

(2004) 02 CAL CK 0054
In the Calcutta High Court
Case No : C.O. No. 2253 of 2003

Uttam Kumar Ghose and Others

APPELLANT

Vs

Sri Sri Ram Gobinda Shib Thakur

RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2004) 3 CHN 469 : 108 CWN 378

Hon'ble Judges : Alok Kumar Basu, J

Bench : Single Bench

Advocate : H. Banerjee, A. Pain and S. Dutta, for the Appellant; B. Ghosh and D. Bose for the opposite party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Alok Kumar Basu, J.—A very interesting question of law is involved in this application filed under Article 227 of the Constitution of India challenging order dated 1st August, 2003 passed by the learned Civil Judge (Senior Division), 3rd Court at Howrah in connection with Title Suit No. 112 of 2002.

2. Opposite Party No. 1 of the present application filed Title Suit No. 112 of 2002 on behalf of family deity representing herself as sebaite/next friend of the deity for declaration and injunction in respect of the property in dispute and the declaration prayed for related to the character of the suit property. One of the defendant in that suit is contesting the suit by filing written statement and defendant Nos. 4 to 13 and 15 and 16 of the said suit did not file any written statement and when the suit was fixed for ex parte disposal against them, they came forward and filed an application for rejection of the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure.

3. It was the specific case of defendant Nos. 4 to 13 and 15 and 16 who figured as petitioners of the present application that the suit is not maintainable in its present form as the plaintiff Smt. Pritikana Ghosal is not a sebaite of the alleged

debutter property and not being a sebaite, she has not obtained any permission of the Court before institution of the suit as next friend of the deities and as a person interested in preservation of the debutter property and performing the seva puja of the deities.

4. The petitioners in view of their above point filed an application under Order 7 Rule 11(d) of the CPC contending inter alia that the suit in the form it has been filed is not maintainable under law and hence, plaint is liable to be rejected.

5. The learned Civil Judge (Senior Division) after considering the application of the present petitioners and also the objections raised by the plaintiffs opposite parties rejected the petition for rejection of plaint on the ground that since one of the defendants has filed written statement and issues have already been framed at that stage the prayer for rejection of plaint cannot be considered and the issue challenging maintainability of the suit can be very well considered at the time of final disposal. The learned Civil Judge also observed that the petitioners did not show how and under what provisions of law the suit was not maintainable and hence, the learned Civil Judge did not find any merit in the said application.

6. The present petitioners have challenged the order of the learned Civil Judge (Senior Division) through this application filed under Article 227 of the Constitution of India.

7. Mr. Banerjee appearing for the petitioners submits that the learned Civil Judge was totally under wrong legal conception in rejecting the prayer of the petitioners on the ground that since issues have been framed no order can be passed for rejecting the plaint under Order 7 Rule 11(d) of the CPC. To substantiate his point Mr. Banerjee has referred to the decision of the Hon'ble Supreme Court in the case of I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others, and also another decision of the Hon'ble Supreme Court in the case of Samar Singh v. Kedar Nath and Ors. reported in AIR 1987 Supreme Court page 1126.

8. As regards the issue how and under what provision of law the suit brought by the plaintiff opposite parties is barred, Mr. Banerjee submits that undisputedly the plaintiff opposite party is not sebaite of the alleged debutter property and naturally without being sebaite and without taking any previous permission from the Court, the plaintiff opposite party is not entitled to file a suit representing the deity regarding the debutter property.

9. Mr. Banerjee in order to strengthen his point has first mentioned a Division Bench judgment of this Court in the case of Tarit Bhusan Rai and Ors. v. Sri Sri Iswar Sridhar Salagram Shila Thakur and Ors. reported in 45 CWN 932. Relying on that judgment Mr. Banerjee contends that in special circumstances a suit on behalf of the deity can be brought by a prospective sebaite or a worshipper or any person interested in the endowment, provided there is an appointment by the Court. Mr. Banerjee contends that it has been, held in that decision:

"Worshippers and members of the family cannot, as of right, represent the idol in

a legal proceeding. The right which they have to sue for the protection of the debutter is their own right and they may exercise it by suing in their own name and on their behalf, although for the benefit of the debutter. When they do so, even in a case where the sebaite is hostile to the deity or negligent of its interests, the suit is their own suit and not a suit on behalf of the idol."

10. Thus, in view of the above legal position Mr. Banerjee contends that in this particular case plaintiff opposite party without being a sebaite and without obtaining previous sanction of the Court is not entitled to file the suit on behalf of the deity and on this ground the plaint is liable to be rejected. Mr. Banerjee has also referred to the decision of this Court given in the case of Sm. Sushama Roy Vs. Atul Krishna Roy and Another, and also the decision rendered in the case of Sri Iswar Radha Kanta Jew Thakur and Others Vs. Gopinath Das and Others, .

11. Opposing the present application Mr. Ghosh appearing for the plaintiff opposite party contends that the plaintiff opposite party is a family member of the predecessor who dedicated the property in favour of the family deity and hence, the plaintiff opposite party is not a stranger, on the contrary she is vitally interested in the debutter property and also in the performance of seva puja of the family deity. Mr. Ghosh contends that earlier one of the sebaits of the debutter property filed a Title Suit No. being 32 of 1980 subsequently renumbered as Title Suit No. 34 of 1985 whereby plaintiff of the suit prayed before the Court for framing of a scheme for proper management of the debutter property along with other reliefs for maintenance and preservation of the debutter property. Mr. Ghosh contends that plaintiff of that suit in collusion with some other sebaits who were shown as defendants of that suit entered into an illegal compromise whereby parties of that suit renounced the deed of endowment executed in favour of the family deity by their predecessor and converted the debutter property into secular property and by a subsequent partition they divided the debutter property among themselves to derive illegal gain at the cost of family deity. Mr. Ghosh contends that challenging that compromise decree and maintaining the true character of the debutter property, the plaintiff opposite party being a family member was compelled to file the present suit and she may be considered both as a prospective sebaite and also as a person interested in maintaining the debutter property and thereby protecting the interest of the deity.

12. Mr. Ghosh to counter the argument of Mr. Banerjee submits that without being a sebaite a person interested in the debutter property may very well bring a suit without prior permission of the Court and to substantiate his point he has relied on a decision of the Hon"ble Supreme Court as reported in Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others, .

13. Mr. Banerjee Has distinguished the ratio of decision reported in Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others, and contends that in the reported decision the property belongs to a public debutter property and hence, without obtaining prior permission of the Court and without being a sebaite any

member of public having interest in the estate could bring a suit but the case at hand is completely different since it is a private debutter estate created on the basis of an endowment.

14. After considering the submissions of both the sides and in view of the decision of the Hon"ble Supreme Court in the case of I.T.C. Ltd. (supra) and Samar Singh (supra), I find that the learned Civil Judge (Senior Division) was totally wrong in holding that an application under Order 7 Rule 11(d) of the CPC cannot be entertained once issues have been framed. The correct legal position would be that at any stage if any of the conditions laid down in Order 7 Rule 11(d) is attracted, the Court can entertain the prayer for rejection of the plaint.

15. Now, I may come to the most important issue raised through this application as to how and under what circumstances provisions contained in Rule 11(d) of Order 7 can be attracted for rejection of a plaint. From provisions of Rule 11(d) of Order 7 it appears that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. On examination of the plaint I do not notice any such statement in the plaint to be barred by any law and that is also not the point raised by Mr. Banerjee during his argument.

16. Mr. Banerjee in his argument has endeavoured to prove that the suit in its present form is not maintainable as the suit is brought in the name of idol and plaintiff opposite party claiming to represent the idol is not sebaite as per the deed of endowment nor the plaintiff opposite party took prior permission of the Court to represent the idol.

17. I have gone through the decisions of this Court in the case of Tarit Bhusan Rai (supra) which was subsequently followed in the decision of Sushama Roy (supra) and Iswar Radha Kanta Jew Thakur (supra). From all those decisions, it is clear that as a general principle nobody except a sebaite is authorised to bring a suit on behalf of the idol to protect the interest of the idol. It is also made clear that in exceptional circumstances a third party having interest in the affairs of the idol can bring a suit for the idol provided the third party obtained prior permission from the Court through a legal proceeding.

18. From the decision rendered in the case of Sushama Roy (supra), I find that Court took extra precaution in preventing frivolous suit involving the Hindu idol and it was the desire of the Court that a person both competent and honest should institute such suits.

19. In the present fact and circumstances it appears that sebaits of the idol for their narrow personal gain sacrificed the interest of the idol ignoring thereby the intention of their predecessor who executed the deed of endowment in favour of the family deity and the present suit has been brought challenging that action of the sebaits and in that background it is a pure question of fact which is required to be proved by evidence whether plaintiff can be permitted to maintain the suit for the idol for preservation of the property of the idol. Thus, I find that even on undisputed facts there is scope of argument and counter argument regarding the

status of plaintiff to bring the present suit and it has been held in the case of Andhra Steel v. A.S.C. Engineers reported in 1980(2) CLJ 161 that where on an interpretation of law two views are possible, Order 7 Rule II(d) is not attracted.

20. Thus, having regard to the submissions made on behalf of Mr. Banerjee challenging the status of the plaintiff opposite party in the matter of filing of the suit on the basis of decisions of this Court already indicated, I am of the view that considering the peculiar fact and circumstances behind filing of the present suit and when there is really a controversy as to the status of the plaintiff opposite party, the provisions of Rule II(d) of Order 7 cannot be made applicable in the present case and the issue regarding maintainability of the suit must be kept open for adjudication at the time of final trial.

21. Thus, in view of my above observation I do not notice any infirmity in the order of the learned Civil Judge (Senior Division) by rejecting the prayer of the petitioners for rejection of plaint.

22. The application under Article 227 of the Constitution of India is, therefore, dismissed on contest, but, without any order as to costs.

23. The learned Civil Judge (Senior Division) is directed to proceed with the trial of the suit as expeditiously as possible without granting unnecessary adjournment at the instance of the parties of the suit.