

(1897) 04 AHC CK 0001
In the Allahabad High Court

Raman Lalji Maharaj

APPELLANT

Vs

Gopal Lalji Maharaj and Others

RESPONDENT

Date of Decision : 15-04-1897

Acts Referred:

Citation : (1897) ILR (All) 428

Hon'ble Judges : Knox, J;Burkitt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Burkitt, J.—This is an appeal by the plaintiff against a decree of the Subordinate Judge of Agra. The parties are the descendants of two brothers whose family from time immemorial had been the hereditary trustees and managers of certain temples at Muttra and Gokul and of the endowments appertaining to them. It appears that some time before suit most of the landed property had been by a friendly arbitration divided between them, but that the temples were left joint. In the 10th paragraph of the plaint it was alleged that for some time there had been disagreements between the parties as to the employment and dismissal of servants, the distribution of offerings made at the temple, the expenses of daily worship, &c, &c, and that there was an apprehension of disturbances, loss of property, &c. The plaintiff therefore prayed the Court to declare that each party was entitled to manage and superintend the temples in turn and to give proper instructions for the custody of the property appertaining to the temples, for the appointment of servants and such matters, and for the mode of living of the parties in the houses appertaining to the temples as well as for the repairs of the houses.

2. As to the last mentioned matter, the plaintiff during the hearing of the suit explained (vide No. 506 of the record, at p. 49 of the respondents' printed book) that the dwelling-houses in question belong to the temples, that the plaintiff did not desire to have them partitioned, but wished that the parties should live in them as hitherto and that the Court should give directions as to their repair. A

similar disclaimer of any desire to partition was made as to certain baithaks, or sitting-rooms.

3. On the following day (March 7th, 1895) another and most important admission was made on behalf of the plaintiff, and was concurred in on behalf of the defendants. According to that admission neither party has any personal pecuniary interest in the income of the temples, whether from property belonging to them or from offerings made by worshippers; all the income is declared by both parties to belong to the temples and to them only. This admission has the effect of correcting a statement made in the 7th paragraph of the plaint to the effect that "if there be any surplus income the parties appropriate it." It further is clear that in this case there is no dispute between the parties as to their right to share in the performance of the worship of the idols in the temples. The ceremonies of public worship are, as appears from the plaint, performed by the servants attached to the temples and the parties are at liberty to take whatever share they please in them. Accordingly, on the allegations of the plaint and on the admission of the parties, it is clear that these temples are trust property in which none of the parties have any pecuniary interest, and that from time immemorial the management has been joint in the hands of the family to which the parties belong.

4. Thus the main relief asked for in the plaint narrowed itself down to a prayer that the Court would partition their duties as trustees and managers between the parties, and would fix stated periods during which each party in turn would hold exclusive possession of the temples and carry on the management, It was suggested that a period of six months in each year should be assigned to each.

5. The Subordinate Judge who tried the suit refused to grant to the plaintiff the relief he asked for. In a carefully considered judgment the Subordinate Judge pointed out most properly that this suit was not one for a declaration of plaintiff's right to share in conducting public worship at the temple and to a participation in the offerings. As to that matter he showed there was no dispute whatever, the real dispute being as to plaintiff's claim to hold the management "in turn."

6. The plaintiff appeals, contending that the relief asked for by him should have been granted. That was the only one of the grounds of appeal which was argued before us.

7. In support of his contention the learned vakil for the appellant cited to us several cases from the Bombay and Calcutta reports, e.g., *Mitta Kunth Audhicarry v. Neerunjun Audhicarry* 14 B.L.R. 156. This case clearly is not in point in the present appeal. It was a case in which a person, who possessed jointly with others a right to worship at a certain shrine and to participate in the offerings, prayed to have his right partitioned from those of his co-sharers and to have periods fixed during which he might exercise it. The High Court held that such a right was a property which could be partitioned like other kinds of

property. In *Mancharam v. Pranshankar* ILR 6 Bom. 298, the Bombay High Court held that a transfer by a divided Hindu of his right to perform public worship and to participate in the offerings at the temple was not invalid. The cases *Limba bin Krishna v. Rama bin Pimplu* ILR 13 Bom. 458, *Anandamoyi Chaudrani v. Baikant Nath Rae* 8 W.R. 193, and *Pranshankar v. Prannath* 1 Bom. H.C. Rep. 12, were cases in which the plaintiffs setup their right to conduct public worship and to receive a share in the offerings made at the temples, and *Ram Soondur Thakoor v. Taruck Chunder Turkoruttun* 19 W.R. 28, was a suit in which to establish similar rights the plaintiff sought to be authorized to remove an idol to his house.

8. All the above cases differ essentially from the present case in that in all of them there was a dispute as to the plaintiffs' right to share in the manner set up by them in the performance of public worship and to receive a share in the offerings. Such cases cannot be considered as in any way laying down a rule applicable to the present case in which there is no such dispute.

9. The parties here are the joint managing trustees of the temples, whose duty it is as such to manage the affairs to the best of their united abilities, a duty which they undertook to perform when they accepted the trust. They have no rights of property or any personal pecuniary interest in the subject-matter of the trust. Is then one of such trustees entitled to ask a Court to partition the duties of the trust between himself and his co-trustees, and, e.g., to give to him the exclusive management of, and possession of, the trust property for, say, six months in each year, putting the other trustees entirely aside during his period of management? We think not. We regard the body of trustees as being each of them not merely entitled, but also as being obliged by his acceptance of the trust to act jointly at all times with the others in the management of the trust property. The duty incumbent on the trustees is one incumbent on them acting jointly, and is not a "property" personal to any one of them individually or to all of them jointly. As it is not a personal property, it does not come under the rule as to partition laid down in the first of the cases cited above. Such a duty cannot in our opinion be partitioned.

10. Something was said at the hearing as to the partition by arbitration which had already been made by the parties. No issue was raised before us as to that partition. It is therefore unnecessary for us to express any opinion as to whether it is a valid instrument or not. We concur with the lower Court in holding that the appellant is not entitled to partition in this case. We therefore dismiss this appeal with costs.