presented containing the offending portion and based on which the decree dated 25/3/1980 (Annex.7) was passed, therefore, the decree has to be

read taking into consideration the original compromise.

It is submitted that the intention of the parties was very clear in conceding the right of the petitioners to worship and collect offerings at all the points in

the temple including that of 1977Kund1977 and 1977Chirag1977 throughout the year and, therefore, the determination made by the executing court

deserves to be quashed and set aside.

Submissions were made that the trial court has selectively read the plaint, whereas, the same should have been read as a whole and that the true

effect should have been given to the decree.

Further submissions have been made that till the year 2008, no one questioned the fact that the petitioners were collecting the offerings throughout the

year, however, on account of the intervention of the State based on the notification dated 27/4/1981 (Annex.8), whereunder, the temple was indicated

as managed and controlled as a State Self Sufficient Temple, the issue arose, whereby, the respondents were accorded right to collect the offerings at

two places i.e. â??Kundâ?? and â??Chiragâ??. It was submitted that the power and authority of the respondents based on the notification dated

27/4/1981, wherein besides the temple in question, large number of other temples were indicated, came up for consideration before this Court in

Mahant Tulsidas vs. State & Anr. : S.B.Civil Writ Petition No. 467/1987 decided on 25/7/2002, wherein, it was held that the said notification was not

conclusive proof of the fact that the temple in question is a State temple and the said aspect would be required to be agitated and, therefore, the

intervention of the State in this context is of no avail to the respondents.

It was re-emphasized that the original compromise entered into between the parties (Annex.5) was required to be taken into consideration and that in

the overall circumstances of the case the executing court was not justified in coming to the conclusion with regard to interpretation of the compromise

decree in the manner it has interpreted the same and, therefore, the order impugned deserves to be quashed and set aside.

Learned counsel appearing for the respondents â?" Chayals made submissions based on the stand of the petitioners in the suit, before the Single Judge

in Civil Writ Petition No.6836/2008 (Annex.R/5) and before the Division Bench.

Reference was also made to Annex.2 produced by the petitioners, which is the report of Mahakma Sri Devasthan of the erstwhile Mewar State as

well as para 15 and 17 of the present writ petition. It was submitted that there is no ambiguity in the decree, wherein, the only interpretation to

â??Poonam se Poonamâ?? which could be given is â??Poonam of Sharavan to Poonam of Bhadrapadâ??, therefore, the writ petition deserves

dismissal.

Further submissions have been made that the petitioners were seeking to take advantage of lack of indication of months in the compromise/decre,

which is otherwise clear from the material available on record and, therefore, the Executing court was justified in interpreting the same in the manner,

which is in consonance with the material on record.

It was submitted with reference to Annex.R/1, which are the documents relating to handing over and taking over the charge from the year 1974 to

2008 regarding the two points of worship i.e. â??Chiragâ?? and â??Kundâ?? i.e. for 11 months the respondents â?" Chayal Pujaris have the right

over the offerings and the petitioners are only entitled for the same during the

period of fair at the â??Samadhiâ?? i.e. from â??Purnima of Shravan to Purnima of Bhadrapadâ??.

Further submissions were made that the Devasthan Department attempted to continue with the arrangement which was directed by the Court during the pendency of the Writ Petition No. 6836/2008, which attempt was quashed by this Court in a writ petition filed by the respondents and the appeal filed by the State being D.B. Special Appeal (Writ) No. 1216/2019 also came to be rejected on 17/12/2019. It was prayed that the writ petition deserves to be dismissed.

Learned counsel appearing for the Devasthan Department took the plea that none of the parties have any right on the offerings being made and it is the Devasthan Department, which has the right to collect the offerings.

Submissions were made that against the Division Bench judgment dated 17/12/2019 the State has preferred Special Leave Petition before the Honâ??ble Supreme Court and, therefore, the various pleas raised in this regard cannot be countenanced.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

At the outset, it may be noticed that the proceedings which culminated in the order impugned are outcome of the directions of the Division Bench

dated 26/8/2013, wherein, the following observations and directions were inter alia given by the Division Bench:

â??2. This intra court appeal is directed against impugned order of Single Bench dated 16th April, 2013 passed in S.B.Civil Writ Petition No. 6836/2008.

3. Although the case was argued at length, but during the course of arguments, learned counsel for parties have agreed to dispose off this special appeal in the following terms:-

1. The appellants as well as private respondents will abide by and follow the decree dated 25th March, 2018 passed by Munsif, Nohar in Civil Suit No. 141/1977.

2. If there is any dispute regarding interpretation of any work or part of the decree between the appellants and private respondents, the aggrieved party will approach the Executing Court in this regard.

3. order dated 16th August, 2008 passed by Assistant Commissioner, Devasthan Department, Bikaner camp Gogamedi is set aside, being infructuous.

4. Since learned Single Judge has also observed that petitioner should approach the Executing Court and learned counsel for parties have already

agreed to approach the Executing Court, in case there is any dispute about the interpretation of any word or part of the decree, therefore, the order of

learned Single Judge is modified to the extent of agreed terms as mentioned above.

5. It is made clear that any observations made by learned Single Judge in its impugned order will not influence the Executing Court or any other

proceedings, if initiated by any of the parties.

4. Ordered accordingly.â??

A perusal of the directions would reveal that it was directed that both the parties will abide by and follow the decree dated 25/3/1980 and in case of

dispute regarding interpretation, the parties would approach the executing court. About the observations made by learned Single Judge, it was directed

that the same would not influence the executing court.

As directed, the petitioners approached the executing court by filing application (Annex.10), which was contested by the respondents (Annex.11),

pertaining to the interpretation of the decree and the rights therein, the dispute being in relation to the right to worship and the offerings at

â??Kundâ? and â??Chiragâ?, while the petitioners claimed right throughout the year, the respondents contended that the same was confined to

â??Purnima of Shravan to Purnima of Bhadrapadâ? and for rest 11 months they claimed the right.

The law cited by learned counsel for the petitioners with regard to interpretation of a compromise decree, in contrast to other decrees where the

general law is that the executing court cannot go beyond the decree, is that while construing the consent decree the court can and in appropriate cases

ought to take into consideration the pleadings as well as leading to the decree.

The petitioners had filed the suit (Annex.3) inter alia with the following averments and sought the relief as under:

â??â??(4)

(5)

3-5

- ,

(6) 12 0 2033

3-5

â??â??

Relief:

â??â??(10)

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A perusal of the averments would indicate that the petitioners claimed that they were taking the offerings at the â??Chiragâ?? and â??Kundâ??

since generations and apparently qualified the same that every year in the month of â??Shravanâ?? and â??Bhadrapadâ?? they were taking the

offerings and were staying in two small rooms (dksBjh) and relief claimed pertained to the right to collect offerings and to stay at the â??Kothriâ??.

Along with the suit, an application seeking temporary injunction was filed, wherein, the order dated 31/8/1977 was passed by the trial court, which

reads as under:

â??- -

, , , (2)

(3) (4) (5)

?

â??

A perusal of the interim order would indicate that the interim order was confined to the month of â??Bhadrapadâ??.

Whereafter, it is claimed that a compromise dated 22/9/1977 (Annex.5) was executed between the parties, which reads as under:

â??

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â??

However, no order appears to have been passed based on the alleged compromise dated 22/9/1977 between the parties.

However, a compromise between the parties was entered into on 8/9/1978 (Annex.6), wherein, the parties were represented through counsel and the Civil Judge verified the same.

The relevant portion, which is essentially the subject matter of dispute reads as under:

1.

2. , ,

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Based on the above compromise, the trial court by its order dated 22/3/1980 ordered for passing of the decree in terms of the compromise and the decree was drawn on 25/3/1980.

So far as the submissions made by learned counsel for the petitioners with regard to the fact that already a compromise was entered into between the parties on 22/9/1977, which did not contain any stipulation which is subject matter of the dispute and, therefore, the said compromise only needs to be taken into consideration for interpretation of the decree appears to be without any foundation.

The petitioners have placed on record the order sheets of the suit from 5/8/1977 to 22/3/1980 (Annex.15) along with the counter to the reply filed by respondent nos. 4 to 7. A perusal thereof would indicate that after the alleged compromise dated 22/9/1977, the matter had come up before the trial court on 30/9/1977, 27/10/1977 and 18/11/1977 and in the order sheet dated 18/11/1977 it was specifically observed that there has been no compromise and, therefore, the matter was fixed for filing written statement.

Learned counsel for the petitioners made submissions that order sheets from 18/11/1977 to 22/3/1980 were missing, however, from the order sheet dated 22/3/1980 it is apparent that the record was received from the appellate court, where appeal against grant of interim order dated 31/8/1977 was pending, on the said date and, whereafter, based on the compromise dated 8/9/1978 the decree was passed, therefore, the plea of missing order sheets has no basis.

The plea raised that as the matter against grant of temporary injunction was pending before the appellate court and, therefore, the compromise dated 22/9/1977 was filed before the said court also appears to be misplaced as the

copies of the compromise produced by learned counsel for the petitioners in the writ petition as well as presented during the course of submissions are merely copies of copies and apparently the whereabouts of so called original are unknown. Further, in view of the order sheet of trial court indicating on 18/11/1977 that there has been no compromise, clearly concludes the said aspect.

The contention that the compromise was filed before the appellate court also appears to be misplaced, as a perusal of the order sheets of appellate court (Annex.18) reveals that the appeal itself was registered on 4/10/1977 and the same remained pending till 3/8/1979, when the same was withdrawn. As the appeal itself was registered on 4/10/1977, there was apparently no question of presenting the compromise dated 22/9/1977 before the appellate court.

Besides the above, irrespective of the alleged compromise dated 22/9/1977, there is no bar in law, where once a decree based on a compromise has not been passed, from entering into a fresh compromise which may be in variation or completely different to the earlier compromise and as such once the compromise dated 8/9/1978 was entered into between the parties and without any objection after almost 1½ years of the date of compromise the decree based on the compromise was passed and for over 35 years no objection was raised regarding the fact of entering into the compromise which led to passing of the decree, raising a dispute now seeking to fall back on the alleged compromise dated 22/9/1977 cannot be countenanced and the plea sought to be raised in this regard being baseless cannot be accepted.

Coming back to the main issue, as noticed, the pleadings of the petitioners and the interim order passed by the trial court, wherein, it appears that the petitioners claimed right during the months of â??Shravanâ?? and â??Bhadrapadâ?? and injunction was granted for the month of â??Bhadrapadâ?? only.

A look at the compromise arrived at between the parties dated 8/9/1978 which has formed the basis of passing of the decree by the trial court would reveal that the opening part of the terms of compromise recognizes the right of the petitioners as Pujaris of the temple and that they have been receiving offerings at the â??Chiragâ?? and â??Kundâ?? and have ancestral right and that the defendants have no objection in this regard.

Whereafter, the said aspect has been qualified/restricted by indicating that the plaintiffs would take offerings from â??Purnima to Purnimaâ?? and

that the defendants would not interfere with said offerings, whereafter, reference was made to the offerings at â??Chiragâ?? that the plaintiffs would

receive cash & prasad and cloth & coconut etc. would not be taken by them. The very fact that the parties cautiously indicated/qualified the right of

the petitioners from â??Poonam to Poonamâ??, the plea raised by the petitioners that the same be ignored in view of the earlier part of the

compromise, essentially is baseless inasmuch as the compromise has to be read as a whole and it cannot be accepted that a portion of the compromise

be totally ignored, which would render the part of the contents of the compromise otiose.

Further, the said terms in the compromise confining the right of the petitioner from â??Poonam to Poonamâ?? appears to be in consonance with the

practice which apparently was going on as evidenced from the averments made in the plaint and the injunction granted by the trial court, whereby, the

petitioners were taking offerings during the fair only i.e. during the period â??Poonam of Shravan to Poonam of Bhadrapadâ??, as such the entire

plea raised based on the alleged right on account of a part of the compromise cannot be accepted.

A feeble attempt was made by the petitioners that as the compromise indicates â??Poonam to Poonamâ??, the same must be read as â??Poonam of

Shravanâ?? of one year to â??Poonam of Sharvanâ?? of next year, is essentially distortion of the compromise. Further, in case the respondents

were to concede the right of the petitioners for the entire year, there was apparently no necessity to indicate and/or qualify the same by â??Poonam to

Poonamâ??. The compromise, by the very term essentially means some give and take and same essentially cannot be give only and, therefore, the

plea raised by the petitioners seeking to appropriate the offerings at the â??Chiragâ?? and â??Kundâ?? for the entire year is apparently beyond the

compromise and the decree, which cannot be countenanced.

The trial court has meticulously dealt with the entire issue and has come to the finding as quoted hereinbefore, which does not call for any

interference.

Learned counsel for the petitioners made submissions that the trial court has

made observations pertaining to temple, the respondents â?" Chayals

being Pujaris etc., which are beyond the record. The observations made, by itself cannot vitiate the order and it appears that same have been made

based on the submissions made before the court.

The submissions made on behalf of the petitioners seeking to invoke the religious beliefs of the respondents are merely an attempt to deny the settled

practice, whereby, the respondents have been involved in the practices of the temple, which aspect is fortified from the report of Mewar State

(Annex.2) filed by petitioners and plaint averments wherein, defendants have been described as â?"pk;y iqt kjhâ?", the attempt, therefore, cannot be appreciated and approved.

So far as the stand of Devasthan Department is concerned, as submitted by learned counsel for the State, the SLP filed by the State is pending

consideration before the Honâ?"ble Supreme Court, which would take care of their stand insofar as the status of the temple is concerned. The

judgment of Single Judge as well as the Division Bench is against the State and as such on account of pendency of Special Leave Petition, nothing

turns on the same.

In view of the above discussion, no case for interference is made out in the order passed by the executing court.

The writ petition has no substance and the same is, therefore, dismissed.

No order as to costs.