
(1985) 10 AHC CK 0052

In the Allahabad High Court

Case No : Second Appeal No. 2565 of 1974 connected with Writ No. 902 of 1977

Shri Thakurji Maharaj

APPELLANT

Vs

Smt. Dankiya and Others

RESPONDENT

Date of Decision : 30-10-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1986 All 247

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : V.K.S. Choudhary, for the Appellant; Panna Lal Agyan, S. Chandra and R.R. Shivhare, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, J.—This is a second appeal by the plaintiff against the judgment and decree dt. 14-8-1974 of the learned 2nd Additional District Judge, Hamirpur (in short "the A. D. J.") reversing the judgment and decree of the trial court, whereby the learned Munsif accepted the contention of the plaintiff that the suit on behalf of the deity was maintainable by Sri Raja Ram Singh as shebait or next friend of the deity. Also the plaintiff has filed a petition under Article 226 of the Constitution for quashing the order D/- 24-2-1977 passed in revision No. 2722 of 1976, Jadunkndan v. Thakur Ram Janki, by the Deputy Director of Consolidation, Hamirpur, by means of a writ of certiorari. First, I take up the second appeal for decision and the writ petition will be taken thereafter.

2. The plaint case is that defendant 5 got his private temple constructed over the land belonging to him and installed there an idol of Sri Ram, Janki and Lakshman Ji that the temple was constructed by defendant 5 for his own worship; that in this connection he got deeds of endowment registered on 6-8-1956 and on 26-5-1958; that by the said deed he appointed himself as Sarbarakar of the deity for his life time and after his death Sri Raja Ram Singh, through whom the instant suit was filed, was to become Sarbarakar; that defendants died in the

year 1963 and since then the property was being managed by Sri Raja Ram Singh that defendants 1 to 4 started interfering with the possession of deity over the suit property and, therefore, the suit was filed on behalf of the deity by Sri Raja Ram Singh, who claimed himself to be the Sarbarakar, praying that a scheme, for management of the property of the deity be drawn up to ensure proper management of the suit property.

3. The suit was resisted by defendants 1 to 4 on several grounds and one of the grounds was that Sri Raja Ram Singh was not competent to maintain the suit.

4. The trial court framed several issues including issue of competency of Sri Raja Ram Singh to maintain the suit and found on such issue that Sri Raja Ram Singh was competent to maintain the suit on behalf of the deity, and, therefore, the suit was maintainable. The trial court accepted the case of the plaintiff on other grounds as well.

5. The matter was carried in appeal by defendants 1 to 4, which was ultimately heard by the A. D. J. The A. D. J. decided the point whether Sri Raja Ram Singh was entitled to maintain the suit on behalf of the deity, in negative. Having found so, no other point was decided by the learned A. D. J.

6. Aggrieved, the plaintiff has come up in second appeal to this Court. The point for consideration is whether the suit was rightly instituted on behalf of the deity by Sri Raja Ram Singh. It is undisputed that in the deed of endowment defendant 5 appointed himself as Shebait or Sarbarakar for his lifetime and after him Sri Raja Ram Singh was to take over as Sarbarakar. The chief contention of the contesting defendants is that Sri Raja Ram Singh would have become Sarbarakar only after the death of defendant 5 and during the latter's lifetime, the former had no right to maintain the suit as Sarbarakar. The trial court negated this contention while deciding issues 1, 2 and 3. The trial court took the view that Sri Raja Ram Singh was competent to manage the property belonging to the deity and maintain the suit to ensure proper management of the property even during the absence of defendant 5. This finding was given, because there was a controversy regarding the death of defendant 5. The plaintiffs contention was that defendant 5 died in 1963 and thereafter he could not manage the property due to his death and that the property was being managed by Sri Raja Ram Singh, after the death of defendant 5, and the defendants 1 to 4 interfered with his management. The contention of defendants 1 to 4 was that defendant 5 did not die, but as he was deeply interested in the religious matters, he had gone on pilgrimage and in his absence they managed the property, and that Sri Raja Ram Singh had no interest or concern with the suit property. They also denied the right, title or interest of defendant 5 in the suit property and claimed their exclusive right to the suit property.

7. I have heard learned Counsel for the parties at considerable length. The submission of Sri Yatindra Singh, learned counsel for the plaintiff, is that the learned A. D. J. unduly emphasised on the fact that Sri Raja Ram Singh was to

take over as Sarbarakar only after the death of defendant 5 and that the death of defendant 5 having not been legally proved, Sri Raja Ram Singh was not entitled to sue during the lifetime of defendant 5. He subnets that in the plaint simply a reason was stated why the suit property could not be managed by defendant 5. According to the plaint case the property could not be managed by defendant 5 due to his death in the year 1963. It is further, stated by him that the reason for not having managed the suit property may be anything, but the fact remained that since 1963 the property was not managed by defendant 5, as he was not present at the place where the deity is situated. His submission is that on these facts the question for consideration was whether Sri Raja Ram Singh was competent to file the suit on behalf of the deity for getting a scheme of management drawn up to ensure proper management of the property belonging to the deity, as that was not being managed by defendant 5; and that this issue could not be side-tracked by the court on the ground that the death of defendant 5 could not be legally proved. The submission is that the suit was for drawing up a scheme of management, as defendant 5, who was Sarbarakar of the deity during his lifetime, was not available to discharge his duties; and that this type of suit could be maintained by any person, who is interested in the deity and who has beneficial interest in the deity, by a worshipper or by a prospective Sarbarakar. The point as canvassed by Sri Yatindra Singh is that what is to be seen in this case is whether Sri Raja Ram Singh is interested in any way in the deity and whether he can maintain the suit as a prospective Sarbarakar, if not as a Sarbarakar, and that it is wholly irrelevant or immaterial to see whether defendant 5 died in 1963 and whether the office of the Sarbarakar devolved on Sri Raja Ram Singh in 1963 or not.

8. Before answering the point for determination, it is expedient to have a look at the relevant law. A question arose in the case of B. Jangi Lal Vs. B. Panna Lal and Another, whether an idol is a necessary party to a suit or not. In this case one Chunnu Lal dedicated his properties to the idol. For the management of the endowment, he framed an elaborate scheme in the endowment deed. He appointed himself to be the manager of the endowment for his lifetime and after his death his son Jagannath Prasad was to be the manager. The office of the manager was to continue in the descendants of Chunnu Lal, so long as the family did not become extinct. In 1941, when the suit was brought, the person acting as the manager of the said endowment was Panna Lal, the grandson of Chunnu Lal. The plaintiff was the great-grandson of Chunnu Lal. The suit was filed by the plaintiff against Panna Lal, who was the manager of the waqf, and against two trustees on the allegation that the said trust was being mismanaged by Panna Lal (Manager). Then the defence was that the plaintiff was not competent to maintain the suit and that the suit of that type could only be instituted by the idol and by no one else. Thereupon, this Court observed -

"In such a case, we see no reason why any person who is interested in the waqf should not be allowed to bring a suit. In the present case it cannot be said that the plaintiff has no such interest as would not be enough to enable him to

sustain a suit in a Court of law on his own behalf. The plaintiff in the present case is, admittedly, a descendant of the elder branch, being the grandson (sic, should be great-grandson) of the founder of the trust."

It was further observed : --

" He belongs to the family for whose worship the idol was created, and he has a right to worship the idol. He has, therefore, also a right to see that the idol, which is the object of iris worship, is properly maintained and preserved, and the property which is dedicated for its preservation and maintenance is not diverted to other purposes. Apart from this direct and present interest which he has, the plaintiff has also a future interest in the office of the managership of the waqf as a prospective shebait".

(Emphasis mine)

9. In *Tarit Bhusan Rai and Another Vs. Sri Sri Iswar Sridhar Salagram Shila Thakur by Krishna Chandra Chandra and Others*, it was held that there are several distinct rights of suit in respect of endowed property, viz;

(1) the idol itself, as a juristic person, has the right of suit;

(2) the shebait, the human agency through whom the idol must act, has a distinct right, distinct from and in normal cases in supersession of the idol's right of suit; it is this right of suit which has been said to be vested in the shebait and not in the idol;

(3) the prospective shebait, as persons interested in the endowment, have a right of suit,

10. In the *Hindu Law of Religious and Charitable Trust* by B.K. Mukherjee (Tagore Law Lectures) 1952 Edition at p. 263, it is stated :

"It cannot be denied that a worshipper or a prospective shebait has an interest of his own quite apart from that of the deity and his right to sue for the protection of the idol's property is founded on his own right to worship and the maintenance of the object of worship."

11. In *Behari Lal Vs. Thakur Radha Ballabh Ji and Another*, , this Court held: where even a de facto shebait is absent, a person having beneficial interest, such as a worshipper, should be permitted to come in.

12. In *Ramchand (Dead) by Legal Representatives Vs. Thakur Janki Ballabhji Maharaj and Another*, , the Supreme Court held that a person, who has made large donations for the maintenance of the temple, has clearly a substantial interest to maintain a suit for possession of the temple and its properties against the Pujari or Manager, on behalf of the deity to protect the property from mismanagement or misappropriation.

13. In *KT. N. RM. Thenappa Chettiar and Others Vs. N.S. KR. Karuppan Chettiar and Others*, the Supreme Court held that even in the case of a private trust, a

suit can be filed for settlement of a scheme for the purpose of effectively carrying out the object of the trust. If there is a breach of trust or mismanagement on the part of the trustee, a suit can be brought in a Civil Court by any person interested for the removal of the trustee and for the proper administration of the endowment.

14. Legal position as emerging from the aforesaid authorities is that any person interested in the deity can maintain the suit. It is manifest that Sri Raja Ram Singh is fully competent to maintain the suit on behalf of the idol for settlement of a scheme for proper administration of the endowment. He is a prospective Shebait or Sarbarakar in view of the endowment deed dt. 6-8-1956. The case is that the founder (defendant 5) could not manage the property since 1963 due to his death and, therefore, a scheme for proper administration of the property belonging to the deity has to be drawn up. It is undisputed that defendant 5 was not available since 1963 and, therefore, he could not manage the property himself. The only dispute is whether defendant 5 died or had gone on pilgrimage? Whether defendant 5 had died or not this fact is not very significant, as according to the aforesaid authorities, not only a de facto Shebait, but a person, who is in any way interested, who has beneficial interest in the property of the deity and/or who is a prospective shebait, can maintain the suit. In Behari Lal Vs. Thakur Radha Ballabh Ji and Another, , this Court had held that where even a de facto shebait is absent, a person having beneficial interest, should be permitted to come in. Sri Raja Ram Singh, who has filed the suit in hand on behalf of the deity, is a prospective shebait hence is interested or has beneficial interest in the property of the deity and in the absence of defendant 5, he does have a right to maintain the suit to prevent the property of the deity from being mismanaged, wasted and/or misappropriated.

15. The argument of Sri Shivhare, learned-counsel for defendants 1 to 4, that in the plaint Sri Raja Ram Singh himself has claimed as Sarbarakar on account of the death of defendant 5 in 1963, which is not legally proved, and so he cannot maintain the suit, is too technical. It is the pith and substance and not the form which is material. From the plaint, it is manifest that the property of the deity was not managed by the founder since 1963 and that when he started managing the property, interference was made by defendants 1 to 4 and, therefore, it is necessary to have the scheme of administration through the Civil Court. On these facts, it is not very material whether defendant 5 actually died in 1963 and whether Sri Raja Ram Singh became a de facto Sarbarakar in that year, but Sri Raja Ram Singh having interest in the deity and he being a prospective Sarbarakar, is well competent to file a suit on behalf of the deity. The learned A.D.J. fell in error when he stressed on the point of death, the proof of which is not very necessary in this case. When the fact has come that defendant 5 could not be available from 1963 to manage the property, then any person who has interest in the property, could maintain the suit.

16. The matter may be looked at from another angle also. The object of the

endowment deed d/- 6-8-56, when it laid down a scheme that the founder was the Sarbarakar for his lifetime and after him Sri Raja Ram Singh was to take over as Sarbarakar, was to ensure proper management of the property, Looking that object, the said deed could not be interpreted so as to render the management by the next man in the line of succession impossible. The cardinal principle of interpretation is that a document should be interpreted keeping in view the object thereof. The object clearly was to ensure proper management of the property and, therefore, the founder introduced a scheme that he would manage the property during his lifetime and Sri Raja Ram Singh would step into his shoes after him. This object can be achieved only when the deed, which should be liberally interpreted, is interpreted so that the next man in the line of succession would take over as and when the founder becomes incapable of discharging his duties as Sarbarakar. The founder may become incapacitated to manage the property either due to his death or for other reasons. Whatever be the reason either death, as contended by Sri Raja Ram Singh, or the pilgrimage, as contended by defendants 1 to 4, non-availability of defendant 5 is there and the fact is that defendant 5 has not been available since 1963 and, therefore, he could not manage the property. To achieve the object of the deed whereby the property was settled with the deity, the deed has to be interpreted so as to confer a right on the next man in the line of succession to step into the shoes of his predecessor and take all possible steps to prevent the property from being mismanaged or misappropriated. From this angle also, Sri Raja Ram Singh is competent to maintain the suit.

17. The order of the learned A.D.J. on this point is reversed and the order of the trial Court is restored. The learned A.D.J. having not gone into other points, which were decided by the trial Court, it has become necessary to remand the case to the learned A.D.J.

18. In the result the second appeal is partly allowed, the judgment and decree dt. 14-8-1974 of the learned A.D.J. are set aside and the case is remanded to the learned A.D.J. with a direction that he will decide the remaining points arising for determination from the judgment and decree of the trial court. The costs will abide the ultimate result of the appeal.

19. Then comes the writ petition of the plaintiff. Upon a perusal of the order of the Deputy Director of Consolidation dt. 24-2-1977, it appears that Sri Raja Ram Singh filed an objection on behalf of the deity before the Consolidation Officer that the share of the deity in the joint land be separated. It was also prayed that he be entered as Sarbarakar in the revenue record. The said objection was rejected by the Consolidation Officer by order dt. 30-10-75 on the ground that the Assistant Consolidation Officer having passed the order dt. 4-4-75 in cases Nos. 2180 and 2183, he was not competent to interfere with the order dt. 4-4-1975 and that Sri Raja Ram Singh may file appeal according to law. Thereafter Sri Raja Ram Singh filed an appeal No. 2011 of 1975, which was allowed by the Settlement Officer (Consolidation) by order dt. 24-1-1976

cancelling the order of the Assistant Consolidation Officer and directing him to decide the matter on merits. Aggrieved by the said order of the Settlement Officer (Consolidation), a revision was filed by defendants 1 to 4 before the Deputy Director of Consolidation. Thereupon, the Deputy Director of Consolidation relying on the order of the learned A.D.J. dt. 14-8-1974 held that Sri Raja Ram Singh not being Sarbarakar was not competent to file the appeal before the Settlement Officer (Consolidation). He, thus, allowed the revision and cancelled the appeal order by his order dt. 24-2-1977. It is against this order Sri Raja Ram Singh has filed this writ petition.

20. As I have already held that Sri Raja Ram Singh is competent to maintain the suit and the order of the learned A.D.J. to that extent was not sustainable, the order dt. 24-2-1977 of the Deputy Director of Consolidation deserves to be quashed.

21. In the result, the writ petition is allowed, the order of the Deputy Director of Consolidation dt. 24-2-1977 is quashed and he is directed to re-decide the revision filed before him on merits. The parties will bear their own costs of this writ petition.