
(2016) 04 UK CK 0007
In the Uttarakhand High Court
Case No : First Appeal No. 42 of 2015

Chandra Prakash Rai

APPELLANT

Vs

Balak Nath Shisya Mahant Gopal Nath

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Specific Relief Act, 1963 — Section 38

Citation : (2016) 117 ALR 298 : (2016) 3 ARC 509 : (2016) 4 CivCC 302 :
(2016) 3 CivilLJ 326 : (2016) 132 RD 564

Hon'ble Judges : Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. Rajendra Dobhal, Sr. Advocate assisted by Mr. Pratul Kumar & Mr. M.K. Kaparwan, Advocates, for the Appellant; Mr. Nikhil Singhal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Servesh Kumar Gupta, J.—This appeal has been filed against the judgment and order dated 8.4.2015 rendered by the First Additional Civil Judge (Senior Division), Haridwar, thereby decreeing the suit of the plaintiff and restraining the defendant by passing the perpetual injunction not to interfere in the management of plaintiff on the property described in Schedule ?A? which is a children-school being run under the title ?Sidh Smritinath Shiksha Sadan? for imparting the education up to IVth standard. In addition thereto, defendant was also directed to vacate the property described in the Schedule ?B? and to deliver its vacant possession to the plaintiff within two weeks, nay he was also directed to mesne profits @ Rs. 1500/- per mensem since May, 2008.

2. Having heard learned Counsels of either party, it transpires that the whole property was initially under the ownership/management of Baba Smriti Nath, who died in 1970 and there is no dispute that this property was inherited by his disciple Gopal Nath who also passed away on 14.8.1989. It needs to be mentioned here that on 14.6.1989 i.e. two months before his death, Gopal Nath

executed a registered Will in favour of Baba Balak Nath, who was his disciple. Plaintiff Balak Nath has averred himself to be looking after such property being the Chief Priest of the Temples/Statues within in addition to managing the school which is also a part of that property.

3. It was pleaded that the appellant Chandra Prakash Rai was engaged by Balak Nath as a licensee some time in 2007 for cleansing purposes and in such capacity, he was given the possession of two rooms to live-in along with his family. Later on, he did not perform his duties, as expected, so his licence was orally terminated and thus, he was asked to vacate the same but he refused. So, the plaintiff was constrained to file the O.S. No. 95 of 2008 on 9.5.2008 for the above relief and such suit was decreed vide the impugned judgment.

4. On the other hand, the version of appellant/ defendant Mr. Chandra Prakash Rai is that Mr. Balak Nath had never been the disciple of Mr. Gopal Nath nor the latter had any right to execute the Will and instead Gopal Nath had his two disciples, namely, (1) Shiv Nath and (2) Charan Nath. This property was offered on tenancy by Mr. Ramesh Nath, disciple of Mr. Shiv Nath @ Rs. 500/- per month, thus, the appellant paid the rent from 1.5.2007 to 31.3.2008 to Mr. Ramesh Nath at such rate. So, Mr. Balak Nath has no locus to file the original suit against him for injunction and eviction.

5. I have heard learned Counsel for both the parties. The main issues which will settle down the controversy between the parties are Issue Nos. 1 to 3, as framed by the court below, which are as under :-

"A. Whether the plaintiff is the legal owner in possession of the property described in Schedule ?A??

B. Whether the plaintiff is entitled to recover the possession on the property described in Schedule ?B??

C. Whether the plaintiff is entitled to recover the mesne profits @ Rs. 1500/- per mensem from the defendant?"

6. The remaining issues pertaining to the suit valuation, Court fee, Order 7, Rule 11 CPC and Sections 34, 38 and 41 of the Specific Relief Act, were neither agitated nor were argued before this Court by either of the parties. So, I feel that there is no dispute between them regarding these issues.

7. Now, the only dispute remains about the Issue Nos. 1 to 3, as quoted herein above.

8. Having heard the rival contentions as well as on going through the evidence on record, it is very significant to mention here that in paragraph no. 1 of the plaint, it was pleaded that the whole property came under the ownership/ Mahantship of Swami Gopal Nath after the death of prior Mahant i.e. Swami Baba Smriti Nath, disciple of Swami Sundernath. For whole of the life, Gopal Nath used to look after and managing the affairs of the property, in question, in addition to

some new construction which he raised on such property. The contents of this paragraph no.1 have been admitted by the defendant Chandra Prakash Rai in paragraph no.1 of his written statement. He has also disclosed that on 8.5.2008, possession of one room was forcibly taken over from him and his wife Smt. Kamlesh by the plaintiff who then locked the same. With these facts, it transpires that now only one room is under the possession of defendant Chandra Prakash Rai.

9. When the defendant himself has admitted in paragraph no. 1 of his written statement that the whole property was under the ownership/Mahantship of Late Gopal Nath, so, there remains no room for any doubt that Mr. Gopal Nath had the authority to execute the Will which is the basis of the suit launched by Mr. Balak Nath. The execution of the Will, by itself, has not been denied but what has been pleaded is that Mr. Gopal Nath did not have any authority to make such Will. This contention of the defendant/appellant, herein, has no substance for the obvious reason that in his own written statement, he himself has admitted about the ownership/Mahantship of Mr. Gopal Nath on the whole property. The defendant, who alleges himself to be in the property, as tenant on behalf of Ramesh Nath, as landlord, has not proved his case even the least because the latter himself has not been produced by the defendant in the witness box to depose that he ever became the owner or landlord of such property, so that to have an authority of letting out two rooms to Mr. Chandra Prakash Rai.

10. It also appears that O.S. No.125 of 2004 was launched by Balak Nath against Mr. Shiv Nath, from whom it has been pleaded that Ramesh Nath got this property. In such suit, the compromise was entered into between Mr. Balak Nath Yogi (plaintiff) and Mr. Ramesh Nath (defendant), who claimed himself to be the disciple of Mahant Shiv Nath on 31.5.2008. Both the parties were duly identified by their respective Counsel. In the terms of such compromise, it was stated that on account of death of Mr. Shiv Nath, Mr. Ramesh Nath was entering into that compromise deed as legal representative (disciple) of Shiv Nath and all his misunderstandings he nurtured then had come at rest to the effect that Mr. Ramesh Nath had no occasion or concern with the questioned property nor he would claim such concern on such property in future. He had admitted that at the strength of registered Will dated 14.6.1989 executed by Mahant Gopal Nath, Mr. Balak Nath is continuing as owner-in-possession of the whole property. So such compromise deed, when signed on 31.5.2008 by Mr. Ramesh Nath himself, then there remains no question to accept the baseless pleadings of defendant Chandra Prakash Rai. Even in such deed of compromise, Mr. Ramesh Nath did not make any whisper about the so-called tenancy of Mr. Chandra Prakash Rai either in two or in one room of such property.

11. One thing is more pertinent to mention here that in O.S. No. 95 of 2008, Ramesh Nath moved an application before the Court below for his impleadment as necessary party which was rejected on 3.3.2012. Revision no. 44/2012 filed there-against was also dismissed on merits by the District Judge on 7.9.2012.

12. The cross-examination of Mr. Chandra Prakash in the court below on 11.12.2013 states that he was unaware even about the vocation of Mr. Ramesh Nath, as also the pending litigation of O.S. No. 125 of 2004 between Balak Nath and Shiv Nath, whereas at the same time, he claims himself to be residing within the premises of the property, in question. This appears to be somewhat unacceptable to the Court.

13. That apart, the municipal records of Haridwar also strengthen the pleadings of the plaintiff.

14. So, in view of what has been set forth above, I find that the findings recorded by learned Trial Judge are not inteferable at all regarding the controversial Issue Nos. 1 and 2. It is hereby further held that Mr. Balak Nath is the owner-in-possession of the whole property in question and he is entitled to get back the vacant possession of the property, as described in Schedule ?B? from the appellant Chandra Prakash Rai.

15. As regards the payment of mesne profits, the Court finds that the defendant/appellant is not monetarily sound a person and issuing direction to recover the amount @ Rs. 1500/- per month w.e.f. May, 2008 may carry hardship to him. In these circumstances, I modify the rate of mesne profits to the tune of Rs. 700/- (rupees seven hundred) per month since May, 2008, to be exigible from him. He is directed to vacate the premises, in his possession, latest by 31.5.2016. In case of making default in handing over the peaceful possession, the modification as made by this Court, in the quantum of mesne profits, shall be deemed to be otiose and the mesne profits @ Rs. 1500/- per month shall be recoverable from him by the plaintiff.

16. Subject to the above modification, the appeal is dismissed with costs all throughout.

17. Let a copy of this judgment and order along with LCR be transmitted to the court below for compliance of the order.