
(1958) 06 BOM CK 0004
In the Bombay High Court
Case No : Appeal No. 41 of 1953

Gulabchand Joshi and Others

APPELLANT

Vs

Shri Balaji Deity and Others

RESPONDENT

Date of Decision : 25-06-1958

Acts Referred:

Citation : AIR 1959 Bom 252 : (1958) 60 BOMLR 1461

Hon'ble Judges : Gokhale, J

Bench : Single Bench

Advocate : N.B. Chandurkar, for the Appellant; M.R. Bobde and C.P. Kalele, for the Respondent

Judgement

1. This is all the documentary evidence on the record in connection with open site surrounding the temple building and Mr. Chandurkar contends that this evidence is insufficient to substantiate the plaintiffs' case that the open site surrounding the temple building belonged to the deities. As I have already pointed out, it is common ground between the parties that the temple was built on a portion of the present site at least about 100 years before the present suit. That some additional land was acquired from Government in 1868 cannot also be disputed. The actual order granting this land has not been produced, though it does appear that in the proceedings of 1883-84 relating to the encroachment made by Nanakram, a certificate in connection with the grant of the site was produced by the Pujari, which was returned to him. This land, however, was used for a garden for the temple and though there are references in some of the earlier papers which support Mr. Chandurkar's argument that the land was granted to Nanakram, it cannot be inferred from them, as I have already stated, that the grant was personally in favour of Nanakram and his family. The execution of the rent note in favour of Nanakram on 26-5-1923 (Ex. P-4) by Laduram and Chhedilal is also to some extent in favour of the defendants. But as I have already stated, the explanation of the plaintiffs that this rent note came to be executed in order that the Pujaris may receive regularly payment for their

maintenance directly from the lessees seems to be borne out by oral evidence as well as the evidence of the accounts books produced by Chhedilal. But a more significant fact is that an area of 14000 square feet or more was purchased in 1926 by the Panchas (EX. P-7) and got entered in the name of the temple deities in 1931 (Ex. P-9). and the entries in the record-of-rights Exs. 1-2-D-4 and 1-2-D-5 clearly support the plaintiffs' case that the owner of the land was the Deosthan itself. It is significant that the Deosthan is shown as the occupant in these entries in respect of the entire open site admeasuring 39868 square feet. It is conceded by Mr. Chandurkar that these entries in the record-of-rights must be presumed to be true, but he says that the presumption raised by these entries is liable to be rebutted and is so rebutted by the documents of 1883-84 to which a reference has already been made in detail. I am not prepared to accept this argument and hold that the documentary evidence relied upon by the defendants rebuts the presumption raised by the record-of-rights entries on the record.

2. Then we come to the evidence relating to the reconstruction of the temple building in 1918. As I have already stated, it is the plaintiffs' case that these buildings were reconstructed in 1918 by raising on a large scale subscriptions from the public and this reconstruction was followed by installation ceremonies in which dedication was made in favour of the plaintiff deities. It is not denied by the defendants that the rebuilding of the temple took place in 1918; but it is alleged by them that a considerably less amount than what is alleged by the plaintiffs was spent and it is also contended by the defendants that part from public subscriptions, Manuram also spent for the repairs and rebuilding. In support of the defendants' allegations, there is hardly any reliable evidence on the record. As I have already pointed out, Rameshwar, defendant No. 4 though he filed a written statement was present in Court only once but thereafter made himself scarce and did not step into the witness-box. The evidence of 1-2-D. W. 3 Motilal discloses that he summoned Rameshwar in order to prove his title, and though Rameshwar was present in Court on 10-7-1952, no monies seem to have been paid by the defendants in respect of his allowance, nor does it appear that any serious attempt was thereafter made to secure his presence in Court to give evidence. On the other hand, the plaintiffs have substantiated their allegations by producing the account books of Narsinghdas one of the Panchas, who took a leading part in the work of reconstructing the temple building in 1918. The accounts were produced by Ratanlal, the son of Narsinghdas, who is defendant No. 6, and they were proved by Ranglal (P.W. 11). Now, these account books are of two kinds. Extracts have been produced from the daily rokad and also from the khatavani. The account books for the year 1918-19 show that a total collection of Rs. 6334-11-0 was made from the public for the expenses of the reconstruction and Rs. 6702-14-6 were actually spent. In the year 1919-20 an additional amount of Rs. 1515-0-6 was collected and the total expenses over the building were Rs. 1610-15-6. In the year 1920-21 an amount of Rs. 387/- was raised and Rs. 289-9-3 were spent. In the year 1921-22 no further collections

were made but an amount of Rs. 210-13-6 was spent. These account books which have not been challenged in any way support the plaintiff's case that the Panchas raised from the public contributions amounting to more than Rs. 8000/- and spent that amount in rebuilding the temple. This documentary evidence is further supported by the witnesses of the plaintiffs Mannulal (P.W.1), Laxmidar (P.W.5), Kisan (P.W.7), Richpal (P.W.8), Jamanlal (P.W.11) who is the next friend of the deities, Onkarsa (P.W.9) who is a man of 86 years and who himself contributed a sum of Rs. 25/- and Bansilal (P.W.12).

3. It appears, and that is not disputed, that during the work of reconstruction, one of the deities, Shri Murlidharji, was removed, while the other one was shifted a little and after the work of re-construction was completed there was an installation ceremony and it is the allegation of the plaintiffs that there was a dedication of this new building in favour of the deities. In this connection reference may be made to the evidence of Richpal, one of the Panchas who stated that there was a night-long installation ceremony during which there were "homas", and since then the temple belongs to the deities. Accordingly to the evidence of Jamanlal, the next friend of the deities, eight or nine months after the construction was complete, installation ceremony was held, "homa" was made in this installation ceremony in which Richpal, Lalluprasad, Harmukhdas and Narsingdas and their wives took part, and the people contributed in money or kind for the "Annakut" etc. Bansilal's evidence is also to the same effect and he seems to have been present at the installation ceremony, being invited by his distant relative Richpal. According to his evidence, Nanuram's financial condition was not such as to enable him to build and look after the temple on his own responsibility. Mr. Chandurkar has drawn my attention to the admissions made by plaintiffs' witnesses regarding some lands at Kharpi and Yeoda owned by Nanuram and there are on records Exs. 1-2-D-12 to 1-2 D-18, which show that the family of the Pujaris had lands at Kharpi and Yeoda. But that is neither here nor there since there is no evidence about their income. It is not denied by the defendants that subscriptions for the purpose of reconstruction of the temple were obtained from the public, and the account books produced by the plaintiffs establish that an amount of more than Rs. 8000 was collected and spent on the work of reconstruction. It is also not denied by the defendants that an installation ceremony was held after the work of reconstruction. It seems to be the contention of the defendants that installation ceremony was performed not by the Panchas but by Nanuram himself and it is denied that there was any dedication of the temple in favour of the deities.

4. That takes me to the evidence of the defendants' own witnesses. Suganchand and Shrinarayan. Suganchand (1-2-D. W.2) has deposed that he was a priest versed in "Puras" and "Kathas" and he took part in the installation of the temple idols, along with other "Pandits". According to him, Baba Nanulal did the installation ceremony and he denies that Harmukh, Richpal, Narsingdas and their wives performed the ceremony. He stated that the ceremony took two days, Nanulal spent for it, and the temple belonged to Nanulal. It is obvious that he is

related to defendant No. 2, Motilal, the latter's real sister being married to his son, though his son's wife is no longer living. According to his evidence, "pratistha" for a house is called "wastu shanti" that of a temple is called "deo pratishta" and Pratistha Prakash" is one of the books on the subject. He admitted that at the time of the temple installation, he read some mantras from "Pratistha Prakash" and some from "Wasishta Havan Padhati". He stated that he was not the "acharya" of the ceremony but Ramdhin, who is now dead, was the "acharya". Ramdhin was a "pardeshi" Brahmin and he did all the rituals as the officiating priest. He stated that there was a "yajna" at that time and his work in the ceremony was of putting the "ahuti" in the yajna", while Ramdhin did the "homa" including "sankalpa" etc. He says that Ramdhin might have done the "pradhan sankalpa" or "dewalaya sankalpa". In this presence, he stated, there were only "homa, mantras" and meals. The ceremony of the installation of the idol was not done in his presence. According to him, Nanuram had no wife at that time and he might have put some image of "durva" or silver in place of the wife of the "yajamana". About 20 persons took meals on the first and the second day. He stated that Ramdhin did the ceremony according to the "Dharma Shashtra". In the account books produced by the plaintiff, there are entries of December 1919 in which there is a reference to payment made to Ramdhin and purchase of articles like wheat, ghee etc. To that extent, Suganchand's statement that Ramdhin was the "acharya" seems to be fully supported. The other witness examined by the defendants is Shrinarayan and his evidence also shows that he was present at the ceremony and Nanuram had invited him for the "homa" performed after the reconstruction of the temple. According to him, four "pandits" were there in all, including the witness himself, Bababux, Suganchand and Ramdhin and the ceremony took two days. He denied that the Panchas and their wives took part in the ceremony but says that Nanuram was the "yajamana". According to him, at the ceremony, on the first day, himself, Bababux and Suganchand did the japa of the "gayatri mantra" and the next morning the "homa" began. The work that he did was the recitation of the "gayatri mantra" on the first day and putting of "ahutis" on the second day. According to this witness, Ramdhin was the "acharya" and recited "mantras"; "sankalpa" was made by Ramdhin and it was according to the "shastras". He said the Ramdhin had a book of "pothi" and that was "Wasishta Havan Padhati". He states that Ramdhin had also 2-3 other books and the "pratistha" i.e., installation of the idol was made. He also states that Nanuram told him at the time that the temple belonged to him. Now, all this evidence goes to support the plaintiffs' case that after the work of the reconstruction of the temple was completed, a ceremony was held and the ceremony included the "pratistha," which would imply that the temple building was dedicated to the deities. Mr Chandurkar relies on the evidence of Suganchand and Shrinarayan and says that it was Nanuram who was the "yajamana" and not the Panchas. In my judgment that would make no difference if the installation ceremony ultimately resulted in the dedication of the temple building in favour of the deities for purposes of worship by the public.

5. In Dr. P.V. Kane's History of Dharmasastra, Volume II, Part II, at page 892, the learned author, after referring to several works which prescribe a comprehensive procedure of the consecration of wells, ponds and tanks, states as follows:

"Pratistha generally means dedicating to the public with prescribed rites. Utsarga means "divesting oneself of ownership over a thing and dedicating it for the use of all". There were four principal stages in the procedure of pratistha, first the Sankalpa, then the homa, then the utsarga (i.e., declaration that the thing has been dedicated) and lastly the daksina and feeding of brahmanas."

Then the learned author proceeds to state at p. 893: "In the case of temples, the proper word to use in pratistha and not utsarga". The evidence of Suganchand and Shrinarayan would indicate that there was "sankalpa, homa" as well as "pratistha", and, in my opinion, that must necessarily lead to an inference that after the work of reconstruction which was financed to such a large extent by public contributions, the temple buildings were dedicated in favour of the deities. In Deoki Nandan Vs. Murlidhar, , their Lordships of the Supreme Court have pointed out that the ceremonies relating to dedication are "Sankalpa, Uthsarga and "Prathista". "Sankalpa", it is observed at p. 769 (of SCR): (at p. 141 of AIR):

"means determination, and, is really a formal declaration by the settle of his intention to dedicate the property. "Uthsarga" is the formal renunciation by the founder of his ownership in the property, the result whereof being that it becomes impressed with the trust for which he dedicates it."

Then after referring to Mr. Mandlik's observation in the Vyavahara Mayukha, Part II, Appendix II, p. 339, that "there is no utsarga of a temple except in the case of repair of old temples", and to Dr. Kane's History of Dharmasastras, Volume II, Part II, p. 893 and to the statement which I have already quoted above, it is stated by their Lordships that the question of inferring a dedication to the public by reason of the performance of the Uthsarga ceremony cannot arise in the case of temples. As I have already pointed out, the evidence of Suganchand and Shrinarayan shows that the ceremonies of "sankalpa and pratistha" were performed at the time of the installation of the deities in the reconstructed temple buildings in suit and religious books were used by Ramdhin in the performance of these ceremonies. This evidence, in my judgment, establishes the plaintiffs' case that the temple buildings were dedicated in favour of the deities after the reconstruction of the buildings. It is nobody's case that the temple buildings were merely repaired. A large amount to the tune of more than Rs. 8000/- was spent in reconstructing the structure, which necessitated the removal of at least one idol during the work of reconstruction.

6. I need not refer in detail to the evidence on record about the user of the temple building by the public. It was alleged by the plaintiff that the Hindu public freely visited and worshipped the deities; religious functions such as "Annakut, Bhajan, Santah" etc., used to be performed there, and marriage parties, Ramlila

men, Sadhuas and travellers used to put up in the temple building. This is not denied by the defendants and the evidence on this point seems to be ample and reference in this connection may be made to the testimony of connection may be made to the testimony of Ganesh (P.W.2), Tukaram (P.W.3), Bhimrao (P.W.4), Laxmidhar (P.W.5) and Keshao (P.W.6). Mr. Chandurkar points out that the evidence as to user by the public of the temple premises does not necessarily prove that the temple is a public temple or that the property belongs to the deities. In this connection, he relied on the case of AIR 1940 7 (Privy Council) , in which their Lordships of the Privy Council stated that it was not enough to deprive a family of their private property to show that Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual Mela. Then their Lordships observed as follows:

"Worshippers are naturally welcome at a temple because of the offerings they bring and the repute they give to the idol: they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case as the present; and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family."

Now, this case is clearly distinguishable from the present case, because in that case the family had treated the temple as family property, dividing the various forms of profit whether offerings or rents, closing it so as to exclude the public from worship when marriage or other ceremonies required the attendance of the members of the family at its original home, and erecting "samadhis" to the honour of its dead. In that case, it was further observed by the Privy Council that the value of public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right. In the present case, there is evidence to show that contributions on a very large scale were collected from the public for the work of the reconstruction of the temple buildings, and after the work of reconstruction was over, an installation ceremony including "Pratistha" was performed and that ceremony was intended to dedicate the property to the deities for the purpose of worship by the general public. At any rate, therefore, since 1918 the public seems to have used this temple as of right and not by permission of Nanuram and of Rameshwar.

7. Mr. Chandurkar also relied upon another Privy Council case, AIR 1941 56 (Privy Council) , in which it was observed at p. 93 (of Ind App): (at p. 60 of AIR), that the burden lies heavy on persons setting up dedication of property for purposes of the shrines and it would be beside the point to show that the evidence does not exclude the theory of dedication. Mr. Chandurkar relied on what was said by their Lordships at page 95: (of Ind App). (At p. 61 of AIR), of the report:

"The case of dedication is not made out merely by evidence of neighbourly or considerate conduct towards a religious institution, or by showing that small profits have not been churlishly exacted by the proprietor from persons held in general esteem. Nor is it to be made out by showing that the sadhus dependent on the mahant got his held for repairs, or allowed him to assign pilgrims to them at the time of mela, or sought his help in other ways."

In this case, dedication was sought to be established by user. In my opinion, this case also does not assist Mr. Chandurkar in view of the evidence on record as to dedication of the temple building in the present case.

8. Then Mr. Chandurkar referred me to another Privy Council case in AIR 1943 7 (Privy Council) , in which it was held that where a question arises whether particular property acquired by a given individual was acquired on his own behalf or on behalf of some other person or institution with whom or with which he was connected, the circumstances that the individual so acquiring property was a professed ascetic may have importance; but it is out of the question to suppose that a man's religious opinions or professions can make him incapable in law of holding property. The argument of Mr. Chandurkar seems to be that Nanakram and his successors were not incapable of holding property merely because they were Pujaris of the said deities. Nobody has questioned the right of Nanakram or his successors to hold private property. The evidence undoubtedly shows that they possibly owned lands at two villages, Kharpi and Yeoda. But the real question is whether the evidence on the record justifies the contention of the appellants that the suit properties were exclusively owned by Rameshwar, and the evidence, in my opinion, is against the contention of the appellants.

9. Mr. Chandurkar then contended that at the most the evidence of the installation ceremony and the account books of Narsingdas would show that what was dedicated to the plaintiff deities was the temple building newly constructed, but that would not involve dedication of the land surrounding the temple in favour of the deities. As I have already pointed out, it is not the plaintiff's case that the land was also dedicated to the deities at the time of the installation ceremony. It is the plaintiffs' case that the land was owned by the deities and that seems as I have already pointed out, to be supported by the entries in the record-of-right (Exs. 1-2-D-4 and 1-2-D-5) after Nanuram's death which show that the Deosthan was the occupant of plot No. 132 from the year 1800. That inference is further supported by the fact that in 1926 a nazul site admeasuring an area of about 14000 square feet lying to the north of the Murlidhar temple was purchased by the Panchas and was not entered in the name of Deosthan. (Ext. P-7 and P-10). It was also argued by Mr. Chandurkar that the map of 1883 (Ex. 1-2-D-25) showed that the original structure consisted not only of the temple but also of a residential portion. That is undoubtedly so, but there does not seem to be any reliable evidence as to what happened after the reconstruction of 1919. It is also true and that is not disputed, that during the minority of Rameshwar, defendant No. 4, his maternal uncle Thanduram appoint

Pujaris and, after attaining majority, Rameshwar, claimed the right to appoint Pujaris in his own place. That, in my opinion, would not affect the question of ownership of the temple. The pujaris, it appears, were paid by the Panchas for their work, and if Rameshwar chose to appoint other Pujaris in his place, the Panchas would not be concerned, and as Ex P-3 shows, Rameshwar distinctly stated in that writing dated 3rd May, 1948 executed by him in favour of the Panchas that in case the Pujari appointed by him did not behave properly, the Panchas had the right to expel him. It is also significant that during the minority of Rameshwar, in the record-of-rights when Rameshwar's name was shown as the wahiwatdar of the temple the Panchas were entered as his guardians. Since admittedly Thanduram, the maternal uncle of Rameshwar, appointed Pujaris for doing the worship of the deities, in the record-of-rights he or any nearer relative of Rameshwar should have been shown as the guardian of Rameshwar and not the Panchas, apart from the fact, already referred to above, that the recorded occupant of the suit land was Shri Balaji Deosthan itself not only in respect of the portion purchased by the Panchas in 1926 and got entered by them in the name of he Deosthan in the Nazul settlement of 1930-31 but also in respect of the rest of the original site by wahiwat since 1800 A.D.

10. Considering the entire evidence on the record, especially the entries in the record-of-rights, reconstruction of the temple by public contributions, performance of Sankalpa and Pratistha, and user of the temple by the public as of right, in my opinion, the view of the learned trial Judge, that the suit property belonged to or was owned by the plaintiff deities and not by Nanakram or his successors is correct. It is hardly necessary to add that though legally the deities would be the owners of the suit properties, it is now well established that under Hindu Law, the idols themselves can have no beneficial interest in the endowment but the true beneficiaries would be the public, if the dedication was intended for the purpose of worship by the general public: see Deoki Nandan Vs. Murlidhar, .

11. Then it was urged by Mr. Chandurkar that at any rate, it should be held that defendant No. 1 and her predecessors-in-title had acquired title to the suit property by adverse possession. I do not think that there is any substance in this contention, because Ex. P-3 executed by Rameshwar on 3rd May, 1948 shows that he had only a right of worshipping the deities and had no ownership rights in the suit property. He handed over the possession of the temple to the management of the Panchas and he asked them not only to carry out the necessary repairs but to do the work of putting up the, fencing, and as I have already pointed out, in the context, it must necessarily mean the fencing of the compound surrounding the temple. The contention therefore that the defendants have perfected their title by adverse possession cannot be accepted.

12. Order accordingly