

(1937) 05 AHC CK 0016
In the Allahabad High Court

Arya Pratinidhi Sabha

APPELLANT

Vs

Chotey Lal and Others

RESPONDENT

Date of Decision : 06-05-1937

Acts Referred:

Citation : (1937) 05 AHC CK 0016

Hon'ble Judges : Collister, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Collister, J.—These are three connected second appeals by a plaintiff, namely, the Arya Pratinidhi Sabha. It appears that in Shahjahanpur there are two girls' schools or pathshalas of the Arya Samaj, one in Mohalla Dilawarganj and the other in Mohalla Bahadurganj. There are also some shops of the Arya Samaj, the income" whereof is utilized for the upkeep of the Bahadurganj School. The school in Dilawarganj has no building of its own; it is conducted in a rented building. The school in Bahadurganj has its own building. The managing and governing body of the Arya Samaj at Shahjahanpur is known as the Arya Vidya Up Sabha.

2. In 1927 Chotey Lal respondent 1 and men of his party were asserting themselves to be office-bearers of this institution. On 29th June 1926 the Arya Pratinidhi Sabha instituted Suit No. 266 of 1927 against Chotey Lal and others, the plaint being signed by one Tinku Lal as special attorney. It was alleged in the plaint that although in 1926 Chotey Lal defendant 1 was the secretary and defendant 2 was the treasurer and defendants 3 to 8 were members of the Arya Vidya Sabha (which subsequently became the Arya Vidya Up. Sabha), new office bearers and members had been elected on 10th January 1927 by the executive committee of the Arya Samaj and the term of office of the defendants had expired. The main reliefs claimed were:

(a) The defendants may be ordered to hand over the charge of the registers, papers of all kinds, furniture, books and goods of every kind of the Arya Vidya

Sub-Committee, formerly the Arya Vidya Subha Sahjahanpur, of Arya Kanya Patshala, Sahjahanpur (Bahadurganj) and Kanya Patshala (Dilawarganj), to the plaintiff or to any other person appointed by it for this purpose, within the time to be fixed by the Court, Laid at Rs. 400.

(b) A decree may be passed in favour of the plaintiff against the defendant for any amount and (sic) money which may be found in the defendants or any defendants' possession under account up to the date of the decision of this case, on account of the funds and income of the Arya Vidya Sub-Committee, formerly Arya Vidya Subha, Shahjahanpur, and Kanya Patshalas aforesaid, or may be found to have been realized by the defendants or any defendant in the name of the Arya Samaj, Shahjahanpur. The plaintiff does not know the correct amount of it at this time. It is therefore laid at Rs. 1,200. If any further amount is found due, then further court-fee will be paid thereon.

(c) An injunction may be issued to the defendants restraining them from calling any society of theirs in the name of Arya Samaj, Shahjahanpur, taking any proceeding in its name, or having any society registered under the name of Arya Samaj, Shahjahanpur, or any society subordinate to it, as Arya Vidya Sabha and Arya Vidya Up Sabha, Shahjahanpur.

(d) An injunction may be issued to the defendants restraining them from causing any obstruction or interference in the management and supervision and in the discharge of other duties by the present Arya Vidya Sub-Committee and the Arya Samaj, Shahjahanpur, in respect of the Arya Kanya Pathshala, Shahjahanpur (Bahadurganj) and Kanya Pathshala, Dilawarganj, laid at Rs. 200.

3. The suit was decreed on 27th March 1928 and a few days later, Tinku Lal applied for and took out execution and thereafter he took possession of the building and shops. The defendants appealed and on 14th January 1930 the appeal was allowed and the suit was dismissed. There was then a second appeal to this Court : but ultimately the plaintiff withdrew his suit with permission to institute it afresh. This was on 22nd June 1932. No fresh suit was instituted. Meanwhile, on 15th February 1930 Chotey Lal had applied for restitution u/s 144, Civil P.C., and ultimately his application was allowed on 15th September 1931; but restitution was apparently not made at that time on account of the appeal which was pending in this Court. When the plaintiff withdrew his suit and the parties were restored to the status quo, Chotey Lal pressed his application for restitution and on 7th July 1932, the trial Court appointed a receiver for the purpose of making such restitution. The plaintiff resisted and on 8th July 1932 the locks of the building were broken under the orders of the Court and possession was given to Chotey Lal. The plaintiff appealed against the order of 8th July 1932. He also objected that restitution could only be made in respect to those properties of which he had acquired possession in execution of his-decree and could not be made in respect to such properties of which he had otherwise-possessed himself. On 30th November 1933 the Munsif, apparently purporting to act u/s 151, Civil P.C., rectified his order of 8th July 1932 and directed that the

Bahadurganj building and the shops be handed back to the plaintiff. Another order was passed on 6th January 1934 partly allowing and partly dismissing the plaintiffs' application in respect to moveables.

4. As I have already said, the plaintiff appealed against the order of 8th July 1932. That appeal was No. 128 of 1932. Chotey Lal and others appealed against the order of 30th November 1933 and against the order of 6th January 1934. Those appeals were Nos. 288 of 1933 and 28 of 1934. The plaintiff's appeal has been dismissed and the appeals of the defendants have been allowed by the Civil Judge of Shahjahanpur by a judgment dated 15th November 1934.

5. Second appeals have been presented to this Court in respect to all three matters. S.A. No. 178 of 1935 arises out of Appeal No. 128 of 1932 relating to the order of 8th July 1932; S.A. No. 179 of 1935 arises out of Appeal No. 288 of 1933 relating to the order of 30th November 1933; and S.A. No. 255 of 1935 arises out of Appeal No. 28 of 1934 relating to the order of 6th January 1934.

6. There is only one point which has been taken before me in these appeals. It is contended that in execution of his decree the plaintiff obtained possession of nothing more than the books, registers, furniture, etc., of the institution, the value whereof was Rs. 400, and that it was by force and not in execution of his decree that he obtained possession of the buildings. It is accordingly pleaded that Chhotey Lal and his party were not entitled to restitution in respect to such property as had come into the possession of the plaintiff otherwise than in execution of his decree.

7. I have been referred by learned Counsel for the plaintiff-appellant to certain admissions of Chotey Lal which were made during the pendency of proceedings u/s 145, Criminal P.C. There is an application of his dated 14th April 1928, paper No. 21.C, in which he said inter alia that the buildings which were in dispute in the proceedings u/s 145, Criminal P.C., had not been the subject matter of dispute in the civil litigation and no relief had been sought in respect to them. Then there is a certified copy of a deposition purporting to have been made by Chotey Lal on 20th April 1928 in the Criminal Court. This certified copy bears no exhibit mark or number and was never put to Chotey Lal. Chotey Lal did not go into the witness-box and so this document could not very well have been put to him; but an admission or denial ought to have been demanded from his counsel. This certified copy is a public document and is admissible as proof of the contents of the original, but there has been considerable discussion before me as to whether the identity of the deponent with Chotey Lal is established. In my opinion the matter is of academic interest only and there is no necessity to pursue it. These admissions of Chotey Lal are quite inconclusive, for it is obvious that both Tinku Lal and Chotey Lal, whenever it has suited their purpose, have fallen back on the letter of the decree of 27th March 1928 in Suit No. 266 of 1927 and have pleaded that no right was given thereunder to possession of the buildings. Under that decree, Chotey Lal and the other defendants were ordered among other things to make over charge of the Arya Vidya Sabha and the

pathshalas to the plaintiff and were restrained from interfering with the plaintiff in the management thereof. Three days after the passing of the decree, Tinku Lal applied for execution and in his application dated 31st March 1928 he claimed inter alia that charge of the pathshalas and of the Arya Vidya Sabha and the Arya Vidya Up Sabha be handed over to him and thereafter he took possession of the school building and the shops. There can be no doubt whatever that he took possession under colour of his decree; and it is, I think, obvious that the taking over charge of this institution necessarily involved the taking possession of its buildings. It is absurd to suppose that one person can be in charge of such institution while another person has a right to possession of its buildings.

8. In Mathura Kurmi Vs. Jagdeo Singh and Others it was held by a Bench of this Court that:

Under the terms of Section 144, Civil P.C., where a decree-holder gets possession of the property decreed to him otherwise than by executing the decree, but under colour thereof, and that decree is set aside in appeal, the opposite party is entitled to be replaced in possession.

9. It is true that that case is distinguish, able for the reason that the property there taken possession of was the subject matter of the suit and of the decree, whereas in the present case possession of the buildings was not actually decreed. Nevertheless, I am of opinion that since the plaintiff was entitled under his decree to hold charge of the institution and since under colour of that decree he took possession of the buildings, such possession naturally and necessarily following the taking of charge, he is under an obligation to restore possession to the persons who were admittedly in possession at the time when the suit was instituted. The object and purpose of Section 144, Civil P.C., is that the parties shall be restored to the position which they originally occupied. In my opinion the view taken by the Court below is right.

10. After learned Counsel for the plaintiff-appellant had concluded his arguments, learned Counsel for the defendants-respondents in the course of his argument raised a plea that these three second appeals are incompetent. He contends that the order of 8th July 1932 was ancillary to the order of 7th July 1932 and was not separately appealable. The order of 7th July 1932 was appealed against, but the appeal was dismissed on 27th July 1932. As regards the order of 30th November 1933 and the order of 6th January 1934, it is pleaded that they were in effect review orders and that no second appeal lies. Since I have already found on merits in favour of the defendants-respondents, it is not necessary to consider these pleas. Learned Counsel for the plaintiff on the other hand has pleaded that the orders of 30th November 1933 and 6th January 1934, being orders u/s 151, Civil P.C., were not appealable and were thus final. This plea finds no place in the memorandum of appeal to this Court and the judgment of the lower Appellate Court indicates that the point was not agitated in that Court. It seems to me that these orders cannot be deemed to have been passed u/s 151 at all. They were orders substantially affecting restitution of the

property.

11. In the result these three appeals fail and are dismissed with costs. Permission to appeal under the Letters Patent is refused.