

(1971) 01 SC CK 0038
In the Supreme Court Of India
Case No : Civil Appeal No. 1184 Of 1967

Ajodhia Prasad

APPELLANT

Vs

Sangam Lal and Others

RESPONDENT

Date of Decision : 18-01-1971

Acts Referred:

Constitution of India, 1950 — Article 133

Citation : (1972) 4 SCC 93 : (1971) 3 UJ 243

Hon'ble Judges : J. C. Shah, C.J.; K. S. Hegde, J.; A. N. Grover, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

J.C. Shah, C.J.—Sangam Lal and Ganga Narain as realtors filed suit No. 5 of 1954 in the District Court of Kanpur for an order removing Ajodhia Prasad, appellant in this appeal from the office of Sarvarskar and the managership of the trust described in the plaint and from order removing defendants Nos. 2, 3 and 4 from the "office of trusteeship", for appointment of new trustees, Sarvarskar and Manager and for an order against the appellant directing him to render an account of the income and expenses of the trust property during his period of office and for framing a scheme for the management of the trust. The trial Court by order dated September 12, 1955 passed the following order :

...I decree the suit declaring the property in suit to be trust property for public purposes of charitable and religi' us nature and order the removal of all the defendants from the office of "Sarvarskar" and the trustees and direct the appointment of Board of new trustees as detailed in the following scheme for management The defendant No. 1 is directed to render accounts of the income and expenditure of the trust property of the last six years to the new Board of trustees in whom the entire trust property shall vest.

The Court then proceeded to set out the clauses of the scheme of administration of the trust. Thereafter, by order dated October 14, 1955, the Court pasted a

supplementary order, part of which was by consent and the remaining being an adjudication of the Court. The Court ordered by consent that :

...the following trustees are hereby appointed to look after the management of the trust property : 1. Sri Sri Narain, Advocate, 2. Sri Ajodhia Prasad, 3. Sri Durga Prasad, 4. Sri Puran Chand, and 5. Sri Hari Har Gaur, Vakil. In accordance with the consent of parties, Sri Sri Narain, Advocate is hereby appointed as the President of the Board of Trustees", and then proceeded to order :

As there is a dispute between the parties regarding the post of Manager and Secretary, the Court, therefore, having taken into regard the benefit of the trust, appoints Adjodhia Prasad as the Manager and Durga Prasad as the Secretary of the Board of Trustees. Should Adjodhia fail to perform his duty honestly, the Board shall have the power to frame bye-laws to curtail his powers.

A decree was drawn up by the District Court containing the directions pursuant to the judgments dated September 12, 1955 and October 14, 1955.

2. Against the order by the District Court, an appeal was preferred to the High Court of Allahabad. The High Court in appeal set aside the order appointing the appellant as manager of the trust and further directed that an account be taken from the appellant for the period of his entire management. The Court set aside the order of the District Court dated October 14, 1955 appointing the appellant as the Manager of the trust and directed the District Court to take steps to appoint another Manager, out of the remaining trustees. For giving effect to the last direction, the High Court ordered that the case of Durga Prasad may also be considered and his appointment as Secretary be set aside. Against the order passed by the High Court with certificate granted under Article 133(1)(a) of the Constitution this appeal has been preferred.

3. It is contended in the first instance that the High Court had no jurisdiction to set aside order of the District Court passed by consent appointing the appellant as the Manager. We are unable to hold that the order appointing the appellant the Manager was an order made by consent. The order dated October 14, 1955 consisted of two parts, the first part relating to the appointment of trustees was an order by consent, and the second part was the adjudication of the Court. That second part order was open to examination by the Court for its propriety.

4. It was then contended that no ground was made out for removing the appellant from his office as Manager. But the findings recorded by the learned trial judge on issue No. 4 clearly show that no accounts of the income and expenditure of the trust were maintained by the appellant that he had asserted his title against the trust, that the members of his family forcibly realised the rent of the trust property, that some of the houses belonging to the trust had been let out at nominal rent, and that the house in the occupation of the appellant could fetch a rent of Rs. 150/-per month, but no rent was realised for the benefit of the trust. After referring to these circumstances, the trial Court observed :

...I can readily believe the plaintiff's witnesses that rag,bhog, utravas and festivals are not properly performed and the income of the trust property is misappropriated. Accordingly I hold that the defendants are guilty of breaches of trust and they are liable to be removed.

No appeal was preferred against the order passed by the trial Court removing the first defendant from the office of Manager.

5. It was then urged that the High Court was not justified in directing the appellant to give accounts of his management during the entire period during which he remained in management. But the appellant was in management of the trust property and he was bound to account for the entire period during which he remained in management. The trial Court was, in our judgment wrong in restricting his accountability to six years only The order passed by the High Court requiring the appellant to account for the entire period of his management is correct.

6. Finally, it was urged that the High Court erred in directing that Durga Prasad may be considered for appointment as Manager out of the remaining trustees. The High Court has only directed that the District Judge will take steps to appoint another manager out of the remaining trustees, and has left it to the District Court to consider amongst others the claim of Durga Prasad to be appointed a manager. There is no ground for upsetting that order.

7. In our judgment this is a futile appeal. The appeal fails and is dismissed with costs.