

Ramchand (Dead) by Legal Representatives

Vs

Thakur Janki Ballabhji Maharaj and Another

Civil Appeal No. 574 of 1966

(CJI J. C. Shah, G. K. Mitter JJ)

23.07.1969

JUDGMENT

SHAH, ACTING C.J. -

1. Suit No. 41 of 1947 was filed in the Court of the Civil Judge, Mathura, by the deity Thakur Janki Ballabhji Maharaj, acting through its manager - L. Tulsiram, authorised agent of the Bharatpur State, for a decree for possession of the temple of the deity at Brindaban in U.P.; and of the temple properties and for an order calling upon the defendant, Ramchand, to account for the realisations of the estate of the deity.

2. The case of the plaintiffs was that the Ruler of the State of Bharatpur built the temple at Brindaban and installed the idol of Thakur Janki Ballabhji Maharaj and dedicated the temple to the deity; that the Shebait of the deity who was a paid employee of the State was appointed by the Ruler of the State of Bharatpur; that one Chhotelal was appointed a priest to perform the worship in the temple under a written agreement, dated April 8, 1936; that after the death of Chhotelal on May 13, 1912, Ramchand was appointed the priest of the temple on condition that he shall execute the usual agreement in favour of the State; that Ramchand entered upon the duties as pujari but failed to execute the agreement, and in course of time raised various constructions of his own on the premises in dispute and converted them into private residential buildings, and illegally used the temple as a lodging house for pilgrims "to the utter detriment, loss and desecration of the deity" and thereby acquired "illegal benefit to himself out of the temple properties"; and that Ramchand was not performing the seva puja of the deity.

3. The suit was resisted by Ramchand. He denied that the temple was built at the expense of the Ruler of the State of Bharatpur or that he - Ramchand - was appointed to be a priest of the temple by the Ruler of Bharatpur. He contended that one Ram Narain Kedar Nath had taken a piece of land at Brindaban on rent from the temple of Govindji and after constructing a temple thereon and installing the Thakurji had given it as an offering to Sitaram, ancestor of Ramchand, and had appointed Sitaram as the Manager of the temple; that the temple had since then remained in the management of the descendents of Sitaram, and that he (Ramchand) was in possession of the temple and its properties as "Manager and proprietor".

4. The trial Court dismissed the suit holding that the Ruler of Bharatpur was never the owner of the temple or of the articles mentioned in Schedules A and B of the plaint, that the Ruler was also not the founder of the temple nor its shebait; and that the Ruler had never appointed any pujari of this temple and was not authorised to appoint or dismiss such a pujari.

5. In appeal against the decree passed by the Court of first instance it was urged before the High Court of Allahabad that the trial Court erred in dismissing the suit merely on the finding that the Ruler of the State of Bharatpur "had no concern with the construction of the temple or with the installation of the idol in the temple," and that in the suit filed by the deity, having regard to the acts of mismanagement and misappropriation committed by the defendant Ramchand, a decree should have been made in favour of the deity. Counsel for Ramchand contended that the suit being of the nature of a suit under Section 92 of the Code of Civil Procedure could not be instituted without obtaining the sanction in writing of the Advocate-General and that in any event the second plaintiff, the State of Bharatpur, could not file the suit, since it was not a shebait or the settler of the temple.

6. It was common ground before the High Court that the property of the temple was not property of a public trust of a religious or charitable nature. From the averments made in the plaint it is clear that the suit was filed by the deity against the person in management and it was not a suit filed by the relators. Section 92 of the Code of Civil Procedure had therefore no application to the suit and the sanction of the Advocate-General was not a condition of the initiation of the suit. The High Court therefore rightly rejected the contention that the suit was not maintainable without the sanction of the Advocate-General.

7. The High Court held that it was open even, to a worshipper, if he possesses sufficient qualifying interest, to start a suit to protect the property of the deity. Observing that the defendant Ramchand had raised residential buildings of his own in the temple premises and that he was lodging pilgrims in a part of those buildings and was asserting a proprietary title to them and was on that account guilty of conduct detrimental to the interest of the deity and had rendered himself liable to be ejected from the temple and its properties, and that he was unfit to act as pujari, the High Court reversed the decree passed by the trial Court and decreed the plaintiffs' suit for possession of the temple and its properties and restrained the defendant Ramchand by an injunction from interfering with the management of the temple and performance of worship of the deity. With special leave, Ramchand has appealed to this Court.

8. Ramchand has committed several acts of mismanagement and misappropriation of the temple and its properties. He has set up a personal title to the temple properties and has converted the properties to his own use. Ramchand is, therefore, not fit to remain in possession as pujari or as manager of the temple. The suit is filed by the deity acting through the Manager. Granting that it is not proved that the Ruler of Bharatpur established the temple and installed the deity, there is abundant evidence that the State of Bharatpur had made from time to time large donations for the maintenance of the temple. The Ruler of Bharatpur had therefore clearly a substantial interest to maintain the suit on behalf of the deity to protect the property. There is no merit in the appeal and therefore it must fail.

9. It is, however, necessary to make an effective decree in this appeal. It may be noticed that even though the suit has been filed and prosecuted on behalf of the State of Bharatpur and later by the State of Rajasthan through its District Magistrate, the temple is situate within the State of U.P. and it would be difficult for the District Magistrate or any other authority acting on behalf of the State of Rajasthan to look after the administration of the temple and to protect its properties from misappropriation. This is undoubtedly a private trust but the Civil Courts have jurisdiction to frame a scheme for the management of the temple which is not a public trust. The Judicial Committee of the Privy Council in *Pramatha Nath Mullick v. Pradyumnakumar Mullick* (52 IA 245) directed that a scheme be framed for the regulation of the worship of the idol even though there was no public trust. In *Asha Bibi and Others v. Habissa Sahib and Others* (AIR 1957 Mad 583) the Madras High Court held that a suit for removing the trustees of a private trust and for framing a scheme was

maintainable. A similar view was also taken by the Calcutta High Court in *Shri Mahadeo Jeev and Another v. Balkrishna Vyas and Another*. (AIR 1952 Cal 763).

10. The Civil Court has therefore jurisdiction to frame a scheme for management of the temple and its properties. The present is, in our judgment, a case in which in exercise of the powers under Order XLI, Rule 33 of the Code of Civil Procedure, we should direct that the Court of first instance to frame a scheme of management of the temple collections on the income and disbursement of expenses, application of the surplus if any and for that purpose to appoint a manager of the property of the deity and its properties, with authority to take possession of the temple and the properties from the defendant Ramchand and to administer the property and its income under the directions of the Court. We direct accordingly. The Court will also take an account of his dealings with the property of the deity from Ramchand and determine his liability and recover the amount found due from him, on taking accounts. The Court will pass appropriate orders with regard to the constructions made by Ramchand and will prevent the property being used for the private benefit of Ramchand or any other person. The scheme to be framed will be consistent with the law relating to private religious endowments, if any, in force in the State of Uttar Pradesh.

11. Subject to this modification, the appeal is dismissed with costs.

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