
(1930) 01 AHC CK 0061
In the Allahabad High Court

Goswami Sadanand

APPELLANT

Vs

Goswami Indra Nand and Others

RESPONDENT

Date of Decision : 16-01-1930

Acts Referred:

Citation : (1930) 01 AHC CK 0061

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—This appeal and appeal No, 67 of 1926 arise out of the same suit and will be decided by the same judgment.

2. The pedigree at p. 67 of the paper book of appeal No. 88 of 1926 will show how the parties are related be one another. It appears that either in the lifetime of Goklanandji, the remote ancestor or from before, there was established a temple in the holy city of Brindaban. The presiding deity of the temple is known as Mahaprabhuji and the temple itself is known as Singar Bat. The management of the temple, which is open to the public is in the hands of the descendants of Goklanandji. In course of time, the management came to be divided among the three descendants of Goklanandji, who had it appears, three sons, Nimanandji, Sundarnandji and Keshavanandji. The branch of Nimanandji, came to be known as the "Bari Taraf" or the oldest branch, The descendants of Sundaranandji came to be described as the middle branch and Keshavanandji's descendants came to be described as "Chhoti Taraf" or the youngest branch. In course of time the middle branch disappeared and the temple was left in the management of the remaining two branches. The original mode of management was that each branch managed the temple for a month. When the middle branch died away, the remaining two branches managed the temple for one and half months each. We are concerned, in this litigation, with the elder branch alone. The last male ancestor of this branch was Jadavanandji. He had four sons, two by each of his two wives. The plaintiffs are the two sons of his second wife, who married

Jadavanandji after the death of his first wife. The first two defendants were the sons of the elder wife. Defendant 2 Rajendranandan died during the pendency of the suit. He is represented by his sons. The sons of defendant 1 Sadanand are also parties.

3. The plaintiffs' case was that defendant 1 was in the management of the temple and its properties and was also the manager of the private properties of the parties. Sadanand had become dishonest in his intentions and the plaintiffs did not like that he should continue to manage the property. On these allegations the plaintiff sought the partition of the property. He mentioned that the plaintiffs' aunt Mt. Thakomani (originally defendant 3) was not entitled to any share because she had become a recluse. The lady denied this statement and claimed a third share in the property. She, however, died pending the suit and we are no longer concerned with what would have been her share in case of partition. The main defence in the case has been put forward by defendant 1. His case was that certain of the immovable properties in suit were temple properties, that certain others were the joint properties of the parties, that as regards items 1 to 7 and 11 and 13 at p. 8 of the printed record and items 1, 3, 9, 13, 17 and 18 at p. 12 of the printed record were his separate property, having been acquired by him out of his separate funds. Defendant 1 denied that he was in possession of any movable property belonging to the parties. Defendant 1 also urged that he alone was entitled to the worship of the idol and the right to worship could not be delegated to the plaintiffs.

4. The learned Subordinate Judge, who tried the case, held that the entire house property was the property of the idol and could not be divided. As regards the zamindari property which were claimed by defendant 1 as his own, the learned Judge held that in the absence of clear evidence of separate acquisition on the part of the defendant, they must be treated as joint properties of the parties. The parties' rights only were declared because the actual partition could not be carried out by the civil Court. He dismissed the suit with respect to most of the movable properties. It appears that a commissioner was appointed to make an inventory of the movable properties found in a portion of the house of the parties. "As regards these properties the learned Subordinate Judge directed that they should be divided in equal shares. As regards the turn of worship, the learned Judge said that it would be divided between the parties, but the "veth" (offerings) should not be divided, but should go to the common storeroom.

5. Appeal No. 88 of 1926 is the appeal of defendant 1 and the appeal No. 67 of 1926 is the appeal by the plaintiffs.

6. We shall take up the appeal of defendant 1 first. It was argued on behalf of defendant 1 that the parties being governed (admittedly) by the Dayabhaga school of the Hindu law, it was for the plaintiff to prove that the properties which stood recorded in the name of defendant 1 were not his separate property but were joint family property. The learned counsel relied on the case of Sarada Prasad Ray v. Mahanand Ray [1904] 31 Cal. 448 and that of Govind Chandra Das

v. Radha Krishto Das [1909] 31 All. 477. There can be no doubt that in its constitution a family governed by the Mitakshara Law is different from a family governed by the Dayabhaga Law. But where, only a question of presumption is concerned, it has to be determined on the facts of each case. In a family governed by the Mitakshara law, everybody forming the family is entitled to a share in the family property. In the case of a family governed by the Dayabhaga Law, the father is the owner of the entire property and on his death his sons take the property as co-owners and not as joint owners. These and other differences do exist in the constitution of the families. But where the property is held jointly and where there is a nucleus of family property and where one of the members of the family has been left in the management of the property, properties acquired in the name of the manager will be presumed to be the property of the family, unless the manager shows that he had a separate income, income apart from the yields of the joint family property out of which he may have acquired the property. The case in *Sarada Prasad Ray v. Mahananda Ray* [1904] 31 Cal. 448 was this. The defendant had acquired a certain property in the lifetime of the father. In a suit for partition instituted after the death of the father, the question arose, whether the property held in the name of the defendant should be treated as a partible property. The learned Judges of the Calcutta High Court held that there was no presumption that this property was joint family property. The reason was clear. In the lifetime of the father, the entire property belonged to him alone. In the circumstances, the acquisition by the defendant could have been made only with his separate income. There was, therefore, in that particular case no source of income, out of which property might be acquired for and on behalf of the plaintiff.

7. In the Allahabad case *Govind Chandra Das v. Radha Krishto Das* [1909] 31 All. 477, the family was not shown to have possessed any nucleus, out of which further property could be acquired. It was accordingly hold that it was for the plaintiff to prove that the property in the hands of the defendant was a joint family property acquired out of the joint funds and, therefore, was divisible. The learned counsel for the appellant has selected and relied on a particular passage out of the report of this case to be found at p. 480. It runs as follows:

If a person subject to the Dayabhaga Law desires to prove that a property acquired during the time that the family was living as a joint Hindu family, is joint property, it is incumbent on him to prove that there was an original nucleus of joint property, with the aid of which the property sought to be partitioned has been increased and amplified.

Stress has been laid on the words, "has been." What their Lordships meant was that it had to be proved that there was a nucleus of joint property out of the income of which additional property could have been acquired. The remarks in the judgment must be read with the facts of the case, because the remarks must be taken to have been influenced by the facts alone. Their Lordships were not considering a case like the present one before us. In the particular case before

us, we have got the fact that there was a substantial nucleus of joint family property. It has not been shown that defendant 1 had any independent and separate income of his own. He was in charge of the temple property and he was in charge of the entire joint immovable property. In the circumstances, if there was a substantial nucleus, it would be enough for the plaintiff to show that the defendant had no separate income. Then it would be presumed that what was acquired by the defendant was acquired with the income of the joint family property. Where, therefore, there is a nucleus of joint family property and there is no separate means of acquisition by the defendant, it cannot be said that further evidence must be laid, on behalf of the plaintiffs, to prove that, as a matter of fact, the acquisition was made with the income of the joint family property. It would be impossible for any plaintiff to prove a thing like that. The family income being in the hands of defendant 1, he alone will be able to prove how he has spent it. On the other hand, if the defendant has a substantial income of his own and if he is prepared to explain how he spent the income from the joint family property, the plaintiff will have to prove that the account was wrong and the money, being the profits from the joint family property, was actually applied to acquire property standing in the name of the defendant.

8. We are of opinion that having regard 1930 A/49 & 50 to the circumstances of this case, the learned Subordinate Judge was right in holding that the zamindari property is not the separate property of the defendant and is divisible among the parties.

9. Coming to the house property, it appears that the appeal ought to succeed in the case of only one house and no more. It is in respect of three houses that defendant 1 claims that the plaintiffs' suit should fail. These are, item 5 at p. 6, item 12 at p. 7 and item 14 at p. 7. As regards item 5 at p. 6 (which is described as "House No. 1, comprising seven shops...", it appears that plaintiff 1 admitted before the Court below (see p. 46) that it was the property of an idol known as Thakur Radha Damodar. It was an idol with which the parties had no concern to start with. Somebody by the name of Sukhomaya Rai established an idol and endowed the property. The idol was installed in this very house. Plaintiff 1 stated that the idol had been removed to the building in which the idol of Mahaprabhuji is situated. We have no evidence to corroborate him, but if this was so, the removal must have been to facilitate the carrying on of the worship. The fact remains that this house did not belong to the family. The management of the house and the management of the worship of Thakur Radha Damodar has been in the hands of defendant 1 for the last 22 to 26 years (see p. 57). In the circumstances the property cannot be claimed by the plaintiffs either as the property of Mahaprabhuji or property of the parties. The appeal, therefore, will have to be allowed with respect to this house and the suit should be dismissed with respect to it.

10. As regards item 12 at p. 7, this is the property which once belonged to one Subharam Bhagat. The plaintiffs' case is that it was given to the idol many years

ago. The defendant has not been able to prove that the gift was made to him personally or to his ancestors personally. The property has been treated as the property of the Thakurji and the decision of the Court below with respect to it must be taken as correct. As regards item 14 at p. 7, the house is described as a dharamsala. A part of it was built by the family and a portion of it was added to by some pious gentleman by the name of Ganga Ram. It has been used for the purpose of lodging pilgrims who come to visit the temple. It has been treated as a part of the idol's property and it must be left as such.

11. Defendant 1's appeal also included among it the movable properties which were recovered from the apartments once occupied by Mt. Madhumati. There is no admission on the part of the plaintiffs that the properties belonged to Madhumati alone. It was argued by the learned counsel for the appellant, that the properties, being Mt. Madhumati's exclusive property, could not be claimed by the plaintiffs till they had shown that all the possible line of heirship has become extinct. But, as we have already mentioned, there is no admission on the part of the plaintiffs, that these movable properties belonged to Madhumati. They were only recovered from what were once the apartments of that lady. She died about three years prior to the institution of the suit. It is therefore difficult to believe that her goods were not appropriated by the parties and had been kept separate. The plaintiffs claim the partition of these goods as a part of the joint property and, therefore, asked the Court to depute somebody to make an inventory of these goods. In the written statement, defendant 1 did not claim that these goods were not to be partitioned as they belonged to a third party. We may mention the very important fact that the commissioner's report had been received much earlier than the filing of the written statement by defendant 1. In view of these circumstances we do not think that we need treat these properties as the separate properties of Mt. Madhumati. These properties there fore have rightly been declared to be divisible between the parties.

12. Lastly comes the question of "turns" or days fixed for worship by the elder branches of the family. It has been held more than once in this Court that where a family has a right of worship with some emoluments attached to it, the Court may assign certain days for facility of worship and for the purpose of enabling each party to receive offerings offered. The latest case on the point comes from their Lordships of the Privy Council in AIR 1925 139 (Privy Council) One of the cases decided by this Court will be found reported in AIR 1923 All.p. 425. It is, therefore, open to the Court in this case to divide the turns of worship. We may point out that in this particular family (as stated in the beginning of this judgment) three branches managed the worship, each branch for a month, when the middle or second branch disappeared, its turn of worship of one month was divided between the surviving members of the family. In the circumstances, there can be no bar to the division of the turn of worship.

13. Coming to the appeal filed by the plaintiffs, it appears that the learned Subordinate Judge, in directing the division of the turn of worship made the

following reservation:

The bhet at the temple during their turns will continue to go to the Thakurji's bhandar of the bari taraf walas us usual. (see p. 73).

14. The learned counsel for the plaintiffs argued that if all the offerings to the priest who may be officiating or presiding at a particular time were to go for the worship of the idol, it was no use dividing the turns at all. The counsel for the parties are agreed that the income of the temple may be divided into two classes, one as the income of the presiding priest and the other as the "charao" or offering made to the idol itself. The learned counsel are agreed that according to the evidence given in this case, the actual offerings that were made to the idol are the idol's property, while the remuneration or presents made to the priest is his private property. We agree with his view and, therefore, we make it clear that any presents or remuneration paid to the pujari or the person whose turn it may be to act or officiate, will be his personal property, while the offerings made to the idol would be the idol's exclusive property.

15. The plaintiffs also complain that the learned Subordinate Judge has not given any direction to enable the plaintiffs to control the management of the endowed property. The management of endowed property cannot be very well divided. We are of opinion that the learned Subordinate Judge will have to frame a scheme, with the approval, as far as possible, of the parties, by which two persons at least should be constituted the management, who would be liable to keep accurate accounts of the income not only from the immovable property, but also from the offerings to the idol. The properties that we are mentioning are, of course, the property which belongs only to the parties and properties which are under the control of the parties and our remarks have nothing to do with properties that may be under the control of the youngest branch. Subject to these modifications, the judgment of the Court below is affirmed.

16. To sum up, the claim of the plaintiffs with respect to item 5 at p. 6 is dismissed. The claim otherwise stands decreed subject to the modifications stated above. In appeal No. 88 of 1926 the parties will pay and receive their costs in proportion to their respective failure and success. In appeal No. 67, the parties will pay their own costs.