

(2003) 05 AHC CK 0258
In the Allahabad High Court
Case No : Second Appeal No. 315 of 1982

Gorakh Giri

APPELLANT

Vs

Ram Chandra Kuer (D.) and Others

RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 92
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2003) 6 AWC 5536

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Tribhuwan Upadhyaya, R.A. Sharma, C.K. Parekh, Dhurva Narayana, C.P. Ghildyal and Kuldeep Kumar Singh, for the Appellant; R.N. Singh, S.N. Singh, Fauzdar Rai, V.N. Pandey, R.K. Shahi and C.K. Rai, for the Respondent

Final Decision : Allowed

Judgement

B.K. Rathi, J.—This second appeal is against the judgment and decree dated 2.12.1981, passed in Civil Appeal No. 20 of 1979 by Vth Additional District Judge, Ballia. The facts giving rise to this appeal are as follows:

The Suit No. 36 of 1973 was filed by the Respondents in the Court of Civil Judge, Ballia for declaration and injunction. The case of the Plaintiff-Respondents is that there is math in the village, mauza Bairia, pargana Deaba, district Ballia which belong to Dasnami Shankara Charya Sampardaya. The owner of the math is Lord Srinath Jee, who is installed in the building of the math. According to the directions of Dasnami Shankara Charya Sampardaya every mahant should belong to duiz vansh. The math is the charitable and religious trust and its entire property is endowed and dedicated. The mahant of the math manages the property for and on behalf of Srinath Jee as sarvarakar.

2. It is further alleged that one Basdeo Giri was the mahant of the math. He had no chela. Therefore, the Defendant claimed himself to be chela of math, but he could not be chela in accordance with the directions of the religious books as he

is married person and got sons also. There was no mahant of the math and therefore, people of the village formed a committee of the Plaintiffs to manage the affairs of the math.

3. It was further alleged that the Defendant fraudulently obtained Will from mahant Basdeo Giri on 13.4.1967 and 12.5.1967, which were cancelled by Basdeo Giri on 14.6.1967 and by that document he authorised the managing committee of the Plaintiffs to manage the affairs of the math. The Defendant fraudulently again obtained another Will of Basdeo Giri on 2.9.1967 but it was again cancelled by Basdeo Giri. That therefore, the Plaintiffs-Respondents have right to manage the affairs of the math. Basdeo Giri died in June, 1968 and since then the Plaintiffs are managing the entire property of the math and the agricultural land of the same.

4. The proceedings u/s 145, Code of Criminal Procedure also started. Therefore, the Plaintiffs filed a suit for declaration that they are sarvarakar of the math and for injunction to restrain the Appellant from interfering in their working as mahant of the math.

5. The Appellant contested the suit and alleged that the Plaintiffs were never appointed as mahant of the math and never managed the math. The rights of the parties have already been decided under the consolidation proceedings and the same operate as res judicata.

6. The trial court framed necessary issues and recorded a finding that the Plaintiffs are not the mahant of the math and have no right to manage the same. The trial court accordingly dismissed the suit. The Plaintiff-Respondents preferred First Appeal No. 20 of 1979 which have been allowed and the suit have been decreed by the first appellate court and, therefore, the present second appeal has been preferred.

7. I have heard Sri Tribhuwan Upadhyaya, learned Counsel for the Appellant and Sri Faujdar Rai, learned Counsel for the Respondents.

8. A preliminary objection has been raised by Sri Faujdar Rai, learned Counsel for the Respondents that the suit was filed by as many as eight Plaintiffs and all of them were Respondents in the appeal. That during the pendency of this appeal all the Plaintiffs, who were Respondents in the appeal have died except one. That their heirs have not been substituted. That therefore, the appeal has abated. It is necessary to dispose of this preliminary objection first.

9. According to the case of the Plaintiffs, they were appointed mahant by the Will dated 14.6.1967 by Basdeo Giri and also by assembly of persons of the village. However, it is not alleged that there was any such direction that their heirs will become the mahant of the math or who shall replace them after the death. It is also not alleged that in place of the deceased Plaintiffs, somebody else have been appointed as mahant of the math. The claim of the Plaintiffs as mahant is for their life time and the claim does not survive after the death of any of the

Plaintiffs. Even if the claim survives, the claimants will be the surviving Plaintiff and not outsider or legal heirs. The surviving Plaintiff is already Respondent in the suit. Therefore, there is no question of abatement. It may also be pointed that the Respondents themselves have not clarified as to who should be substituted as legal heirs of the deceased Plaintiffs. Therefore, for the purpose of the suit regarding the property in dispute, the deceased Plaintiffs have left no heirs. Therefore, the question of substitution does not arise and this appeal has not abated.

10. Now coming to the merits, the memo of appeal show that as many as five substantial questions were framed by the learned Counsel for the Appellant and the appeal was admitted on all the questions mentioned in the memo of appeal.

11. The Appellant claim the right to manage the trust firstly is based on the registered deed dated 14.6.1967. However, this deed was not relied on by any of the courts below. There is concurrent findings that this deed does not confer any right on the Plaintiffs to manage the math. Second, claim is based on the ground that people of the village assembled and appointed the Plaintiffs as mahant. There is oral evidence regarding it. However, there is no document. It has not been alleged that as to how the people of the village were authorised to appoint the mahant. If there was no body to look after the property, the management could be ordered u/s 92, CPC or under the provisions of the Trusts Act. The appointment by the assembly of people is wholly void. Therefore, the Plaintiffs are not entitled to manage the math under any circumstances and trial court rightly dismissed the suit.

12. However, the suit has been decreed by the first appellate court in the first appeal. After perusal of the judgment of the first appellate court, I am of the view that his approach was absolutely erratic and he has committed a gross error of law in allowing the appeal. The learned first appellate court has framed a scheme for the management of math u/s 92, CPC Perhaps the first appellate court has failed to consider whether he had such power. I am afraid that he had no such power.

13. The appeal was decided by Sri P.K. Chatterjee as Vth Additional District Judge, Ballia. The suit u/s 92, CPC can be filed with prior permission of the Court or the Advocate General. There was no such permission. The suit can be filed in the principal civil court of original jurisdiction. The suit was filed in the Court of Munsif for declaration and injunction. In such a suit, a scheme for the management cannot be prepared by the Court. There is no inherent powers u/s 151, CPC to prepare the scheme of management of a math. The same can be prepared in the suit u/s 92, CPC by the principal civil court or by the District Judge under the provisions of the Indian Trusts Act. Therefore, the right of management given to the Plaintiff by the first appellate court is against law and totally without jurisdiction and the same cannot be maintained.

14. Before parting this appeal, it may also be mentioned that from the oral

evidence recorded in this case, it appears that the Plaintiffs never managed the math. The Plaintiff examined Ramchander, P.W. 1, who in his statement has said that no meeting of the alleged management committee ever took place. He further stated that the trust was never managed by the Plaintiffs but was being managed by Gorakh Giri, Defendant. That no account of the properties were ever maintained. Therefore, from the statement of the Ram Chander, P.W. 1 itself it appears that the alleged allegation regarding the appointment is false.

15. Accordingly, this appeal is allowed with costs throughout. The judgment and decree of the first appellate court is set aside and that of the trial court is restored.