
(1971) 11 AHC CK 0042
In the Allahabad High Court
Case No : S.A. No. 130 of 1965

Radha Kishun Ji Maharaj and Another APPELLANT
Vs
Smt. Imarti and Others RESPONDENT

Date of Decision : 29-11-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1972) 42 AWR 98

Hon'ble Judges : J.S. Trivedi, J

Bench : Single Bench

Advocate : V.B.L. Srivastava, for the Appellant; H.S. Nigam, R.C. Srivastava, R.R. Misra, Krishna Prasad, S.M.K. Chowdhary and Rajeshwari Pd., for the Respondent

Final Decision : Allowed

Judgement

J.S. Trivedi, J.—Plaintiff-Appellants Sri Radha Kishun Ji Maharaj through Sri Ram Govind and Sri Ram Govind filed regular suit No. 509 of 1961 out of which this appeal arises for possession of the Mandir premises and for a declaration that Sri Radha Kishun was the Bhumidhar of the cultivatory plots detailed in the plaint. The Plaintiff's case was that the temple of Sri Radha Kishun Ji has been in existence since long and on 20th December, 1945 one Bhagirath gifted his Zamindari property to Sri Radha Kishun Ji appointing the Plaintiffs along with the Defendant-Respondents 1 to 3 as Mohatimims of the property. Defendant No. 4 Ambha Lal was said to have been appointed the Pujari of the temple. The allegation of the Plaintiff is that the said pujari has wrongfully occupied the building and is laying claim to it, hence the suit.

2. Defendants 4 to 6 who are Pujari and his sons contested the suit and denied Plaintiff's right or title in the suit properties. They claimed to have become Sirdars of the tenancy land and they also claimed that the house occupied by them was not part of the temple premises and belonged to them exclusively. The trial Court held that the temple and the premises occupied by the Defendant-

Respondents 4 to 6 i.e. Pujari and his sons were part of temple premises belonging to Sri Ram Radha Kishun Ji Maharaj. The trial Court further held that the aforesaid Defendants had no title to the temple premises which included the alleged house. It was also held by the trial court that Defendants 5 and 6 i.e. sons of Pujari being recorded in 1356 F. acquired sirdari rights in the tenancy land and the Plaintiff Radha Kishun Ji was not the Bhumidhar of the agricultural land. The trial Court, therefore, dismissed the suit for possession over agricultural plots. The Plaintiff's suit for possession over the temple premises was, however, decreed. Aggrieved by the judgment and decree of the trial Court Defendants 4 to 6 filed an appeal. A cross objection was filed by the Plaintiff-Appellants. The lower appellate Court dismissed the cross objection. With respect to the temple premises the lower appellate Court affirmed the finding of the trial Court holding that the so-called house was part of the temple premises. The lower appellate Court, however, found that the Defendants 4 to 6 were not guilty of conversion of temple property. According to it the increase of Amba Lal, Defendant 4's family necessitated new constructions and as mismanagement was not proved, the suit of the Plaintiff for possession of the temple premises was dismissed by the lower appellate Court, hence this Second Civil Appeal by the Plaintiff Sri Radha Kishun Ji through Ram Govind and by Ram Govind himself.

3. The main point agitated in this appeal is that the Plaintiff Ram Govind was not competent to file the suit. According to the Respondents, Sri Ram Govind or his family members were not the founders of Radha Kishun Ji. They had only dedicated some property to Sri Radha Kishun Ji and by the subsequent dedication of property they could not acquire the status of the Shebait of the original endowment i.e. Sri Radha Kishun Ji and could not become the founders of Sri Radha Kishun Ji. It is further contended that the suit being in the nature of the framing of a scheme suit was barred by Section 92 of the Code of Civil Procedure.

4. It is not disputed that the temple of Sri Radha Kishun Ji Maharaj has been in existence from before and that Bhagirath, predecessor of the Plaintiff, by Ext. 5 on 20th December 1945 dedicated some properties to the idol Sri Radha Kishun Ji. The normal rule is that When a deity is installed, the Shebaitship in the absence of any deed laying down the line of Shebaitship remains in the founder and his heirs and devolves like any other species of property. The complications arise where additional gift is made to the deity with a provision about the devolution of the office of Shebait different from the original endowment. In such cases the Shebait would be put to election and would have to choose whether the gift deed with the condition attached to it should be accepted or not. The additional gift could also co-exist if the provision for the management of the additional gift does not interfere with the right of the Shebait of the original endowment. Election by the Shebait of the original endowment in respect of subsequent gifts need not be express. It may be implied also. In the instant case there is nothing on record to show if any members of the founder's family were in existence on the date of the suit or had taken any interest at any point of time

in the management of the temple. There is ample evidence on record to show that the Plaintiffs along with Defendants 1 to 3 who are successors of Bhagirath have been managing the endowed property. As a matter of fact Defendants 5 and 6, sons of Defendant No. 4 had asserted their right of possession over the tenancy land on the basis of the permission granted by Defendants 1 to 3 who are some of the successors of Bhagirath. There is no evidence in this case that the founders of the original endowment or the successors at any point of time consented to the gift made by Bhagirath to the endowment. But as remarked earlier in the absence of the founder's heirs and in the circumstances where Bhagirath and his successors have been managing the property endowed by them to the temple, a valid presumption can be drawn that they are the de facto Shebait of the endowment.

5. Both the courts below have negated Defendant 4's contention that the so-called house was exclusively owned by him. Defendant 4's status was not greater than that of a Pujari or Archakas. A Pujari is appointed by the founder to conduct the worship of the deity. He cannot claim better rights and he also cannot resist the suit of a de facto Shebait for his removal specially when he is setting up a title in himself with respect to a portion of the temple premises. In *Buddu Satyanarayana and Others Vs. Konduru Venkatapayya and Others*, it was laid down that the conduct of the Archakas in asserting an adverse right disentitled them from any claim founded on equity. The court below, therefore, was wrong in dismissing the Plaintiff's suit for possession of the temple premises on the ground that the mismanagement by the Pujari of the temple property was not proved.

6. Coming next to the objection that a suit of this nature was not competent, I am of the opinion that the objections of the learned Counsel for the Respondents have no force. Even if the Plaintiff No. 2 was not a de facto Shebait, a suit by an idol through a person interested for the recovery of the temple property will not be incompetent. Section 92 of the CPC on which reliance has been placed by the learned Counsel for the Respondent contemplates suit against the trustee for the removal of the trustee or Shebait and for the framing of the Scheme. An Idol is a juristic person. It has a juridical status with power of suing and being sued. The suit of course has to be filed in the case of an idol through some person and that some person can be the Shebait or even a stranger.

7. The suit principally being a suit by the deity or idol against a person claiming some property of the idol is not barred by any provisions of the Code of Civil Procedure.

8. In *Madhavrao Anandra Raste v. Shri Omkareshwar Ghat* 31 Bombay Law Report 192, it was held:

That the Plaintiff institution, like a Math or an idol, was a juristic person and could maintain the suit through its Vahivatdars.

9. In *Mukherjea's Tagore Law Lectures on Religious and Charitable Trust* it was

laid down that:

(1) An Idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol.

10. The suit of the Plaintiff, therefore, was competent both on the finding that the Plaintiff was a de facto Shebait and was a person interested in the endowment. Learned Counsel for the Respondent further contends that the Plaintiff has not taken any interest in the seva and Puja of the deity and the purpose of the suit is to utilise the trust property to his own benefit, he being an influential person of the vicinity. It is also submitted that a suit against the Plaintiff not only will require the permission of the Advocate General but will require persons who can spare their time, energy and money to indulge in a thankless litigation. He, therefore, submits that a scheme of management be framed and he should be permitted to act as the Pujari of the deity under the said scheme.

11. It is true that a suit against a trustee or Shebait can only be filed either by the Advocate General or by any two persons with the permission of the Advocate General. It is also correct that Advocate Generals by themselves are not interested and the public is equally indifferent with the result that after the founder the succeeding Shebait has either liquidated the trust properties or have ignored the trust and the Public Trust has become the family property of the Pujaries. Whatever might have been the benefit of Section 92 CPC before the independence of the country after the independence it is the duty of the Govt. both Central and State that the public charities and religious endowments are preserved and administered in accordance with the wishes of the founder and this purpose can only be achieved by maintaining a complete list of the trusts of every State with their assets and constituting a Board for the inspection and administration of the Trust properties. Members of the public cannot be expected to bear the burden of litigation and increase a non ending headache. Invariably cases have come to this Court where even after the framing of a scheme the trustees or their successors have misused their position necessitating another suit.

12. An ineffective law, however, cannot be a ground for exercising a jurisdiction which is not permitted by Section 92 of the Code of Civil Procedure. So long as Section 92 is on the statute book the Respondents in this suit at this stage

cannot be allowed to plead even for the framing of a scheme of management.

13. Learned Counsel for the parties have stated that the agricultural land is the subject matter of consolidation proceedings. The suit of the Plaintiff in respect of the agricultural land, therefore, has to abate u/s 5 of the UP Consolidation of Holdings Act.

14. The result, therefore, is that this appeal is allowed and the suit of the Plaintiff shall stand decreed with costs throughout for possession in respect of the temple premises and the suit of the Plaintiff for agricultural land shall stand abated u/s 5 of the UP Consolidation of Holdings Act.