

(1930) 07 PAT CK 0019
In the Patna High Court

Harihar Prasad and Another

APPELLANT

Vs

Siri Gurugranthsaheb under The Management of Mahabir Prasad

RESPONDENT

Date of Decision : 02-07-1930

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 64
Evidence Act, 1872 — Section 32
Transfer of Property Act, 1882 — Section 123, 5

Citation : AIR 1930 Patna 610 : 128 Ind. Cas. 791

Hon'ble Judges : James, J; Chatterji, J

Bench : Division Bench

Judgement

Chatterji, J.—The case of the plaintiff-respondent, the Gurugranth Sahib, is that in 1897 when it was installed, together with some images of Hindu deities, in a temple constructed at great cost, the founder Munshi Ganga Prashad made an oral dedication of his 4 dams 8 kauris odd share in Mauza Dhenawan in favour of the plaintiff. Subsequently on the 22nd August, 1914, Ganga Prashad executed and registered a formal deed of wakf reciting and confirming the oral dedication. The defendants, on the strength of their having eventually acquired the interest of Ganga Prashad in the said share at a sale in execution of a money-decree, began to interfere with the plaintiff's possession of the dedicated land in January, 1926. The plaintiff, therefore, prayed for a declaration of title based on the endowment, and for confirmation or in the alternative for recovery of possession of the suit plots and for a permanent injunction restraining the defendants from interfering with his possession.

2. The suit was dismissed by the Munsif who heard it, but his decision was reversed on appeal by the Subordinate Judge who decreed the suit. The defendants now appeal from the said decision.

3. The learned Advocate for the appellants argues that the Subordinate Judge has erred in admitting in evidence the statement of Ganga Prashad contained in

the deed of wakf as being the statement of a dead man and made against his interest under the provisions of Section 32 of the Evidence Act. It was pointed out that this statement was made about a week after the proprietary share in question had been attached on the 14th August, 1914. The gift was made after the attachment, it would be void u/s 64 of the CPC so far as the attaching decree holders are concerned. Eventually the decree-holders themselves became the purchasers, and as such, notwithstanding the fact that they merely acquired the right, title and interest of their judgment-debtor Ganga Prashad they acquired free from all alienations and encumbrances effected by him after the attachment. They were not the representatives of Ganga Prashad, or persons deriving title through him and they would not be bound by any statements made by him. Reliance was placed on *Dinendronath Sannial v. Ramkumar Ghost* 7 C. 107 a decision of their Lordships of the Judicial Committee. It is clear that the recital by Ganga Prashad in the deed of wakf could not be binding either on the auction-purchasers or on the defendants, who in April 1923 had purchased the rights of the auction-purchasers.

4. The learned Advocate for the appellants next contended that the oral endowment in 1897 having been made at a time when Ganga Prashad was joint in estate with his cousin Jwala Prashad, having an undivided moiety share, the gift or dedication of the share in question would be invalid, first, because it was not of certain existing Immovable property, and secondly because it was beyond the competence of Ganga Prashad. The argument is supported by the decision in *Kalu v. Barsu* 19 B. 803 where it was held that a gift not made from necessity or for the performance of any pious duties obligatory on the family would be invalid and would not be operative even as regards the share of the donor. The learned Subordinate Judge, however, held that this question was not of great importance because the joint and undivided moiety share of Ganga Prashad was ascertained specifically by a petition or division by private arrangement in 1911 : when the two plots in suit, as also the plots containing the temple and the dharamshala, went into the sole possession of the plaintiff; and further because the defendants themselves claimed the share in question, as "also the specific plots of land, on the strength of their repurchase of the interest of Ganga Prashad. The oral dedication was followed by the possession of the plaintiff; and accordingly there was no uncertainty as to the specific share or as to the plots in question. As to whether the oral endowment was valid Or otherwise that was a point which had to be decided on the particular facts and circumstances and on the evidence in the case.

5. The learned Advocate next contended that the oral dedication would be invalid and could not pass any title to the donee having regard to the express provision of Section 123 read with Section 5 of the Transfer of Property Act. The law requires all gifts of Immovable property to be compulsorily registered. He relied on *Mannu Lal v. Radha Kishenji* 36 Ind. Cas. 989 a decision of the Allahabad High Court. Reference may also be made to *Hira Mani Singh Vs. Anmol Singh* where their Lordships held that the provisions of Section 123 were mandatory and

imperative; and it followed that no gift of Immovable property could be made except by means of a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. In that particular case a gift had been made by way of Sanklap at the time of nuptials; and it was held that such a gift could not operate as a valid gift of Immovable property, so as to divest the donor of his proprietary rights or to clothe the donee with any title to the same. The learned Subordinate Judge referred to *Ramalinga Chetti v. Sivachidambara Chetty* 49 Ind. Cas. 742 : 42 M.440 : 9 L.W. 224 : 25 M.L.T. 253 : 36 M.L.J. 675 : (1919) M.W.N. 426 wherein it was held that a dedication of a small portion of joint Hindu family lands to an idol of a temple of the father or manager of the family on the occasion of the funeral of a deceased member was not required to be in writing, and was valid and binding on the other members of the family as a gift ordained for pious purposes. That case followed a previous decision in *Pallaya v. Ramavadhanulu* 13 M.L.J. 364 and was followed by a later decision in *Tadi Bulli Tammireddi*, and *Tadi Harinarayanareddi*, minor by father and next friend, the first appellant Vs. *Tadi Bulli Gangireddi*, . In a later Full Bench decision, *Tangella Narasimhaswami, Dharmakatha of Sri Kodanda Ramachandra Moorthy Vs. Iamidi Venkatalingam and Others*, it was held that a gift to God-Almighty, is not a gift to a living person within the meaning of the Transfer of Property Act and that, consequently, Section 123, read with Section 5 of the Act, does not apply to such a gift, so as to require a registered document for its creation. The Court held that though an idol may be regarded by a fiction of law as a juristic person clothed for some purposes with rights of persons, yet a juristic person is not a living person for all purposes; and the principle of *stare decisis* was applied. In *Ramalinga Chetti v. Sivachidambara Chetty* 49 Ind. Cas. 742 : 42 M.440 : 9 L.W. 224 : 25 M.L.T. 253 : 36 M.L.J. 675 : (1919) M.W.N. 426 the observations of Mookerjee, J., in *Bhupati v. Ram Lal* 3 Ind. Cas. 642 : 37 C.128 are cited with approval, to the effect "that it was conclusively established from Hindu texts and authorities that according to Hindu judicial notions there can be no gift in favour of the Gods and that a donor could only content himself with a dedication of things for acceptance. There is no acceptance on the part of the deity, but from the dedication, religious merits and spiritual benefit accrues to the person in charge of the worship and the creatures of God."

6. The Calcutta High Court had from the very earliest times adopted the same view as may be found in *Muddun Lal v. Komul Bibi* 8 W.R. 42, where Glover, J., observed that he was not aware of any ruling of the Calcutta High Court which makes documentary evidence a *sine qua non* for proof of a grant of a specific endowment. In the great majority of cases, it would, of course, be looked for; but its absence would not necessarily put out of Court the party suing on the strength of the endowment. In *Rambrama Chatterji v. Kedarnath Banerji* 72 Ind. Cas. 1026, Mookerjee, J., observed that the execution of a document is not essential for the purpose of a valid dedication, which may be inferred from the application of proceeds from family conduct; and he followed *Muddun Lal v. Komul Bibi* 8 W.R. 42, *Manohar v. Lakhmiram* 12 B. 247 and *Abhiram v. Shyama*

Charan 4 1nd. Cas. 449 : 36 C. 1003, P.L.T. 681 (P.C.). Their Lordships of the Judicial Committee in AIR 1927 80 (Privy Council) , observed that a dedication of a portion of the family property for the purpose of a religious charity may, according" to Hindu Law, be validly made without any instrument in writing, even if it be an appropriation of landed property, and the act of the karta of the family would be valid if assented to in any way," however, informally, by the other members" of the family. Such an appropriation may even be made by the karta without consent. Under the circumstances it could not be held that in the absence of a registered document an oral endowment according to Hindu Law must necessarily be invalid.

7. The essential point for decision accordingly is whether there was real Sanklap and Samarpan as pointed out in Deo Saran Bharthi and Another Vs. Deoki Bharthi and Another, , whereby the property is completely given away and the owner completely divests himself of its ownership. In order to constitute a valid gift, there must be something shown to indicate an acceptance on the part of the donee, and the fact and nature of acceptance must depend upon the circumstances of each case. The learned Advocate for the appellants contended that if this principle were applied to the facts it was clear that the plaintiff must be considered to have failed. The alleged oral dedication in 1897 was not followed by the mutation of the plaintiff's name in Register D of the Collectorate. No accounts were produced, though admitted to have been kept, showing that the rents and profits and the income of the dedicated property went to the sole use and benefit of the plaintiff; so that there was no complete divestment of ownership. He further argues that Ganga Prashad's conduct in the execution proceedings of 1914 clearly negated any such oral dedication; as he throughout set up his own private rights to the said share and never alleged that there had been any oral dedication in favour of the plaintiff, No claim was preferred by him as manager of the plaintiff under Order XXI, Rule 58, to resist the execution proceedings. There was no evidence of any transference of possession, nor was there anything to prove acceptance by either the plaintiff or by Ganga Prasad as manager of the plaintiff. No weight could attach to the finally published Record of Rights as the entries had been made at a time when there was none to resist the entry of the plaintiff's name. The sale of the share had taken place in January 1915, and the decree-holder had themselves become the purchasers; but Ganga Prashad had applied to set aside the sale under Order XXI, Rule 90 and this matter was pending decision till it came to be finally disposed of in appeal in September 1915, by which time the draft Record of Rights had been completed and the final publication was on the 4th November, 1915 The auction-purchasers obtained delivery of possession through Court in August 1916 and their names were registered in the Collectorate in November, 1917. The learned Subordinate Judge had decided in favour of the oral dedication, on the oral evidence of some witnesses who deposed to the fact; but he had not tested the truth or otherwise of those statements in the light of the other proved or admitted facts enumerated above It is argued, therefore, that his conclusion was not justified

and was liable to be challenged even in second appeal as he had drawn a wrong inference on the evidence. The learned Advocate for the respondent suggested that so far as the finding related to the validity of the oral endowment of 4 dams 8 kauris odd milkiyat share it might be discarded as not being a point immediately necessary to be decided. According to him the gift may be divided into two parts, namely the oral dedication of the share, and the setting apart of the four plots, on one of which the temple was built and the dharamshala, on another, with the two suit plots which were to be used as phulwari or orchard in connection with the worship of the plaintiff. And if this was made out, the plaintiff would be still entitled to a decree in respect of the two plots in suit. It may be observed, however, that the plaintiff claimed title to the suit plots on the ground that these appertained to the 4 dams 8 kauris share, of which the oral dedication had been made at the time of the installation, and the plaintiff led evidence and invited a decision on the point; and accordingly it was found necessary by both the Courts concerned to enquire into and to adjudicate on the nature of the said title to the milkiyat share. The learned Advocate intimated during the course of his argument that the plaintiff had instituted another suit for a declaration of title relating to the said milkiyat share, and this was pending decision in the Court of the Subordinate Judge, He accordingly prayed that the matter relating to the title to the milkiyat share might be left open, as otherwise there was a danger of the decision of this Court operating as *res judicata*. Whether it will operate as such or not is a matter with which we are not concerned. We would accept the contention of the learned Advocate for the appellants and hold that the plaintiff has failed to prove title to the milkiyat share in question on the alleged oral dedication which must be found to have been invalid.

8. In decreeing the suit relating to the two plots in question the learned Subordinate Judge has given no independent findings, regarding the two plots as distinct from the milkiyat share, as is apparent from his judgment; the first point for determination according to him being whether Ganga Prashad had dedicated the share which included the lands in suit, before it was attached on the 14th August, 1914. It is also clear that the learned Subordinate Judge did not accept the evidence relating to possession of the suit of plots from 1897 up to the publication of the Record of Rights as being convincing or sufficient, but he decreed the suit, being of the opinion that possession after the publication of the Record of Rights was with the plaintiff.

9. The learned Advocate for the respondent suggested that even apart from the oral evidence as to possession, the situation and the local features amply made out the truth of the plaintiff's case. He argues that four plots of lands which came to be numbered as plots Nos. 536, 635 and 533, with a total area of 1-95 acres in the ghairmazrua khatian under the shamilat khewat 1-44 had been set apart by Ganga Prashad in 1897. The temple stood on plot No. 536 the area being 28 acres; the dharmshala stood on plot No. 535 with an area of -05 acres; and the two suit plots were the phulwari, plots No. 534 with an area of 1-45 acres and 538 with an area of 17 acres. He argues that the proximity of the two

suit plots to the temple and the dharamshala gives sufficient indication of the truth of the story of the plaintiff that these were maintained as phulwari in connection with the temple, and the oral evidence relating to possession ought to be accepted. The learned Advocate for the appellant points out that the map shows that plot No. 538 is far away to the west of the temple, and there are three plots Nos. 534, 337 and 541, which intervene between the temple and plot No. 538, so that the situation of that plot refutes the respondent's contention, As for plot No. 534 only a small portion of it namely that immediately to the north, east and south of the temple (plot No. 536) is so situated that it can be argued that this portion and plot Nos. 535 and 536 were intended to form one plot but the major portion of plot No. 534 stands quite outside and to the west of plot No. 536. It is a big plot with its greatest length from north to south, and having regard to its area namely 145 acres out of the total ghairmazrua which is 219 acres, it is argued that it cannot be believed that this portion could have possibly formed one single plot with plot Nos 536 and 535. Ha submitted accordingly that the local features were against the submission mad9 on behalf of the respondent. I am inclined to agree with the learned Advocate for the appellants; and for the reasons given by him I would find that the respondent's claim in respect of plot No. 538 had failed completely: and that so far as the suit related to that portion of R.S. plot No. 534 which lay to the west of plot No. 536, the claim has not at all been made out; and that part of the plaintiff's case ought to be dismissed. But for the small portion of plot No. 534 which lies to the immediate north, east and south of temple plot No. 536 the local features are in favour of the plaintiff's version; and the evidence relating to possession of this part may be safely accepted as being probable and reliable. This aspect of the case was in a manner admitted by the defendant No. 1 in his evidence when he stated that the temple, the dharamshala and other lands connected therewith were on a plot of about 16 or 17 cottas of land in the sole use and occupation of the plaintiff. The result is that the decree of the Court below must be set aside, and the plaintiff's claim allowed only to the extent specified above, the rest of the claim being dismissed. As the appeal succeeds substantially I would allow costs to the appellants throughout in all the Courts.

James, J.

10. I agree.