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Laxman Prasad Vs Shrideo Janki Raman

Court: Madhya Pradesh High Court

Date of Decision: Nov. 24, 1972

Acts Referred: Madhya Pradesh Public Trust Act, 1951 â€" Section 2(4), 32
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 â€" Section 12(1)(e)

Citation: (1979) ILR (MP) 368 : (1973) JLJ 904 : (1973) 18 MPLJ 842

Hon'ble Judges: Raj Krishna Tankha, J; A.P. Sen, J

Bench: Division Bench

Advocate: B.L. Seth, for the Appellant; A.L. Halve, for the Respondent

Final Decision: Allowed

Judgement

A.P. Sen, J.

This was a suit brought by Shrideo Janki Raman through its Mohatminkar for eviction of the defendant u/s 12(1)(e) of the Madhya Pradesh

Accommodation Control Act, 1931. The Courts below have decreed the suit. The appeal came up for hearing before Naik J., and he referred the

case to a larger Bench for examining the correctness of the view expressed by Bhargava J., in Agarwal Hosiery Shop v. Deity Radhakishan etc.

1963 MPLJ 46. One of the questions that arose in the appeal was whether in a suit by a public trust registered under the Madhya Pradesh Public

Trusts Act, 1951 all the trustees must join in filing the suit or whether the suit by one of the trustees was competent. Bhargava J., in Agarwal

Hosiery Shop"s case (supra), after making a contrast between rules 1 and 2 of Order XXXI of the Code of Civil Procedure, held that a trustee

could represent the beneficiaries and it was, therefore, not necessary to join all the trustees.

With great respect to the learned Judge, the view that all trustees need not join in a suit can hardly be supported. In President Badri Narayan v.

Gulam Rasool Fakhruddin 1969 MPLJ 77, one of us (Sen J.,) had occasion to deal with the question. There, the suit was brought by one of the

trustees as representing ""Shri Rajulal Trust"" which was registered under the M.P. Public Trusts Act, 1951 for reimbursement. It was pleaded by

the defendants that the suit, as framed, was not maintainable. Due to this, the trustee applied under Order 1, rule 10 of the Code of Civil

Procedure, for permission to continue the suit in a representative capacity as representing all the trustees. That application, however, was rejected

on the ground that no prior permission of the Court had been obtained. But while refusing the application, the Court observed that the trustee could

apply under Order 1, rule 10 of the Code for impleading other trustees as co-plaintiffs in the suit. While dealing with the question, it was observed:

The Trust admittedly is a Public Trust, and the suit could have been instituted in its name, if there was a provision in the M.P. Public Trusts Act

enabling a Public Trust to sue in its name. Perhaps, the plaintiff felt that in the absence of such a provision the suit had to be brought in his own

name. In making that assumption, the plaintiff committed an honest mistake. The suit had to be brought under Order 1, rule 8 or in the name of the

co-trustees as in the case of a private trust.

There is obviously a lacuna in the M. P. Public Trusts Act in that unlike other enactments, it nowhere provides that upon registration of a Public

Trust under the provisions of the Act, the Trust will have a legal personality, capable of instituting and defending suits and other legal proceedings in

its name.....

It is true that section 32 of the Madhya Pradesh Public Trusts Act, 1951 forbids trial of a suit on behalf of a public trust, which expression by the

definition of ""public trust"" contained in section 2(4) includes a temple, unless the public trust is registered. It is common ground that the temple in

which the idol of Shrideo Janki Raman is installed together with all its endowed properties, is registered as a public trust. But the temple is not a

legal person and is incapable of suing. The suit had to be instituted and prosecuted in the name of a legal person capable of suing. The plaintiff-

deity in whom the property was vested alone could have brought the suit. No doubt, the idol is itself a juridical person with the power of suing and

sued. See Pramatha Nath Mullick v. Pradyumna Kumar Mullick and another ILR 52 Cal. 809. In Jagadindra Nath v. Hemanta Kumari Debi ILR

32 CAL. 129 PC, their Lordships stated the legal postion as follows:

There is no doubt that an idol may be regarded as a juridical person capable as such of holding property, though it is only in an ideal sense that

property is so held.

Dealing with the position of the shebait of such an idol, their Lordships proceeded to state:

It still remains that the possession and management of the dedicated property belong to the shebait. And this carries with it the right to bring

whatever suits are necessary for the protection of the property. Every such right of suit is vested in the shebait, not in the idol.

In Kisan and others v. Shree Maroti Sansthan, Mohori and others 1947 NLJ 527 : ILR 1947 Nag. 819, Vivian Bose J., stated:

Now it is beyond dispute that ordinarily an idol must be represented by its duly appointed manager or shebait. No other person has a right to sue

on its behalf any more than in the normal course a third person can sue on behalf of a minor or a lunatic. In either case it must be the proper

guardian or committee. But this rule is subject to exceptions, one of which is when the legal or de facto guardian has an adverse interest. In that

event, a third party appointed by the Court is permitted to sue with its permission which permission has in every case to be properly obtained and

when the right to sue is challenged the matter has to be investigated and decided. The same rule obtains in the case of an idol except that there the

person suing must show that he had a personal interest in the idol, as for example, that he is a worshipper or a donor of the property in question or

a settler of the trust which embraces the subject-matter of the suit. But once that is established, and it is shown that the shebait or manager who

would ordinarily represent the idol has an adverse interest, then the suit lies. These rules are founded on good sense and have long been accepted

by the Courts. They will be found set out in Mayne''s Hindu Law, 10th Edition, page 927, and have been applied by the Courts in the following,

among other cases : Pramatha Nath Mullick v. Pradyumna Kumar Mullick, Pashupatinath Seal v. Pradyumna Kumar Mallik ILR 64 Cal. 454 ,

Maruti Ramrao Chandavarkar Vs. Mallapur Shri Gopal Krishna, , Kazi Hassan v. Sagun Balkrishna ILR 24 Bom 170 and Venkatarama

Ayyangar v. Kasturiranga Ayyangar ILR 40 Mad. 212, p. 225.

In the ultimate analysis, Bose J, held that though ordinarily, an idol must be represented by its duly appointed manager or shebait, a worshipper in

that suit may be permitted under the circumstances there, to sue on behalf of the idol as its next friend and the plaint should be amended showing

the idol to be the plaintiff and adding a prayer that the endowed property should be placed in the possession of the wahiwatdar for and on behalf

of the idol.

Their Lordships of the Supreme Court in Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others, have also held that suit for

declaration of title and possession brought by a worshipper in the name of the idol is maintainable, when the person representing it leaves it in the

lurch. In such circumstances, a person interested in the worship of the idol is clothed with an ad hoc power of representation to protect it. In

dealing with the question, their Lordships have reviewed the law on the subject. In particular, their Lordships relied upon a passage from Dr. Bijan

Kumar Mukherjea''s Hindu Law of Religious and Charitable Trusts, 2nd Edn. p. 249:

(i) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It

has to act through human agency, and that agent is the shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality

of the idol might, therefore, be said to be merged in that of the shebait.

(ii) Where, however, the shebait refuses to act for the idol, or where the suit is to challenge the act of the shebait himself as prejudicial to the

interest of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in

persons interested in the endowment to take proceedings on behalf of the idol.

When a suit is brought on behalf of the deity either to recover possession of property held adversely by a stranger or for recovery of money

payable to the Debutter estate, all the shebaits must join as plaintiffs. See: Mukherjea''s Hindu Law of Religious and Charitable Trusts, 3rd Edn. p.

198. Dr. Mukherjea states:

One of the co-shebaits cannot maintain a suit for recovery of rent to the extent of his share. In Burabani Coal Co. v. Gokulanand LR 61 IA 35,

four shebaits of a family deity had executed a mining lease of the idol''s interest in a Mouza. A suit being instituted by one of the shebaits against the

lease for a four-anna share in the royalties, it was held that a such a suit was not maintainable and that the irregularity was not cured by making the

other shebaits parties defendants.

When there are mote shebaits than one, they constitute one body, in the eye of law, and all of them must act together. The management of the trust

properties may be for practical purposes, in the hands of one of the shebaits who is called the managing shebait or the shebaits themselves may

exercise their right of management by turns, but in neither case it is competent for one of the shabaits to do anything in relation to the Debutter

estate without the concurrence either express or implied by his co-shebaits. This is, of course, subject to any express direction given by the

grantor. Mukherjea''s Hindu Law of Religious and Charitable Trusts, 3rd Edn. p. 197-196.

By parity of reasoning, when there are more trustees than one, the trustees must act together. In AIR 1945 23 (Privy Council) , their Lordships of

the Privy Council stated the law, in the following terms:

..In this connection attention may be drawn to the following statement of law from Lewin on Trusts, Edn. 14, page 196:

In the case of co-trustees the office is a joint one. Where the administration of the trust is vested in co-trustees, they all form as it were but one

collective trustee, and therefore must execute the duties of the office in their joint capacity. It is not uncommon to hear one of several trustees

spoken of as the acting trustee, but the Court knows no such distinction; all who accept the office are in the eyes of the law acting trustees. If any

one refuse or be incapable to join, it is not competent for the others to proceed without him, but the administration of the trust must in that case

devolve upon the Court. However, the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both.

But such sanction or approval must be strictly proved.

In view of this, the decision of Bhargava J., in Agarwal Hosiery Shop (supra), taking a view to the contrary must be overruled as not laying down

good law. In our opinion, the learned Judge was not right that any one of the trustees without reference to the other trustees, may maintain a suit in

the name of the idol or in invoking Order XXXI, rules 1 and 2 of the CPC which, in terms, are not applicable to a suit of this kind. Rule 1 deals

with a suit between the beneficiaries and a third person, while Rule 2 pertains to a suit against the trustees. The correct legal position may be stated

thus

When a temple where an idol is installed is registered, together with its endowed properties, as a public trust under the Madhya Pradesh Public

Trusts Act, 1951, the suit must be brought in the name of the idol, by all the trustees acting together. However, such a suit may be brought by one

trustee with the sanction and approval of his co-trustees. But sanction or approval must be strictly proved.

But the suit must also fail on another ground. The Madhya Pradesh Accommodation Control Act, 1961 makes a distinction between ""residential

and ""non-residential"" accommodations. The claim as laid in the plaint pleads a need u/s 12(1)(e) of the Act, i. e., the residential need of the deity. It

is alleged therein that the temple where the deity is now installed is in a delapidated condition, and therefore, the demised premises are needed for

consecrating the deity. That obviously is a residential purpose. In common parlance, ""residence"" means dwelling in a place. In Jowitt''s Dictionary

of English Law, Vol. II, it is stated:

In the case of a person, residence connotes the idea of home, or at least of habitation, and need not necessarily be permanent or exclusive. The

word denotes the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink and sleep. R. v. North Curry

(Inhabitants) (1825) 4 B & C at p. 959.

Admittedly, the demised premises were initially let to the defendant for a nonresidential purpose, i. e., for business purposes. That being so, the

demised premises having been let for a non-residential purpose, the accommodation cannot be got vacated for a residential purpose u/s 12(1)(e)

of the Madhya Pradesh Accommodation Control Act, 1961.

In the result, the appeal succeeds and is allowed. The judgment and decree of the Courts below are set aside and the plaintiff"s suit is dismissed.

But, in the circumstances of the case, there shall be no order as to costs