

(1974) 02 MP CK 0001
In the Madhya Pradesh High Court
Case No : C.R.A. 493 of 1973

Ram Janki Raj Mandir

APPELLANT

Vs

Haridas Guru Sarjoodas and others

RESPONDENT

Date of Decision : 27-02-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Madhya Pradesh Public Trust Act, 1951 — Section 6, 8

Citation : (1975) JLJ 381 : (1974) MPLJ 531

Hon'ble Judges : S.M.N. Raina, J

Bench : Single Bench

Advocate : M.C. Jain, for the Appellant; R.A. Roman, for the Respondent

Final Decision : Allowed

Judgement

S.M.N. Raina, J.

This is a revision petition u/s 115 of the Code of Civil Procedure.

Haridas, non-applicant No. 1 has filed a suit on behalf of Shriram Janki Temple as Mahant of the same u/s 8 of the Madhya Pradesh Public Trust Act (hereinafter referred to as "the Act") for a declaration that the order of Registrar dated 31-10-1972 whereby it was declared to be a public trust is illegal and void and for certain other ancillary reliefs. The suit was filed against the State Government and the Registrar of Public Trusts. During the pendency of the suit an application under Order 1, rule 10 of the CPC was filed by the Trust through Rajkumar Choubey for adding the trust as a defendant through its various trustees. This application was rejected. Being aggrieved thereby Rajkumar Choubey has filed this revision petition on behalf of the trust.

Under section 8 of the Act any, working trustee or person having interest in a public trust or any property found to be trust property, is competent to file a suit in a civil Court to have any finding of the Registrar u/s 6 of the Act by which he may aggrieved set aside or modified. The section is silent as to who shall be

arrayed as defendant in the suit under this section. Sub-section (2) of the said section merely lays down that the Civil Court shall give notice of such suit to the State Government through the Registrar and the State Government, if it so desires, shall be made a party to the suit. Thus the State Government is only a proper party and may be joined if it so desires. It is, however, clear that any person who is directly interested in the finding should be joined in such a suit.

It is somewhat interesting to note that the suit has been filed on behalf of the trust itself. Section 8 does not contemplate a suit by the trust. Under the said section a suit may be brought by the working trustee or by a person having interest in the public trust or any property found to be trust property. Haridas who claims to be interested in the trust property as successor of his Guru Sarjoodas Dayaldasji has filed this suit for setting aside the declaration of the trust as a public trust so as to have a free hand in the administration of the property. It was not necessary for him to file the suit on behalf of the trust. However, this is a matter not directly raised before me and I need not deal with this question any further. I only wish to point out that in fact the trust is not a party to the suit and, therefore, an application was made by Rajkumar Choube, one of the trustees, on behalf of the trust to join the trust as a party through the trustees mentioned in the application under Order 1, rule 10.

There can be no doubt that the trust having been declared as a public trust by the Registrar, the trustees determined by the Registrar are charged with the management of the trust property. As such they are interested in the question whether the trust is a public trust or not. Their very existence as trustees and the duties that they are required to perform in that capacity depend entirely on this question. They are, therefore, necessary parties to the suit and as such they should be joined as parties.

Learned counsel for the non-applicant relied on the decision of this Court in *Bajinath v. State of M. P.* 1972 M P L J 11 : 1972 J LJ 126 in support of his contention that the plaintiff being the dominus litis cannot be compelled to contest the suit against the persons not of his choice. Where a defendant raises a question that a third party should be joined as defendant, plaintiff may not be compelled to join such party and may be left to face the consequences of non-joinder; but where a third party files an application for joinder on the ground that he is either a necessary or a proper party, different considerations arise. In such a case the interests of the applicant have to be kept in view and the matter cannot be left to the choice of the plaintiff. The decision in the aforesaid case, however, proceeded upon the consideration that the applicant in that case was not directly and legally affected by the adjudication of the suit as would appear from the observations in paragraph 17. In the instant case the position is different. The trust as declared by the Registrar would cease to be public trust if the suit is decreed and as such the trustee and directly and legally affected by the adjudication of the suit. That case is, therefore, distinguishable,

Learned counsel for the non-applicant also relied on the decision of the Supreme

Court in *Parmananda Mahapatra Vs. Commissioner of Hindu Religious Endowments, Orissa and Others*, . In that case it was held that the public need not be impleaded as necessary parties under Order 1, rule 8 of the CPC in a suit brought u/s 64 of the Orissa Hindu Religious Endowment Act. The interest of the public in a suit of this nature is limited as well as remote as compared to that of a duly appointed trustee who is entitled under the law to manage the property of the trust. This decision is, therefore, of no help to the non-applicant.

It is no doubt true that section 8 of the Act does not lay down who shall be joined as defendant in the suit; but on principles applicable generally to suits of this nature, it is obvious that persons vitally interested in the findings sought to be challenged, who would be adversely affected if the finding is set aside, should be joined as defendants. I, therefore, hold that the trustees declared by the Registrar should be joined as defendants to a suit of this nature and the trial Court was in error in rejecting the application under Order 1, rule 8 which was apparently filed on their behalf by Rajkumar Choubey. As the learned trial Judge has acted with material irregularity in exercise of his jurisdiction in rejecting the application, the impugned order is set aside.

The petition is, therefore, hereby allowed and it is hereby directed that the trustees of the public trust shall be joined as defendant to the suit.

I make no order as to costs in the circumstances of this case.