

(1959) 12 AHC CK 0013
In the Allahabad High Court
Case No : First Appeal No"s. 87 and 151 of 1948

Behari Lal

APPELLANT

Vs

Thakur Radha Ballabh Ji and Another

RESPONDENT

Date of Decision : 21-12-1959

Acts Referred:

Citation : AIR 1961 All 73 : (1960) 30 AWR 341

Hon'ble Judges : S.N. Dwivedi, J;R.N. Gurtu, J

Bench : Division Bench

Advocate : G.S. Pathak, S.K. Agarwal, K.L. Misra and R.R. Agarwal, for the Appellant; K.N. Seth and Ambika Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Gurtu, J.—This is an appeal of Lala Behari Lal the contesting defendant in the suit for recovery of property and mesne profit. The plaintiff is the idol, Sri Thakur Radha Ballabh Ji and sues through Yasodanandan as next friend. The plaint allegation is that house No. 49/54 belonged to the plaintiff. The said house was a partitioned portion of a bigger building of which the other partitioned portion bore No. 49/53. The plaintiff was not the proprietor of house No. 49/53 but he had acquired the mortgagee rights thereof.

The partitioned portion No. 49/54 (also referred to as house in this judgment) had been bought by the plaintiff out of the plaintiff's fund by defendant No. 2 Lala Jagannath as Manager and Sarvarakar of the plaintiff. Jagannath Prasad later executed a sale deed dated 13-1-1942 in respect of the partitioned portion No. 49/54, of which the plaintiff was in proprietary possession, in favour of L. Behari Lal the contesting defendant for a consideration of Rs. 10,000/- with the allegation that house No. 49/54 was in a dilapidated condition and needed to be rebuilt and that out of the sale proceeds some other newly constructed property would be purchased by Jagannath Prasad as Sarvarakar of the temple. The aforesaid statement was incorrect and was incorporated in the sale-deed in order to give it validity.

The sale-deed was executed for an inadequate consideration. There was no authority in Jagannath Prasad to sell the property. The plaintiff further alleged that the sale of house No. 49/54 was made by Lala Jagannath Prasad to Lala Behari Lal according to the story of Lala Jagannath Prasad, defendant No. 2 under an agreement brought about for the following reasons:

2. Jagannath Prasad was anxious to require the equity of redemption for the idol of the portion bearing No. 49/53 of which it was the mortgagee but the proprietor of portion No. 49/53 was unwilling to dispose of the equity of redemption in its favour. It was, therefore, agreed between Jagannath Prasad and Lala Behari Lal that Jagannath Prasad would transfer the mortgagee rights of No. 49/53 and also transfer the proprietary right of No. 49/54 in order that Lala Behari Lal having acquired both the rights in the compact house consisting of portions Nos. 49/53 and 49/54 would be able to purchase the equity of redemption of portion No. 49/53 with the result that if these sales came through the entire block comprising of Nos. 49/54 and 49/53 would have been acquired.

The arrangement was that thereafter there would be a division of the property or apportionment of the profits in case the compact block was subsequently sold. The plaintiff stated that if the story of defendant No. 2 was held to be correct, even then the sale deed dated 13-1-1942 executed by Jagannath Prasad defendant No. 2 in favour of Behari Lal was null and void and ineffectual as against the proprietary rights of the plaintiff. The plaintiff further alleged that since Jagannath Prasad was not safeguarding the rights of the plaintiff, the suit was being brought through Jasodanandan who was a worshipper of the idol and came, for Darshan and took interest in the management of the idol.

3. Jagannath Prasad, the pro forma defendant No. 2 filed a written statement and by paras 16 and 17 of his written statement set out the story which had been alleged by the plaintiff in the plaint. The contesting defendant Lala Behari Lal also entered defence. He set up the case that portion No. 49/54 did not constitute the property of the idol but was the private property of Jagannath Prasad purchased by the latter out of his own funds. It was further pleaded that house No. 49/54 was in such a dilapidated condition that its required rebuilding but its rebuilding or even its temporary repairs would have required a large amount of money.

Due to war conditions, the house as it stood could fetch a reasonably good price which could be invested in purchasing substitute profitable property. Jagannath Prasad (defendant No. 2) acting as a prudent man sold the house for a good price to Lala Behari Lal. Even if the house was a waqf property, the transaction of sale entered into by Jagannath Prasad was for the benefit of the idol and within the former's competence. Yasodanandan's right to represent the idol as next friend was also challenged. Other pleas were also raised.

4. Oral and documentary evidence was led before the Civil Judge who by his judgment dated 22nd of December 1947 held that the property in suit i.e.

portion No. 49/54 was purchased out of the funds which belonged to the plaintiff idol, He held that it was proved that there was a duly constituted endowment and the property in dispute was a dedicated property, and that there was no flaw in the constitution of the dedication. It was held that a sum of Rs. 10,000/- as recited in the deed had been paid by the vendee and that the document of sale was not without consideration but it was held that the consideration was not adequate and the full price of the property was more than Rs. 11,000/- or Rs. 12,000/-.

The entire story of Jagannath Prasad in regard to the scheme behind the sale of the portion in suit and of the mortgagee rights was disbelieved as also the version that the money paid by Behari Lal in respect of the sale consideration was returned. It was further held that in any case, there was no unavoidable necessity for the transfer of the house No. 49/54 in suit, and therefore, it was beyond the competence of Jagannath Prasad as Manager to pass a conveyance of sale. It was held that Jasodanandan was entitled to bring the suit in the name of the idol as its next friend. It was held that there was no estoppel against the plaintiff.

In the conclusion the plaintiff's suit for possession over the property and recovery of Rs. 1,400/- as past mesne profits was decreed with costs against defendant No. 1 on the condition of the plaintiff paying Rs. 10,000/- to the defendant No. 2 within two months from the date of the decree. It was ordered that on the plaintiff's failure to pay the amount, the suit would stand dismissed with costs and that in case the amount was paid, the plaintiff would be entitled to ad litem and future mesne profits at Rs. 45/- per mensem till the date of delivery of possession on payment of necessary court-fee in the execution department. The decree directed that defendant No. 2 shall be bound by the decree and bear his own costs.

5. In this appeal by the defendant Behari Lal the following points alone have been raised.

6-9. First of all, it has been argued that the court below was wrong in coming to the conclusion that the transaction was not for the benefit of the estate, and the finding that there was no unavoidable necessity was wrong. It was contended that the transaction was for the benefit of the estate and was within the competence of the manager. It was also contended that the sale consideration was adequate and that Jasodanandan had no right to represent the plaintiff and bring the suit through himself as next friend.

10. We will first deal with the argument regarding the condition of the house, because the sale now is said to be justified only on the ground that it was in a dilapidated condition and that the disposal thereof was for the benefit of the estate. (After discussion of evidence. His Lordship proceeded.) The impression that has been created in our mind by a reading of the entire evidence is that no doubt this was an old house which would be needing considerable repair and

attention, but it was not a house that could be said to have become in the nature of a liability or in regard to which there was any real risk of subsidence so as to destroy its value for the idol as an investment. It was yielding a reasonable rent and this would not have been so if it was on the verge of collapse. It fetched a price which no one would have paid if the house was in a stage of collapse, the sale price received in 1942 being somewhat higher than the sale price fixed in 1932. This shows that the house in its value had not gone down at all.

The contiguous portion of the block, namely, No. 49/53, it appears, was sold for a substantial sum of money amounting to almost Rs. 75,000/-. The two portions could not have been in very much dissimilar conditions. Even if the house had required somewhat extensive repairs in order to assure its continued value as a sound investment the repairs could have been effected because the learned Judge has pointed out that such rebuilding was within the means of the idol. In all these circumstances, we are inclined to agree with the view of the learned Judge that there was no real reason to transfer the house in suit.

Moreover we think that in the circumstances we cannot say that the transaction was capable of conferring any real benefit on the estate. The re-investment of Rs. 10,000/- was likely to diminish the income, if a new house was purchased for it was bound to be a smaller house and if the same income was desired to be maintained then a far larger amount than Rs. 10,000/- would have been required. The powers of a Manager of an idol are analogous to those of the manager of an infant heir. The question is whether a manager of an infant heir could be said to have acted as a prudent manager if he had disposed of this house. We are of the view that he would not have considered the transaction as a necessary one to save the property from destruction nor even a transaction which would benefit the estate nor a prudent one.

The criticism made of the learned Judge's approach to this question of benefit of the estate is that the learned Judge was wrong in considering that unavoidable necessity had to exist before a sale could be said to be for the benefit of the estate. In Mulla's Hindu Law 1959 Ed. 243, the question of alienation by the manager for "the benefit of the estate" is discussed. It is there pointed out that there is a conflict of opinion as to the meaning of the words "for the benefit of the estate" which occur in the judgment of the Judicial Committee in *Hunooman Prasad v. Babooee Mundraj Koonweree* 6 Moo IA 393. One view is that the transaction cannot be said to be for the benefit of the estate unless it is of a defensive character calculated to protect the estate from some threatened danger or destruction.

Another view is that for a transaction to be for the benefit of the estate it is sufficient if it is such as a prudent owner, or rather a trustee, would have carried out with the knowledge that was available to him at the time of the transaction. An authoritative exposition of the expression "for the benefit of the estate" is to be found in *Palaniappa v. Devasikamony Pandara Sannadhi* 44 IA 147: AIR 1917 PC 33. The question in that case was as to the power of a mohunt (head of a

math) to alienate debottar land. In the course of the judgment the Judicial Committee observed as follows;

"No indication is to be found in any of them (cases) as to what is, in this connection, the precise nature of the things to be included under the description "benefit to the estate". It is impossible, their Lordships think, to give a precise definition of it applicable to all cases, and they do not attempt to do so. The preservation, however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation, these and such like things would obviously be benefits. The difficulty is to draw the line as to what are, in this connection, to be taken as benefits and what not."

It is true, therefore, that pure defensive character is not the sole test of whether an act of alienation which is claimed to be for the benefit of the estate is or is not so. In *Jagat Narain and Another Vs. Mathura Das and Others* the view taken by the Full Bench was that a transaction need not be of a defensive character to attract the doctrine of the benefit of the estate, but it must be such as a prudent owner would enter into taking into consideration all the facts available to him. In the Full Bench case the judgment of 6 Moo Ind App 393 is referred to and the oft quoted passage is cited, which runs as follows;

"The power of a manager for an infant heir to charge an estate not his own, is, under the Hindu Law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate. But where, in the particular instance; the charge is one that a prudent owner would make, in order to benefit the estate, the bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded."

The view that the principle of the benefit of the estate in the case of a manager of a joint Hindu family is not limited to transactions which are of defensive nature is also laid down in *Amraj Singh and Others Vs. Shambhu Singh and Others*. It has also been held that a sale of a house in a dilapidated condition in respect of which a notice has been issued by the Municipality to pull it down, is for the benefit of the estate. (See *Nagindas Maneklal Vs. Mahomad Yusuf Mitchela*, . In *Baidyanath Prasad and Others Vs. Kunja Kumar and Others*, it was held that an alienation of an inconveniently situated land and purchasing another property in its place is for the benefit of the estate. It would appear that no exhaustive definition of the expression "benefit of the estate" is given anywhere and the expression has been illustrated in some cases.

It seems to us that whether a transaction is beneficial to the estate must depend upon the facts and circumstances of the particular case and guidance alone is to be obtained in regard to the general scope of the doctrine of the benefit of the estate from the illustrations which are found in the reported cases.

11. Looking at the facts of this case, the test would be as to whether a person who was the guardian of a minor owning such property in similar circumstances would as a prudent person have sold the property having regard to its structural conditions and the surrounding circumstances. If Jagannath Prasad was anxious to acquire the equity of redemption of the contiguous portion No. 49/53 which was in much the same condition It would appear that the house No, 49/53 even as it stood must have been of value to the idol and was likely to be so; and in point of fact it Jagnnnath Prasad's story was correct the sole idea behind the sale of 49/54 was not to sell the property because it has ceased to be of value but it was in pursuance of a profit making scheme.

According to that story the true reason why the house No. 49/54 had to be disposed of was not because it was in a dilapidated condition. It seems that it is unlikely, that a consideration of even Rs. 10,000/- would have been paid by a purchaser if the house No. 49/54 was on the verge of becoming a debris. We are therefore far from satisfied that this transaction was for the benefit of the estate.

12. The learned Judge has also found that the consideration was inadequate and this finding has been attacked. Of course there can only be an estimated approximation of the true value of the property sold.

The learned Judge has taken judicial notice of the fact that prices in Kanpur were going up and that in some cases relating to property in Kanpur decided by the High Court 20 to 35 times the annual rent was accepted as criteria for judging the market value. There was oral evidence of Jagannath Prasad to the effect that in 1942 the rate of sale for property in Generalganj was annas four of profit per month per cent. At this rate basing the price on an annual rent of Rs. 440/- the approximate price of this property would be in the neighbourhood of Rs. 17,000/-. In other words the investment of Rs. 17,000/- would yield at 3 per cent a profit of Rs. 440/- per annum. At 20 times the annual rent the price would be over Rs. 10,000/- and more so at 25 times the annual rent.

We think that the figure of Rs. 45/- as monthly rent of the premises is a figure on which we can rely. The figure of Rs. 17,000/- or 18,000/- would also be arrived at on the basis of the sale price obtained for the contiguous separated portion No. 49/53. The defendant's contention that the value of house No. 49/54 should be calculated on the comparative basis of the plinth area of 49/54 and 49/53 is unsound. The learned Judge has also pointed out that Rs. 8,000/- was the sale price fixed in 1932 and by 1942 prices had started shooting up and even on that view the figure of Rs. 10,000/- does not seem to be adequate.

As we have said already it is very difficult to fix the exact price which this building should have fetched to the defendant. Considering the line of reasoning of the learned Judge we cannot, we feel, differ from his finding that the price paid was below the market price.

13. It remains to consider the last submission of the learned counsel namely that

the temple had no right to bring the suit through Jasonandan.

14. In Mukherjee's Hindu Law of Religious and Charitable Trust 1952 Ed. 265 it is stated as follows:

"The deity as a juristic person has, undoubtedly, the right to institute a suit for the protection of its interest. So long as there is a shebait in office, functioning properly, the rights of the deity, as stated above, practically lie dormant and it is the shebait alone who can file suits in the interest of the deity. When, however, the shebait is negligent or is himself the guilty party against whom the deity needs relief, it is open to worshipper or other persons interested in the endowment to file suits for the protection of the Debutter. It is open to the deity also to file a suit through some person as the next friend for recovery of possession of property improperly alienated or for other relief. Such a next friend may not unoften be a person who as a prospective shebait or a worshipper is personally interested in the endowment.

How then are we to distinguish between these two classes of cases and ascertain whether it is a suit by the deity or by the worshipper personally? The answer would certainly depend upon the nature of the suit and the nature of the relief claimed. If the suit is not in the name of the deity, it cannot be regarded as a deity's suit, even though the deity is to be benefited by the result of the litigation. It would be the personal suit of (he worshipper, the family member or the prospective shebait as the case may be. Again these persons are not entitled to claim any relief for themselves personally, e.g., by way of recovery of possession of the property improperly alienated or adversely possessed by a stranger."

The aforesaid statement of the position by Mukherjee, answers the defendants' objection fully. In our Court it has been held that a suit can be brought in the name of an idol by a de facto manager (see Gopal Datt and Another Vs. Babu Ram and Another, . Also it has been held in AIR 1935 44 (Privy Council) by their Lordships of the Privy Council that a dc facto mahant is entitled to maintain a suit. It has also been held in Darshan Lal and Others Vs. Shibji Maharaj Birajman, that a person claiming a mere benevolent interest in the fortunes of an idol cannot be permitted to sue in the name and as next friend of the idol. No doubt a shebait has authority to institute a suit in his own name to recover property belonging to the deity. (See Jagadindra Nath v. Hemanta Kumari 31 IA 203.

It has been held in Administrator-General of Bengal and Another Vs. Balkissen Misser and Others, , that after the appointment of Shebait the right to sue for possession of the property with which the idol is endowed, belongs to the Shebait and not to the idol. But the question which arises is if the Shebait is not willing to sue or cannot sue because he himself is responsible for the alienation which is to be questioned or if there is no de facto Shebait or mahant, idol, not being a sentient being, should become incapable of action and let its interest suffer? The

case of a person who merely takes a benevolent interest is different to a person who has more than a benevolent interest, such as a worshipper. It is contended that even such a person is debarred from representing the idol and for this reliance is placed upon *Gopalji Maharaj Vs. Krishna Sunder Nath Kaviraj*. In that case the idol sued through a person who claimed to be a manager of a temple but in fact was merely tenant and it was held by the trial court that the tenant could not represent the idol.

In the civil revision filed in this Court from the trial Court's judgment Sen, J., pointed out that a Hindu idol, although not a sentient being, is a juristic person and has been regarded as occupying a position analogous to that of an infant. He held that Order 32 Rule 4, C. P. C., could not be applied to the case of a Hindu idol. He referred to the case of *Jodhi Rai v. Basdeo Prasad* ILR All 735 (FB), which lays down that a suit on behalf of an idol must be carried on by some person who represents the idol, usually the manager of the temple in which the idol is installed.

Mr. Justice Sen then pointed out that the person through whom the idol was represented in the suit could not be described as the manager of the temple as he was not appointed to the administration of the temple. The right of the tenant to represent the idol was negated because it was said that it was not shown that he had a sufficient interest in the subject-matter of the suit to be entitled to bring the suit in the name and on behalf of the idol and reference was made to the case of *Sheo Ramji and Others Vs. Sri Ridhnath Mahadeoji and Another*, in which the original manager of the temple property was dead, his chela and successor was a minor and one of the persons who was appointed to supervise the management namely Ram Kishan Das had appointed Vivekanand guardian of the property of the idol on behalf of the minor.

The idol brought a suit through Vivekanand to recover possession of the property which had been wrongfully sold and it was held that Vivekanand had a sufficient interest in the subject-matter of the suit to be entitled to bring the suit in the name and on behalf of the idol. We do not think that the effect of Sen, J.'s judgment is that even though a person is shown to have a sufficient interest in the subject-matter he cannot as next friend of the idol bring a suit. It is obvious that a tenant could not be said to have any interest in the temple merely because he was a tenant. The tenant's relationship could only be said to be contractual relationship and not a beneficial relationship idol.

In *Doongarsee Shyamji v. Tribhuvan Das* AIR 1947 All 375, the argument was advanced that any one can file a suit as next friend of the deity and that to such a suit the provisions of Order 32 C. P. C. though strictly not applicable, should be applied so that the decree could be passed in favour of the deity and all that the courts need see is whether the person purporting to act as the next friend has any interest adverse to the minor and in case the court is of the opinion that the person purporting to act as the next friend is not a proper person the court may appoint some one else. The argument so broadly put was not accepted.

It was however pointed out that where the shebait of a temple has done something which is obviously adverse to the interest of the institution it may be that the court would allow a disinterested third party to file a suit, but such a suit must be filed in the interest of the foundation or the deity, as the case may be. Learned counsel for the appellant was prepared to concede that the idol through a next friend would be entitled to file a suit to seek a mere declaratory relief but he contended that a suit for possession cannot be brought by an idol through a next friend even though such a next friend had a beneficial interest.

The contention was that in such a case possession could not be directly taken by the idol and possession would be taken by the next friend which would mean placing of the temple property in the hands of a person who had no de jure right to hold possession which right could be vested in the shebait alone. We are unable to understand why if a declaration can be sought by a deity through a next friend who has a beneficial interest, a suit for possession cannot be filed in the same manner. The decree would be executed for the benefit of the idol and when the next friend took possession he would be taking it for the idol and the idol would be in possession.

It was contended that the proper procedure to be followed in a case where there has been an unjustified alienation by the shebait is to have the shebait removed in an action u/s 92, C.P.C., to have another shebait appointed and such a duly appointed shebait could then in his own name sue for restoration of the property to the temple of which he is the shebait. The authority cited in support of this was Kunj Behari Chandra and Others Vs. Sri Sri Shyam Chand Jiu Thakur and Others, . Suits u/s 92 C. P. C., have their foundation. on breach of trust.

Where a shebait purports to alienate the property under a mistaken belief that he has the power under the circumstances to alienate the property but there is no misappropriation of the sale proceeds or any other misfeasance and the conduct of the shebait is in all other respects unimpeachable it does seem strange that the shebait should be subjected to a suit u/s 92, C. P. C., and be removed and this cumbersome procedure should have to be adopted before the property alienated could be recovered for the temple.

In such a case the failure of the shebait to sue to set aside the alienation would be understandable because it would be difficult for him to proceed with an action directed against his own act. Once the right of a de facto manager to bring a suit is accepted then it seems to us that it is only one step further and involves no real breach of the principle to allow one who has a beneficial interest in the temple property to take steps to see that the temple property is preserved to the idol and to file a suit for that purpose as the next friend Of the deity bringing the suit in the name of the deity himself. No doubt where the shebait is in existence and functions normally as has been said, the deity's right to sue lies dormant but as soon as the shebait is unable to act or his own act is questioned certainly a person who has a beneficial interest should be allowed to take steps to prevent the idol's interest being jeopardised.

Where even a de facto shebait is absent surely a person who has beneficial interest should be permitted to come in. That the worshippers have a beneficial interest has been clearly laid down by their Lordships of the Supreme Court in *Deoki Nandan Vs. Murlidhar*, It has been laid down there that the true beneficiaries of a religious endowment are not the idols but the worshipper and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers.

We may point out that in this case the evidence is not only that Jasodanandan was a worshipper but the finding of the court below is that Jasodanandan used to help Jagannath Prasad in managing the temple. For all these reasons we think that the idol was properly represented in the suit through him and the suit could not for that reason fail.

15. This appeal is accordingly dismissed with costs.