2023:PHHC:157221

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42292-2018
Date of decision : 08.12.2023

KRISHNA DEVI & OTHERS

... Petitioner(s)

Versus

LAL CHAND AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Puneet Bali, Sr. Advocate assisted by
Mr. Shivam Sharma, Advocate
for the petitioner(s).

Mr. K.R. Dhawan, Advocate
for respondent No.1.

Mr. Kirat Singh Sidhu, DAG, Punjab
for respondent No.2.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the Complaint No.RT-18/09.05.2016 dated 19.08.2015 filed by respondent No.1 under Sections 452/ 379/ 295/ 435/ 506/ 148/149/120-B IPC (Annexure P-5), the Summoning order under Sections 148, 295 read with Section 149 IPC passed by the JMIC, Moga dated 23.05.2018 (Annexure P-6) and all subsequent proceedings arising therefrom.

2. The brief facts of the case as emanating from the pleadings are that petitioner No.1 is the real sister of respondent No.2. Their father late Munish Ram vide Transfer Deed dated 23.05.2005 transferred his land measuring 40 kanals 8 marlas in favour of the petitioner No.1. The

said transfer deed was challenged by the respondent No.2 by way of filing of a civil suit bearing Civil Suit No.57 of 2006 for declaration to the effect that the suit property was ancestral/coparcenary and respondent No.2/complainant was in possession thereof.

3. The said Civil Suit bearing CS No.57 of 2006 filed by respondent No.2 was dismissed on 17.09.2013 (Annexure P-1) wherein a finding was given to the effect that the Transfer Deed dated 23.05.2005 was just and proper. It was also held that Mutation No.940 had been sanctioned in favour of petitioner No.1-Krishna Devi and that order had been upheld in the Court of A.C. 2nd Grade, Commissioner, Ferozepur Division and FCR, Punjab and therefore respondent No.2/complainant had not been able to prove his possession.

4. The respondent No.2 had filed another Civil Suit bearing C.S. No.41 dated 03.03.2014 in which he claimed that the land measuring 06 kanals, 18 marlas was in his possession and petitioner No.1-Krishna Devi should not interfere in the said possession and that she had nothing to do with motor connection bearing No.R3-32 of 10 BHP involved in the said land. On 03.03.2014 the Trial Court had directed the parties to maintain status quo with respect to the said land.

5. Thereafter, the instant complaint came to be filed by respondent No.1 on 19.08.2015 (Annexure P-5) with multiple allegations. The averments/allegations in the said complaint were similar to the pleadings in the aforementioned two civil suits. In the criminal complaint, the petitioners came to be summoned under Sections 148,

295 read with Section 149 IPC vide order dated 23.05.2018 (Annexure P-6).

6. In Civil Suit bearing No.57, the appeal which had been instituted bearing Civil Appeal No.12 of 2013 came to be dismissed on 09.03.2017 (Annexure P-7) which finding was further confirmed on 01.06.2018 (Annexure P-3) by this Court in RSA No. 4911 of 2017 titled as Lal Chand & others Versus Munshi Ram & another, decided on 01.06.2018.

7. Meanwhile, in C.S. No.41 of 2014, the Trial Court had directed the parties to maintain status quo with respect to the said land vide order dated 03.03.2014. The said interim order was valid upto 12.03.2014 after which it was never extended. On 11.09.2014 respondent No.2 invoked the provisions of Order 39 Rule 2-A read with Section 151 CPC in CM No.28 of 2015 for violation of the order dated 03.03.2014 in the Court of Civil Judge, Sr. Division, Moga. The allegations in the said application were that on 03.05.2014, Krishna Devi and her daughter i.e. petitioner No.2 along with 14/15 musclemen armed with arms and ammunitions and deadly weapons entered into the land of the complainant, harvested the standing crop and threatened to kill the plaintiff and therefore, the status quo order was violated. It was held by the Civil Judge, vide its order dated 04.09.2017 (Annexure P-4) that except for the self-serving statement of respondent No.2 there was no other positive evidence to prove that the respondents had committed any breach of any order. It was further held that there had been long drawn

litigation both civil and criminal between respondent No.2-Lal Chand and petitioner No.1-Krishna Devi with regard to the property left behind by their predecessor-in-interest Munshi Ram.

8. The learned Senior counsel for the petitioners contends that the complaint filed by respondent No.1-Lal Chand and the consequent summoning order are an abuse of the process of law and deserve to be quashed. No offence whatsoever is made out. Lal Chand, Respondent No.1 along with others had filed Civil Suit No. 57 of 21.01.2006 against Munshi Ram and Krishna Devi, petitioner No.1 for declaration to the effect that the suit property is an ancestral co-parcenary property in the hands of plaintiffs and defendant No. 2 and also sought consequential relief of permanent injunction to restrain the defendants from interfering into the possession of plaintiffs over the suit land. The learned Addl Civil Jduge (Senior Division), Moga, vide his Judgment and Decree dated 17.09.2013, while dismissing the suit filed by Respondent No. 1 and others recorded a positive finding of fact that the plaintiffs had failed to prove possession over the land. The Judgment and Decree dated 17.09.2013 passed by Addl. Civil Judge (Sr. Divn.), Moga was upheld by District Judge, Moga vide Judgment and Decree dated 09.03.2017 and further, this Court upheld the Judgment in R.S.A. No.4911 of 2017. The Respondent No.1, with mala fide intention, by concealing the factum of the decree passed by the civil court and findings recorded in the said suit, vide Judgment dated 17.09.2013 holding that the plaintiffs had failed to prove possession over the said land, filed the impugned

complaint which was an amalgamation of two civil suits against the petitioners on 19.08.2015. The filing of the complaint by the Respondent No. 1, was thus, an abuse of process of law after concealment of material facts from the Court and thus, the impugned Complaint (Annexure P-5) and the consequent summoning order (Annexure P-6) filed by Respondent No.1 deserved to be quashed.

Particularly, as regards the offence under Section 295 IPC, it is his contention that there is absolutely no allegation in the complaint that the Samadhs of the common ancestor of the petitioner No.1 and the complainant had been desecrated in any manner. On the other hand, he contends that even if the said Samadh were destroyed no offence under Section 295 IPC was made out as a Samadh cannot, ordinarily be treated as a temple in view of the judgments in the case of ***Saraswathi Ammal & another versus Rajagopal Ammal, (1953) 2 SCC 390*** and ***Committee of Management of Institution known as Bodendraswami Mutt by its Managing Member N. Ganesa Iyer Versus President of Board of Commrs. for Hindu Religious Endowments, AIR 1954 MAD 1027***.

While referring to the reply dated 03.09.2019 filed by the respondent No.2, he contends that interestingly, the complainant has not disputed any of the orders passed by the Civil Court categorically observing that the respondent/complainant had no right over the land in dispute. Therefore, once the orders of the Civil Court had been found to have been passed categorically holding that it was the petitioner No.1 who was in possession of the land, the question of the impugned

summoning order being passed on the basis of the impugned complaint does not arise.

He, therefore, contends that the impugned complaint dated 19.05.2015 (Annexure P-5), the summoning order dated 23.05.2018 (Annexure P-6) and all consequential proceedings arising therefrom were liable to be quashed.

9. On the other hand, the learned counsel for the respondent/complainant contends that the offence has been established beyond reasonable doubt. Once the petitioners had been summoned to face Trial, the question of interference by this Court would be in rare circumstances as disputed questions of fact had arisen. The summoning order had been challenged by the complainant party as well on the grounds that the accused were liable to be summoned under other sections as well and the said petition was pending adjudication. He, therefore, contends that there was no merit in the present petition and the same was liable to be dismissed.

10. I have heard the learned counsel for the parties.

11. Before proceeding further in the matter, it would be apposite to refer to the relevant provisions of the IPC and the judgments of the Hon'ble Supreme Court.

Section 148 reads as under:-

> *148. Rioting, armed with deadly weapon.—Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with*

imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 149 reads as under:-

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.
If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to *be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.*

Section 295 reads as under:-

295. Injuring or defiling place of worship, with intent to insult the religion of any class.— Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The Hon'ble Supreme Court in the case of ***Saraswathi Ammal & another versus Rajagopal Ammal, (1953) 2 SCC 390,*** held as under:-

7. It was held in the Madras decisions above noticed that the building of a samadhi or a tomb over the remains of a person and the making of provision for the purpose of Gurupooja and other ceremonies in

connection with the same cannot be recognised as charitable or religious purpose according to Hindu law. This is not on the ground that such a dedication is for a superstitious use and hence invalid. Indeed the law of superstitious uses as such has no application to India. The ground of the Madras decisions is that a trust of the kind can claim exemption from the rule against perpetuity only if it is for a religious and charitable purpose recognised as such by Hindu law and that Hindu law does not recognise dedication for a tomb as a religious or charitable purpose. It is, however, strenuously argued by the learned counsel for the appellants that the perpetual dedication of property in the present case, as in the Madras cases above referred to, must be taken to have been made under the belief that it is productive of spiritual benefit to the deceased and as being some what analogous to worship of ancestors at a sradh. It is urged, therefore, that they are for religious purposes and hence valid. The following passage in Mayne's Hindu Law, 11th Edn., at 192, is relied on to show that.

> *"What are purely religious purposes and what religious purposes will be charitable must be entirely decided according to Hindu law and Hindu notions."*

It is urged that whether or not such worship was originally part of Hindu religion, this practice has now grown up and with it the belief in the spiritual efficacy thereof and that courts cannot refuse to accord recognition to the same or embark on an enquiry as to the truth of any such religious belief, provided it is not contrary to law or morality. It is further urged that unlike in English law, the element of actual or assumed

public benefit is not the determining factor as to what is a religious purpose under the Hindu law. Now, it is correct to say that what is a religious purpose under the Hindu law must be determined according to Hindu notions. This has been recognised by courts from very early times. [Vide Fatma Bibi v. Advocate General of Bombay. It cannot also be disputed that under the Hindu law religious or charitable purposes are not confined to purposes which are productive of actual or assumed public benefit. The acquisition of religious merit is also an important criterion. This is illustrated by the series of cases which recognise the validity of perpetual endowment for the maintenance and worship of family idols or for the continued performance of annual sradhs of an individual and his ancestors. See Dwrakanath Bysack and another v. Burroda Persaud Bysack and Rupa Jagashet v. Krishnali.

*** *** ***

12. In the three Madras cases in which it was held that the perpetual dedication of propertv by a Hindu for performance of worship at a tomb was not vaild, there was no suggestion that there was any widely accepted practice of raising tombs and worshipping thereat and making endowments therefor in the belief as to the religious merit acquired thereby. In the present case also, no question has been raised that in the community to which the parties belong there was any such well-recognised practice or belief. The defendants in the written statement make no assertion about it. But on the other hand, the plaintiff in paragraph 12 of his plaint asserts that the:

> *"Institution of Samadhi and ceremonies connected with it are not usual in the community to which the parties belong".*
>
> *Indeed it may be assumed that such a practice is not likely to grow up amongst Hindus where cremation and not burial of the dead is the normal practice, except probably as regards sannyasis and in certain dissident communities. We see no reason to think that the Madras decisions are erroneous in holding that perpetual dedication of property for worship at a tomb is not valid amongst Hindus."*

(emphasis supplied)

In ***Committee of Management of Institution known as Bodendraswami Mutt by its Managing Member N. Ganesa Iyer Versus President of Board of Commrs. for Hindu Religious Endowments, AIR 1954 MAD 1027***, held as under:-

> *4. Sri S. Viswanathan for the appellant has urged that a Samadhi or a tomb constructed to commemorate the memory and religious Life - work of a human being can never fall into the category of a temple intended for the worship of God or Gods. "Temple" as defined in Section 9(12) of the Act means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of religious worship. I find it extremely difficult to bring worship which has grown up round the tomb of a human being within the category of religious worship. Sri S. Viswanathan has contended that such commemorative observations in which the public participate may be described as hero worship or any other form of worship but can, in no sense, according to*

Hindu religious notions, be put into the category of religious worship.

5. I have been referred to the Supreme Court decision 'Saraswathi Ammal v. Rajagopal Ammal, AIR 1953 Supreme Court 491, in which it was held that perpetual dedication of property for worship at a tomb is not valid amongst Hindus. A number of Madras decisions, were there referred to with approval. Kunhamutti v. Ahmad Musaliar, AIR 1935 Mad 29(D);- 'Draiviasundaram Pillai v. Subramania Pillai', AIR 1945 Mad 217 (E) and- 'Veluswami Goundan v. Dandapani', AIR 1946 Mad 485 (P), for the position that the building of a samadhi or a tomb over the remains of a person and the making of the provision for the purpose of Gurupooja and other ceremonies in connection with the same cannot be recognise as a charitable or religious purpose according to Hindu law. This being the case, I find it difficult to appreciate in what legal manner a samadhi can ordinarily evolve into a temple for purposes of public religious worship as defined in Section 9(12) of the Act.

6.i. Sri. Viswanathan has referred by way of anology of the Thyagaraj Shrine at Tiruvayar, where there are commemorative festivals and observances on a very large scale to commemorate the memory of a great saint and composer of devotional songs. The learned District Judge endeavoured to justify his order by separating the religious festivals carried on in the matam round the samadhi from the samadhi itself. As it appears to me, the samadhi and the observances, which have grown up around it, are inseparable. The presence of idols of gods and recognised deities in the matam round the samadhi may be intended merely to invest the

observances in the samadhi with some religious significance in gratitude to a great supernatural power or powers for the life of a good man and saint.

7. Sri Ramachandran on behalf of the Commissioner for Religious Endowments supports the lower Court on the strength of 'Ratnavelu Mudaliar v. Commr. for Hindu Religious and Charitable Endowments, AIR 1954 Mad 398 (G). That was indeed the case of an ancient institution which originated in a samadhi. Though it continued to retain traces of its origin and guru-pooja was performed in the precincts the same learned Bench Rajmannar, C.J. and Venkatarama Aiyar, J. confirming a judgment of Krishnaswami Naydu, J. also on the original side of the High Court, held it to be a temple within the scope of Section 9(12).

8. The facts of that case were however peculiar and different from those in the present case. So long ago as 7-8-1860 the Government made a grant in favour of Chidambaraswami, who founded that institution. He was described as the founder of the "Apparswami pagoda" and not of the "Apparswami Samadhi". Since then, it was treated admittedly in various proceedings as a temple. The facts of that case can easily be differentiated from the present one in which a claim is made for the first time that this admitted samadhi has now evolved into a temple. In that decision, the following observations of Varadachariar, J. in - 'Board of Commrs. for the Hindu Religious Endowments v. P. Narasimham, AIR 1939 Mad 134 (H) were quoted with approval. "That what the evidence in this case describes as taking place in connection with the institution is public worship can admit of no doubt. We think it is also religious. The test is not whether it conforms to any

> *particular school of Agama Sastras; we think that the question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship, they are making themselves the object of the bounty of some superhuman power, it must be regarded as a religious worship.*
>
> *9. Even if this very broad test were to be applied to the present case, I am not prepared to hold that the mere presence of some idols and the festivals, which have grown round the samadhi of Bodendraswami, inevitable in the case of all tombs of saints and great men in this country, would bring it within the definition of a temple as defined in Section 9(12). For these reasons, I would set aside the order of the District Judge and hold that this institution is not a public temple as defined in Section 9(12) of the Act.*
>
> (emphasis supplied)

12. Coming back to the facts of the instant case, it is apparent that in civil proceedings it has been established beyond doubt that it was the petitioner side which was in possession of the land on which various occurrence allegedly took place. This fact has deliberately not been disclosed in the complaint for obvious reasons. Had it been brought to the notice of the Summoning Court, the possibility of the impugned order being passed under Sections 148/149/120-B IPC would have been unlikely. Therefore, no offence under Sections 148 & 149 IPC is made out.

Further, a Samadh of a family member cannot constitute a place of worship held sacred by a class of persons. In the case of such a

Samadh, a desecration thereof would entail insult to a family member at best. By no stretch imagination can it be held that a destruction damage or defilement would amount to insult to the religion of an aggrieved person. Even otherwise, there are no allegations against the petitioners regarding destruction, defilement or damage to the Samadh. Therefore, no offence under Section 295 IPC is made out on the admitted facts on the record.

13. In view of the aforementioned discussion, the continuance of the present proceedings emanating out of the complaint dated 19.05.2015 (Annexure P-5) and the summoning order dated 23.05.2018 (Annexure P-6) are nothing but an abuse of the process of the Court. Therefore, the complaint dated 19.05.2015 (Annexure P-5), summoning order dated 23.05.2018 (Annexure P-6) under Sections 148, 295 read with Section 149 IPC and all subsequent proceedings arising therefrom are hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

08.12.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/Nobnm