
(1974) 01 AHC CK 0022
In the Allahabad High Court
Case No : First Appeal No. 152 of 1964

Brindaban

APPELLANT

Vs

Ram Lakhan Lalji and Mahadeoji and Others

RESPONDENT

Date of Decision : 21-01-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 92

Citation : AIR 1975 All 255

Hon'ble Judges : T.S. Misra, J;K.B. Asthana, J

Bench : Division Bench

Advocate : S.N. Verma, for the Appellant;

Final Decision : Allowed

Judgement

T.S. Misra, J.—This appeal arises out of a suit for declaration that the plaintiff No. 2 is the Sarbarakar of the plaintiff No. 1 and for the removal of the defendant No. 1 from the management of the temple and the properties of the plaintiff No. 1 and the charge of the same to be handed over to the plaintiff No. 2 as the Sarbarakar of the plaintiff No. 1. The suit was filed by the idols Ram Lakhan Lalji and Mahadeo Ji through Rameshwar Bajpai as the plaintiff No. 1 and Rameshwar Bajpai as the plaintiff No. 2 against Brindaban, the first defendant, and Prakash Narain. The latter was impleaded as a pro forma defendant. The material facts may be briefly stated as follows :

2. One Jagannath was the owner of the properties in dispute. He had a brother by name Shy am Lal who had died in 1893 leaving behind a widow Smt. Kaushalya. Jagannath had a son Jwala Prasad who had pre-deceased him leaving behind his widow Smt. Narayani and a son Durga Prasad. Jagannath died in 1904. Durga Prasad also died a few days thereafter surviving him Smt. Savitri his widow. The three widows, Narayani, Savitri and Kaushalya executed a document in the year 1908, whereby they endowed all the properties, movable as well as immovable, in favour of the idols of Sri Ram Lakhan Lalji and Mahadeo Ji installed in a temple in one of the premises in question. In pursuance of that

document of 1908. Smt. Narayani, and Smt. Savitri were to manage the properties so endowed during their lifetime. A scheme of administration was also laid down in that document. It appears that Smt. Savitri managed the affairs of the temple during her lifetime and, after her death in the year 1915, Smt. Narayani continued to manage the same. It further appears that in the year 1932, Smt. Narayani executed a will, whereby she authorised Smt. Siya Devi, Brindaban and others, mentioned therein, to act as Mukhya Dharma Kartas after her death, Smt. Siya Devi, on the demise of Smt. Narayani, entered into the management and continued to manage the properties till the year 1938, when she called Brindaban to look after the management along with her. Brindaban thus came on the scene and started with the management of the affairs of the temple along with Siya Devi. He continued to do so till the year 1944, even after the death of Siya Devi. At the end of the year 1944 or in the beginning of the year 1945, Brindaban, for the first time, began to assert that he was the nearest reversioner of Durga Prasad son of Jwala Prasad and was entitled to claim the properties as the heir of the said Durga Prasad. Thus, Brindaban started claiming to be the owner of the properties in dispute. After obtaining the permission of the Advocate General of U. P. u/s 92, C. P. C. a suit was filed in the court of the District Judge, Kanpur, being suit No. 1 of 1946, claiming various reliefs u/s 92, C. P. C. It was alleged in that suit that the trust was a public trust, and it was prayed, inter alia, that Brindaban be removed from the trusteeship Brindaban, in that suit, denied the existence of the trust and claimed that the entire property belonged to him as the reversioner of Durga Prasad son of Jwala Prasad. Brindaban also filed a suit No. 43 of 1946 in the court of the first Civil Judge, Kanpur, for a declaration that he was the owner in possession of the properties left by the three ladies mentioned above. These suits were tried together by the District Judge, Kanpur, who dismissed both of them. Appeals were preferred against those decisions, being first appeal No. 318 of 1947 and first appeal No. 426 of 1948. These two appeals were also disposed of by a common judgment by this Court on 20th December, 1961 The suit u/s 92, C. P. C. was held to be rightly dismissed on the finding that the trust was not a public trust and that Section 92, C. P. C. was not applicable. The suit of Brindaban was also held to have been rightly dismissed because his title had come to an end and it was not open to him to renounce his position as trustee and to repudiate the private trust in favour of the idols, which he had accepted and in which he had acted as a trustee for several years. Both the appeals were, therefore, dismissed. The plaintiffs-respondents then filed the present suit giving rise to this appeal. It may be mentioned at this stage that during the pendency of those two suits, a receiver was appointed and the properties in dispute were given in the custody of the receiver. During the pendency of the suit which has given rise to this appeal, the receiver continued to hold the possession of the properties under an order passed in the suit also. Thus, the properties in dispute are still in possession and custody of the receiver. The plaintiffs, in the present suit, alleged that as the defendant Brindaban had set up his own title in the properties in dispute, he was liable to be removed from the office of Mukhya Dharma Karta and/or trustee. It

was also alleged that he had misappropriated and converted to his own use the properties of the trust which he was administering. It was further stated that Ram Charan, who was nominated in the deed of 1932 as Mukhya Dharma Karta having died, the plaintiff No. 2 was entitled to succeed to the office of Mukhya Dharma Karta, and was, therefore, entitled to the declaration sought for. The defendant No. 2, being the only surviving member of the trust committee appointed by Smt. Narayani Devi, was impleaded as a pro forma defendant, and no relief was claimed against him. The suit was resisted by Brindaban, the first defendant, on a number of grounds. He alleged that he was the nearest reversioner of the last male owner of the properties in dispute and, in every case, the rightful trustee of the properties detailed and described at the foot of the written statement and as such was not liable to be removed, and the plaintiff was not entitled to the declaration sought for. He further alleged that no valid trust ever came into existence, and the aforesaid ladies had no right to create any trust or to lay down any scheme of management. The deed of 1932 was said to be illegal, ineffective and void in law. In paragraph 27 of the written statement, it was asserted that, in fact, no trust committee was functioning or could legally function. He denied to have misappropriated any property of the trust or to have committed any act of misfeasance or non-feasance in regard to the properties of the trust. In the alternative, it was submitted by the defendant No. 1 that he being the only reversioner of the last male owner of the properties and the trust being a private one, the plaintiff No. 2 had no right to sue and claim any relief on any ground whatsoever.

3. The trial court, on the pleadings of the parties, framed a number of issues. It found that the plaintiffs had a right to file the suit and the plaintiff No. 1 could file the suit through Rameshwar Bajpai. It also found that the suit was not barred by Section 42 of the Specific Relief Act or by limitation. It, however, recorded a finding that Brindaban, the defendant No. 1, having set up a title adverse to that of the idols and claiming himself to be the owner of the endowed properties, was liable to be removed from the management of the temple and the properties of the idols. With regard to the right of the plaintiff No. 2 for being declared as Mukhya Dharma Karta, the court below found that in view of the fact that Brindaban, the defendant No. 1 had acted on the document of 1932, he was estopped from challenging the validity thereof and, as such, there was no obstacle in the way of the plaintiff No. 2 being declared the Sarbarakar of the plaintiff No. 1. On these findings, the suit was decreed. Against that decision, Brindaban has preferred this appeal.

4. During the pendency of this appeal, Brindaban died. An application was moved by his legal representatives for being substituted in his place in the appeal. That application was allowed vide order dated 13th February, 1970, subject to an observation that it would be open to the respondents to raise the point whether the appeal was maintainable at the instance of the legal heirs of the deceased Brindaban.

5. At the outset, the learned counsel for the respondent Rameshwar Bajpai urged that the legal representatives of Brindaban were not entitled to continue with the appeal inasmuch as they have now filed a separate suit in the court of the II Civil Judge, Kanpur, on 22nd August, 1969, being suit No. 223 of 1969, in which they have admitted the existence of the will of 1932, whereby Brindaban and Rameshwar Bajpai were appointed as trustees and were also authorised and empowered to act as Mukhya Dharma Kartas. In that suit, they have also alleged that the trust was a private trust, that Rameshwar Bajpai was making no arrangements whatsoever for the idols and festivals, as directed under the trust-deed, and was not maintaining proper accounts, that the trust affairs were not being carried out according to the intentions of the founders, nor new trustees were being appointed, and that Rameshwar Bajpai was acting arbitrarily and capriciously. In our view, the aforesaid contention made on behalf of the respondent Rameshwar Bajpai has no merits. Brindaban had pleaded, *inter alia*, that the will of 1932 executed by Smt. Narayani was void and ineffective. The legal representatives may show that the impugned decree was not sustainable on any of the grounds on which Brindaban could legally challenge the same. The fact that the legal representatives have filed another suit claiming the removal of Rameshwar Bajpai from the trusteeship and for rendition of accounts etc. would not, therefore, be a bar to the maintainability of the present appeal. We, therefore, reject this objection and proceed to decide the appeal on merits.

6. The learned counsel for the appellant contended that Rameshwar Bajpai, the respondent No. 2, cannot be declared to be the Sarbarakar of the plaintiff No. 1 inasmuch as the will of 1932 executed by Smt. Narayani was void and ineffective. This is the sole ground, on which the decree passed by the court below is now being challenged.

7. It is now a common case of the parties that the trust in question is a private trust, and not a public trust. It was not disputed by the legal representatives of Brindaban in the appeal before us that the properties in question have been endowed to the idols. Thus, the dedication having been made in favour of the idols, the respondent No. 1, and the trust being a private trust, the question, which falls for determination in this appeal, is whether the plaintiff No. 2 could be declared to be the Sarbarakar of the plaintiff No. 1.

8. It may be stated at this stage that, in the relief No. 2, the plaintiffs had sought for the removal of Brindaban from trusteeship. Brindaban having died, that part of the relief has become in-fructuous. However, in that relief, it was also sought that the charge of the properties in dispute be given to Rameshwar Bajpai as the Sarbarakar of the plaintiff No. 1. Thus, this relief is interlinked with the question whether Rameshwar Bajpai is the Sarbarakar of the idols. Rameshwar Bajpai has founded his claim to the office of Sarbarakar on the will of 1932 executed by Smt. Narayani. This will, however, cannot be considered in isolation. It has to be considered along with the deed of endowment of 1908. The deed of 1908 provided, *inter alia*, that Smt. Savitri would be the Mukhya Dharma Karta during

her lifetime. Arrangements for the management of the trust property after the death of the executants of that deed were also made in that document. A committee of Dharma Kar-tas with a Mukhya Dharma Karta and a Sahkari Mukhya Dhanna Karta was nominated, and it was stipulated that in the event of any Dharma Karta becoming Incapable of discharging his duties, his vacancy could be supplied by the remaining Dharma Kartas. In paragraph 4 of the deed, it was stipulated that the executants would have a right to remove the Karpardas and appoint, in their places, other Karpardas. A perusal of the entire deed would disclose that the three executants thereof had not reserved to themselves a right to change the members of the committee of Dharma Kartas or to appoint anyone else in their places. However, in the year 1932, Smt. Narayani, who was the last of the three executants of the said documents of 1908, executed a will, whereby she appointed Smt. Siva Devi as Mukhya Dharma Karta and Brindaban as one of the Dharma Kartas. It was also stated in that will that after the death of Smt. Narayani, Siya Devi would act as Mukhya Dharma Karta, and on the death of Siya Devi, Brindaban, Ram Charan and Rameshwar Bajpai would, one after the other, act as Mukhya Dharma Karta. Significantly, Smt. Nara-vani had not, in the deed of 1908, reserved to herself any right to change the names of Dharma Kartas or to appoint new ones in their places. In fact, that right had been conferred on the remaining Dharma Kartas mentioned in that deed. That being so, Smt. Narayani was not competent to appoint, by will, any Mukhya Dharma Karta, nor change the Danel of Dharma Kartas given in the deed of 190.8. It is a settled law that, when a property has been dedicated by a donor and he has thereby divested himself of all interests in the property, the rule of succession to the office of Shebait assumes considerable importance in the case of trusts, and, if the line of succession has been laid down by the donor at the time of the dedication, the same cannot be changed by the donor in the absence of any reservation of power to himself of changing the line of succession. The rule is not capable of being altered by the donor at his will (See Bindraban Vs. Sri Godamji Maharani Birajman Mandir Sri Rangji Maharaj . Once the appointment is made and the line of devolution has been laid down, the same cannot be altered or revoked in the absence of reservation of power to that effect in the deed of dedication. A shebait cannot also alter the line of succession to the office of Shebait laid down by the founder. Applying these principles to the instant case, it is obvious that Smt. Narayani could not change the panel of trustees, nor could she appoint new Dharma Kartas or Mukhya Dharma Kartas in place of those who were nominated by the deed of 1908. Hence, Rameshwar Bajpai cannot, in our view, claim any legal right to the office of Mukhya Dharma Karta. Moreover, the office of Dharma Kartas or, so to say, Mukhya Dharma Kartas, is not a property, which could be bequeathed by a will. In that view of the matter as well, Smt. Narayani could not, by her will of 1932, appoint any person to function as Mukhya Dharma Karta after her death. Rameshwar Baipai has, however, founded his claim to the office of Mukhya Dharma Karta on the said will. In our opinion, no such claim can be legally maintained. Hence, in any view of the matter, the relief for declaration sought for by Rameshwar Baipai to the effect that he is the

Sarbarakar of the plaintiff No. 1 cannot be granted in this suit.

9. The defendant Brindaban is already dead. The properties in dispute are, as indicated above, in the custody of the receiver. The trust in question is, undoubtedly, a private trust. The Civil Courts have jurisdiction to frame a scheme of management even in the case of a private trust (See *Ramchand (Dead) by Legal Representatives Vs. Thakur Janki Ballabhji Maharaj and Another*, and *Kt. N. Rm. Thenappa Chettiar v. N. S. Kr. Karuppan Chettiar* AIR 1965 SC 915)). Since the properties in dispute of the plaintiff No. 1 have been in the custody of the receiver for a number of years, it is now expedient and proper that a scheme of management of the temple and the properties of the plaintiff No. 1 be framed. The present is, in our judgment, a case, in which we should exercise our powers under Order 41, Rule 33 of the CPC and direct the court below to frame a scheme of management for the temple and the properties of the plaintiff No. 1. We, therefore, direct the court below to frame a scheme of management for the temple and the properties belonging to and owned by the plaintiff No. 1, the collections of the income, disbursement of expenses and application of surplus, if any and to appoint seven Dharma Kartas including a Mukhya Dharma Karta of the said properties with authority to take possession of the temple and all the properties, movable and immovable including cash etc., from the receiver and administer the said properties and the income under the directions of the court. The court below will take account from the receiver and direct the receiver to deposit in court the entire amount, lying in his custody or control and deliver possession thereof, including all other properties, to the trustees so appointed. The scheme to be framed will be consistent with the law relating to private religious and charitable endowments.

10. The appeal is accordingly allowed. The decree of the court below is set aside and the case is remanded to the trial court to frame a scheme of management and pass suitable orders in the light of the directions given herein-above. We direct that in the circumstances of the case, the parties shall bear their own costs. We hope that the long drawn litigations in regard to the trust in question will now stop. Since a scheme of management is going to be framed in this suit, the plaintiffs of the fresh suit, namely Suit No. 223 of 1969, would be well advised to withdraw that suit.