(2008) 09 RAJ CK 0021

In the Rajasthan High Court

Shri Parshvanath Jain Temple and Others APPELLANT

Vs

LRs. of Prem Dass RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Rajasthan Public Trusts Act, 1959 — Section 29

Citation : (2009) 3 RCR(Civil) 133

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—Since this present second appeal is pending for admission for last 15 years, unfortunately, therefore, it was ordered to be listed for final disposal at the admission stage by this Court on 08.09.2008. On account of death of sole respondent-defendant Prem Dass on 08.08.2007, an application under Order 22 Rule 4 read with Rule 9 namely I.A. No. 12115/08 was filed by the appellant, which was allowed by this Court on 17.09.2008 and amended cause title was taken on record as it was stated in the application that earlier also an application under Order 22 Rule 4 was filed for taking Legal representatives of deceased respondent Prem Das on record on 05.11.2007 within 90 days of the death and copy of the same was given to counsel Mr. Suresh Shrimali but on account of bonafide typing error as the appeal number in that application was mentioned as 153/93 instead of 150/93, the said application could not be dealt with and disposed of earlier. Be that as it may, the aforesaid corrected application was allowed by this Court. However, Mr. Suresh Shrimali pleaded no instructions on behalf of respondents-legal representatives, therefore, since Mr. Hanuman Dass son of late Prem Dass, who appeared in the case on behalf of respondents-defendants, all L.Rs of Late Prem Dass, and stated that he is working as Junior Accountant with Rajasthan Tourism Development Corporation and represents all the legal representatives of late Prem Dass, he was heard in the matter.

2. Mr. L.R. Mehta assisted by Mr. R.K. Purohit and Mr. Ramit Mehta submitted that though the Courts below decided all issues in favour of plaintiff-appellant Shri Parshvanath Jain Temple, Guron-ka-Talab, Jodhpur, which was represented through manager and patron Shri Ugam Raj Mehta, Shri Balwant Raj Bhansali and Shri Sukhpal Chand, yet issue No. 4 as to whether plaintiff being not registered under the provisions of Rajasthan Public Trust Act could maintain the suit or not was decided in favour of defendant and, therefore, the eviction decree was not granted by the learned trial Court. While the trial Court in its judgment dt. 31.03.1990 held that defendant-Prem Dass had ceased to be ''Pujari'' of the said temple w.e.f. 19.02.1982 and the suit premises namely a ''kotadi'' and verandah was given to him for living there so long as he worked as ''Pujari'' in the temple and was, therefore, not entitled to occupy the said suit premises after he had ceased to be ''Pujari'' and, therefore, the suit for eviction was filed by the plaintiff Deity through its manager and worshippers, yet since the said plaintiff was not registered public trust, therefore, in view of bar contained in Section 29 of the Rajasthan Public Trust Act, 1959, the suit could not be maintained and, therefore, the same was rejected by the learned trial Court while deciding issue No. 4 in favour of defendant.

3. The first appeal filed before the learned trial Court also failed while the appellate Court rejected the appeal on 05.03.1993.

4. Being aggrieved of the said judgments of lower Courts the appellant has approached this Court by way of present second appeal.

5. Thus, the only question which arises for consideration by this Court is:

Whether in the absence of the plaintiff trust known as Shri Parshvanath Jain Temple, Guron-katalab, Jodhpur, being not registered as a Public Trust under the provisions of Rajasthan Public Trust Act, 1959 at the time of institution of suit No. 862/82, whether said suit could be heard and decided by the learned trial Court in view of bar u/s 29 of the said Act and whether the subsequent registration of the Trust cures such defect and, therefore, decree of eviction could be granted in favour of plaintiff?

6. Mr. L.R. Mehta, learned Counsel appearing for the appellant-plaintiff urged that firstly the bare language of Section 29 of the Rajasthan Public Trust Act, 1959 does not bar the institution of the suit itself. Section 29 of the Rajasthan Public Trust Act, 1959 reads as under:

29. Bar against suits by un-registered 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 provisions of sub-Section (1) shall apply to claim of set off or other proceeding to enforce a right on behalf of such public trust.

7. The language used in Section 29 is that no suit to enforce a right on behalf of a Public Trust shall be heard or decided in any Court unless such Trust is

registered under the said Act. Learned Counsel submitted that in view of the trust having been registered during the pendency of this appeal on 24.01.1994 as a Public Trust by the Devasthan Department as "Chintamani Parshvanath Jain Mandir, Guron-ka-talab, Jodhpur", the name "Chintamani" added as the idol is of Lord Chintamani Parshvanath, vide registration number 01/94/Jodhpur and such certificate having been placed on record on 13.01.2000 along with the application under Order 41 Rule 27 CPC, therefore, the defect, if any, stood cured and since no prejudice was caused to the defendant on this account, even by later registration of the said Trust, the decree of eviction could be granted in favour of appellant since other relevant issues had been decided in favour of plaintiff. He relied upon the decision of Madras High Court in case of Sankaranarayanan Iyer v. Shri Poovananathaswami Temple Koilpatti through Executive Officer and Ors. AIR 1949 Mad 721 in which it was held as under:

"A ''de facto trustee'', that is, a person other than a manager or the head of a charitable and religious trust or endowment who can establish a legal title to his office, can maintain a suit to recover properties belonging to the idol or the institution, on behalf of the idol or institution, provided that such a person is able to prove that he is in exclusive possession of the office of manager or head of the institution, though he may not be able to establish his legal title to it : Vedakannu Nadar and Others Vs. Nanguneri Taluk Singikulam Annadana Chatram through its huktdars Medai Dalavoi Ranganatha Mudaliar and Others, , Overruled: AIR 1933 75 (Privy Council) and AIR 1935 44 (Privy Council)

"De facto" means, "by the title of possession," in antithesis to "de jure" i.e., "by the title of right".

So long as an action is for the benefit of the real owner, namely, the idol or the mutt, and the person bringing the action is the only person who is in management of the affairs of the idol or the mutt for the time being, there is no reason why such person should be not allowed to maintain the action on behalf of the idol or the mutt.

In recognizing the right of de facto trustee to sue for recovery of possession of trust property, Courts must be astute to safeguard the interests of the institution, for it is only in such interest that the right of suit is at all conceded to him. The de facto trustee can act only in the absence of the de jure trustee and in the interests of the trust, and cannot keep the lawful trustee or manager out of possession. The expression "de facto trustee" cannot include persons who purport to act as trustees in fraud of the rights of the existing lawful trustees. The de facto trustee would be a trespasser so far as the lawful trustee is concerned : AIR 1945 Mad. 43 (F.B.)

8. He also relied on a decision of this Court in case of Kr. Nirmal Chand Soni and Others Vs. Thakurji Saligramji Maharaj and Others, in which learned Single Judge of this Court dealing with Section 29 of the Rajasthan Public Trust Act held as under:

There is no bar in Section 29 for the institution of a suit and it only creates a bar for the hearing and decision by the Court... Thus the proceedings for final decree in a suit for redemption cannot come within the purview of Section 29 of the Act putting a bar for passing a final decree even though it may be a litigation with respect to a property belonging to a public trust which was required to be registered under the Act.

9. He also relied on a decision of this Court in case of Banshidhar v. Hindu Anatha Ashram 1976 WLN (UC) 237 in which dealing with Section 29 of the Public Trust Act, this Court held that it was a mere irregularity which could be cured and no prejudice is caused to the defendant even by subsequent registration of the trust. Relevant para No. 15 of the judgment is reproduced hereunder:

Section 29 provides that no suit by an unregistered Public Trust which is required to be registered under the Act shall be heard or decided by any Court. This Section does not prohibit institution of a suit by an unregistered Public Trust. According to this Section the Court is debarred from hearing and deciding the suit if such suit is filed by an unregistered public trust. In the present case the plaintiff institution got itself registered under the Rajasthan Public Trust act on 03.10.1972 before the disposal of the suit by the trial Court. It is true that by 03.10.1972 the witnesses had been examined by the trial Court. The examination of the witnesses at the most amounted to irregularity. There is nothing to suggest that this irregularity in any way prejudiced the defendant tenant or affected the merits fo the case or the jurisdiction of the Court. Section 99 CPC lays down that no decree shall be reversed or substantially varied nor shall any case be remanded in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court. The learned Counsel for the appellant was not able to point out how the irregularity committed in this case affected the merits of the case or the jurisdiction of the Court. In absence of any prejudice to the defendant. I find no substance in this contention.

10. Learned Counsel Mr. Mehta also relied upon the following points from the commentary of Mukherjea on Hindu Law of Religious & Charitable Trusts about the suits on behalf of Deity:

(1) An idol is a juristic person in whom the title to the properties of the endowment vests; but it is only in an ideal sense that the idol is the owner. It has to act through human agency and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might, therefore, in one sense, be said to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for

the idol. In such cases, the law accordingly recognizes a right in person interested in the endowment to take proceedings on behalf of the idol.

(3) Where the endowment is a private one, the members of the family are the persons primarily interested in its upkeep and maintenance, and they are, therefore, entitled to act on behalf of the deity; but where the endowment is a public one, Section 92 of the CPC prescribes a special procedure when the suit is against the trustee, and the reliefs claimed fall within that Section. Such a suit can be brought only in conformity with that Section and the rights of the members of the public, who are interested in the endowment as worshipers or otherwise, to institute proceedings on behalf of the idol are, to the extent abridged. Where, however, the suit does not fall within the ambit of Section 92, the right of the worshipers or persons interested in the endowment to vindicate the rights of the idol under the general law remains unaffected.

(4) Once it is found that the plaintiffs, whether they be shebaits or the founder or the members of his family, or the worshipers and members of the public interested in the endowment, are entitled to maintain the suit--and that is a matter of substantive law--the further question whether an idol should be impleaded as a party to it or whether the action should be brought in its name is one purely of procedure. Such a suit is really the suit of the idol, instituted by persons whom the law recognises as competent to act for it, and the joinder of the idol is unnecessary. Indeed, it may even result in embarrassment. But where the matters in controversy in a suit would affect the interests of the deity, as for example when the trust is denied, or is sought to be altered, it is desirable that it should also be impleaded as a party.

(5) Where the joinder of the idol is necessary or desirable, there is a difference of opinion as to whether the provisions of Order 32 of the CPC could, by analogy, be applied to such a suit, and whether it is open to a person to constitute himself as the next friend of the idol and institute the suit on its behalf. The better opinion seems to be that the provisions of Order 32 cannot be extended to a suit on behalf the idol, as there is no real analogy between an infant and an idol, that a suit by a person other than the Shebait could be instituted on behalf of the idol only when the Court grants permission therefor, and that such permission should, as a rule, be given only after hearing the persons interested.

11. On the side opposite, Mr. Hanuman Dass, who appeared in person as legal representative of late Prem Dass and represented all legal representatives of deceased was heard at length. He urged that in the absence of registration of Public Trust the suit was not maintainable and, therefore, was rightly dismissed by the Courts below while deciding the issue No. 4 in favour of defendants. He further submitted that his father Prem Dass was not working as ''Pujari'' in the said temple since 19.02.1982 nor any of his legal representatives including him were working as ''Pujari'' in the said temple. He further submitted that different persons could not espouse cause of Deity inasmuch as three different persons named above had filed the suit in question and, therefore, suit was not

maintainable. He also urged that the subsequent registration of the Trust on 24.01.1994 was of no consequence and the decree of eviction could not be granted in favour of appellant-Trust.

12. I have heard learned Counsel and the defendant present in person at length and given my thoughtful consideration and perused the record of the case and judgments of two Courts below.

13. The position of law regarding suits on behalf of Deity on the basis of case laws and aforesaid quoted portion from the commentary of learned author Mukherjea, can be stated thus.

14. The statement of law in Jagdindra''s case L.R. 31 I.A. 203 that the right to sue in respect of the deity''s property is vested in the Shebait cannot possibly be extended the case of a de facto Shebait who has no lawful title to shebaitship. Nevertheless as the deity is a juristic person and various persons other than the Shebait can institute suits on behalf of the deity, there could be nothing wrong in allowing a de facto Shebait to file suits not for his own benefit but for the benefit of the endowment. The Privy Council in Mahadeo Prosad v. Karia L.R.62 IndAp47 : 39 C.W.N. 433 laid down, following an earlier pronouncement of theirs in Ram Chandra v. Nawrangi, L.R. 60 I.A. 124 : 37 C.W.N. 541, that a person in actual possession of a Math is entitled to maintain a suit to recover property appertaining to it not for his own benefit but for the benefit of the Math. These were cases which related to a Math and not to a Debutter, but the same reasoning, it seems, would apply to a Debutter endowment as well and it has been so held in several decided cases. The Allahabad High Court held in Gopal Dutt v. Baburam (1936) A.L.J.R. 515 that a suit can be brought in the name of the idol by a person who is the de facto manager of a temple and the same view was taken by the Chief Court of Oudh in Sri Radha Krishna v. Maharaj Kumar ILR 12 Luck. 331 and by a Full Bench of the Madras High Court in Sankaranarayanan v. Shri Poovananatha AIR (1949) Mad. 721.

In the Madras Full Bench case, the learned Judges quoted with approval the observations of Wadsworth, J. in an earlier case Subramannaiya v. Abbinava AIR (1940) Mad. 617 which stated the true rationale of the rule permitting a de facto trustee in possession and management of a temple or mutt to bring a suit for the recovery of properties belonging to the institution or to take such action as may be necessary in the interests of the trust. The observations are as follows: "It is the duty of the Court to protect the trust property from misappropriation and diversion from the objects to which it was dedicated. When the trust property is without a legal guardian, owing to any defects in the machinery for the appointment of a trustee or owning to unwillingness of the legal trustee to act, it would be a monstrous thing if any honest person recognised as being in charge of the institution and actually controlling its affairs in the interest of the trust should not be entitled, in the absence of any one with a better title, to take these actions which are necessary to safeguard the interests of the trust".

The view that a de facto trustee is entitled to maintain an action on behalf of the trust has since been laid down in a number of decisions Jaganath Vs. Tirthananda Das, Sri Ram v. Chandeshwar Prasad ILR 31 Pat. 417 ; Lalta Prasad Vs. Brahmanand and Others, Kanakulamada Nadar v. Pichakannu Ariyar AIR 1954 TC 254 ; Sapta Koteshwar Godat Goa Endowment (Trust) Vs. Ramchandra Vasudeo Kittur and Others, . In Sapta Koteshwar Godat Goa Endowment (Trust) Vs. Ramchandra Vasudeo Kittur and Others, , it was observed that the fact that the de facto trustee was also seeking to advance his own interests was not a ground for non-suiting him but that the Court might make appropriate directions for protecting the interest of the deity. The question has since been considered by the Supreme Court in Vikramadas v. Daulat Ram 1956 S.C.R. 826. Therein it was held that a de facto trustee in possession and management of the asthan and its properties had a right to take proceedings for protecting the rights of the institution.

15. Thus, it is well settled that even a person claiming to act as manager or worshipper acting for the benefit of idol or Deity can maintain a suit for recovery of possession for the benefit of Deity. It is not disputed before me that these persons, who had filed the suit originally were acting for the benefit of Deity and not for their personal benefit. As a matter of fact the findings of two Courts below are against the defendant, who have held that defendant ceased to be ''Pujari'' of temple in question way back on 18.02.1982. Moreover, the said Trust having now been registered with the Devasthan Department as Public Trust vide Registration No. 1/1994 dt. 24.01.1994, the irregularity, if any, stood cured and by this removal of defect, no prejudice has been caused to the defendant.

16. In view of aforesaid legal position, since action on behalf of Trust was taken for the benefit of Trust only and locus of persons who had filed the eviction suit in the matter cannot be challenged, therefore, decree of eviction could be granted in favour of the plaintiff.

17. This Court is further of the view that the irregularity, if any, on account of non-registration of the Trust at the time of institution of the suit stood cured with the registration of the Trust. Said registration certificate is taken on record by allowing application under Order 41 Rule 27 filed by the appellant. Since the suit continues even during the pendency of appeal and the bar u/s 29 of the Act was only against the hearing and final decision of the suit and not against the institution of the suit itself, the said bar cannot now stand in the way of appellant-plaintiff at this stage in the present appeal in getting the decree for eviction against the defendants. Since on other issues the findings of facts have been given against the defendants and there is no reason available with this Court to vary those findings, therefore, this Court is inclined to set aside the impugned finding of the Courts below on issue No. 4 and pass the decree of eviction against the defendants.

18. Accordingly, this appeal is allowed and findings of Courts below on issue No. 4 as to non-maintainability of eviction suit in question are set aside and issue No.

4 is decided in favour of plaintiff-appellant and it is held that the plaintiff is entitled to decree of eviction. It is further directed that defendants-legal representatives of late Prem Dass shall handover the vacant and peaceful possession of the suit premises to the plaintiff-appellant, a registered Trust "Chintamani Parshvanath Jain Mandir, Guron-ka-Talab, Jodhpur within a period of two months from today. For use and occupation of suit premises since 1982 without authority of law, the defendants shall pay consolidated mesne profit to the appellant-plaintiff-Trust to the tune of Rs. 50,000/- and further mesne profits @ Rs. 2000/- p.m. from October, 2008 onwards before 15th day of the next month till the actual handing over of the vacant and peaceful possession to the appellant-plaintiff-Trust. Decree may be made accordingly. No order as to costs.

19. If the said vacant and peaceful possession of the suit premises is not handed over or there is default in payment of mesne profits by the defendants, L.Rs. of Prem Dass, the plaintiff appellant shall be at liberty to file contempt petition before this Court as well, besides seeking execution of the decree.