
(1947) 07 AHC CK 0005
In the Allahabad High Court

Ram Narain

APPELLANT

Vs

Shri Ram Lachman Janki Bharat Satrughan Hanumanji and
Others

RESPONDENT

Date of Decision : 25-07-1947

Acts Referred:

Citation : AIR 1948 All 195

Hon'ble Judges : Sinha, J

Bench : Division Bench

Judgement

Sinha, J.—This is an appeal by the defendant against whom a suit for a scheme of management in respect of certain trust property, was decreed by the learned Munsif. That decree was affirmed, on appeal, by the learned Civil Judge and he has come before me in second appeal.

2. The facts are mostly, if not entirely, admitted and are briefly these. There was a temple built in the city of Cawnpore about the year 1912 or 1913, adjoining his house, by one Bhagwan Das, the father of Ram Narain the appellant before me, and his brother Sheo Narain. Sheo Narain has taken no interest in this matter and may, therefore, be dismissed from consideration. The temple was a substantial temple and was constructed at a cost of nearly RS. 25,000.

3. On 14-8-1926, a cousin of Bhagwan Das, namely Bansi, dedicated considerable property to it. It might be mentioned that the presiding deities of the temple were Ram, Lachman, Janki, Bharat, Shatrughan and Hanuman. The deed of trust is an elaborate document, spread over a number of paragraphs, only two of which are necessary for the purposes of this case. One of them mentions five men who were entrusted with the management of the endowment. They are Ram Narain, Ram Prasad, Lachman Prasad, Satidin and Balai. Ram Narain was placed at the head of the management. There are two other paragraphs which are relevant. One is para 10 which says that:

In case a Dharamkarta dies or is unfit to work as such, his son or some one who

is competent in his family should be selected. If there is no son or other competent man in the family, some other competent person should be selected.

Bansi, however, made it a condition that the persons selected should belong to the biradari and also to the Sanatan Dharam sect of the Hindus.

4. Paragraph 11 provides for a contingency which would arise in the event of mismanagement. In such an event, it authorises the members of the biradari to take such steps as are known to the law for the proper administration of the trust.

5. On 11-1-1935, a number of persons of the Teli community, headed by Ram Prasad, brought a suit against Ram Narain and Lachman Prasad u/s 92, Civil P.C., for the removal of the defendants from the board of trustees, for the appointment of new trustees, and also for an account of the trust funds and income for the years commencing from 1926. It was also prayed that the property be vested in the new trustees. There was a further relief for the settlement of the accounts by the Court, if that was found necessary.

6. The suit was contested by Ram Narain who challenged the plaintiffs' right to bring the suit on the ground that the temple was a private temple established by his father, and contended that Section 92 of the Code had no application to a case of that nature. The learned District Judge of Cawnpore decreed the suit and directed the removal of Ram Narain from the office of the trust. He also directed him to render an account of the income of the trust property from the date of the death of Bansi. Certain other reliefs were granted by him, which it is not necessary to follow. On appeal, a Bench of this Court held that the temple was a private temple and a suit u/s 92, Civil P.C., was misconceived. A prayer was made by the learned Counsel who appeared for the plaintiffs, that the suit might be treated as one to enforce a private trust and suitable action might be taken. The learned Judges did not accede to it. Say they:

It seems to us that it would be quite wrong for us at this stage to allow the plaintiffs entirely to change the nature of their claim, and consequently we deal with this matter as a suit u/s 92, Civil P.C.

They also expressed their opinion in these terms:

The public is in no way Interested in the benefits of the trust, because the beneficiary is a private temple, and consequently the trust cannot be described as a public trust, We do not consider it necessary to go into the question whether the plaintiffs or one of them may or may not have some other remedy

7. The present suit was instituted by Shri Ram Lachman Janki Bharat Satrng Ban. Hanumanji Maharaj Birajman Mandir, Lokman, through Ana too son of Lachman Prasad, and by Ram Prasad against Ram Narain for accounting and also for the drawing up of a scheme for the good management of the trust in accordance with the deed of 14-8-1926 The plaintiffs charged the defendant, Ram Narain, with various acts of mismanagement, into the details of which it is not necessary

to enter at this stage. They founded their claim on the deed of 14-8-1926.

8. It might be noted that Ram Prasad was one of the five managers appointed by Bansi. The learned Counsel are not agreed as regards Lachhman. In the view I propose to take, it is not strictly material.

9. The defence, in the main, was that Bansi was a member of a joint Hindu family with the defendant and was as such, not competent to execute the will. It was also pleaded that the will was not legally or properly executed, and that the defendant was in possession of the property as an heir of Bansi and not under the deed of trust, which was never acted upon. Lastly, the right of the plaintiffs to bring an action, even if the will was a good will and was acted upon, was denied, inasmuch as. it was pleaded, the trust was a private trust and a suit of the character instituted was not legally maintainable.

10. It might be mentioned here that Ram Prasad died during the pendency of the suit leaving a widow, Mt Sheo Dulari, and two minor sons. Durga Prasad and Lalta Prasad, with the result that the surviving plaintiff who continued the suit on behalf of Thakurji, was not one of the persons appointed by Bansi, nor did the sons of Ram Prasad who stepped into his shoes on his death, fulfil that character.

11. The learned Munsif found the will proved and properly executed. He also found that Bansi was not a member of a joint Hindu family with the defendant To the question whether the defendant had come into possession of the property purporting to do so under the trust, or independently as a full proprietor, he did not address himself To the cardinal question, as to have the defendant was administering the trust, he did address himself, though father perfunctorily; he did not devote to it the care and attention it deserved. That portion of the judgment is cryptic and is in these terms:

It has been correctly asserted that the defendant has not been managing the trust properties in accordance with the trust deed that Dharamkartas who are dead, have not been reappointed, and I have reason to believe that the defendant has mismanaged the trust properties.

In the result, he decreed the suit for rendition of accounts and for the drawing up of a scheme. The defendant went in appeal I must confess that the judgment of the learned Civil Judge leaves a great deal to be desired A portion of the judgment is devoted to a recital of the facts, but the greater portion is devoted to a consideration of the effect of the earlier litigation, which culminated in the judgment of the High Court, and proceeds upon a misreading and misapprehension of that judgment He found that the will was proved and was duly executed. He read in the judgment of the High Court some" thing which operated as res judicata against the defence. Like the Munsif, he did not discuss the character of the defendant's possession, but, unlike him he failed to deal at all with the question whether he had mismanaged the trust. He affirmed the decision of the learned Munsif. The defendant has come to this Court in second appeal.

12. The learned Counsel for the appellant contends that the charge of mismanagement has not been established at all nor have the plaintiffs succeeded in proving that the defendant took possession of the property purporting to do so under the deed of 14th August 1926. It is contended, in the alternative, that, even if the charge is established and it is also proved that he came into possession of the property under the deed, the suit is not maintainable, inasmuch as it is a private trust, and the plaintiffs can have no right of suit in these circumstances.

13. The question whether the defendant came into possession under the deed or independently of it, was a very important question. The learned Counsel for the respondent argues that the judgment of the High Court proceeds upon the assumption that while the trust was a private trust, the possession of the defendant was only that of a trustee. I do not so read that judgment. If the defendant came in possession of the property and treated it as his own, and not as the property belonging to the trust, and continued to exercise his rights in defiance of the trust for a number of years, he shall, after the requisite period of limitation, acquire good title to the property. Whatever view might at one time have prevailed, their Lordships of the Judicial Committee have now definitely held in the well known case in AIR 1940 116 (Privy Council) that a trust is also subject to the law of limitation. This was, therefore, an important question and invited careful consideration.

14. The other question whether the plaintiffs have succeeded in bringing home to the appellant the charge of mismanagement or maladministration of the trust is, perhaps, more important, and deserved still more, detailed consideration. The learned Munsif, as I have already said, did but tardy justice to this point; the learned Civil Judge has not touched it at all.

15. For the proper decision of the case it is necessary to have the findings of the learned Civil Judge on these two questions. It is only when it is established that the defendant accepted the trust and came into possession of the property, purporting to act on behalf of the trust, and the charge of mismanagement is also brought home, that the legal questions will really arise as to whether the plaintiffs who brought the suit had a right to do so and whether the surviving plaintiff or the heirs of the deceased Ram Prasad had a right to continue it.

16. I, therefore send down the following issues under Order 41, Rule 25, Civil P.C.:

(1) Did the defendant accept the trust when he took possession of the property or treat himself as its full owner?

(2) Has the defendant been guilty of acts of mismanagement of the trust in his position as the trustee?

17. The learned Civil Judge is requested to return his findings within two months from this date. The parties are allowed an opportunity to lead fresh evidence on

both the issues. On receipt of the findings the usual ten days shall be allowed for objections.

On return of the findings on the issues remitted, his Lordship delivered the following judgment.

18. I remitted two issues by my order dated 25-11-1946. The learned Civil Judge Mr. Aftah Ahmad, has written an extremely careful order. The finding on the "first" issue is in favour of the appellant and on the "second" issue in favour of the respondents. But the finding on the "first" issue is fatal to the suit. I accordingly allow the appeal, set aside the decrees of the Courts below and dismiss the plaintiffs' suit with costs in all Courts. Leave to appeal under the Letters Patent is refused.