

(1991) 04 MP CK 0030
In the Madhya Pradesh High Court
Case No : S.A. No. 582 of 1984

Ram Singh Chhatrriya and Another

APPELLANT

Vs

Shri Rajiv Lochan Trust

RESPONDENT

Date of Decision : 29-04-1991

Acts Referred:

Court Fees Act, 1870 — Article 17(6), 7
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1991) JLJ 471 : (1991) 36 MPLJ 863 : (1991) MPLJ 863

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Advocate : M.M. Sapre and Abhdy Sapre, for the Appellant; R.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Shukla, J.

This appeal is directed against the judgment-and decree dated 13-8-1984 of First Additional District Judge, Raipur, passed in Civil Appeal No. 30-A of 1976, whereby, while setting aside the decree of the trial Court, the plaintiffs suit for declaration that Shri Kuleshwar Mahadeo Temple, Nawapara (Rajim) and its property vests in the Plaintiff-Committee (a Trust) has been decreed.

The brief history of the case is that the plaintiff-respondent is a Public Trust and it filed a suit through its Working Trustee Mahant Laxminarayan Das on 29-1-1975 with the assertion that the plaintiff is a Public Trust registered under the M. P. Public Trusts Act, 1956. That, the temple of Kuleshwar Mahadeo is situated in a place where the three rivers, i.e. Mahanadi, Sodhu and Pairi, meet together. The temple and its properties are vested in the plaintiff-Committee, vide judgment passed in First Appeal No. 73 of 1920, on 12-4-1921, by the Court of Judicial Commissioner of Central Provinces.

That, the defendants are the Pujaris of the said temple of Kuleshwar Mahadeo

under orders and connivance of the Trust Committee. They were allowed to retain small share in the offerings in lieu of their remuneration.

The defendant No. 2 Bhukhan Singh was removed from the post of Pujari with effect from 26-8-1973, because of the misconduct as he had misappropriated a set of silver eyes offered to the deity by a devotee. The defendant No. 1 was also suspended with effect from 27-12-1973 as he disobeyed the order of the Committee.

The defendants have forcibly taken possession of the trust property by breaking open the lock on 18-12-1973 and proceedings u/s 145 of the Code of Criminal Procedure, were, thereafter, started and the trust properties were attached. It was directed to be kept in the custody of the Additional Tahsildar, Fingeshwar. The defendants have, meanwhile, filed a suit (No. 20A of 1989) without making the plaintiff party and got a declaration of entitlement of possession in their favour. The learned Sub-Divisional Magistrate was influenced by the said judgment and passed orders in favour of the defendants. Now, therefore, the defendants are trying to take actual physical possession of the trust property from the Additional Tahsildar, Fingeshwar. As such, suit for declaration of right, title and interest was filed by the trust.

The defendants have denied the claim of the plaintiffs and pleaded that Shri Kuleshwar Mahadeo Temple was their family property and they have a right to perform worship and this right continued in their family for the last many generations.

The trial Court has held that the suit had been filed without the consent and connivance of the trust committee and that the working trustees have not been duly elected by the beneficiaries and the members of the trust. The value of the property is nearly Rs. 26,000/-; that the defendants are Pujaris of the said temple; they have got a right to collect the offerings made by the devotees; that the plaintiffs have no right to oust the defendants and they have further no right to disturb the possession of the defendants. Accordingly, the suit was dismissed.

On appeal having been filed by the plaintiffs, the first appellate Court reversed the findings and held that the suit has been properly instituted; that the suit property of Shri Kuleshwar Mahadeo Temple belonged to the plaintiffs; and that, the defendants are Pujaris under the orders and with the permission of the plaintiffs and they have a right to collect only small offerings. The appellate Court further declared that the defendants have got a hereditary right of worship. Hence, this appeal.

This appeal has been admitted on the following substantial question of law: -

"Whether the first appellate Court erred in law in negating the plea of the defendants-appellants that in their capacity as hereditary Pujaris, they had unrestricted right to perform Puja in the suit temple and accept offerings made by the devotees?"

The learned counsel for the appellants has raised the following points in the case and allowed to make submission as follows : -

- (i) that, all the trustees should have been joined as a party in the case and, in their absence, the suit is bad;
- (ii) that, value of the property was Rs. 26,000/- and, therefore, Civil Judge (class II), had no jurisdiction to try the suit; and
- (iii) that, the suit was arbitrarily valued at Rs. 800/-.

The suit was filed for and on behalf of the trust committee by working trustee Shri Mahant Laxminarayan Das. The suit was dismissed vide judgment and decree dated 30-3-1976 of the trial Court. An appeal was filed and, during the pendency of the appeal, an application Under Order 41, Rule 27 of the Code of Civil Procedure, for admitting documents and taking additional evidence, was filed. The First Additional District Judge, Raipur, rejected the application and dismissed the appeal on 25-8-1976. Thereafter, a Second Appeal was filed in the High Court. The High Court accepted the application Under Order 41, Rule 27 of the CPC and remanded the case for fresh decision, vide order dated 19-7-1980. Thereafter, the first appellate Court has decreed the suit.

The trust committee of Rajivlochan Mandir Trust, vide proposal dated 17-10-1977, has approved the action and granted permission for continuation of the suit and the appeal. Now, this document has been taken in evidence and is marked as Ex. P-1 A. It, therefore, would be deemed that the suit had been filed with the consent and under the permission of the trust committee.

It is undisputed that Rajivlochan Trust is a Registered Trust under the M. P. Public Trusts Act; and the suit has, in fact, been brought for and on behalf of idol of Kuleshwar Mahadeo.

When an idol is substantially on the record of a suit from the beginning, the rectification of the original improper representation by a proper representation cures all the original technical defects with effect from the date of institution of the suit. The rectification cannot be treated as the addition of a new party so as to attract the penal provisions of Section 21 of the Limitation Act. Idol Shriji Lakherapura, Bhopal Vs. Gappulal and another,

The following passage has been quoted with approval in the casereferred above Ramalinga v. Shivachidambara AIR 1919 Mad. 809:

"..... that if some persons who have an interest in the trust sue to enforce the rights of the trust, the subsequent addition of more representatives out of time would not be within the mischief of Section 22, Limitation Act....."

In view of the law referred above, the prior permission by the trust committee was not necessary and the defect, if any, in filing of the suit, stands cured.

Learned Counsel for the appellant, then, referred the case reported in Laxman

Prasad Vs. Shrideo Janki Raman, and submitted that the suit ought to have been filed by all the trustees. I am in agreement with the statement of law laid down in the case referred above. The following passage from the judgment is very relevant for the purpose of this case : -

"Where a temple where an idol is installed is registered, together with its endowed properties, as a public trust under the Madhya Pradesh Public Trusts Act, 1951, the suit must be brought in the name of the idol, by all the trustees acting together. However, such a suit may be brought by one trustee with the sanction and approval of his co-trustees. But sanction or approval must be strictly proved."

Admittedly, the suit has been filed for and on behalf of the idol of Kuleshwar Mahadeo and the suit having been instituted with the sanction of all the trustees and the Executive Committee, vide Ex. P-I-A, and, therefore, the defect, if any, stands cured.

Now, so far as the objections Nos. 2 and 3 are concerned, it has been submitted by the counsel for the appellant that the value of the suit property is Rs. 26,000/-, but the plaintiff has arbitrarily valued it at Rs. 800/and filed in the Court of Civil Judge (Class II), which had no jurisdiction.

Admittedly, the property is in possession of the Tahsildar, Fingeshwar, as a Receiver, under the order of the Sub-Divisional Magistrate. The plaintiffs have not filed the suit for possession. They want a declaration of their right so that the possession may be delivered to them, as the possession of the property, at present, is with the Tahsildar. It was, therefore, not necessary for the plaintiffs to have paid ad valorem court-fee on the value of Rs. 26,000/-.

The learned counsel for the appellant has referred to the case reported in Idol Shri Shriji v. Chaturbhai 1964 MPLJ 362 and submitted that the court-fee ought to have been paid u/s 7(iv)(c) of the Court-fees Act. That was a case where the plaintiff tried to avoid the decree and wanted a relief that the property is not liable to attachment in a decree for permanent injunction. Value of the attached property was stated to be Rs. 85,000/-. It is not a case here. No consequential relief has been sought and, therefore, provisions of Section 7(iv)(c) of the Court-fees Act would not be attracted.

A temple which is devoted absolutely to religious purposes, even if it is regarded as a house, has no market value within the terms of Section 7, clause (v)(e) and a suit for recovery of possession of it for the purpose of managing it and conducting its worship falls under Article 17(6) of Schedule 2. And it makes no difference as to the marketability of the temple whether it is private or public. The temple, so long as it stands as a temple dedicated to a deity installed in it, remains as a property of the deity and consequently whether it is private in the sense that it is meant mainly or exclusively for the worship of the persons who founded it does not make it more marketable than it is when the public at large are allowed to enter and worship there. In either case, the property belongs

primarily to the deity and therefore it must fall within the category of *res extra commercium*, *Motilal v. Shambhoolal*, 1938 NLJ 214, AIR 1938 Nag. 481.

There is another case reported in *Mst. Devaki v. Basu Singh* 1971 MPLJ SN 10, in which it has been held that for relief of possession without claiming a relief of setting aside gift deed, it is not necessary to pay *ad valorem* court fee u/s 7(iv)(c), but court-fee Under Section 7(iv)(c), but court-fee u/s 7(v)(b) is payable.

In the opinion of this Court, therefore; the court-fee has been correctly paid in the case. Valuation also cannot be said to be arbitrary. Even otherwise, no prejudice seems to have been caused to the defendants.

Now, so far as the merits of the case are concerned, the first appellate Court has appreciated the evidence and found that the defendants-Pujaris have no unrestricted right over the property. However, they have been permitted to keep small offerings.

It is not open for this Court to disturb the finding of fact unless the finding is perverse or is based on inadmissible evidence. The counsel for the appellant could not demonstrate perversity in the finding of the first appellate Court. While it is held that Kuleshwar Mahadeo is a temple of public trust, nobody including the trustees, can be permitted to have unrestricted right of keeping the offerings of that temple. The ownership of such property is in the idol itself and not in any person, including the Pujari or Shebait. The Shebait is the Manager, custodian and administrator of the property of a Devasthan, and he occupies a fiduciary position.

A hereditary Pujari cannot have the unrestricted right of the enjoyment of property of temple or offerings dedicated by devotees.

The learned first appellate Court has quoted the following passage from the Judgment of the Judicial Commissioner's Court in *Benimadho Singh v. Lal Nagendra Singh and Ors.*, F.A. No. 73 of 1920:

"-----all the property of the temple shall vest in the Trustees. That the Committee of Trustees shall appoint one person from among the hereditary Pujaris to be Sarbharakar or Manager of all the immovable property of the Trust. The Committee shall have power to remove Sarbharakar from his office and shall appoint a successor from among the hereditary Pujaris."

The plaintiffs have adduced evidence to show that the defendants are authorised to keep only small offerings offered by the devotees. They are working as Pujaris under the orders and consent of the plaintiff and, therefore, they cannot be allowed to have unrestricted right of keeping offerings for themselves.

In the opinion of this Court, therefore, it has rightly been held that despite the defendants - being hereditary Pujaris, they have a right to receive only small offerings. This Court finds nothing to disturb that finding.

The appeal, therefore, fails and is dismissed with costs.