
(2013) 09 RAJ CK 0096

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 519 of 2012

Vagaram and Others

APPELLANT

Vs

Vardaram and Others

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 1 CDR 149 : (2014) 1 RLW 303

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : N.M. Lodha Assisted by and Mr. K.L. Thakur, for the Appellant; A.A. Bhansali for Vardaram, Magaram, Mr. Rajesh Shah for Umaram, Bharam, Sukhdev Prasad, Lalaram, Shri Gautam Rishi Trust Meena Samaj Gayarah Pargana, Sirohi, Pali and Jalore. Mr. Ashok Upadhyay for Mohanlal, Sonaram and Nemaram. Mr. Javed Hussain for Hakmaram. Mr. C.S. Ojha for Hansa Ram, Togaram and Bharam and Mr. S.R. Choudhary for Devasthan Department, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—These appeals u/s 40(3) of the Rajasthan Public Trust Act, 1959 ("the Act") have been filed against order dated 04.01.2012 passed by the District Judge, Sirohi in Civil Misc. Case Nos. 49/2010, 02/2011 and 04/2011 and order dated 02.03.2012 passed in Civil Misc. Case No. 4/2011. At the request and with the consent of all the counsel representing various parties, the appeals were finally heard.

2. The facts in brief may be noticed thus: a public trust by the name of "Shri Gautam Rishi Trust Meena Samaj Gyarah Pargana, Sirohi-Pali-Jalore", Kesarpura, Shivganj ("the Trust") is a Public Trust registered under the provisions of the Act. It appears that one Uma Ram filed an application u/s 23 of the Act in prescribed Form No. 8 before the Assistant Commissioner, Devasthan Department, Jodhpur ("the Assistant Commissioner"), inter alia, indicating that elections of the Trust were held on 15.06.2009 and the persons indicated in the form were elected;

another application under the same provision in the same form was moved by one Varda Ram again pointing out that elections were held on 23.02.2009 and the persons indicated in the form were elected; yet another application was filed by one Sona Ram (Desuri) under the same provision and form claiming that elections were held on 20.09.2009 and the persons indicated therein were elected as office bearers of the Trust.

3. The Assistant Commissioner consolidated all the three applications and by order dated 05.10.2009 accepted the changes indicated in the Form No. 8 submitted by Uma Ram and passed consequential directions.

4. Aggrieved against the order dated 05.10.2009 passed by the Assistant Commissioner, Varda Ram and Maga Ram filed a suit u/s 22 of the Act seeking cancellation of the entries made by the Assistant Commissioner. Alongwith the suit, an application seeking temporary injunction was filed. However, the temporary injunction application was refused by the trial court by its order dated 19.02.2010.

5. Being aggrieved against the order dated 19.02.2010, Varda Ram and others filed S.B. Civil Misc. Appeal No. 251/2010 under Order XLIII, Rule 1 CPC before this Court. The appeal was decided by order dated 24.02.2010, whereby, it was directed as under:-

7. Therefore, while keeping the said suit pending, the rival claimant groups present before this Court are relegated before the learned Assistant Commissioner, Devasthan Department, Jodhpur and the order already passed by him on 5.10.2009 is set aside and he is directed to hear all the concerned parties and rival claims of the parties and decide the same in accordance with Section 38 of the Act. The parties in the first instance may present before the learned Assistant Commissioner on 15th March, 2010 and after hearing all the parties, the learned Assistant Commissioner shall decide the rival claims of the parties of the said public trust in accordance with law.

8. With these observations this appeal is disposed of.

9. Till the next date fixed before the learned Assistant Commissioner, the status quo as it exists today shall be maintained and thereafter the management of the said trust would be governed by the further interim order or by way of direction as the case may be passed by the learned Assistant Commissioner.

6. In pursuance of the order dated 24.02.2010 (supra), the Assistant Commissioner initiated proceedings u/s 38 of the Act and on 19.03.2010 appointed a interim Management Committee under the Chairmanship of Nayab Tehsildar, Shivganj. The said order dated 19.03.2010 passed by the Assistant Commissioner was questioned before this Court in S.B. Civil Writ Petition No. 4686/2010 by Varda Ram and others, which petition was dismissed on 26.05.2010 with a direction to the Assistant Commissioner to dispose of the proceedings within a period of three months. Though the order dated 26.05.2010

was questioned before the Division Bench, but in the meanwhile by order dated 19.11.2010, the Assistant Commissioner disposed of the proceedings u/s 38 of the Act and directed Uma Ram and others, Varda Ram and others and Sona Ram and others to apply to the Court for directions.

7. The operative portion of the order dated 19.11.2010 passed by the Assistant Commissioner in proceedings u/s 38 of the Act reads as under:-

8. In pursuance of the directions dated 19.11.2010, three applications were filed before the District Judge, Sirohi and were registered separately i.e. Civil Misc. Case No. 49/2010-Varda Ram & Ors. v. Uma Ram, Civil Misc. Case No. 2/2011-Shri Gautam Rishi Trust Meena Samaj Gayarah Pargana, Sirohi v. Varda Ram & Ors. and Civil Misc. Case No. 4/2011-Sona Ram & Ors. v. Varda Ram.

9. During pendency of the said proceedings before the District Judge, Sirohi, the present appellants Nos. 1 to 9 and respondent Nos. 11 and 12 i.e. Vaga Ram and others filed an application in Civil Misc. Case No. 49/2010-Varda Ram & Ors. v. Uma Ram for being impleaded as party, which application was allowed by the District Judge, Sirohi by order dated 05.11.2011 and they were impleaded as defendants/non-applicants Nos. 9 to 19.

10. A reply to the misc. application filed by Varda Ram was filed by the appellants Vaga Ram and others and by way of counter reference certain reliefs were also sought.

11. In the meanwhile, the appeal against order dated 26.05.2010 passed in the writ petition was decided by the Division Bench and it was noticed that the order dated 19.03.2010 was purely interim one and the proceedings before the Assistant Commissioner had been concluded and it was left open to the parties to file appropriate application before the District Court and it was also left open for the District Court to continue the same interim arrangement or to pass order as it may deem appropriate to take care of management during the pendency of the proceedings and interim arrangement was ordered to continue till the matter was considered by the District Court.

12. However, during pendency of the proceedings, it appears that on 04.01.2012, an application was filed before the District Judge in Civil Misc. Case No. 49/2010 with the following averments:-

13. In Civil Misc. Case No. 2/2011 also an application was filed with the following averments:-

14. Similarly in Civil Misc. Case No. 4/2011 an application was filed with the following averments:-

15. The District Judge made endorsement of the following nature on each of the three applications itself, a representative endorsement as made in Civil Misc. Case No. 49/2010 reads thus:-

16. Thereafter, on the same day i.e. on 04.01.2012 the following nature order

was passed in all the three civil misc. cases, a representative order as made in Civil Misc. Case No. 49/2010 reads thus:-

17. Consequently, the proceedings in all the three misc. applications instituted in pursuance to the direction dated 19.11.2010 passed by the Assistant Commissioner u/s 38 of the Act were dismissed as having been compromised.

18. Thereafter, it appears that an application dated 28.02.2012 was filed in Civil Misc. Case No. 4/2011 by counsel for the defendants/non-applicants indicating that the original case has been decided by way of compromise and the interim Committee appointed under the Chairmanship of the Sub Divisional Officer, (which Committee was reconstituted by the District Judge by order dated 06.04.2011) has come to an end and, therefore, the Sub Divisional Officer be directed to hand over the charge to the newly elected President of the Trust, on which application, by order dated 02.03.2012, the District Judge dissolved the interim Committee constituted under the Chairmanship of Sub Divisional Officer, Shivganj and noticing that Uma Ram has been elected as President of the Trust and, therefore, directed that the charge be handed over to the said newly elected President and disposed of the said application.

19. It is submitted by learned counsel for the appellants that the entire procedure adopted by the District Judge in dismissing the proceedings by order dated 04.01.2012 by way of so called compromise is wholly against the scheme of the Act and the said order could not have been passed so as to bring to an end the said proceedings by way of compromise; the appellants and Assistant Commissioner were parties to Civil Misc. Case No. 49/2010, however, neither copy of the application dated 04.01.2012 was delivered to them nor they were heard before passing of the said order; once a direction u/s 38 of the Act had been issued in pursuance to the order passed by this Court on 24.02.2010, the said proceedings could not have been concluded in the manner done by the District Judge; provisions of CPC ("CPC") relating to withdrawal/compromise of the suits have been violated, inasmuch as, looking to the nature of suit, the District Judge has failed to record his satisfaction. Not only this, it was submitted that even the so called compromise was not placed before the District Judge alongwith the application/before the order dated 04.01.2012 was passed, which clearly goes to show the non application of mind by the District Judge to the application filed by the respondents herein.

20. The learned counsel for the appellant also questioned the order dated 02.03.2012 passed by the District Judge, whereby, the interim Committee was dissolved and was directed to hand over the charge to the so called newly elected President of the Trust. It was submitted that once the proceedings had come to an end though illegally, the District Judge was rendered "functus officio" and no order in the nature of the order dated 02.03.2012 could have been passed. It was prayed that the appeals be allowed and the orders dated 04.01.2012 and 02.03.2012 be set aside.

21. Learned counsel appearing for Devasthan Department chose not to make any submissions.

22. Learned counsel Mr. Rajesh Shah appearing for the respondents vehemently opposed the submissions made by learned counsel for the appellants. It was contended that irrespective of the nature of proceedings, it is well within the rights of the applicants to withdraw/compromise the proceedings and the appellants had no business to question the same; no proceedings were initiated by the appellants before the trial court, if they were aggrieved by the order dated 04.01.2012, inasmuch as, no application seeking recall of the order etc. was made and, therefore, they cannot be heard in the present appeals; the parties had resolved the entire dispute and, therefore, there was no requirement to continue with the litigation before the District Judge and, consequently, the same was rightly got decided based on the compromise. Regarding the order dated 02.03.2012 it was submitted that the interim Committee had already come to an end with the disposal of the misc. applications before the District Judge and, as such, the District Judge was justified in directing handing over of the charge to the newly elected President. Ultimately, it was prayed that the appeals be dismissed as having no substance.

23. I have considered the rival submissions made by learned counsel for the parties.

24. The question which arises for consideration in the present appeals is as to whether proceedings u/s 40 of the Act pending before the District Judge instituted pursuant to the directions issued by the Assistant Commissioner u/s 38 of the Act can be withdrawn/compromised by the parties?

25. It would be appropriate to notice provisions of Sections 38 and 40 of the Act, which reads thus:-

Sec. 38-Application for directions:

(1) If the Assistant Commissioner, on the application of any person having interest in a public trust or otherwise, is satisfied after making such inquiry as he thinks necessary that-

(a) the original object of the public trust has failed

(b) the trust property is not being properly managed or administered or

(c) the direction of the Court is necessary for the administration of the public trust:

he may, after giving the working trustee an opportunity of being heard, direct such working trustee or any other trustee or person having interest in the trust to apply to the court for directions, within such time not exceeding thirty days as may be specified by the Assistant Commissioner.

(2) If the working trustee or any other trustee or person having interest in the

trust so directed fails to make an application as required, or if there is no trustee of the public trust, or if, for any other person, the Assistant Commissioner considers it expedient to do so, he shall himself make an application to the court.

Sec. 40-Powers of the Court on application under Sec. 38 or Sec. 39:

(1) On receipt of an application made under or in pursuance of section 38 or section 39 the court shall make or cause to be made such inquiry into the case as it deems necessary and pass such orders thereon as it may consider appropriate.

(2) While exercising the powers under sub-section

(1) the court shall, besides other powers, have power to make an order for-

(a) removing any trustee;

(b) appointing a new trustee;

(c) declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(d) providing a scheme of management of the trust property;

(e) directing how the funds of a public trust whose original object has failed shall be spent, having due regards to the object for which the trust was created;

(f) issuing such other directions as the nature of the case may require.

(3) Any order passed by the court under sub-section

(2) shall be deemed to be a decree of such court and an appeal shall lie therefrom to the High Court.

26. The Act was enacted to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Rajasthan. The provisions of Section 38, which are part of Chapter-VIII deals with the powers of officers in relation to the Public Trusts, which confers powers on the Assistant Commissioner to direct the working trustee, trustee or person having interest in the Trust to apply to the Court for directions, which power can be exercised on the application of any person having interest in a Public Trusts, or otherwise, on Assistant Commissioner being satisfied after such inquiry as he thinks necessary.

27. The importance of the provision and exercise of powers under the said provision can be gathered from the fact that under Sub-section (2) of Section 38 a mandate has been given to the Assistant Commissioner to himself make an application to the Court in case the working trustee, trustee or person having interest in the Trust fails to make an application as required by Sub-section (1).

28. Further, the powers of the Court u/s 40 in relation to the proceedings in pursuance of direction u/s 38 are sweeping in nature, inasmuch as, the Court can

remove any trustee; appoint a new trustee; allocate trust property/interest therein for any particular object of the Trust; provide a scheme of management of the Trust property; direct the use of funds of a Public Trust, whose original object has failed and issue such other directions as the nature of the case may require. Further, the order passed by the Court is deemed to be a decree and appeal lies to the High Court.

29. The Assistant Commissioner in the present case after making necessary inquiry in pursuance to the order dated 24.02.2010 passed by this Court, directed Uma Ram etc., Varda Ram etc. and Sona Ram etc. to apply to the Court for directions on his being satisfied that "the Trust property was not being properly managed or administered" and "the direction of the Court was necessary for the administration of the Public Trusts" as envisaged u/s 38(1)(b) & (c) of the Act and, consequently, sought exercise of powers by the District Court u/s 40 for the purpose of "providing a scheme of management of the Trust property" and "for issuing such other directions" as envisaged u/s 40(d) & (f) of the Act as would be evident from the order dated 19.11.2010 passed by the Assistant Commissioner, as noted/quoted hereinbefore.

30. In pursuance thereof, applications in fact were filed by the persons directed by the Assistant Commissioner and appellants herein alongwith two other persons got impleaded in the said proceedings and filed counter reference seeking directions different than what was sought by the applicants therein. The District Court proceeded with the inquiry as contemplated u/s 40 of the Act and interim orders providing for management of the Trust were also made/continued. However, it appears that on account of some settlement/compromise arrived at among some of the parties, three applications, as quoted hereinabove, were filed on 04.01.2012 and the learned District Judge made endorsement of verifications on the said one page application itself and passed orders dismissing the misc. applications.

31. A perusal of the record indicates that the application was neither supplied to the appellants who were parties to Civil Misc. Application No. 49/2010 nor they were heard before passing of the order dated 04.01.2012. Not only the appellants, even Assistant Commissioner, who u/s 72 of the Act is statutorily a necessary party and was also a party to the proceedings, was not supplied a copy of the application and was also not heard. Further, though a reference to some affidavit having been written and the same having been handed over to the "Samaj" was made in Civil Misc. Case No. 49/2010 but, the same was not placed on record. In the applications made in other two misc. cases, neither any reference to alleged compromise and so called affidavit was made nor any document was placed on record. A look at the contents of the applications, quoted hereinabove, would also reveal that the terms and conditions etc. of the so called compromise were also not indicated in the said applications.

32. The nature of proceedings u/s 38 of the Act and consequential directions issued by the Court u/s 40 of the Act, having a force of a decree, binds not only

the parties thereto but, all those who are interest in the Trust and, therefore, the proceedings u/s 40 of the Act are in the nature of a representative suit. The Hon"ble Supreme Court while dealing with a case u/s 92 CPC in Raje Anandrao Vs. Shamrao and Others, held the proceedings u/s 92 of the Act as a representative suit and held thus:-

(12)..... It is true that the pujaris were not parties to the suit under S. 92 but the decision in that suit binds the pujaris as worshippers so far as the administration of the temple is concerned, even though they were not parties to it, for a suit under S. 92 is a representative suit and binds not only the parties thereto but all those who are interest in the trust. Therefore, the mere fact that the pujaris were no parties to the suit will not take away the jurisdiction of the District Judge to modify the scheme, if the modification is with respect to the administration of the trust and if it does not affect the private rights of the pujaris.

33. The said position now stand statutorily recognized after 1976 amendment in C.P.C., whereby, Rule 3B has been inserted in Order XXIII. Clause (d) of Explanation whereof includes proceedings of present nature.

34. The provisions of Civil Procedure Code, 1908 have been made applicable u/s 69 of the Act to all proceedings before the Court under the Act save in so far as they may be inconsistent with anything contained in the Act. Therefore, in view of the provisions of Section 69 of the Act read with Section 141 CPC, the provisions contained in Order XXIII relating to withdrawal and adjustments of suits are applicable to the proceedings u/s 40 of the Act instituted in pursuance to direction issued u/s 38 of the Act. It would be relevant to notice provisions of Rule 3 and 3B of Order XXIII CPC at this stage, which reads thus:-

3. Compromise of suit.-Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

3B. No agreement or compromise to be entered in a representative suit without leave of Court.-

(1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interest in the suit.

Explanation.-In this rule, "representative suit" means,-

(a) a suit u/s 91 or section 92,

(b) a suit under rule 8 of Order 1,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.

(emphasis supplied)

35. A bare look at the above provisions would reveal that satisfaction of the Court that the proceedings have been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties is a prerequisite before passing any order in accordance therewith. Provisions of Rule 3B of Order XXIII provides for agreement or compromise to be entered in a representative suit only with the leave of the Court and that also expressly recorded in the proceedings. A representative suit has been explained in the said provision to include a suit u/s 92 CPC and a suit, in which, the decree passed may by virtue of any other law for the time being in force bind any person who is not named as party to the suit. As already discussed above, the proceedings u/s 40 of the Act binds not only the parties thereto but all those who are interested in the Trust.

36. As noticed from the orders dated 04.01.2012 quoted hereinabove while passing the order dated 04.01.2012, the learned District Judge has failed to record any satisfaction regarding the so called compromise/agreement being lawful. In fact no such satisfaction could have been recorded by the learned Judge as nothing was produced before him so as to apply his mind on the said agreement/compromise. Further, as also noticed, the proceedings u/s 40 of the Act in pursuance of direction u/s 38 being representative in character and in view of Explanation (a) & (d) under Rule 3B of Order XXIII no agreement or compromise could be entered without leave of the Court and no such leave was either applied or obtained.

37. From the above discussion, it is apparent that while the direction issued by

the Assistant Commissioner u/s 38 in pursuance to the order passed by this Court was for seeking a scheme of management of the Trust property, on his satisfaction based on inquiry, that such a direction was necessary and in view of the fact that the applicants merely act in pursuance of the directions of the Assistant Commissioner, they apparently have no right to seek withdrawal/dismissal of the proceedings.

38. The provisions of Section 38(2) are a clear indicator of the above position, which provides that the Assistant Commissioner is not at the mercy of the applicants, as in case the applicants decide, despite directions u/s 38, not to apply to the Court, a mandatory duty has been cast on the Assistant Commissioner to "himself make an application to the Court", therefore, once a direction u/s 38 is issued, the same has to be taken to its logical end by the District Court by way of inquiry and by passing appropriate orders.

39. In any case, even if in a given case, circumstances arise and such an application is made, the procedure and requirements of Order XXIII, Rule 3 and 3B have to be scrupulously followed and complied with before any order based on compromise can be passed by the Court.

40. The entire procedure adopted by the District Court on 04.01.2012 being in utter disregard of provisions of Sections 38 & 40, Rule 3 and 3B of Order XXIII, the orders dated 04.01.2012 passed in the three misc. cases cannot be sustained.

41. In so far as passing of the order dated 02.03.2012, whereby, the interim Committee was dissolved and charge was handed over to the so called newly elected President of the Trust, the interim Committee having been appointed by order dated 06.04.2011 by the District Judge as an interim arrangement only during the pendency of the applications, with the dismissal of the said application, the interim Committee came to an end automatically. Therefore, the issue raised about the District Judge having been rendered functus officio need not be decided.

42. Consequently, though the manner in which the order dated 02.03.2012 was passed, cannot be approved, the same does not call for any interference. In the result, the appeals are allowed. The orders dated 04.01.2012 passed in all the three Civil Misc. Cases are quashed and set aside. The Civil Misc. Case Nos. 49/2010, 02/2011 and 04/2011 are restored back to their original numbers before the District Judge, Sirohi, who shall deal with the matters from the stage as before passing of the order dated 04.01.2012. Looking to the nature of proceedings, the same should be dealt with expeditiously. Record be sent back immediately. The parties are directed to appear before the District Judge, Sirohi on 21.10.2013. It would be open for the parties to apply for appointment of interim committee during the pendency of the applications and in case such an application is made, the same would be decided by the District Judge most expeditiously and, till such time, the status quo regarding management of the Trust shall be maintained. No costs.