

(1976) 02 CAL CK 0009
In the Calcutta High Court
Case No : Second Appeal No. 649 of 1974

Nibaran Sarkar

APPELLANT

Vs

Kamala Ranjan Hazra

RESPONDENT

Date of Decision : 16-02-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1978) 1 ILR (Cal) 554

Hon'ble Judges : A.N. Banerjee, J

Bench : Single Bench

Advocate : Ranjit Kumar Banerjee and Abhijit Banerjee, for the Appellant; Saktinath Mukherjee and Bhaskar Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Banerjee, J.—In this appeal at the instance of the Defendants the only point which was urged before me by Mr. Ranjit Kumar Banerjee, learned Advocate appearing on behalf of the Appellants, was that the arpannama dated April 23, 1960, was void for uncertainty and as such, no relief could be granted to the Plaintiff Respondent. The Plaintiff Respondent brought the suit concerned on his own behalf and as paricharak of Satya Sadhan Pratisthan. The dispute relates to the two schedules of properties as described in the plaint. One Satish Chandra Hazra executed a registered deed of arpannama dated April 23, 1960, in which he stated that the properties of mouza Mougram were his ancestral property while the properties of mouza Sarandi were his purchased property. Properties of these two mouzas were described in the schedules ka and kha to the plaint. Now, in the above document Satish Chandra Hazra stated that after founding Satya Sadhan Pratisthan he was worshipping the deity Sri Sri Satyanarayan and was reciting Bhagabat twice a year and also arranging for seva of daridranarayan (feeding the poor) and that as he felt necessary that the aforesaid puja and other functions should be carried out in a smooth manner by raising a house of its own for the said Pratisthan he was dedicating his aforesaid properties to the

said Pratisthan. He also appointed himself and his sister the Defendant No. 2 Chandi Bala Dasi as paricharak of the said Pratisthan and stated that on the death of one of them the other alone would run the Pratisthan and on the death of both the villagers of Maugram would nominate from amongst descendants of his grandfather one who would be of religious mind as paricharak. Now, the Plaintiff brought the suit alleging that in violation of the terms of the endowment the Defendant No. 2 after the death of Satish Chandra Hazra had gifted away the properties to the Defendant No. 1 and had also transferred possession thereof to him. Accordingly, the villagers of Mougram had nominated him as paricharak and he had brought the present suit for declaration that the aforesaid gift was illegal and not binding upon the deity and also for framing a scheme. Both the Defendants contested the suit. Their defence was that the properties of Mougram which were ancestral properties had devolved upon the Defendant No. 2 on the death of Satish Chandra Hazra and that the properties of mouza Sarandi were purchased by the Defendant No. 2 in the benami of Satish Chandra Hazra. It was also their case that the arpannama was a void and forged document and that Satish Chandra Hazra was insane. The learned trial Court framed as many as 11 issues out of which issues Nos. 1 to 5 which included the question regarding the maintainability of the suit in its present form and maintainability of it without the permission of Advocate-General, West Bengal, were not pressed and accordingly, the trial Court decided them in favour of the Plaintiff. The trial Court also decided the remaining issues in favour of the Plaintiff and declared the right, title and interest of the deity in the suit properties. As against such judgment and decree of the trial Court the Defendants preferred an appeal. The learned lower appellate Court modified the judgment and decree of the trial Court to this extent that the Plaintiff Kamala Ranjan Hazra would be an interim paricharak till a paricharak in accordance with the terms of the arpannama was selected by the villagers. In view of the concurrent finding of both the Courts on the facts as stated above Mr. Ranjit Kumar Banerjee confined himself only to the question whether the arpannama would be void for uncertainty inasmuch as it purported to dedicate the properties in favour of an unregistered body, viz. Satya Sadhan Pratisthan. In this connection Mr. Banerjee also drew my attention to a decision of Allahabad High Court in the case of Mathur Quer v. Dharma Samaj AIR 1914 All. 94. It was held in this case that a gift to an unregistered society was void. Reference was also made to the case of Chandi Charan Mitra v. Haribala Dasi 23 C.W.N. 645 in which it was held that general endowment for worshiping of god without naming the god was void. Mr. Banerjee also contended that having regard to the nature or succession in the line of paricharak it must be held that the endowment constituted a public dabuttar and as such Section 92, Code of Civil Procedure, would be a bar. Mr. Sakti Nath Mukherjee, learned Advocate appearing for the Plaintiff Respondent, submitted that it was no longer open to the Appellants to raise the question of the endowment constituting a public debuttar and Section 92, Code of Civil Procedure, being a bar to the institution of the present suit. Mr. Mukherjee submitted, further, that it would be wrong to suggest that the properties were dedicated to an unregistered body. According to

him, dedication was for religious purposes and that as such the arpannama could not be assailed on the ground taken by Mr. Banerjee.

2. In so far as the suit being hit by Section 92 of the Code is concerned, I may at once say as has already been pointed out that the Defendants Appellants did not press the issues regarding maintainability of the suit in its present form and also maintainability of it without permission of the Advocate-General. On the other hand, it will appear from the judgment of the trial Court that it was contended there on behalf of the Defendants that the suit related to a private debutter. In such circumstances, Mr. Mukherjee is justified in contending that it is no longer open to the Appellants to raise the question of the suit being hit by provisions of Section 92 of the Code. Now, coming to the other question, namely, whether it is a case of dedication to an unregistered body like Satya Sadhan Pratisthan I may observe that although form of the document supports the contention of Mr. Banerjee, the substance of it clearly indicates that the dedication was for the seva-puja of the deity Sri Sri Satyanarayan and also for some other religious purposes such as recital of Bhagabat twice a year and seva of daridranarayan. In the case of Monohar Ganesh v. Lakhiran ILR 12 Bom. 247 West J. pointed out that:

The Hindu Law like Roman Law and those derived from it recognises not only the corporate bodies with rights of property vested in the corporation apart from its individual members but also juridical person and subjects called foundations.

The religious institutions like mutts, choultries and other establishments, obviously answer to the description of foundations in Roman Law. Dr. Bijan Kumar Mukherjee in his Tagore Law Lectures as incorporated in the book The Hindu Law of Religious and Charitable Trusts (3rd ed., p. 31) observes that the idea is the same, namely, when property is dedicated for a particular purpose the property itself upon which the purpose is impressed, is raised to the category of a juristic person so that the property which is dedicated would vest in the person so created. There are a large number of decided cases where it has been held that to constitute the valid dedication of properties by a Hindu for religious and charitable purposes, no document in writing or registered is necessary. Dr. Mukherjee in his learned lectures as contained in the aforesaid book (p. 124) referred to a Full Bench decision of this Court in the case of Bhupati Smrititirtha v. Ramlal ILR 37 Cal. 128 and pointed out that the said decision has been followed by other High Court in India and it has been held by the Allahabad High Court in the case of Mohar Singh v. Het Singh ILR 32 All. 337 that a bequest to complete the building of a temple which was commenced by the testator and to install and maintain an idol therein was a valid bequest under the Hindu Law. I respectfully agree with the principle of law as enunciated above and hold that in the present case it cannot be said that the arpannama was void for uncertainty. Accordingly, the points taken by Mr. Banerjee fails.

3. In the result, the appeal stands dismissed with costs.