

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Revision/TA/5092/2010/Udaipur.

1. Ramnarain son of Jamna Lal Patidar
 2. Rameshwar son of Shri Moda Patidar
 3. Kanhaiya Lal son of Dalchand Patidar
 4. Sukha Lal son of Napla Patidar
 5. Chhagan Lal son of Lachhi Ram Brahmin
 6. Uda son of Nanda Teli
 7. Deva son of Gopal Teli
 8. Bhagriya son of Dhanna Mali
 9. Shiv Lal son of Kamla Brahmin
 10. Bhera son of Gaghana Gadri
- All residents of village Dabok Tehsil Mavli Distt. Udaipur.

...Petitioners.

Versus

Shri Charbhuj Ji Sthan Deh through Shri Nana Das (deceased)

1. Smt. Bhamri son of Nana Das Bairagi
2. Smt. Heera Bai widow of Nana Das Bairagi
3. Smt. Sohani Bai widow of Nana Das Bairagi
4. Modi Das son of Bhagwan Das Bairagi

All residents of Village Dabok Tehsil Mavli Distt. Udaipur.

...Non-petitioners.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri Jaswant Singh Sankhla, counsel for the petitioners.

Shri Ajit Lodha, counsel for the petitioners.

Shri O.L. Dave, counsel for the petitioners.

Shri P.S. Dashora, counsel for the non-petitioners.

Date: 13.12.2012

J U D G M E N T

The petitioners have filed this revision petition under section 230 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being aggrieved by the order passed by Assistant Collector, Mavli on 4.7.2001 in case No. 11/2001.

2. The factual matrix of the case is that the non-petitioners filed a regular suit under section 188 and 92-A of the Act against the petitioners. The main contention of the suit was that the disputed land belongs to Mandir Charbhuj Ji situated at Dabok and the non-petitioners (plaintiffs) are the pujaris of the temple and the petitioners (defendants) interfered in the peaceful possession and cultivation of

the disputed land. During adjudication of the suit, an application under section 212 of the Act was also filed, wherein receiver was also appointed by the Board of Revenue and the possession was handed over to Tehsildar, Mavli for management of the disputed land. Thereafter the suit of the non-petitioners was dismissed by Sub-Divisional Officer, Vallabhnagar on 2.3.2001 on an application under Order 7 Rule 11 of the Civil Procedure Code but the order of handing over of the possession from the receiver was not given. Therefore, an application was filed by the petitioners to hand over the possession of the disputed land before Sub-Divisional Officer, Vallabhnagar which was dismissed on 4.7.2001. Being aggrieved by the order passed by Sub-Divisional Officer, Mavli, this revision petition has been filed before this court.

3. Heard the learned counsels of the parties.

4. The learned counsel for the petitioners contended that since the main suit has been dismissed by the trial court, the order of appointment of receiver automatically comes to an end. The learned advocate submitted that the possession of the disputed land will be handed over to the parties from whom the possession was taken. He further contended that a trust has been registered for management of the temple Charbhuj and its properties, wherein the pujaris are also one of the trustees. Therefore, possession of the disputed land should be handed over to the functionaries of the trust. The learned advocate argued that the order passed by the trial court is bad in the eye of law, therefore, be quashed and the possession of the disputed land be handed over to the petitioners who are the trustees of the Charbhuj Temple Trust.

5. The learned counsel for the non-petitioners contended that the suit filed by the non-petitioners was dismissed by Sub-Divisional Officer but now the matter has been finally decided by the Board of Revenue and Hon'ble Board has quashed the order passed by Sub-Divisional Officer and the case has been remanded to the trial court for decision on merits. He further submitted that since the original suit is still pending before the trial court, so that the order of

appointment of receiver should remain in for management of the disputed land in a better way. The learned counsel also contended that the registration of trust has been got done after filing of the original suit before the trial court. He argued that the application of the petitioner has been decided by the trial court under section 144 of the Civil Procedure Code and on rejection of this application, the petitioners should have filed appeal against the order passed by the trial court on 4.7.2001. In this case no revision lies before this court. The learned counsel referred to the case law: 1968 RRD 284. He urged the court that the case has been remanded to the trial court, the possession should remain with the receiver only till final disposal of the case. He cited AIR 1962 (SC) 21, 2001 RRD 111 and 2006 RBJ 385 in support of his argument. The learned counsel requested the court to dismiss the revision petition being not maintainable.

6. I have given thoughtful consideration to the rival contentions raised by the learned counsels of the parties and also perused the record available on file.

7. This is an undisputed fact that an application was filed by Shri Ramnarain son of Jamna Lal Patidar on 28.5.2001 before Sub-Divisional Officer-cum-Assistant Collector, Mavli. The applicant requested the court that the main suit was filed by Mandir Charbhuj Ji through Nana Das and Modi Das under section 188 and 92-A of the Act. During adjudication of the suit, an order under section 212 of the At for taking the disputed land in receiver was passed by the Board of Revenue. Presently, the land is with the receiver who is Tehsildar, Mavli.

8. This is very pertinent to mention here that the main suit filed by Mandir Charbhuj Ji through the pujaries was dismissed on an application filed by the defendants under Order 7 Rule 11 of the Civil Procedure Code. Finally, in the second appeal before the Board of Revenue, this court decided appeal No. 7795/2001 on 4.9.2012 and remanded the matter to the trial court for deciding the case on merits.

9. This is an accepted fact that presently the suit filed by Mandir Charbhuj Ji is pending before the trial court in compliance of this court judgment dated 4.9.2012 in appeal No. 7795/2001. This is also an important development that a trust has been registered by the Devsthan Department on 15.1.1996 under Rajasthan Public Trust Act, 1959 and the disputed land has been shown as the property of the trust. As per the provisions of Rajasthan Public Trust Act, 1959, the functionaries of the trust are under legal obligation to manage and look after the temple and properties of the trust. After registration of the trust an appeal was also preferred by Nana Das and Modi Das in the court of Commissioner, Devsthan, Udaipur which was also dismissed by Devsthan Department on 9.11.1998.

10. This is also an accepted fact that the application filed by the petitioners is not under section 144 of the Civil Procedure Code, it was an ordinary application filed by the petitioners wherein they requested the court that possession of the disputed land should be handed to them as the main suit has been dismissed and the trust has been formed for management of the trust properties. This court has carefully perused the order passed by the trial court on the application filed by the petitioner Ramnarain. This court is of the considered view that under the provisions of Rajasthan Public Trust Act, a trust has been formed for management of the temple Charbhuj Ji and its properties. Therefore, the trust is legally competent to take possession of the disputed land which has been put under the management of the receiver. The learned advocate for the non-petitioners have objected to this contention and he has argued that the suit filed by the non-petitioners is still pending before the trial court. Therefore, the disputed land should be in possession with the receiver only and no appeal or revision or writ was filed by the petitioners against the order passed by the Board of Revenue regarding appointment of receiver. Therefore, in this revision, the disputed land cannot be handed over to the trust whose registration is a development after filing of the original suit.

11. This court is of the considered view that a trust has been registered under Rajasthan Public Trust Act, 1959, therefore, it is prima facie duty of the trust executives to manage the properties of the temple. In view of the court, the land in dispute which is under the management of receiver should be handed over to the trust without any delay. If the parties have any grievance against the formation or registration of the trust they can agitate the order of registration of the trust before the appropriate forum but as long as the trust exists nobody other than the trust can have preference to manage the properties of the said trust.

12. As discussed above, the revision petition filed by the petitioners is hereby accepted, the order passed by the trial court on 4.7.2001 is hereby quashed. Tehsildar is directed to hand over possession of the disputed land to the Secretary and Chairman of the trust.

Pronounced.

(Bajrang Lal Sharma)
Member