

(2014) 11 SC CK 0023

In the Supreme Court Of India

Case No : C.A. No. 10556 of 2014 (Arising out of SLP(C) No. 3038 of 2010)

Sree Panimoola Devi Temple

APPELLANT

Vs

Bhuvanachandran Pillai

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : 2015 (12) SCC 698 = 2014 (13) SCALE 485

Hon'ble Judges : Rohinton Fali Nariman, J; Ranjan Gogoi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Learned Counsel for the parties and perused the relevant material. Leave granted.

2. The Respondents in the appeal, as Plaintiffs, had instituted a suit under Section 92 of the Code of Civil Procedure, 1908 for settling a scheme for the administration of the first Defendant temple, viz., Sree Panimoola Devi Temple (hereinafter referred to as "the temple") and other incidental reliefs. The suit was dismissed by the learned Trial Court. In appeal, the High Court has set aside the decree of dismissal passed by the learned Trial Court and remanded the suit for de novo consideration. Aggrieved, the Defendants have filed the present appeal.

3. Having heard Learned Counsel for the parties at length, we find that the matter lies within a short compass. The learned Trial Court, on an elaborate consideration of the evidence adduced by the parties, came to the conclusion that the case set up by the Plaintiffs that the temple is a public temple had not been proved and established. In this regard, the documents exhibited by the Defendants as Exhibit B-1 to B-4 were also considered in great detail by the learned Trial Court to come to the aforesaid conclusion. The learned Trial Court also held that the worship by the public for long, by itself, could not make the temple a public temple and in this regard relied, inter alia, on a judgment of the

privy council in Babu Bhagwan Din and Others vs. Gir Har Saroop and Others, AIR 1940 7 (Privy Council) . In appeal, the High Court agreed with the conclusion of the learned Trial Court that the Plaintiffs in the suit have not adduced sufficient evidence to show that the temple had acquired the status of a public temple. However, proceeding further, the High Court appreciated/re-appreciated the contents of Exhibits B-1 to B-4 to conclude that the said documents, relied upon by the learned Trial Court, were not sufficient to enable any firm and categorical finding to be recorded. Accordingly, the impugned order of remand was passed which has been challenged before us.

4. If the Plaintiffs had not led sufficient evidence to establish their case, as held by the High Court, ordinarily, that should have been the end of the matter. In any case, the conclusion of the High Court that the Exhibits B-1 to B-4 were not sufficient to reach any positive conclusion does not commend to us in view of the elaborate consideration of the said documents by the learned Trial Court to reach the conclusion that the temple was a private temple. In such circumstances, remand of the suit for de novo consideration virtually gives to the Plaintiffs a second opportunity to establish their case.

5. The case of the Plaintiffs all along and also in the counter affidavit filed before this Court has been that the temple was initially a private temple, but the same acquired the status of a public temple with passage of time due to the visits of large number of persons and offerings made by the general public, including their participation in the religious rites performed therein. Even if we are to accept the aforesaid position, the said fact by itself would not be sufficient to enable a determination in favour of the Plaintiffs. In this regard, following observation of the Privy Council in Babu Bhagwan Din (supra) may be extracted with profit.

"In these circumstances it is not enough in their Lordships" opinion, to deprive the family of their private property to show that Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela. Worshippers are naturally welcome at a temple because of the offerings they bring and the repute they give to the idol: they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case as the present; and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family. Such an inference if made from the fact of user by the public is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away; and as worship generally implies offerings of some kind it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity."

6. Reliance has been placed by the Learned Counsel for the Respondents/ plaintiffs on a decision of this Court in Bala Shankar Maha Shankar Bhattjee and others Vs. Charity Commissioner, Gujarat State, to contend that worship by the general public for long and offerings made by the public would give a private temple a status of a public temple.

7. A reading of the opinion of this Court in Bala Shankar (supra) makes it clear that the worship by the members of the public and offerings made was one of the several circumstances considered relevant by this Court for determination of the question, namely, whether the temple in question -Kalika Mataji temple - is a public temple. There were several other relevant aspects that were taken into account by the court to answer the said question, namely, cash allowance paid from the State treasury to maintain the deity from time to time; fixed grants given by the Rulers i.e. Scindia and British Rulers; the temple and its properties being shown in Government Records as belonging to Mataji and the Respondents being shown as Pujaris. The reliance placed on Bala Shankar (supra), therefore, is of no consequence. In view of the foregoing discussions and the aforesaid reasons, we are of the view that the High Court was not correct/justified in remanding the suit to the learned Trial Court for de novo consideration. We, therefore, set aside the order of the High Court and allow this appeal and restore the decree passed by the learned Trial Court.