(1990) 12 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 287 of 1989

Hari Singh and others APPELLANT

Vs

Bishanlal and others RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Limitation Act, 1963 — Article 64, 65
Transfer of Property Act, 1882 — Section 122, 41

Citation : AIR 1992 P&H 11

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : Mr. S.K. Jain, for the Appellant; Mr. N.L. Dhingra and Mr. Autar Singh, for the Respondent

Judgement

1. The defendants have come up in second appeal against the judgment and decree of the first appellate Court reversing on appeal those of the trial Court and decreeing the suit of the plaintiff-respondents for possession of the disputed land.

2. The facts :--

Respondents Nos. 1 and 2/plaintiffs filed a suit challenging the alienation of the trust property made by respondents Nos. 3 and 4/defendants Nos. 1 and 2 (for short the alienors) in favour of defendants Nos. 4 and 8/appellants (for short the alienees), inter alia, on the ground that the property was the trust property. A charitable religious trust was created by the Kaisth community of Rohtak for the management, administration and welfare of the temple which is famous by the name of Mandir Chitar Guptji Maharaj. The persons of the Kaisth community and other people worshipped at the temple and made offerings. The plaintiffs are the devotees of the temple and have interest in the temple and the trust property. The predecessors-in-interest of the plaintiffs gifted the property to the temple. Mutation No. 405 was sanctioned in favour of the Mandir Chitar Guptji Maharaj on 30-12-1889. The alienors claiming themselves to be the Secretary and the

President of trust created for the management of the temple sold the property vide sale deed dated 30-6-1973 in favour of the defendant-alienees. The sale was not in the interest of the temple and was thus, illegal and void. The alienees controverted the pleas of the plaintiffs and alleged that the trust vide resolution dated 28-6-1973 authorised the alienors for transferring the property in dispute in favour of the alienees. The trust was created for the management and administration of the Mandir Chitar Guptji Maharaj.

3. On the pleadings of the parties, the following issues were framed :--

"1. Whether the sale deed executed on 30-6-73 and registered on 2-7-73 is illegal, null and void and not binding on the plaintiffs'' trust? OPP

2. If issue No. 1 is proved, whether the plaintiffs are entitled to possession of the suit land? OPP

3. Whether the plaintiffs have got no locus standi to bring the suit? OPP. 4. Whether the suit is maintainable in the present form? OPD.

5. Whether the suit is time barred? OPD.

6. Whether the power of attorney in favour of Man Mohan is false and forged, if so its effect? OPD.

7. Whether the suit has not been properly valued for the purpose of court-fee and jurisdiction? OPD.

8. Whether the civil Court has got no jurisdiction to entertain and try this suit? OPD.

9. Whether the defendants are bona fide purchaser with all rights and are protected u/S.41 of the Transfer of Property Act? OPD.

10. Relief."

Issues Nos. 1 and 9 were disposed of together and it was held that the trust authorised the alienors vide resolution Exhibt DW2/A to transfer the property to the alienees who were in actual physical possession of the same being tenants. The sale was found to be valid. It was also found that the alienees are entitled to the protection of S. .41 of the Transfer of Property Act; in view of the findings under issues Nos. 1 and 9, issue No. 2 was held redundant; issues Nos. 3 and 4 were decided against the plaintiffs and it was held that they had no locus standi to file the suit; issue No. 5 was answered in favour of the plaintiffs; issues Nos. 6 to 8 were not pressed by the defendants and were decided against them. Accordingly, the suit was dismissed. On appeal by the plaintiffs, the first appellate Court held that the plaintiffs were the worshippers of the temple and had interest in the property. It was also found that they were the heirs of the original donors and were recorded as owners in the jamabandi Exhibit P-3 for the year 1977-78. The donors who had gifted the land in favour of the temple had specifically restrained the donee from alienating the gifted property in any manner. Only the income from the property was to be used for the maintenance and upkeep of the temple. It was also found that the suit in the present form was maintainable; the plaintiffs were seeking possession of the property for and on behalf of the temple and were not claiming any title in the property. It was also found that the alienees were not entitled to protection of S. .41 of the Transfer of Property Act.

4. In the jamabandi Exhibit P-3 pertaining to the year 1977-78, the temple is recorded in possession of the property but in the remarks column, the donors-heirs are recorded as co-owners in their respective shares. The alienees were the tenants on the suit land and they would be deemed to be aware of the entries in the records of right which prima facie establishes that the temple is not the absolute owner of the property. The names of the heirs of the donors find mention in the records of right being the owners in their respective shares. The sale was unauthorised since it was not warranted by the document under which the gift was made by the donors in favour of the donees. In the remarks column of mutation No. 405, Exhibit P-4, it is specifically stated that the donors gifted the property in favour of the temple with a rider that Mohtmims or Mohtmums cannot sell or alienate the same and could use the income for the upkeep and maintenance of the temple. Against this recital, the signatures of the donees exist. The subsequent jamabandis have not been produced. However, in the jamabandi for the year 1977-78, Exhibit P-3, the names of the heirs of the donors are recorded, presumably for the reason that the gift was not absolute and if the object for which the gift was created, ceased to exist, the property was to revert to the donors. The gift with a condition in favour of the temple can be created. Reference can usefully be made to para 411 of Hindu.Law by Mulla (Sixteenth Edition). In view of the clear exposition of law, it is not open to objection that the property cannot be gifted to religious or charitable institution with conditions.

5. The plaintiffs had not moved the Court for establishing their personal right in the property. They moved the Court to re-vest the property in the diety after removing the cloud which had been created on its right to possess the property. The alienation in favour of the alienees was without jurisdiction. The gift was made in favour of the temple with a rider that Mohtmums or the Managers cannot sell or alienate the property but can only use the income from the property for maintenance of the temple. The suit for recovery of possession was filed within 12 years from the date on which the alienation was made in favour of the alienees and the claim of the true owners could only be defeated if the person in possession alleged and proved that he had perfected his right by adverse possession.

6. For the reasons aforesaid, the appeal is devoid of merits and is dismissed but with no order as to costs.

7. Appeal dismissed.

