

(1999) 05 CAL CK 0040
In the Calcutta High Court
Case No : Second Appeal No. 345 of 1979

Sri Sri Durga Mata Thakurain	Vs	APPELLANT
Sanat Kumar De		RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 92

Citation : (1999) 1 ILR (Cal) 488

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Monibhusan Sirkar and Suniti Sengupta, for the Appellant;

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This second appeal is at the instance of Plaintiffs in a suit for declaration, khas possession, framing of a scheme etc. and is directed against the judgment and decree dated July 24, 1978 passed by the learned Additional District Judge, Birbhum in Title Appeal No. 213 of 1975 thereby reversing those dated September 29, 1975 passed by the learned Subordinate Judge, Birbhum at Suri in Title Suit No. 70 of 1969.

2. The Appellants herein are the deity and its sebaits. In the cause title of the plaint the named sebaits have described themselves as for themselves and on behalf of the gentlemen of the village - Nirvaypur and also on behalf of "Atmiya and Kutumbas" of late Umesh Chandra Saha and Brojendrabala of Suri Town. The said suit was filed after taking leave under Order 1 Rule 8 of the Code of Civil Procedure. In the suit the Plaintiffs prayed for declaration that "Sebait Niyog Patra" dated November 21, 1967 executed by Brojendrabala in favour of Defendants was a void and invalid document and not binding upon the Plaintiffs deity and the sebaits and for further declaration that gentlemen of the Village - Nirvaypur and the relatives and agnates of Brojendrabala and Umesh Chandra of Suri Town are the sebaits of the deity. In the said suit prayer for khas possession, and for account were also prayed.

Subsequently, an added prayer was made thereby praying for framing a scheme for management of the disputed property.

3. The learned trial Judge on contested hearing, decreed the suit in part thereby granting the following reliefs:

The suit be and the same is decreed in part on contest without costs against the Defendants. It is hereby declared that the "Sebait Niyogpatra" deed marked Ext. A purported to have executed by Brojendrabala is void and invalid document and not binding upon the Plaintiffs and other sebaitis of the deity Sree Sree Durgamata Thakurain in Dharmarajtola in the Village Nirbhoypur whom these Plaintiffs are representing and they are the real shebaitis after the death of Brojendrabala Dasi and the Defendants have no right to retain the "Ka" and "Kha" schedules properties and the R.S. record prepared in their names are declared to be wrong. The Defendants do vacate the possession of the suit properties in favour of the Plaintiffs, failing which the Plaintiffs will get possession of the properties through Court. A scheme for smooth running of seva puja of the deity will be framed and for that purpose the Plaintiffs are directed to submit the scheme within 60 days from date. Other reliefs, as prayed for by the Plaintiffs, are however dismissed.

4. Being dissatisfied, the Defendants preferred an appeal being Title Appeal No. 213 of 1975 which was heard by the learned Additional District Judge, Birbhum and the learned first appellate Court below by the judgment and decree impugned in this second appeal has set aside those passed by the learned trial Judge and has dismissed the suit holding that the reliefs claimed in the suit come within the purview of Section 92 of the CPC and the formalities mentioned in Section 92 of the Code not having been complied with, the suit was liable to be dismissed.

5. Mr. Sarkar, the learned Counsel appearing on behalf of the Plaintiffs has seriously disputed the finding of the learned Court of appeal below and has contended that the disputed property is a private debottar and as such Section 92 cannot have any application to the fact of the present case. Mr. Sarkar further contends that even if some of the reliefs come within the purview of Section 92 of the Code, the Court can separate such reliefs and grant appropriate decree.

6. In support of such contention Mr. Sarkar relies upon a decision of this Court in the case of Sarat K. Mitra Vs. Hem Ch. Dey and Others,

7. As indicated earlier, suit has been filed by the local villagers claiming to be sebaitis after taking leave under Order 1 Rule 8 of the CPC thereby asserting their right of sebaitship over the property and for further declaration that the Defendants have no right, title or interest over the property. The main grievance of the Plaintiffs/Appellants is that Brojendrabala had no right to create any Sebait Niyog Patra conferring right of sebaitship upon Defendants in as much as in the original deed of Arpannama, the settlor did not grant such right to Brojendrabala to appoint any other person as sebait.

8. In the suit, the Plaintiffs by way of amendment also incorporated the prayer for framing a scheme of management and such prayer was granted by the learned trial Judge.

9. In order to attract the provision of Section 92 of the Code of Civil Procedure, the following conditions must be satisfied:

- a) A trust is created for public purposes of a charitable or religious nature.
- b) There was breach of trust or a direction of Court is necessary in the administration of such trust.
- c) The relief claimed is one or other of the reliefs enumerated therein.

If any of the three conditions is not satisfied, the suit falls outside the scope of the said section.

10. As pointed out by the Apex Court in the case of Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others, the reliefs in the suit for declaration that a property belongs to trust or for recovery of possession of such trust property from persons who are in illegal possession thereof are not enumerated in Section 92 of the Code. The Plaintiffs in the instant suit has merely prayed for declaration of their shebaiti right and for recovery of possession from persons who according to the Plaintiffs did not acquire any right over such property by virtue of a deed executed by the erstwhilesebait. Therefore, this is a suit purely for enforcing private right of sebaits and the deity against outsiders and as such is beyond the purview of Section 92 of the Code. The Supreme Court in the case of Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, held that even if all the ingredients of a suit u/s 92 of the Code are made out, if it is clear that the Plaintiffs are not suing to vindicate the right of public but are seeking a declaration of their individual or personal rights or individual or personal rights of any other person or persons through whom they are interested, then the suit should be outside the scope of Section 92 of the Code. Therefore, in the instant case, although the trust was of public nature and a prayer for framing a scheme for management of the trust was incorporated by way of amendment, the primary object of the Plaintiffs is to remedy the infringement of their individual right.

11. Thus, the learned Court of appeal below erred in law in holding that the suit was not maintainable as the requirements of Section 92 of the Code have not been complied with.

12. I, therefore, set aside the judgment and decree passed by the learned first appellate Court below and reamed the matter back to it for considering the appeal on merit.

13. The appeal is thus allowed. In the facts and circumstances there will be, however, no order as to costs.

14. No formal decree need be drawn.