

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4096 OF 2008

State of Uttarakhand & Anr.Appellant(s)

VERSUS

Mandir Sri Laxman Sidh
Maharaj ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. This appeal is filed by the defendants against the final judgment and order dated 17.04.2007 passed by the High Court of Uttarakhand at Nainital in First Appeal No.51 of 2005 whereby the High Court dismissed the appeal filed by the appellants herein and affirmed the judgment and decree dated 30.03.2002 passed by the Civil Judge (Senior Division)/X F.T.C., Dehradun in O.S. No. 318 of 1996.

2. In order to appreciate the issues involved in the appeal, it is necessary to set out the relevant facts infra.

3. Appellant No.1 is defendant No.1-State of Uttarakhand (earlier part of State of UP) and appellant No. 2 is defendant

No.2 - Divisional Forest Officer (DFO) whereas the respondent is the plaintiff in the civil suit out of which this appeal arises.

4. The respondent (plaintiff) is one-Bharat Bhushan Bharati. He has described himself as "Mahant" and "Manager" of one temple known as "Sri Laxman Sidh Maharaj" situated in the midst of thick forest near one village named "Harawala" Pargana, Pachwa District, Dehradun (Uttarakhand).

5. On 27.05.1996, the respondent filed a civil suit (O.S.No.318/1996) in the name of "Temple Sri Laxman Sidh Maharaj" describing himself in the cause title of the plaint as "Mahant" and "Manager" of the temple.

6. In Paras 1 and 2 of the plaint, the respondent averred that the temple in question is located in the thick forest near Harawala. It is an ancient temple wherein the deity of Lord Shiva is installed from time immemorial (5-6 thousand years). It has shrines of some saintly persons, who attained Godhood and also has one "Kund" where there exists continuous fire.

7. In Para 3, it is averred that there was one person by name Basant Bharatji who was earlier "Mahant" of the temple. He died in 1982. During his lifetime, he had nominated the

respondent (plaintiff) as "Mahant" as his successor. This is how the respondent became "Mahant" and "Manager" of the temple in question for managing the affairs of the temple.

8. In Paras 4 and 5, it is averred that thousand of devotees visit the temple every year and perform puja and other religious ceremonies of the deity and the shrines.

9. In Paras 6 and 7, it is averred that the temple along with Dharmshala for the benefit of devotees and "Kund" is surrounded by 5 acres of land. Since the Dharamshala is quite old (200 years or so) and required extensive repairs, the respondent (plaintiff) started to carry out some repair work but the Divisional Forest Officer (DFO) - defendant No.2 of the concerned area, on 05.04.1996, objected the respondent from carrying out the repairs in the Dharamshala saying that the respondent cannot do any kind of repair work and hence the respondent became aggrieved and filed the civil suit seeking for a declaration that, (1) the plaintiff (respondent) - temple is the owner of the land specified in Schedule to the plaint; and (2) permanent injunction restraining the State and its authorities not to interfere in the respondent-plaintiff's

possession over the lands and the constructions made thereon.

10. In Para 8, it was averred that due to urgency, the respondent (plaintiff) seeks exemption from serving notice to the State under Section 80 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code". The suit was valued at Rs.20,00,000/- on payment of fixed court fees and was filed in the Court of Civil Judge (senior division), Dehradun.

11. Appellant No.1 (State) as defendant No.1 along with DFO (defendant No.2)-respondent No.2 herein filed their written statement and denied all averments of the plaint set out above.

12. The Trial Court framed 7 issues, which read as under:

“1) Is the temple Sri Laxman Sidh Ji Maharaj is in actual physical possession of the piece of land admeasuring 5 acres situated at Village Harrawala, District Dehradun without any let or hindrance for the last thousands of years?

2) Has the plaintiff got right to raise the construction on the disputed land?

3) Can the permission for raising the construction over the disputed land not be given to the plaintiff as has been mentioned in paras 6 and 7 of the plaint of the plaintiff?

4) Relief.

5) Is years old well belonging to the plaintiff situated at a short distance from the temple, feeds the temple precincts through a pipe line?

6) Is the suit of the plaintiff is maintainable?

7) Has the suit been undervalued and insufficient court fee has been paid?"

13. After framing the abovementioned issues and recording the evidence, the Trial Court by judgment/decreed dated 30.03.2002, partly decreed the suit. It was held that the plaintiff is the owner of the land admeasuring 3.573 acres mentioned in the schedule to the plaint by virtue of their adverse possession but the plaintiff is not the owner of one well except to the extent that he will have a right to enjoy the easementary rights over the well to take water from the well. The Trial Court also issued permanent injunction against the State and their authorities not to interfere in the plaintiff's possession and also not to interfere in their right to undertake construction work in the temple and Dharmshala.

14. It is apposite to reproduce the operative part of the decree passed by the Trial Court hereinbelow in verbatim which reads as under:

"The suit of the plaintiff is partly decreed with costs in favour of the plaintiff and against the defendants and the plaintiff shrine Sri Laxman Sidh Maharaj is declared as an owner by virtue of adverse possession in respect of property admeasuring 3.573 acres, as depicted in red colour in Site Plan 49-A attached with the plaint, but the plaintiff is not the owner of the property of well, as depicted in red colour in Site Plan 49-A, but the plaintiff/temple has the easementary rights to take water from the said well and the defendants are permanently restrained from interfering in the possession or construction being raised by the Mahant in the property of temple and from creating obstruction in the way of plaintiff in taking water from the well as depicted in Site Plan 49-A attached with the plaint. The Site Plan 49-A-1/3 attached with the plaint shall form part of the judgment and decree."

15. The State, felt aggrieved of the aforesaid judgment/decreed, filed first appeal before the High Court of Uttarakhand. The Division Bench of the High Court by impugned order dismissed the appeal and affirmed the judgment and decree of the Trial Court quoted supra which has given rise to filing of the appeal by the defendants by way of special leave before this Court.

16. Heard Ms. Shilpi Satya Priya Satyam, learned counsel for the appellants and Ms. V. Mohana, learned senior counsel for the respondent.

17. Having heard the learned Counsel for the parties and on

perusal of the record of the case, we are constrained to allow the appeal and while setting aside of the impugned order dismiss the suit filed by the respondent as being wholly misconceived.

18. At the outset, we are constrained to express our total displeasure on the casual manner in which both, the Trial Court and the High Court, decided the suit and the appeal. If we may say so, it only shows total non-application of their judicial mind while deciding the case. It will be clear from the discussion made hereinbelow.

19. We have set out the averments of the plaint supra to show that a relief of declaration of ownership over the suit properties and injunction was sought on these averments.

20. To begin with, in our considered opinion, the plaint completely lacked of necessary material pleadings and particulars for claiming a declaration of title over the suit property (temple and land) and permanent injunction.

21. Secondly, the necessary material pleadings in such case ought to have been as to how and on what basis, the plaintiff claimed his ownership over such a famous heritage temple

and the land surrounding the temple. The plaintiff, i.e., Sri Bharat Bhushan Bharti, who had styled himself as ‘Mahant’ and “Manager” of the temple, ought to have pleaded necessary details such as, whether he claimed the right of ownership through his forefathers and, if so, who were they and whether they constructed the temple with their own resources and, if so, in which year?

22. Thirdly, whether the plaintiff's forefathers were allotted the land in question pursuant to any grant or patta or lease or license or any kind of written permission for constructing the temple on such land by the State and, if so, its details ought to have been pleaded.

23. Fourthly, whether the plaintiff's forefathers ensured compliances of such grant etc. if grant was made and whether the construction of the temple was for the family as a private temple or for the benefit of public at large as the case may. These facts also ought to have been pleaded.

24. Fifthly, how and in what manner, the present plaintiff claims to be or/and is related to the forefathers, who constructed the temple around 5000-6000 years back for

tracing the plaintiff's right of inheritance through family pedigree. These facts also ought to have been pleaded.

25. Sixthly, when the plaintiff claimed a right of management of the temple and its property as "Mahant/Pujari" or "Manager", then he ought to have pleaded as to on what basis, he was claiming the post of "Mahant/Pujari" or "Manager" - was it through his forefathers or through any other channel and who, according to him, was the owner of the temple; and who nominated him as Mahant/Pujari; and whether it was by any written order; and, if so, on what terms and conditions and whether such person had any such authority to nominate the plaintiff or was it by way of any custom prevalent etc. These facts ought to have been pleaded with details.

26. Seventhly, whether the plaintiff as "owner" or "Mahant" or "Manager" ever asserted his right of ownership, Mahantship or Managership against public at large without there being any objection from anyone from public at large.

27. In our considered opinion, a case with which we are dealing here, the aforesaid material facts were necessarily to be pleaded to establish *prima facie* the legal right of the

plaintiff in such type of suit property.

28. As mentioned above, since the plaint did not contain aforementioned pleadings, the suit was liable for rejection at the threshold. That apart, there was absolutely no evidence (documentary) adduced by the plaintiff to prove and establish his legal ownership rights over the temple and the land and nor did he adduce any documentary evidence to show his so-called "Mahantship" or "Managership", except making bald averments in the plaint running in four pages and that too with no material details set out above.

29. We are, therefore, really at a loss to understand as to how and on what basis such suit could be entertained much less decreed.

30. What was more a matter of serious concern that the Trial Court proceeded to decree the plaintiff's suit by conferring an ownership of the Temple/land with a right of easement over the use of well to drink water from the well on the basis of their "adverse possession" over the suit property.

31. By no stretch of imagination, in our view, such a declaration of ownership over the suit property and right of

easement over a well could be granted by the Trial Court in plaintiff's favour because even the plaintiff did not claim title in the suit property on the strength of "adverse possession". Neither there were any pleadings nor any issue much less evidence to prove the adverse possession on land and for grant of any easementary right over the well. The Courts below should have seen that no declaration of ownership rights over the suit property could be granted to the plaintiff on the strength of "adverse possession" (see **Gurdwara Sahib vs. Gram Panchayat Village Sirthala & Anr.**, (2014) 1 SCC 669. The Courts below also should have seen that courts can grant only that relief which is claimed by the plaintiff in the plaint and such relief can be granted only on the pleadings but not beyond it. In other words, courts cannot travel beyond the pleadings for granting any relief. This principle is fully applied to the facts of this case against the plaintiff.

32. In our considered opinion, if the Trial Court committed several jurisdictional and legal errors by not applying any legal provisions and just on mere asking, decreed the suit, at least, the High Court (Division Bench) in its first appellate

jurisdiction in an appeal filed by the defendants against the judgment of Trial Court should have taken note of relevant legal provisions applicable to the case and then decided the appeal accordingly.

33. Unfortunately, the High Court also cursorily dismissed the defendants' appeal and affirmed the judgment and decree of the Trial Court without entering into any discussion on any issues much less relevant legal issues. Indeed, while examining the issue, the provisions of Heritage Property Act and the Ancient Monuments Preservation Act, 1904 could also have been taken note of with a view to find out as to whether the structure which is 5000 years old is governed by the provisions of these two Acts or not and if it is governed, then its effect. We, however, do not wish to examine this issue in this appeal, because, in our view, the suit is otherwise liable to be dismissed on other grounds set out above.

34. As held above, we cannot, therefore, countenance the approach and the manner in which the suit and the appeal were decided by the respective Courts and nor can we concur with their respective so-called reasoning and the conclusion.

Indeed, if we may say so, there is no reasoning much less judicial reasoning of the Courts below which is capable of being upheld.

35. In the light of foregoing discussion, we have no hesitation to hold that the filing of the suit by the plaintiff was wholly misconceived and was nothing but it was abusing the process of law. In any event, we also hold that the plaintiff was neither in possession of the suit property much less in its legal possession nor he had any authority to remain in its possession for want of any lawful authority. The plaintiff thus has failed in every respect.

36. Before parting, we consider it apposite to state that several cases of this nature have come to our notice which are either pending in courts or they remain unnoticed. Unfortunately, it appears that the State did not take up such cases seriously nor has taken any steps to preserve, control and manage effectively such priceless heritage culture of our country with the result, the precious heritage of our country is being misused by handful of private persons for their personal benefits.

37. We hope that the State (appellant herein) would pay serious attention not confining to the temple in question but to several alike and take suitable measures as may deem fit and proper after taking into account the pattern followed by other States in such type of cases, if any, and relevant provisions of the Acts applicable to such structures for the benefit of public at large so that heritage of our country is preserved, managed and controlled in letter and spirit for coming generations.

38. As a result, the appeal succeeds and is allowed. The impugned judgment/decreed of both the Courts below are set aside and the suit filed by the respondent is dismissed with cost of Rs.25,000/- payable by the plaintiff-Bharat Bhushan Bharti personally. The cost shall be deposited by the respondent-plaintiff with the State Legal Services Office.

.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
September 12, 2017

ITEM NO.1501

COURT NO.3

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(S). 4096/2008

STATE OF UTTARKHAND & ANR.

APPELLANT(S)

VERSUS

MANDIR SRI LAXMAN SIDH MAHARAJ

RESPONDENT(S)

(HEARD BY: HONBLE R.K.AGRAWAL AND HONBLE ABHAY MANOHAR SAPRE, JJ.)

Date : 12-09-2017 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. Rahul Kaushik, AOR

For Respondent(s) Mrs. V. Mohana, Sr. Adv.
Mr. Rajeev Kumar Bansal, AOR
Mr. Akshay K. Ghai, Adv.
Mr. Brahma Prakash, Adv.

Hon'ble Mr. Justice Abhay Manohar Sapre pronounced the judgment of the Bench comprising Hon'ble Mr. Justice R.K. Agrawal and His Lordship.

The appeal succeeds and is allowed in terms of the signed reportable judgment. The impugned judgment/decreed of both the Courts below are set aside and the suit filed by the respondent is dismissed with cost of Rs.25,000/- payable by the plaintiff-Bharat Bhushan Bharti personally. The cost shall be deposited by the respondent-plaintiff with the State Legal Services Office.

[VINOD LAKHINA]

AR-cum-PS

[ASHA SONI]

BRANCH OFFICER

[SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE]