
(2011) 03 MP CK 0011
In the Madhya Pradesh High Court
Case No : F.A. No. 221 of 1991

Radheshyam

APPELLANT

Vs

Omkardas and Others

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 96

Citation : (2012) ILR (MP) 3038 : (2011) 2 MPJR 358

Hon'ble Judges : Gulab Singh Solanki, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Solanki, J.

Being aggrieved by the judgment and decree dated 12/9/1991 passed by Additional District Judge to the Court of District Judge, Hoshangabad, sitting at Harda, in Civil Suit No. 26A/1977, appellant/defendant has preferred this appeal u/s 96 of the Code of Civil Procedure.

Plaintiff/Respondent No. 1 filed a suit for possession of disputed agricultural lands and houses, for damages and permanent injunction. It is pleaded that late Mahant Shaligramdas was his Guru and was having agricultural lands and houses as mentioned in the schedule of the plaint. It is undisputed that Mahant Shaligramdas was died on 5.2.1977. It is also pleaded that on 10.6.1973 at Bhadugaon late Mahant Shaligramdas orally selected the plaintiff as "Patt" disciple and successor of him and after selection plaintiff started managing the property. It is further pleaded that late Mahant Shaligramdas by an application dated 26.4.1976 relinquished all his rights, interests and titles in favour of the plaintiff, thereby he was declared successor of late Mahant Shaligramdas. This document was executed before the witnesses. It is further pleaded that the application dated 26.4.1976 was filed before the Naib Tahsildar, Harda for recording the name of plaintiff as jointly in the Revenue Records and in this way

during the life time of Mahant Shaligramdas, plaintiff started managing the properties as owner but after the death of Mahant Shaligramdas, defendant started interference and dispossessed him on 9.3.1977 and taken illegal possession of the property, therefore he filed the suit.

Case of appellant/defendant before the trial Court was that Mahant Shaligramdas did not have any personal property like agricultural lands or houses as pleaded by the respondent No. 1/plaintiff. According to the defendant, all properties were the Trust property and belonging to the Trust, named as Ram Janki Mandir Public Trust, which was registered on 7.2.1955. It is further pleaded that Mahant Shaligramdas was a trustee and party to the proceedings for registration of the Public Trust. It is further pleaded that the order of registration of Trust was not challenged within six months, therefore, entries of registration become final. The suit filed after 22 years, is barred by limitation. It is denied that plaintiff was selected as disciple of Mahant Shaligramdas and pleaded that on 17.2.1977 all saints, Mahants, disciples and decided that till the Kumbh fare of Nashik, the Trust property will be managed jointly by Ayodhyadas, Padumdas, Omkardas, Radheshyam and Narsinghji. Ayodhyadas was made working Mahant. An agreement dated 17.2.1977 was written and signed by all concerned including respondent No. 1/ plaintiff Omkardas. It is also pleaded that respondent No. 1/ plaintiff Omkardas was having a family, therefore, he was not entitled to be selected as Mahant. On the basis of aforesaid pleading, they pray for dismissal of the suit.

On the basis of pleadings of the parties, the Trial Court framed as many as nine issues and after appraisal of evidence on record, plaintiff's suit was decreed, and he was declared title holder of the property, mentioned in the schedule, appendix of the plaint and appellant/defendant is restrained from interfering in the property. Being aggrieved appellant filed this appeal.

During pendency of this appeal, respondent No. 1/plaintiff filed IA No. 3279/2005, an application under Order 6 Rule 17 of the Code of Civil Procedure, for amendment of the plaint. It was directed that the same shall be considered at the time of final hearing of the appeal. Therefore, first of all I have to consider IA No. 3279/2005, an application under Order 6 Rule 17 of CPC.

Respondent No. 1/plaintiff pleaded that during the course of argument it is found that there are certain discrepancies in regard to particulars of properties mentioned in Schedule-A appended with the plaint and documents which have been produced and proved by the plaintiff during trial, therefore, in order to avoid controversy, application for proposed amendment is filed with pleading that proposed amendment is necessary for a fair and complete adjudication of the controversy between the parties. It is further pleaded that no prejudice would be caused to the appellant/defendant.

In reply, appellant/defendant denied the averment of application and pleaded that proposed amendment is not permissible after twenty two years. It is also

pleaded that due to proposed amendment subject matter of the suit will be changed, therefore, he prays for dismissal of the application.

During the course of final argument, it was contended by the learned counsel for the appellant/defendant that if the subject matter of the suit be changed, such amendment cannot be allowed. He relied on (M/s Revajeetu Builders & Developers Vs. M/s Narayanaswamy & Sons & others), 2009 SAR (Civil) 1066 and K. Raheja Constructions Ltd. Vs. Alliance Ministries and others,

On the contrary, learned counsel for the respondent/plaintiff submitted that proposed amendment is only to correct the description of suit property which was written incorrectly/wrongly by typing mistake. He further submitted that proposed amendment is necessary to bring real question in controversy between the parties. He relied on (Sajjan Kumar Vs. Ram Kishan), (2005) 13 SCC 89 and Puran Ram Vs. Bhaguram and Another, .

I have perused the pleadings of the plaint, written statements and Schedule appended to the plaint.

The identity of the properties was well known to both the parties except areas mentioned in the schedule appended with the plaint. Respondent/plaintiff seeking permission to amend the areas and some numbers which were incorrectly/ wrongly typed by mistake.

It is well settled principle of law that the description of the land if incorrectly pleaded in the plaint and both parties were aware about the area and identity of the properties then such amendment should be allowed because same is necessary to bring the real question in controversy between the parties and if such amendment will refuse, it will create complications at the stage of execution in the event of success of plaintiff in the suit. In these circumstances, I am of the considered view that by proposed amendment nature of suit will not be changed and new cause of action is not substituted, therefore, principle laid down in the case of M/s Revajeetu Builders & Developers Vs. M/s Narayanaswamy & Sons & others (supra) is not applicable to the facts of instant case. Therefore, amendment application is allowed and respondent/plaintiff is permitted to amend schedule appended with the plaint and this appeal is considered, assuming the amended schedule.

Now, I have to consider main controversy between the parties. Learned counsel for the appellant submitted that the trial Court committed illegality, in holding that plaintiff will be the successor of Mahant Shaligramdas on the basis of so called Will dated 26.4.1976. He further submitted that the document dated 26.4.1976 is merely application filed for mutation and it cannot be said to be a Will, therefore, he prays for setting aside the judgment and decree passed by the trial Court.

On the other hand, learned counsel appearing on behalf of respondent No. 1/ plaintiff submitted that Mahant Shaligramdas was holding private property which

was other than the Trust property. He further submitted that respondent No. 1/plaintiff was declared successor of Mahant Shaligramdas by executing the Will dated 26.4.1976, therefore, there is no illegality committed by the trial Court in passing the impugned judgment.

I have perused the impugned judgment, evidence and other material on record.

Respondent No. 1/plaintiff Omkardas (PW1) deposed that Mahant Shaligramdas was his Guru. He further deposed that on 10.6.1973 Mahant Shaligramdas made him his pupil by performing Panch-Sanskar including janeu Sanskar which was performed by Pandit Narmada Prasad Shukl (PW7). Pt. Narmada Prasad Shukl (PW7) corroborated this fact. Other plaintiff's witness Kunjilal (PW8) fairly deposed in para-1 that at the time of ceremony Mahant Shaligramdas told them that he become old aged, therefore, he is making the respondent No. 1/plaintiff Omkardas as Sarvarakaar of the temple (mandir). He further deposed that consequently a document Ex.P/5 was executed by Mahant Shaligramdas.

Plaintiff Omkardas further claimed that Mahant Shaligramdas after declaring him his successor, filed an application on 26.4.1976 before Tahsildar Harda and Seoni-Malwa for mutation of the plaintiff's name in the Revenue Records. He further claimed that there was one more statement of Shaligramdas deposed in the Court of Naib Tahsildar regarding transfer of license of a gun (Ex.P/4). He further claimed that he was authorised to plead and contest the cases on behalf of Shaligramdas, therefore, he filed an affidavit Ex.P/1 before competent authority (Sub Divisional Magistrate).

On the basis of aforesaid documents, he deposed that he was managing the property of Mahant Shaligramdas as owner thereof. He admitted in para-24 of his statement that an agreement Ex.P/5 was executed in his favour but he denied his previous statement Ex.D/6, which was in relation to declaration of successor.

According to plaintiff Omkardas, (Ex.P/25) was an application as well as Will executed by Shaligramdas. He admitted in his cross-examination in para-76 that this was typed by Rajendra Khale and Khasra number was written by him on the instructions of Mahant Shaligramdas. He further admitted that the original of this application was filed in the suit, pending before the Civil Judge, Class-II Harda. He further admitted that there is overwriting on the word "Sarvarakaar & Vyavasthapak".

Plaintiff Omkardas was recalled on 20.6.1991 and had deposed that he was declared as "Mahant" in place of "Mahant Shaligramdas" in September, 1979 on the eve of occasion of Kumbh at Nashik and defendant handed over the possession of the disputed property in the year 1983 and since then he managing the disputed property and enjoying the fruits of the same.

Narayanrao Choure (PW5) and Radhakrishn (PW6) are the witnesses of the document Ex.P/25. Both of them deposed that Mahant Shaligramdas was in a sound condition and executed this disputed document Ex.P/25 and signed before

them. They admitted in their cross-examinations that Mahant Shaligramdas was aged about 100 years. Narayanrao Choure admitted in his cross-examination in para-6 that at the time when something was written by ink he was not present there. Both witnesses admitted that 4-5 copies of Ex.P/25 were prepared and there were difference in regard to Khasra numbers written in two documents.

On careful examination of Ex.P/25, it reveals that it is mere an application of mutation prepared for filing before Tahsildar, Harda/Seoni-Malwa, for adding the name of plaintiff Omkardas alongwith Mahant Shaligramdas, as manager/holder and Sarvarakaar of the lands mentioned in the application. It is very unnatural that such type of application bears two attesting witnesses. There was no need of attesting witnesses for application of mutation. This fact goes against the plaintiff who is propounder of so called Will of Saligramdas. When we considered Ex.P/6, previous statement of plaintiff and other circumstances alongwith the statements of attesting witnesses Narayanrao Choure (PW5) and Radhakrishn (PW6), both of them appear to be unreliable. Their statements are self-contradictory in regard to the document Ex.P/25.

When I examined the contents of this application in the light of facts admitted by the plaintiff in his cross-examination, it reveals that 4-5 copies of same document were prepared and plaintiff himself entered the khasra numbers in blank places. He admitted that the application which was filed before the Civil Judge, Class-II in Civil Suit No. 54A/1977, Omkardas Vs. Ashok Kumar, has cutting and over writing/manipulations on the words of "Sarvarakaar & Vyavasthapak". Therefore, it shows that plaintiff manipulated the said document according to his Will.

On careful scanning of Ex.P/25, it also reveals that on the same application at "D to D" written word as: "was given to Patwari on 4.10.1976", shows that this document was given to Halka Patwari. In these circumstances, concerned Patwari was an important witness, who could explain the circumstances that when he received this application, same was bearing the attesting witnesses or not. Firstly it cannot be said that this document was written as a Will, by Mahant Shaligramdas. Secondly, on the basis of this document it appears only that Shaligramdas was intended to make Sarvarakaar by adding plaintiff's in the Revenue Records for managing the whole properties as Sarvarakaar/manager/holder, in these circumstances, the trial Court committed illegality in recording the finding in regard to the fact that Mahant Shaligramdas executed a Will in favour of plaintiff Omkardas. Same thing is reflected in Ex.P/4, which is a statement of Shaligramdas before Naib Tahsildar in regard to transfer of license of gun and Ex.P/5, an agreement, in the name of plaintiff Omkardas. From all above mentioned documents, only one inference can be drawn that the intention of Mahant Shaligramdas was to make plaintiff only Sarvarakaar alongwith him, to look after the properties.

In the impugned judgment in para-47, the trial Court observed on the basis of additional evidence of plaintiff himself that plaintiff was made a Mahant of the

Trust Ram Janki Mandir by order dated 24.7.1985 and this fact was entered in the register of the Trust, but I am of the considered view that to become a Mahant, of a Trust in place of Mahant Shaligramdas is a different matter, then to become a successor of Shaligramdas. In these circumstances, plaintiff may be a Mahant of a Trust and he has right to manage the disputed property alongwith the property of the Trust but at the same time it cannot be said that he is the owner of the disputed property.

No doubt from the evidence on record, it is proved that the property of Timarni was gifted by one Ramdas to Mahant Shaligramdas by executing the gift deed Ex.P/6 and same is not included in the list of Trust property Ex.D/10. In this way, the property of Timarni including lands and houses and Temple of God Laxmi Narayan was personal property of Mahant Shaligramdas.

In regard to property of village Gangia measuring 26-24 acres out of Khasra Nos. 2 and 17, plaintiff pleaded that this property was wrongly entered in the register of Public Trust Ram Janki Mandir. It was the personal property of Mahant Shaligramdas which he purchased by Kol Patta Ex.P/ 26. But this property was entered in the register of Trust during the life time of Shaligramdas. He had not objected against the same during his life time. This fact find further supported by the statement of Radheshyam/defendant No. 3, who filed Ex.D/10, certified copy of Ram Janki Public Trust and deposed that property of Gangia is registered in the name of Ram Janki Temple. He also filed the receipts of Revenue Books Ex.D/13 and Ex.D/14.

On perusal of aforesaid revenue record clubbed with the fact that if Saligramdas was interested in maintaining the property of village Gangia, as his personal property, then he could have been objected this fact and the register of public property could have been amended.

On the contrary, from the conduct of late Saligramdas reveals that he was of the view that property which he earned or received during his life time will also be remained with the property of Trust of Ram Janki Temple and same would be used for the purpose of welfare of temple and for expenditure of pilgrims and disciples of deity. In these circumstances, the property of Gangia cannot be said to be the personal property of Mahant Shaligramdas.

Only property of the village Timarni, (lands and houses) which are not entered in the register of Trust, this property can be said to be the personal property of Mahant Shaligramdas but as discussed hereinabove plaintiff is not the owner thereof. He is only a Sarvarakaar & Vyavasthapak, In this way, the plaintiff is entitled to manage the land, house and properties of village Timarni alongwith the property of trust.

In these circumstances, the Trial Court committed illegality in not appreciating the evidence on record in its proper perspective and declaring the plaintiff Omkardas, owner of disputed property.

Thus, the appeal is allowed. Judgment and decree passed by the trial Court is hereby set aside.

The respondents shall bear their own costs and cost of the appellant.

Counsel fees as per schedule or as per certificate (whichever is less).

Decree be drawn accordingly.