
(1969) 05 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Execution Second Appeal No. 42 of 1966

Ram Charan

APPELLANT

Vs

Triloki Nath

RESPONDENT

Date of Decision : 01-05-1969

Acts Referred:

Rajasthan Public Trusts Act, 1959 — Section 29, 72, 73

Citation : (1969) WLN 213

Hon'ble Judges : Jagat Narain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jagat Narain, J.—This is an execution Section A. by the Judgment-debtor against an appellate order of the District Judge, Ajmer dismissing his objection cannot be, executed against him on account of the provisions contained in Sections 29, 72 and 73 of the Rajasthan Public Trusts Act, 1959.

2. The premises in respect of which the decree for arrears of rent and eviction has been obtained belong to a deity. The suit was instituted by the Shebait in 1957. It was decreed by the trial court on 22-9-60. The first appeal was dismissed on 18-12-61 and the second appeal on 10-7-65. The Public Trusts Act, 1959 was first, published in the Rajasthan Gazette dated 28-10-59. Sections 29, 72 and 73 came into force on 1st July, 1962. These Sections run as follows:

Section 29 : Bar against suits by unregistered trust:

(1) No suit to enforce a right on behalf of a public trust which is required to be registered under this Act but has not been so registered shall be heard or decided in any court.

(2) The provision of Sub-section (1) shall apply to a claim of set off or other proceeding to enforce a right on behalf of such public trust.

Section 72 : Proceedings involving question affecting public purpose:

(1) In any suit or legal proceeding in which it appears to the court that any question affecting a public religious or charitable purpose is involved, the court shall not proceed to determine such question until after notice has been given to the Commissioner.

(2) If upon receipt of such notice or otherwise the Commissioner makes any application in that behalf, he shall be added as a party at any stage of such suit or proceedings,

Section 73 : Bar of jurisdiction - Save as expressly provided in this Act, no civil court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act or which the decision or order of such officer or authority has been made-final and conclusive.

3. If the trust is a public one it was the duty of the judgment-debtor to have raised an objection when the second appeal was pending in the High Court that the Devasthan Commissioner was a necessary party to the suit as the trust was public one. If such an application had been made and it had appeared to the court that the trust was a public one prima facie than notice would have been given to the Devasthan Commissioner to decide whether or not the trust was really a public one. In this connection the decision in Madan Gopal v. Raja Pratap Singh 1946 RLW 78 may be referred.

4. As the question as to whether or not the trust is a public one could have been raised by the judgment-debtor in the suit and it was not raised it will be deemed to have been decided constructively against him in the suit and it is not open to him to raise the question in execution.

5. The learned Counsel for the appellant referred to the decision of a learned single Judge of the Allahabad High Court in Prabhulal Lal and Others Vs. Babu Singh, . That case is distinguishable as there was no dispute that the judgment-debtor was an agriculturist and his house was exempt from sale u/s 69(c) C.P.C. (United Provinces Amendment) Act No. XXXV of 1948 and the learned Judge took refrain from passing an order directing the sale of the house even though the judgment-debtor did not take any objection. In the present case the question as to whether or not the trust is a public one is disputed.

6. Before parting with this case I would like to say that the observation, of the District Judge that the Civil Court has no jurisdiction to determine whether the trust is a public one or not, is erroneous.

7. I accordingly confirm the order of the appellate court and dismiss the appeal. In the circumstances of the case, I leave the parties to bear their own costs.