(1985) 09 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1149 of 1976

Murti Shri Thakar Ji Maharaj Thakar Dwara, Sangrur APPELLANT

Vs

Bhagwan Dass and others RESPONDENT

Date of Decision : 04-09-1985

Acts Referred:
Evidence Act, 1872 — Section 41

Citation : (1985) 09 P&H CK 0012

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : P.K. Palli, Mr. Amarjit Markan and Mr. Arihant Jain, for the Appellant; Anand Sarup with Mr. H.R. Bansal, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This is plaintiff''s second appeal whose suit for possession has been dismissed by both the Courts below.

2. Plaintiff, i.e. Murti Shri Thakar Ji Maharaj Thakar Dwara" (hereinafter referred to "Idol Thakar Ji") Sangrur, filed a suit for declaration to the effect that it is the owner of the land measuring 43 Kanals 5 Biswas and Vacant land 272 square yards 25 square inches situated at Sangrur and suit for possession of agricultural measuring 215 Kanals 16 Marlas etc. along with the consequential relief that the lease deed dated 22nd February, 1961 executed by defendant no, 16 i.e. Rameshwar Dass alias Basheshar Dass in favour of defendants nos. 1 and 2 in respect of land measuring 17 Bighas 7 Biswas and the various sale deeds executed by Basheshar Dass, defendants nos. 3 to 11 are illegal and without any authority since the property belonged to the plaintiff-idol and the vendor Basheshar Dass was only its manager or Mohatmim. The suit property was the trust and religious property belonging to the plaintiff and the various Mahants including Basheshar Dass, defendant, were only managers of the Thakar Dwara in which the idol was installed. Even muafi to the land Revenue was also granted on account of the Thakar Dwara and the succession to the Gaddi has been from

Guru to Chela and at no stage the property belonged to the Mahants in their personal capacity. Since Basheshar Dass Chela Beeram Dass Bairagi, had sold the suit property belonging to the plaintiff, hence the present suit.

3. The suit was contested by the defendants on the plea that the plaintiff has no locus standi to file this suit. The defendants were bona fide purchasers for value and consideration. Basheshwar Dass, defendant No. 16 filed a separate written statement and pleaded that he was the owner of the properties in dispute and the plaintiff had nothing to do with the same. It was also pleaded that earlier one Beeram Dass Chela Thakar Dass had filed suit against Basheshar Dass for declaration that the suit property belonged to the Thakar Dwara Bawa Udho Dass'', in which it was held that the property was not of the Thakar Dwara but belonged to the defendant Bashesher Dass. Therefore, the present suit was barred on the principle of res judicata.

4. The main controversy between the parties in the trial Court was as to whether the suit property was the property of the idol Thakarji-plaintiff or not. The trial Court after discussing the entire evidence came to the conclusion that the plaintiff has miserably failed to establish that the suit property is owned by the idol Thakarji. ''On the question of res-judicata, the Court found that the earlier judgment (Exhibit D-24) did not operate as res judicata. In view of the former finding, the plaintiff''s suit was dismissed.

5. The learned Additional District Judge affirmed the said findings of the trial Court and, thus, maintained the decree dismissing the plaintiff''s suit. Dissatisfied with the same, the plaintiff has filed this second appeal in this Court.

6. The learned counsel for the appellant vehemently contended that the suit property belonged to the plaintiff as the succession to the Gaddi of the Thakar Dwara has been from Guru to Chela and Muafi was also granted to the idol Thakarji'' and therefore, that being the position the presumption would be that the property belonged to the religious institution. The findings of the Courts below in this behalf are wrong and are based on misreading of the material documents. In support of this contention, reference was made to AIR 1934 68 (Lahore) 68 AIR 1933 252 (Lahore) and AIR 1937 14 (Lahore) Then reference was made to the documents. Exhibit P-1 a report of the Tehsildar where the properly was shown to be belonging to the Thakar Dwara and Exhibit P-7 an application made by earlier Mahant Hari Dass dated 24th September, 1965, in which it was stated that the land was given to the institution. Reference was also made to Exhibits P-8, P-9 and P-10 to show that throughout all this period it was admitted and found on enquiry that the land was given to the Thakar Dwara institution are not to the defendants in their personal capacity. Strong reliance was placed on Sukumar Bose and Others Vs. Abani Kumar Haldar and Others, to contend that if the property is debutter property it cannot be converted into secular property by an agreement of members. In other words, if the property is once held to be debutter property, then it could not be converted into secular one subsequently. It was further contended that the defendant Bashesher Dass and

the earlier Mahants were only appointed as Managers of the Thakar Dwara and, therefore, they could not alienate the property belonging to the plaintiff-deity. In support of this contention reference was made to The The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., where the duties and rights of the Mahants were considered.

7. On the other hand, the learned counsel for the defendants contended that institution of Thakar Dwara is different than the "Idol". According to the learned counsel, there is not an iota of evidence to show that the suit property ever belonged to the plaintiff. Even if it be assumed that the idols were installed in the Thakar Dwara, that by itself is not sufficient unless there is an evidence of dedication of the property to the "idols". According to the learned counsel, there is a concurrent finding of fact by both the courts below that the plaintiff has failed to prove its ownership and that being a finding of fact could not be interfered with in second appeal. It was further contended that though the earlier judgment (Exhibit D-24) may not be res judicate but at the same time it is relevant under Sectiion 41 of the Indian Evidence Act as it determined the legal character of the defendant Basheshar Dass in that suit qua the suit property.

8. I have heard the learned counsel for the parties and have also gone through the relevant documentary evidence on the record and the case law cited at the Bar. From the evidence produced on the record, it could not be held that the suit property belonged to the plaintiff i.e. "Murti Shri Thakar Ji Maharaj Thakar Dwara", Sangrur. Vide Exhibit D-10 dated 20th June, 1876, a Sanad was issued in the name of Harnam Dass, the original Mahant, He was made the owner of the building in which the institution known as "Thakar Dwara" was there. The Muafi was granted in the name of the Thakar Dwara. Except in one or two documents, nowhere the name of the plaintiff as such appears nor there is any cogent evidence to prove that the suit property or the "Thakar Dwara" itself was ever dedicated to the plaintiff-idol. The authorities relied upon by the learned counsel for the appellant are not applicable to the facts of the present case because there is no evidence of dedication of the property to the plaintiff either at the time of installation of the "idol" or subsequently. There cannot be any dispute that there is distinction between the institution i.e. Dera and the "idol" as a juristic person. This distinction has been discussed by B.K. Mukherjea in his book Hindu law of Religious and Charitable Trusts, Fifth Edition, at page 328 winch reads as under :--

7.14. Presiding element in a Math is an ascetic or a religious teacher, not an idol.--The primary distinction between a Debutter and a Math lies in the fact that unlike Debutter, where the essential or central part of the institution is a deity or ideal, the presiding element in a Math is an ascetic or religious teacher who together with his disciples and co-disciples form a spiritual family. Both a Math and a Debutter owe their existence of benefactions or grants of property made by pious benefactors. In one case the grantee is an idol for whose ministration or service the Debutter is created; in the other case, the object of the benefaction is the creation of an institution for the benefit of fraternity of religious men at the head of which stands the superior or Mohunt, who represents the entire institution. Ordinarily an ascetic who renounces the world and devotes himself to religion, owns no property except perhaps his cloth, sandals, religious books and the like and these too not in the ordinary proprietary sense. He has no fixed place of residence and moves from place to place, accepting such food and lodgings as are provided for him by pious householders.

But if a pious ascetic gathers around him a number of disciples whom he initiates into the mysteries or tenets of his order and such of his disciples as intend to become ascetics renounce all connection with their family and claims to family wealth, and totally affiliate themselves so to say with the spiritual teacher, a spiritual fraternity would eventually grow up. If pious, generous persons endow such a fraternity with property, it naturally vests in the preceptor for the time being and a home is created for the brotherhood, a Mutt or Muttum and that would lead to the constitution and building of a Mutt and Muttism.

Once a Math is establised, succession to headship takes place within the spiritual family according to the usages that grow up in a particular institution. In a Debutter, on the other hand, the recipient of the property is the deity as a juristic person and the Shebait rights, unless otherwise disposed of remain in the family of the donor and they devolve according to the ordinary law of inheritance.

Discussing the distinction between a temple and a Mutt, it was observed in Tulasiram Das Vs. Ramprasanna Das and Others,) that the Mutt was a place for rendering charitable and religious services in general, that it cannot be treated as a temple merely because there were idols in the Mutt, and that an institution which is in its origin a Mutt cannot be treated as a temple because idols were also worshipped in the Mutt and that the Mutt could not be treated as a place of public religious worship by reason of the worship of the idols. The distinction between a Debutter and Math has been pointed out by the Madhya Pradesh High Court in Swami Harbansa Chari Ji and Another Vs. State of Madhya Pradesh, Math signifies an abode of ascetics. The essential element of Debutter is the deity or idol.

9. Admittedly, the present suit has been filed by the plaintiff ''Murti Sh. Thakar Ji Maharaj Thakar Dwara'' and not by the institution i.e. Thakar Dwara which is far different than the "Murti Shri Thakar Ji Maharaj Thakar Dwara". The ownership is claimed by the plaintiff for which there is no evidence on the record to prove the same. As observed earlier, at no stage there was any dedication of the property to the plaintiff. In that situation, even if the succession of the Gaddi of the institution was from Guru to Chela it will not make any difference because that will not prove that the suit property belonged to the plaintiff ''Idol'', that may at the most lead to the establishment of Thakar Dwara.

10. Apart from that, this very matter was also the subject matter of the earlier suit filed by Beeram Dass Chela Thakar Dass against Basheshar Dass, defendant,

in which one of the questions was as to whether he suit land is a trust property being of ''Thakar Dwara'' or is the private property of the defendant Basheshar Dass. The trial Court decided he same in favour of the defendant and categorically held that the property was held by the defendant in his personal capacity and consequently the plaintiff''s suit was dismissed on 18th May, 1959. Appeal against the said judgment was dismissed by the Additional District Judge, Sangrur, vide judgment dated 11th April, 1960 (Exhibit D-14). Regular Second Appeal No. 865 of 1960 filed in this Court was dismissed as having abated. That litigation shows that therein also the property was not claimed as that of ''Idol Thakar Ji'' but was claimed as that of ''Thakar Dwara''. Though it has been found by both the Courts below that the said judgments did not operate as res judicate between the parties, but at the same time the same are relevant u/s 41 read with section 42 of the Indian Evidence Act. Therefore in that back drop now ''Idol Thakar Ji'' cannot claim to be the owner of the property.

11. Moreover, the entire documentary evidence has been discussed by both the Courts below and on the appreciation of the same, concurrent finding has been given that the plaintiff has failed to prove its ownership of the suit property. I do not find any infirmity or illegality therein as to be interefered with in second appeal.

12. In this view of the matter, the appeal fails and is dismissed with no order as to costs.

