

(1948) 02 PAT CK 0008
In the Patna High Court

Mt. Kishori Kuer and Others

APPELLANT

Vs

Parmeshwar Missir and Others

RESPONDENT

Date of Decision : 16-02-1948

Acts Referred:

Citation : AIR 1948 Patna 457

Hon'ble Judges : Ray, J; Manohar Lall, J

Bench : Full Bench

Judgement

Ray, J.—This appeal arises in a suit instituted by respondent 1, for a declaration that he is the duly constituted mutwalli of Shree Radhakrishnajee in village Jagdispur, and, as such, entitled to remain in possession of the temple of Shree Radhakrishnajee and the residential house of Mt. Jaichha Kuer appertaining thereto as also of the movables specified in the list appended to the plaint, or to recover possession thereof on ejectment of the appellants who have forcibly had occupation of the same as trespassers.

2. The facts giving rise to this litigation, shortly stated, are that one Agam Tiwari of the aforesaid village died in the year 1912 leaving him surviving his widow late Musammat Jiachha Kuer as his sole heir. The Musammat, in due course, came in possession of his estate. While in such possession, she, in fulfillment of the wishes of her husband, constructed the tern-pie in question and built the houses appertaining thereto, installed the deity Shree Radhakrishnajee therein and dedicated all the properties inherited by her for the sevapuja and upkeep of the deity and the temple. She effected the dedication by a registered wakfnama dated 22-9-1921. For the management of the dedicated properties, she appointed seven panches to form themselves into a committee of management. It was provided in the said deed that each of the panches was to be life member subject to his removal on the ground of dishonesty and substitution by a newly appointed panch in his stead by the remaining members of the committee. It was further provided that in case of removal by death of any of the panches, any one of his sons or gotias found competent by the other members of the committee

was entitled to succeed him in the management. An unexpected contingency, however, arose in the matter of management which had not been provided for in the wakfnama, namely, that all the panches as a body, mismanaged the affairs of the temple contrary to the lady's expectation. Thereupon, finding no other way to get possession of the temple and the properties attached thereto, she instituted Title Suit No. 11 of 1939 for their removal in the Court of the District Judge of Arrah, She succeeded in the suit and came into khas possession of the same.

3. While in such possession, she appointed the plaintiff, Parmeshwar Missir, as trustee of the endowment by a deed of wakfnama on 26-5-1940. By virtue of this appointment, the plaintiff entered into management of the deity's affairs and came in possession of the temple along with all the dedicated properties. Musammat Jiachha Kuer, the founder, died on 22-9-1942, whereupon the plaintiff wanted to take her corpse to Benares as she in her lifetime wanted to pass her last days there. The husband of defendant 1, and maternal uncle of defendant 2, Kesho Missir, raised a dispute and prevented the body from being taken, to Benares. Out of this dispute there arose a police enquiry which ended in the Sub-divisional Officer directing the plaintiff to cremate her in the village. Later, Kesho Missir with the assistance of defendants 1 to 6 created trouble in peaceful possession of the plaintiff and ultimately took forcible possession of the disputed properties after breaking open the lock of the temple. There arose some criminal cases between the parties. In such cases Kesho Missir set himself up as legal heir of late Jiachha Kuer as her guru and questioned the dedication and the appointment of the plaintiff as a mutwalli. Hence, the suit.

4. On the death of the aforesaid Kesho Missir, his widow, defendant 1, and his sister's son, defendant 2, now appellants in this appeal, contested the suit and raised the following issues;

- (1) Is the suit as framed maintainable?
- (2) Has the plaintiff valid cause of action for the suit?
- (3) Is the valuation of the suit correct, and is the court fee paid sufficient ?
- (4) Are the deeds of wakfnama and Mutwalliship fats 21-9-1921 and 26-5-1940, respectively, genuine, valid and operative ?
- (5) Was Kesho Misser, Guru of Agam Tewari ? If so,, did the properties in question vest in him after Mosammat Jiachha Kner's death as his legal heir ?
- (6) Is the plaintiff entitled to the recovery of possession of the disputed temple and house and also to the closer of the door in question.
- (7) Is the plaintiff entitled to any moveable property or its price as mentioned in the plaint ?
- (8) To what reliefs, if any, is the plaintiff entitled?.

The allegations of the defendants that gave rise to the issues aforesaid will be set out while dealing with such of the issues as have been pressed in the Court below as well as in this Court.

5. The issues that were pressed at the Bar are issues 1, 4, 5 and 6.

6. Issue 1 arises out of the allegation that Shree Radhakrishnajeel has not been made a plaintiff, and in his absence, respondent 1 cannot maintain the suit. The submission is that in addition to Parmeshwar Missir, mutwalli of Shree Radhakrishnajeel (respondent), Shree Radhakrishnajeel should have been mentioned as one of the plaintiffs. The plaintiff in this case is described in the following words:

Parmeshwar Missir son of Pandit Radha Ballam Misra, deceased, by caste Brahman," by occupation cultivator and priest, resident of Jagdishpur, parganna Behea, thana Jagdishpur, district Shahabad, mutwalli of Sri Radha Kishun Jee.

Besides the description already quoted, the body of the plaint clearly manifests that the suit had been instituted on behalf of and in the interest of Shree Radha Kishun Jee and restoration of possession of the disputed property is sought on his behalf. The question, therefore, arises whether the defect, complained of, in the frame of the suit is such as would entitle dismissal thereof. Mr. Jha has relied upon a number of decisions in support of his contention. They are : *Pramatha Nath Mullick v. Pradyumnakumar Mullick* , AIR 1933 198 (Privy Council) , *Jagadindra Nath v. Hemanta Kumari Debi* (1904) 31 I.A. 203 and *Jodhi Rai v. Basdeo Prasad* (1911) 33 All. 735. The first two cases have no relevance to the facts of this case and do not decide the point under consideration, and the last two cases are definitely contrary to his contention. I shall now proceed to deal with each of these cases *seriatim*.

7. In *Pramatha Nath Mullick v. Pradyumnakumar Mullick* a private household deity was installed in a thakurbari which was dedicated to the Thakur. The deed of dedication provided that the Thakur should not be removed therefrom until another suitable thakurbari was provided. After the founder's death, there was a partition of the family properties between his three sons. In that partition the thakurbari remained joint but each of the sons was allotted equal turns of worship. One of the sons brought the suit which went up to the Privy Council claiming a declaration that he had the right to remove the "Thakur" to his own house during his turn of worship. To this suit he impleaded his two brothers as parties defendants who objected to such removal. In the suit the plaintiff claimed a temporary ownership of the Thakur during his turn as a moveable property allotted to him on partition. It was held that the Thakur was a juristic person and could not be claimed as a Chattel. It was further held by their Lordships of the Privy Council that the will of the idol as to its location must be respected. Their Lordships observed :

While, however, this is the only objection actually made by the objecting defendant, it has to be pointed out that the idol is not otherwise represented in

the proceedings though the result might conceivably vitally affect its interest. In that sense the contest has related to the establishment of individual rights as between contesting she baits. Their Lordships are accordingly of opinion that it would be in the interests of all concerned that the idol should appear by a disinterested next friend appointed by the Court.

8. This decision, therefore, does not go to help the appellants.

9. The next case I should refer to is AIR 1933 198 (Privy Council) . This too has no bearing on the proposition put forward by Mr. Jha. The short facts of the case are that the landlord of a small plot of land brought a suit in ejectment on the ground that the right of occupation was confined to the settlee Ichhakori's family on the ground that the family had become extinct. After the suit was filed, it was found that the sole survivor of that family had made a wakf of the land in suit in favour of "Shree Thakurji Mabaraj." The plaintiff a lied to amend the plaint by impleading the is and trustee and by raising a claim that the execution of the deed had the effect of extinguishing the rights, if any of Bihari, the last survivor. The Munsif allowed the above claim to be raised but without joining the idol or the trustee. The Privy Council came to the conclusion that they were not able to deal with the appeal in the absence of Shree Thakurji Maharaj, whose interest arose under the wakf, or his representative. In a sense this decision goes against Mr. Jha's contention as their Lordships mean to say that the presence of Thakurji's representative in the suit could also suffice. In the present case even if it be assumed that Radhakrishnaje is not the plaintiff, but his representative is there as such.

10. The case in Jagadindra Nath v. Hemanta Kumari Debi (04) 31 I.A. 203 completely undermines the validity of this contention. Their Lordships held that although a Thakur may be regarded as a juridical person capable, as such, of holding property, especially where the dedication is of the completes character, yet the possession and management of the dedicated property with the right to sue in respect of it are vested in the shebait. In this view, their Lordships held they where the right to sue in ejectment had accrued to the plaintiff as shebait during his minority and suits were brought within three years "of his majority, they were not hatred. This decision makes it manifestly plain that the right to sue for ejectment of trespassers, as the defendants in the present case are alleged to be, vests in. the mutwalli, and he can maintain the suit, without mentioning Radhakrishnaje separately as a plaintiff along with him.

11. The last case to be dealt with in this connection is the case in Jodhi Rai v. Basdeo Prasad (11) 33 All. 735. This is a converse case in which the Thakur was made a defendant but not the shebait. The District Judge relying upon an earlier decision of the Allahabad High Court, Thakur Raghunathji Maharaj v. Lal Chand (1997) 19 All. 330, in which it had been held that a suit relating to property alleged to belong to a temple could not be brought in the name of the idol of the temple, dismissed the suit. The Pull Bench held :

Defendant 1 in" this suit was, therefore, properly described in the plaint, and the view of the learned Judge in this respect is in our judgment erroneous. If there is any defect in the description of the defendants in suit of this kind it is nothing more than an irregularity or, misdescription. If, for instance, a suit on behalf of an idol is brought in the name of the manager of the idol, that would not warrant the dismissal of the suit but the plaint may be amended by correcting the description. Similarly in the case of a defendant. Such an amendment would not have the effect of introducing a third party on the record, and no question of limitation, in our opinion, would arise.

The contention of Mr. Jha, therefore, has no substance, and the suit has rightly been held by the Court below to be maintainable in the form in which it has been cast.

12. The next issue that was pressed was that the husband of defendant 1 and maternal uncle of defendant 2, namely, Kesho Missir was "guru" of Agam Tewari, husband of Mt. Jiachha Kuer, and thus was the reversionary heir in respect of Agam's estate after the death of Jiachha Kuer, The learned Court below has in a very careful and elaborate judgment come to the finding that the defendants have failed to establish that Kesho Missir was "guru" of Jiachha Kuer's husband Agam Tewari. We have been taken through the entire evidence adduced by the defendants, and we have been able to find no reason to disagree with the appraisal of evidence by the trial Court. (After discussing the oral and documentary evidence their Lordships agreed with the finding of the lower Court on this issue. The judgment then proceeds thus.

13. Lastly, I shall deal with issues 4 and 6 together. The submission of the appellant's learned Counsel in this connection can be divided into two parts: (1) That Jiachha Kuer had no power to dedicate her husband's estate to Radhakrishnaji as she had not been authorised by him; and (2) that the trust being a public one, after removal of the panches," Jiachha Kuer had no power to appoint the plaintiff as a miatawalli. In view of the finding that Kesho Missir was not an heir to the disputed properties after Jiachha's death, the defendants have no locus standi to impeach the endowment as an unauthorised one. The persons entitled to impeach non-authorised alienation by a widow or other limited heir are obviously the next reversioners Any person who has no interest in the succession is not entitled to impeach them. Such alienations are in their nature not absolutely void but voidable at the option of the reversioners who may affirm it or treat it as a nullity. This option, however, is confined to persons having interest in the reversion and is not exercisable by any outsider as the present defendants are. In this view of the matter, in spite of the finding of the Court below that the plaintiff has failed to establish that Jiachha's husband authorised her to dedicate the entire property to Radhakrishnaje, the question does not arise for consideration.

14. The second submission that the plaintiff's appointment as a mutwalli is void is based on the assumption that the trust was a public trust. The submission is

that Jiachha Kuer, after having appointed a committee as trustees of the endowment, had divested herself of all interest therein. After removal of the trustees (panches), she could only approach the District Court and could have got a trustee appointed or a scheme of management framed of the trust properties; but she was incompetent to appoint the plaintiff as the trustee. This question too does not arise for consideration in this appeal inasmuch the defendants did not raise the plea that the endowment was a public one in their written statement, nor was there any issue framed. The whole contention was based upon a statement of plaintiff's witness No. 4 in cross-examination that he and other persons make offerings to the idol through pujari. I would rather quote the whole paragraph from the judgment of the learned Court below where he deals with the contention. It reads:

Further it is contended that the plaintiff could not be motwali of the estate of the Thakurjee. Hence he cannot successfully maintain this suit. In support of this contention it is asserted that as it appears from the statement of P. W. 4 in his cross-examination that he and other persons make offerings to the idols through pujari, the temple may be said to be of a public nature. But this is nothing but a far fetched argument. It is not the case of any party that the temple in question is of a public nature. Hence mere casual statement of a witness of a plain till cannot determine its public character. Accordingly I find no force in this contention.

In view of the circumstances we refuse to entertain the argument that the trust was of a public nature; nor do we propose to decide the point in this appeal as it does not arise for constitution.

15. The learned Court below has found that there was a dedication in favour of Badba. krisbnajee and that the mutwalinama by which Jiachha Kuer appointed the plaintiff as a trustee is a genuine document and has since been given effect to, the plaintiff having crated into possession of the dedicated properties as a trustee and having been managing the seva-puja; and that he has been forcibly dispossessed out of the disputed properties by the defendants' predecessor-in-interest and that the same have been wrongly retained in possession by the defendants.. We have no reason to differ from these findings.

16. All the contentions that were advanced by the appellants' learned Counsel having failed, the decree of the Court below decreeing the plaintiff's suit must be upheld.

17. In the result, the appeal fails and is dismissed with costs.

Manohar Lall J.

I agree.