

(1941) 03 AHC CK 0005
In the Allahabad High Court

Meghraj and Others

APPELLANT

Vs

Sri Digambar Jain Mandir and Others

RESPONDENT

Date of Decision : 21-03-1941

Acts Referred:

Citation : AIR 1941 All 290 : (1941) 11 AWR 195

Hon'ble Judges : Dar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dar, J.—On 10th February 1915 a sale deed was executed by Buddhu, zamindar and Sangam Lal , lambardar and Jugla, rayaya of a house in khatta Pahladpur in favour of Shri Digambar Jain, khatta Pahladpur, whose managers were Man Singh, Niadar Mai and Ganga Saran for a sum of Rs. 300. Out of this consideration Rs. 290 were paid by Man Singh, one of the managers, before the Registrar and the sale deed contains a covenant that in case transferees are disturbed in possession or enjoyment of the property the said managers would have a right to recover the sale consideration from the vendors. The Jain temple in whose favour the sale deed was executed is a religious institution founded and maintained by the Jain community of khatta Pahladpur. After the execution of the sale the house was used as a panchaiti house by the Jain community for their charitable and religious purposes and for the accommodation of Sadhus. In or about the year 1934 this house or a considerable portion of it fell down and part of it was repaired by the Jain community. A fresh repairing or building up was again undertaken in 1936 and in its course the defendants who were all members of a Brahmin family residing at khatta Pahladpur took forcible possession of the house. As a result the plaintiffs instituted a suit in the Court of the Munsif of Ghaziabad, Meerut, for the recovery of possession of the house against the defendants. The trial Court decreed the claim and on appeal this decree has been affirmed by the lower appellate Court and the defendants have now made a second appeal to this Court.

2. A number of questions arose in the Court below which are now settled by findings of fact. It has now been ascertained and found that the defendants have not got a shadow of a title to the property and they are pure and simple trespassers. It has also been ascertained and found that the plaintiff's vendor had legal title to the property and that the plaintiffs have been in exclusive enjoyment and possession of the property from the date of the sale in 1915 up to a few days prior to the suit in 1936. The questions which arise for consideration in this second appeal relate to the maintainability of the suit by the plaintiffs. Plaintiff 1 is Sri Digambar Jain Mandir, Pahladpur, through its manager Lala Nem Chand. The plaintiff 2 in the suit is Man Singh and plaintiff 3 is Sultan Singh and they are suing on their own behalf as well as on behalf of the other Jain community and Jain society of khatta Pahladpur. Proceedings have been taken by plaintiffs 2 and 3 under Order 1, Rule 8, Civil P.C., and the suit has been made a representative one on behalf of the entire Jain community of khatta Pahladpur. In the written statement the defendants pleaded that the three plaintiffs were not the duly appointed managers of plaintiff 1. At the trial in the Court below as well as in the arguments before the Court of appeal the challenge however was a much wider one. It was contended that the Jain temple could not be regarded as a juristic person and was incapable of holding any property or of bringing a suit to enforce rights relating to a property. The trial Court held that in the pleadings the competency of the temple to hold the property and to bring the suit was not challenged and therefore the question properly does not arise in the case. It also held that the sale of 1915 may be regarded in favour of three managers, one of whom was plaintiff 2 and he alone was entitled to maintain an action. The trial Court further held that in any view of the matter plaintiffs 2 and 3 on behalf of the Jain community were entitled to maintain the suit. The Court of appeal has affirmed the finding of the trial Court on all these matters excepting the right of plaintiffs 2 and 3 to maintain the suit. The lower appellate Court having found that plaintiff 1 was entitled to maintain the suit, it did not express any view one way or the other with regard to the rights of plaintiffs 2 and 3 to maintain the action.

3. The arguments of the learned Counsel for the appellants in this appeal may now be shortly stated. He contends that the Hindu temple, and according to him Jain temple stands in the same position as a Hindu temple, is not a juristic person and consequently it cannot hold property or bring a suit. The sale of 1915 was according to him in favour of the Jain temple. Therefore, plaintiff 1 has no right either to hold the property or to bring a suit and as the plaintiff bases the entire claim upon the rights of plaintiff 1 alone in whose favour the sale-deed was, the rights of plaintiffs 2 and 3 do not arise in the case and they have no right to maintain the action. Now as a matter of construction of the plaint, I do not accept the contention that the plaint as framed embraces a claim to enforce the rights of plaintiff 1 alone. The plaintiffs were alive to the technical difficulty which has been raised in the case and they have made three plaintiffs to the action, plaintiff 1 representing temple and the plaintiffs 2 and 3 as representing

the Jain community. In the body of the plaint it is definitely stated that the house after purchase was used by the Jain community as the Panchaiti house and the community has been in possession of it. I have already stated that proceedings were taken under Order 1, Rule 8, Civil P. C, to make the suit a representative one on behalf of the Jain community of Pahladpur. In my opinion therefore the plaint may be regarded as a combined plaint both on behalf of the Jain temple as well as on behalf of the Jain community, and on the findings arrived at by the trial Court which on fact is not disputed before me, plaintiffs 2 and 3 in any view of the matter were entitled to maintain the action and the decree passed by the Court below is correct and this finding concludes the appeal. But as a serious argument has been addressed to me by Dr. Sen against the rights of plaintiff 1 to maintain the action, I propose to take a short notice of it.

4. There is some authority in this Court in favour of the view that an unregistered society cannot hold property in the name of unregistered society and cannot bring suit in that case, see *Panchaiti Akhara and Co. v. Gauri Kuar* ("98) 20 All. 167 which was a case of a society of Sadhus, *N.W.P. Club v. Sadullah* ("98) 20 All. 497 which was the case of a club and see *Ganesa Singh v. Mundi Forest Co.* ("99) 21 All. 346 which was a case of a society known as Mundi forest and *Ram Sarup v. Arya Samaj of Dhampur* (25) AIR 1925 12 which was a case of the Arya Samaj. On the other hand there is a case of this Court, *Bhagwandas Singh and Others Vs. Pinjra Pole Pashu Anathalaya* in which a Bench of this Court has held that an unregistered society can hold property. That was a case in which a society for cow protection and which was called Pinjia Pole Pasha Anathalaya was allowed to hold funds and maintain an action. And in *Bhagwandas Singh and Others Vs. Pinjra Pole Pashu Anathalaya* a gift in favour of Sri Sanatan Dharam School, under the managership of Lala Shankar Lal , plaintiffs, was upheld to be valid and the school through the manager was allowed to maintain action. The question however which arises in this case is a somewhat different one and it is this whether a Hindu temple or strictly speaking a Jain temple which we are considering in this case can or cannot be regarded as a juristic person or as a legal person capable of holding the property and bringing the suit. There is a case, *Thakurdwara v. Ishar Das* (28) 15 AIR 1928 Lah. 375, in which a learned Judge of Lahore High Court has expressed the view that a Hindu temple could not be regarded as a juristic person. With regard to the mosque in the famous AIR 1940 116 (Privy Council) the question arose recently before the Judicial Committee whether a mosque could or could not be regarded as a juristic person. The matter was left open by their Lordships, but in dealing with the question they observed:

It is not necessary in the present case to decide whether in any circumstances or for any purpose a Muslim institution can be regarded in law as a juristic person. The recognition of an artificial person is not to be justified merely as a ready means of making enactments?well or ill expressed ?work conveniently. It does not seem to be required merely to give an extended meaning to the word "person as it appears in the Punjab Preemption Act, 1905, or in the definition of

gift contained in Section 122, T.P. Act. It is far from clear that it is required in order that property may be devoted effectively to charitable purposes without the appointment of a trustee in the sense of the English law. It would seem more reasonable to uphold a gift, if made directly to a mosque and not by way of wakf, as having been made to the mutwalli than to do so by inventing an artificial person in addition to the mutwalli (and to God in whom the ownership of the mosque is placed by the theory of the law) : see AIR 1940 116 (Privy Council) .

4. Whether a Hindu temple can or cannot be regarded as a juristic person or legal person, I have no doubt that as a matter of construction of a document, if a transfer is made in favour of a temple it may be and can be construed as a transfer in favour of the idol or a transfer in favour of the manager of the temple for the benefit of the endowment as was implied by the observations made by the Judicial Committee mentioned above. But, in this particular case, the point really does not arise and there are two difficulties in applying the principles which Dr. Sen contends for to the facts of this case. First of all we are dealing here with a Jain temple and not a Hindu temple. Now it is well known that Jains are Hindu dissenters and have got their own customs and usages both with regard to inheritance as well as with regard to their religious matters. It is true that ordinary Hindu law applies to Jains, but it is also true that a number of their customs have been established and of some of them judicial notice is being" taken by Courts. The Courts below have remarked that these Jain temples are not exactly in the same footing as Hindu temples and there may be a custom or usage among the Jain community by which they take transfers only in the name of temples and not in the name of idols who are enshrined in those temples. As the question of competency of temple to hold property was not properly raised in the Courts below, evidence on this point was not gone into and in my opinion it will not be proper to hold as a matter of law that a transfer to Jain temples is necessarily void. The other difficulty in the case is that the sale of 1915 was in favour of the temple through its managers and one of those managers, namely Man Singh, is plaintiff 2 in the suit. Eight was given to these managers under the sale deed to recover sale consideration in certain circumstances. I am prepared to hold as a matter of construction in agreement with the Courts below that if there be any difficulty in favour of holding the transfer in favour of the temple to be valid the transfer was in favour of the managers and one of them, Man Singh, plaintiff 2, is perfectly entitled to eject a trespasser. Without therefore deciding the larger question whether a Jain temple can hold property or can bring a suit I shall rest this decision upon two findings, namely (1) that the competency of the plaintiff was not challenged in the written statement and is a matter mixed up with facts and law and cannot be considered as a law point in abstract and secondly because the transfer, assuming it to be invalid, in favour of the temple can be regarded as a transfer in favour of the managers and one of the managers is competent to maintain the action. In my view, there is no force in this appeal, and it is dismissed with costs. Leave to appeal under the Letters Patent is refused.