
(1938) 08 PAT CK 0036
In the Patna High Court

Mt. Satwanti Kuer and Another

APPELLANT

Vs

Ambick Prasad Singh and Others

RESPONDENT

Date of Decision : 24-08-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 21 Rule 63
Transfer of Property Act, 1882 — Section 53

Citation : AIR 1939 Patna 45

Hon'ble Judges : Wort, Acting C.J.;Manohar Lall, J

Bench : Full Bench

Judgement

Wort, Ag. C.J.

1. This is an appeal by the plaintiff arising out of an action under Order 21, Rule 63, the plaintiff being a claimant and having failed in a claim case under Order 21, Rule 58. The real question which had to be decided by the learned Judge in the Court below was whether the transaction, which was a supposed dedication in favour of two deities which had taken place in 1924, was a real or a fictitious transaction, the facts being that an oral dedication took place in July of the year I have mentioned, the deed being executed in 1925. We are saved from a consideration of a somewhat difficult question which arose u/s 53, T.P. Act, by reason of the finding of the learned Judge in the Court below. He says in the first instance that he is "unable to differ from the Subordinate Judge regarding the factum of the alleged dedication." I am using the words of the Judge himself. Then at the end of his judgment he comes to a very clear finding that this dedication was not a real transaction, that there was no "real intention on the part of the Musammat (i.e., the plaintiff) to divest herself of the property, hence there was no dedication enforceable by law"; in other words, no dedication which would support the claim on behalf of the deity. I should have stated that the plaintiffs in this action and therefore the appellants are the deities as represented by the Musammat.

2. It is contended by the learned advocate appearing for the appellant, who had

some considerable difficulty in discovering a point of law in this case, that the finding of the Judge which I first mentioned was a finding that the dedication had in fact taken place and that that was an end of the matter and that the Judge had no right to consider the questions which he referred to in coming to the subsequent finding which I have also mentioned. I propose to refer to one case which was pointed out by my learned brother during the course of the argument and. content myself with a reference to that decision. Lord Thankerton while delivering the judgment of the Privy Council in AIR 1938 73 (Privy Council) referred to a statement of the High Court to the following effect:

What is necessary is that the purpose (i.e., with regard to a Hindu endowment) be clearly specified and that the property intended for the endowment should be set apart as dedicated to that purpose. It is necessary that the donor should divest himself of the property. Whether he has done so is to be determined by his subsequent acts and conduct.

His Lordship then proceeds to say:

Their Lordships agree with this statement, except ,that the evidence of divestiture may be contemporaneous, as in this case, and, in such a case, the subsequent acts and conduct of the donor are irrelevant and cannot reinvest him.

3. Here in the case before us there was no question of the evidence of divesting the Musammat of the property at the date of the dedication. Apart from the actual alleged dedication, it was therefore necessary for the learned Judge to investigate the surrounding circumstances for the purpose of deciding whether the transaction was a real one or not. On the findings of the Judge in the Court below, the decision can, not be disturbed, the appeal therefore fails and must be dismissed with costs.

Manohar Lall J.

I agree.