
(1995) 02 MP CK 0045

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 100 of 1994

Rev. Theodore Ekka

APPELLANT

Vs

Evangelical Church of India

RESPONDENT

Date of Decision : 13-02-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35A
Court Fees Act, 1870 — Article 17

Citation : AIR 1996 MP 77 : (1995) ILR (MP) 256

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : A.G. Dhande, for the Appellant; V.S. Shorti, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—The appellant-defendant, by the present appeal, has challenged the judgment and decree, dated 19-11-1993, passed in Civil Appeal No. 140-A of 1986, by the 1st Additional Judge to the Court of the District Judge, Hoshangabad, whereunder the order dated 30-9-1986 and the order, dated 10-10-1986, passed in Civil Suit No. 231-A of 1986, were set aside and the case was remanded back to the trial Court for proceeding in accordance with law.

2. Brief facts leading to the appeal, are, the respondent-plaintiff filed Civil Suit No. 231-A/1986 against the present appellant-defendant in the trial Court for possession of, a church building parsonage building, for recovery of arrears of rent and damages and also prayed for an injunction against the appellant. It was stated in the suit that the plaintiff is a registered society registered under the U.P. Societies Registration Act, having its registration No. 449/58/ 59. It was also contended that the principal aim and object of the society is to propagate the Christian religion and its allied charitable works. According to the plaintiff, the work of the society is carried on by the Board of Governors. The plaintiff purchased a piece of land admeasuring 60" x 80" on 9-12-1970 at village Rasulia, tahsil an district Hoshangabad, from one Seth Gulabchand for a sum of

Rs. 4,800/-, under a registered sale deed and obtained possession of the property. The plaintiff constructed the buildings on this piece of land, consisting a Church building, measuring about 25" x 35" and a parsonage building, measuring about 25" x 20". Both the buildings are pucca construction. According to the plaintiff, the defendant-appellant was employed as a pastor by the plaintiff and according to the service conditions, besides his pay, he was allowed to occupy the parsonage building in lieu of house rent allowance of Rs. 125/- per month, which was payable to him in case he was required to live in a rented accommodation. According to the plaintiff, the defendant was obliged to vacate the premises, either on his transfer or on termination of his services. The defendant accordingly occupied the parsonage building as a tenant of the plaintiff. The tenancy was monthly which commenced on the first day of each month. According to the plaintiff the defendant became rebel and was disobeying the orders issued by the plaintiff from time to time. The defendant was found guilty of indiscipline disobedience of the instructions issued by the plaintiff and refused to hand over the accounts. The defendant was served with a notice on 29-8-1981 by the Chairman of the plaintiff-society whereby he was dismissed from his services with retrospective effect from 1-8-1978 and was asked to hand over the charge of the office of church, so also the parsonage building. As the defendant disobeyed the orders and was continuing to occupy the Church and parsonage building illegally, the suit was filed for recovery of possession of the church building, the parsonage building, for recovery of arrears of rent and damages and an injunction was also sought restraining the defendant that he should not conduct the church services and permit his successor pastor to conduct church services. The plaintiff valued the suit for Rs. 300/- for possession of church property and paid Court-fee of Rs. 30/- accordingly. For purposes of possession of the parsonage building, the suit was valued for Rs. 1,500/-, being 12 months' rent at Rs. 125/- per month and Court-fee of Rs. 160/- was paid for recovery of damages, the suit was valued at Rs. 4,800/- on which Court-fee of Rs. 556/- was paid. Lastly, for claim of injunction, the suit was valued at Rs. 300/- and Court-fee of Rs. 30/- was paid thereon. The plaintiff thus paid a total of Rs. 776/- as Court-fee.

3. The said suit was registered as No. 231-A of 1986. Notices were issued to the defendant. On 1-5-1986, the defendant filed an application under 0.7, Rule 11, C.P.C. raising an objection that the suit has not been properly valued. It was stated in the said application that the plot in question was purchased on 9-12-1970. Out of the said area of 60" x 80", the church stand on the area of 25" x 35" and the parsonage is built on an area of 25" x 20". Therefore, the remaining area about 3425 sq. ft. has to be valued according to the market rate on the date of the suit. The defendant, in the said application, further submitted that the market rate of the land on the date of the suit was about Rs. 15/- per sq. ft. and the value of the land would not in any case, be less than Rs. 51,375/-. According to him, the value of the parsonage building would also be Rs. 7,500/- and, therefore, the suit was not properly valued and even proper Court-fee was

not paid. The plaint was liable to be rejected under the provisions of Order 7, Rule 11, C.P.C.

4. Parties were heard by the trial Court on 30-6-1986. The learned trial Court relying upon the judgment of this Court in *Gangadhar Kavi v. Radhabillabhji*, 1985 MPWN 578 held and directed the plaintiff that he should value the open plot of land at the market rate and should pay Court-fee accordingly, failing, which orders under Order 7, R. It, C.P.C., would be passed. The matter was adjourned to 10-10-1986. On 10-10-1986, the plaintiff moved an application for adjournment of the case so that they may challenge the earlier order before the appellant/revisional Court, but the trial Court not only rejected the said application for adjournment but rejected the plaint also. It would be pertinent to note that the learned trial Court did not care to read the judgment reported in *Gangadhar Kavi's* case (*supra*) and very cursorily passed the order. The judgment in *Gangadhar Kavi's* case clearly states that where possession of a temple and its properties is sought by the plaintiff, then the relief in respect of the temple has to be valued under Article 17(vi), Schedule II, and in respect of its properties, it is to value u/s 7(v) of the Court-fees Act. The judgment is very clear on the point and it clearly lays down that when the subject-matter of a suit is a temple, it cannot be said to have any market value and, accordingly, the suit for possession or management of a temple would be governed by Article 17(vi) of Schedule II of the M.P. Court-fees Act.

5. As the plaint was rejected, the plaintiff preferred an appeal before the first appellate Court. The first appellate Court by its judgment dated 19-11-93, held that the suit was properly valued. As possession of the church property was sought valuation under Article 17(vi) of Schedule II of the Court-fees Act was proper and so far as the other reliefs were concerned, as the trial Court had not passed any order, the appellate Court also did not pass any order. Against the said order of remand to the trial Court, the present appeal has been filed, challenging the correctness and validity of the order of the first appellate Court.

6. Shri Dhande, appearing for the appellant, contended that the first appellate Court has not given any reasons in its judgment for setting aside the order of the trial Court. It was also contended that as the open piece of land cannot be treated to be the church building or a part of the parsonage, the same was required to be valued under the provisions of Section 7(v) of the Court-fees Act and Court-fee was accordingly to be paid. Replying to the above argument, it was submitted by Shri Shrotri, counsel for the respondent that the trial Court failed to consider the true import of the judgment in *Gangadhar Kavi's* case (1985 MPWN 578) (*supra*). It was also stated that there is a local amendment in Section 7(v) of the Court-fees Act and, therefore, the said section of the Court-fees Act is not applicable. According to him, the suit was properly valued and Court-fee under Article 17(vi) of Schedule II, was rightly paid.

7. The first contention of the counsel for the appellant has no force. The trial Court, as held above, did not even care to read the judgment in *Gangadhar*

Kavi's case and has very mechanically held that the property of the church was to be separately valued. But the first appellate Court, in para 14 of its judgment, has clearly held that the judgment in Gangadhar Kavi's case was not properly appreciated by the trial Court and the first appellate Court was also of the view that Article 17(vi) of the Second Schedule, was rightly applied by the plaintiff. The first appellate Court in para 15 of its judgment has relied upon another judgment of this Court, reported in *Evangelical Church v. Rev. Issu Prakash*, 1985 MPWN 198. The first appellate Court has given proper reasons for dislodging the order of the trial Court. The contention of the learned counsel for the appellant that the open plot ought to have been valued separately because it is not a part of the church or church building, deserves to be rejected, for the following reasons.

8. In the matter of AIR 1938 481 (Nagpur) , this Court has held that 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(v) and a suit for recovery of possession of it for the purpose of managing it and conducting its worship falls under Article 17(vi). 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 the 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 any 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*. It is thus clear that so long as the temple stand on the plot of land, it would be a part of the temple. In the instant case, so long as the church stands on the plot of the land, it would be the property of the church. It would not make any difference, in the instant case, that a parsonage or residence of pastor has been constructed. The parsonage has been let out to the pastor in lieu of Rs. 125/- house rent allowance. The pastor, if he does not reside in the parsonage, would be entitled to Rs. 125/- as house rent allowance. The plaintiff has valued the suit for eviction of the pastor/defendant from the parsonage at Rs. 1,500/-, being one year's rent. This valuation cannot be challenged, nor was it challenged before the Courts below or before me. It would be noteworthy that the open plot or land appertaining to the church would be the land belonging to the church itself because a church necessarily includes the land appertaining thereto and forming its boundary and, therefore, the entire open plot, except the personage, was a place of religious worship. Even if the matter is looked with different angle that the open plot of the land was appertaining to the personage, then too this would be within the tenancy rights of the defendant. It is not the case of the defendant that independent of being a pastor for the church or continuing in the parsonage, he is in possession of the property. If the property is appertaining to the church, then it is a part of the church and the suit has been rightly valued under Article 17(vi) of Schedule 11 of the Court fees Act. On the other hand, if the open plot is

treated to be appertaining to the parsonage, then, being a part of the tenancy rights, the open plot being in the tenancy of the defendant has again been rightly valued for the purposes of eviction at one year's rent. In either of the case the suit has been rightly valued.

9. It is unfortunate that the trial Court, without appreciating the legal position and even without reading the judgment and its ratio, jumped to the conclusion that the plaintiff has to value the properties of the church separately. Firstly, the Court had to decide that the property of the church was separate or distinct and could be alienated. Unless it is held that the property is separately alienable and has not been devoted in perpetuity to the religious purposes plaintiff cannot be compelled to value the open piece of land separately and pay Court-fee according to the market value.

10. In *Rev. Issa Prakash v. The Evangelical Church of India*, C.R. No. 1365 of 1983 this Court held that the land over which the church and the residential house, etc. were constructed was purchased in the year 1959 for a sum of Rs. 10,250/- and, therefore, the land and the building standing thereon had a market value and in a suit for possession of the property, for purposes of Court-fees, the valuation of the suit would be governed by Section 7(v) of the Court-fees Act. On review, the same Hon'ble Judge, in Misc. Civil Case No. 34 of 1984, held that there had been an amendment of Section 7(v) of the Court-fees Act and the learned single Judge also held that the Church necessarily included the land appertinent thereto and formed its boundary and, therefore, the entire suit property, except parsonage, was the place of religious worship. The learned Judge further held that the claim for possession of the Church and the appertaining land, therefore, was governed by Article 17(vi), Schedule II of the Court-fees Act. It is thus clear that in a suit of the present nature, where possession of the church property was claimed, the suit was rightly valued.

11. Counsel for the respondent also placed reliance on *Ram Singh Sheodayal v. Shri Rajiv Lochan Trust*, 1991 MPLJ 863. This Court has held that 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(v)(e) and a suit for possession of it for the purpose of managing it and conducting worship falls under Article 17(vi) of Schedule II. Relying on AIR 1938 481 (Nagpur), it was held that in such a case, Article 17(vi) of Schedule II would be the only applicable Article.

12. Article 17(vi) of Schedule II, of the Court-fees Act reads that in every other suit, where it is not possible to estimate at a money value the subject matter in dispute and which is not otherwise provided for by this Act, the proper Court-fee would be Rs. 30/-. It cannot be disputed that a temple, church, a mosque or a Gurudwara or a place of worship would have no monetary value. Any of these places can be adversely possessed but the mere fact that it can be adversely possessed does not mean that it is saleable. The person getting into adverse possession or remaining in wrongful possession does so on his own force and not because some person passes on the title to him. Any property which is one of the

above, according to the common law, is *res contra commerciu*, and its ownership vests in God. Under these circumstances, the Court-fee would be paid under Article 17(vi) of Schedule II.

13. The plaintiff could not value the suit for possession of the church and, therefore, they had rightly valued the suit at Rs. 300/-. For possession of the parsonage, the suit was rightly valued at Rs. 1,500/-being one year's rent. The claim for rent and damages was valued at Rs.4,800/- and no fault could be found with this valuation also. As regards valuation for injunction, neither there was challenge before the trial Court nor before this Court. In these circumstances, the order of the first appellate Court is perfectly valid and any challenge to the said order has to be dislodged.

14. The defendant, who claims to be a priest/pastor has unnecessarily involved himself into this litigation. The suit was filed in the year 1986 and is still awaiting written statement. I award Rs. 1,000/-to the respondent as an exemplary cost so that such frivolous litigation is not perpetuated.

15. The appeal is liable and is accordingly dismissed with costs, Rs. 1,000/-. The defendant, would he permitted to take part in further proceedings in the trial Court only on payment of costs as awarded above. The suit is pending for the last 8 years, it would be in the interest of justice to order that the trial Court should decide the same on or before 30-9-1995. The records be sent immediately to the trial Court. Parties shall appear before the trial Court on 14-3-1995.