
(1924) 12 AHC CK 0034
In the Allahabad High Court

Ram Sarup

APPELLANT

Vs

The Arya Samaj and Others

RESPONDENT

Date of Decision : 05-12-1924

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : AIR 1925 All 337

Hon'ble Judges : Sulaiman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sulaiman, J.—This is a defendant's appeal arising out of a suit for a declaration of title and recovery of possession. The appeal under the Letters Patent is now confined to the property described as item No. 1 in the plaint which measures over 6 biswas. This property was acquired on the 19th of May, 1911 from one Chandi Prasad in the name of two persons Bishambhar Nath and Ram Saran Das. It now appears that Bishambhar Nath at that time was the Secretary and Ram Saran Das the treasurer of a society called the Arya Samaj of Dbampur. The names of these two persons were entered in the revenue papers. On the 18th of August, 1913 Bishambhar Nath, his brother, Ram Sarup, and Ram Saran Das applied to the Revenue Court for the partition of the property purchased under the sale-deed of the 19th of May, 1911. It is stated on behalf of the appellant that Dr. Baldeo Sahai, who was acting as the manager of the Arya Samaj, also filed certain objections to the partition proceedings. We may note that there were some other shares which admittedly belonged to the Arya Samaj in the mahal in which item No. 1 property stood and against those shares the entry in the column of proprietors was "the Arya Samaj under the management of Baldeo Sahai Kayastha manager". The Revenue Court ordered an imperfect partition under which separate patties were allotted to Bam Sarup, Bishambhar Nath, Ram Saran Das and the Arya Samaj under the managership of Baldeo Sahai.

2. The present suit had been instituted by the Arya Samaj to recover the

property in patties allotted to Bishambhar Nath and Ram Saran Das, which property had been subsequently sold by them to Ram Sarup under a sale-deed dated the 13th of November, 1916.

3. The first Court decreed the claim and the lower appellate Court confirmed the decree. On appeal to this Court the appeal was partly allowed excluding certain items of property with which we are not now concerned, but the decree of the Court below was confirmed with respect to item No. 1.

4. Three main points have been urged before us. It is convenient to dispose of the last two points first. One of which is that the plaintiff Arya Samaj never acquired this property under the saledeed of the 19th of May, 1911 inasmuch as it was not a registered body. This point was not taken specifically in the pleadings and no issue was framed, and though for some reasons it appears to be made the subject of debate in the trial Courts, there is no reference to it in the judgment. No mention was made in the grounds of appeal before the lower appellate Court. However an attempt was made to raise this point for the first time before the learned Judge who heard the second appeal. It was properly disallowed and we are of opinion that this new point cannot now be raised.

5. The second point was that the defendant was protected u/s 41 of the Transfer of Property Act. This contention has no force because the finding is that the defendant was fully aware, as appears from his own statement dated the 20th of April, 1916, that the property belonged to the Arya Samaj and the two persons in whose names it was acquired were mere benamidars.

6. The main point urged before us is that in view of the order of the partition Court allotting this property to Bishambhar Nath and Ram Saran Das as against the Arya Samaj, it was not open to the Civil Court to go into this question and decide whether in fact it belonged to the Arya Samaj or not. The plea is that the claim in the Civil Court is barred by Section 233-K of the Land Revenue Act.

7. It has been assumed by the Court of appeal that if the Arya Samaj had been properly represented before the partition Court, then Section 233-K would be applicable. This contention, however, has not been accepted on the ground that the Arya Samaj was not properly represented.

8. It is an admitted fact that the said Arya Samaj is not a registered corporation and it consists of members fluctuating in number. At the time when the application for partition was made, the entry in the revenue record showed that the Arya Samaj was the recorded proprietor but its manager was Dr. Baldeo Sahai, never the less it was Dr. Baldeo Sahai who was impleaded and notices were not issued to all the members of the association, nor were all the members represented in Court. The learned Judge has relied on two cases of this Court, namely the case of Panchaiti Akhara v. Qauri Kuar (1897) 20 All. 167, N.W.P. Club through G.B. Goyder, Honorary Secretary v. Sadullah (1898) 20 All. 497 which lay down that an unregistered body cannot sue or be sued as a corporation, but that all its members must be impleaded. It is not disputed

before us that there were 13 men who were members of the Arya Samaj of Dhampur in the year 1913 and that no one except Dr. Baldeo Sahai was served with notice or actually appeared in Court. It is clear, therefore, that in view of the rulings of this Court which have been followed in a subsequent case, *Ganesha Singh v. Mundi Forest Co.* (1889) 21 All. 346 , the Arya Samaj as such was not represented, and it follows, therefore, that all the other members are not bound by any order that was passed by the partition Court behind their back.

9. It is, therefore, clearly open to the Civil Court to go into the question of title. The finding is a finding of fact which cannot now be challenged. The result, therefore, is that this appeal must fail and is hereby dismissed with costs.