

(1966) 11 OHC CK 0004

In the Orissa High Court

Case No : Second Appeal No. 49 of 1964

Sri Gopal Jew Thakur and Others

APPELLANT

Vs

Pravasini Das and Others

RESPONDENT

Date of Decision : 07-11-1966

Acts Referred:

Citation : AIR 1967 Ori 85 : (1967) 33 CLT 832

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : R.N. Sinha, H. Kanungo and R.N. Mohanty, for the Appellant; S.K. Ray, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, J.—Kanhei Das had two sons Krushna and Khetra and a foster son Gobinda. In all he had .46 acres of land. Out of this he gifted .20 acres to Gobinda. The balance .26 acres constitute the disputed property and were partitioned between Krushna and Khetra half and half. Subsequently Krushna purchased the share of Khetra and thus he became the owner of the entire property--half of which was inherited as ancestral property, and the other half was his self acquired property. Krushna died in 1951. He had two sons Harimohan husband of plaintiff 3) and Fakirmohan (Plaintiff 2) through his first wife. Through his second wife (defendant 3) he had two daughters (defendants 1 and 2). By a registered document (Sebasamarpan Patra) Ex. 2 dated 26-1-33 Krushna dedicated his entire property in favour of the deity Sri Sri Gopal Jew Thakur (Plaintiff 1) appointing Harimohan and Fakirmohan as marfatdars. Plaintiffs' case is that Harimohan performed the seba puja till his death in 1942 and thereafter Fakirmohan performed I he seba puja.

On 20-7-50 Krushna executed a registered Ansanirupan Patra (Ex. D) in respect of the disputed property in which he gave eight annas to plaintiff 2 and the other eight annas to defendants 1 and 2. On the disputed property of 26 acres a pucca house stands on .03 acres and the temple of the deity stands on .01 acres. The

balance of, .22 acres constitute the Bari lands. Plaintiffs' suit is for a declaration that Ex. 2 is valid whereunder Krushna divested himself of his title and gifted the entire property to plaintiff 1 with plaintiffs 2 and 3 as the marfatdars and that the Ansanirupan Patra (Ex. D) is invalid.

Defendants 1 to 3 contested the suit denying the execution of Ex. 2 and asserting that it was never acted upon. Ex. D is relied upon as being a genuine and valid document.

2. Both the Courts below concurrently found that Exs. 2 and D are genuine and were properly executed. The trial Court decreed the suit holding that by Ex. 2 there was valid dedication and Krushna had no further rights to convey property by Ansanirupan patra (Ex. D). The learned lower appellate Court was of opinion that there was no valid dedication despite execution of the Sebasamarpan patra and that the Ansanirupan Patra was valid as Krushna's title had not been extinguished. It accordingly dismissed the plaintiffs' suit. There is no dispute that the parties are in joint possession of the property which is situate in the town of Balasore.

3. The only question for consideration in this appeal is whether there was a valid dedication of the disputed properties in Ex. 2. In between 26-1-33, the date of execution of Ex. 2 and the death of Krushna in 1951, there is no evidence to show that Krushna divested himself of the property. The disputed property was not mutated nor any rent was paid in the name of plaintiff 1. On the other hand Krushna's name contained in the municipal register as before. Ex. 3 series are relied upon by the plaintiff to show that from 1351 Sal (1944) onwards rent was paid in the name of the deity. Ex. 3 series were granted in the year 1951 and thereafter. The recital was that rent was retrospectively paid from 1944 onwards. Thus in 1951 rent was paid in respect of certain dues which had already been barred by limitation. At any rate, all these rent receipts came into existence after the death of Krushna. No reliance can be placed on these rent-receipts which appear to have been created as evidence of the factum of payment of rent by the deity prior to the death of Krushna.

The learned lower appellate Court reached the correct conclusion that besides Ex. 2 there is no other evidence to show that Krushna had intention to divest himself of the title in the disputed property. In fact Krushna lived in the very house with his family and continued to do the seba puja of the deity. Some of these circumstances by themselves may be innocuous, but the fact remains that there is complete dearth of evidence that Krushna divested himself of the disputed property and dedicated it to plaintiff-1. Thus the only evidence in favour of dedication is the Sebasamarpan patra (Ex. 2) itself.

The object of dedication as recited in Ex. 2 is that there was no other property the Income of which would be utilised for the Puja and bhog of the deity and that the donor had no apprehension that his sons would dissipate the property.

4. On the aforesaid finding that the only evidence of dedication is the

Sebasamarpan patra itself, the question is whether there has been a valid dedication. It is unnecessary to refer to various authorities on the point. It would be sufficient to say that the law on the point has been correctly summarised in para 407-A of Mulla Hindu Law (13th Ed.) and at page 94 of Mukherjee Hindu Law of Religious and Charitable Trust (2nd Ed.). The relevant passage in Mukherjee Hindu Law may be quoted.

When there is a deed of dedication executed by the donor, the mere execution of the document though it purports on the face of it to dedicate property to religious or charitable uses, is not enough to constitute a valid endowment. It must be proved that the donor intended to divest himself of his ownership in the property dedicated. The tests of a bona fide or nominal endowment are; how did the founder treat the property or how have the descendants treated it; has the income of the endowed lands been continuously applied to the object of dedication? x x x x x In order to establish a valid endowment it must be proved that the grant was made with the intention that the profits should be applied for the particular religious purpose and that the profits" have been so applied. No endowment is created if the deed was not meant to be acted upon and the founder had other or ulterior motives, e.g., tying up of property in the family or keeping the property out of the reach of the creditors. The learned advocates for both the parties concede that the aforesaid passage re-presents the correct law.

5. On application of the aforesaid dictum, conclusion is irresistible that there is no proof of a valid dedication. Ex. 2 is the only evidence in support of dedication. In the absence of any other material in proof of the intention of divestment of ownership in the donor, there is no valid dedication. The conclusion reached by the learned lower appellate Court is correct. Ex. 2 is invalid and void. It creates no title in favour of plaintiff 1.

6. Plaintiffs 2 and 3 brought the suit on behalf of plaintiff 1 as the marfatdars. Once it is decided that the Sebasamarpan patra (Ex. 2) is void the further question whether the Ansanirupan patra (Ex. D) was genuine, duly executed and operative need not be gone into in this case. Both Mr. Sinha and Mr. Ray concede that this question should be kept open. The concession is well founded as determination of the validity of the Ansanirupan patra (Ex. D) is to be done only if plaintiffs 2 and 8 had brought the suit in their personal capacity.

7. In the result, the appeal fails and is dismissed; but in the circumstances parties to bear their own costs throughout.