

(1937) 12 BOM CK 0015
In the Bombay High Court

Sunder Singh-Mallah Singh, Sanatan Dharam High School
Trust

APPELLANT

Vs

Managing Committee, Sunder Singh-Mallah Singh Rajput
High School

RESPONDENT

Date of Decision : 06-12-1937

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145
Evidence Act, 1872 — Section 106
Specific Relief Act, 1877 — Section 42

Citation : (1938) 40 BOMLR 724

Hon'ble Judges : Thankerton, J;Normand, J;Lancelot Sanderson, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Thankerton, J.—This is an appeal from a decree of the High Court of Judicature at Lahore, dated May 31, 1934, which reversed a decree of the Senior Subordinate Judge, Kangra, at Dharamsala, dated December 19, 1927.

2. The respondents, the Managing Committee, Sunder Singh-Mallah Singh Rajput High School, hereinafter referred to as " the committee," filed the suit through Kharak Singh, member of the committee and manager of the school, and Chaudri Ram Singh, a member of the committee, on November 8, 1926, and impleaded as defendants Sunder Singh-Mallah Singh Sanatan Dharam Rajput High School Trust, hereinafter referred to as "the trust," through ten named trustees, of whom Rai Bahadur Chaudri Mallah Singh was the first named.

3. In the plaint the respondents claimed (a) a declaration to the effect that "the plaintiff-committee is the managing body, trustee and administrator of Sunder Singh-Mallah Singh Rajput High School, Indaura, that the defendants have no connection whatsoever with this school or its property, nor have they any right as trustees or administrators in the said school, that the plaintiff alone is the trustee and administrator of this property, in the interests of the said school, and that he

alone is entitled to the income and authorised to spend it," and (b) a perpetual injunction against interference by the defendants.

4. The property claimed was detailed as follows,

1. Rs. 95,000 on fixed deposit in the Punjab National Bank, Lahore.
 2. War Bonds of the value of Rs. 5,000, also deposited with the said Bank.
 3. Bonds, mortgage deeds, and promissory notes, of the value of Rupees one lakh, and
 4. Lands and school buildings, etc., mentioned in a list attached to the plaint.
5. The trust through the trustees filed its jawab-i-dawa, denying the right of the plaintiff to any relief, and, on the pleadings the Subordinate Judge framed the following issues :-

- (1) Whether a suit for a declaration lies?
 - (2) Whether the plaintiff managing committee has locus standi to maintain the suit and has duly authorised Kharak Singh and Ram Singh to institute the suit ?
 - (3) Whether the plaintiff committee is not a duly registered body?
 - (4) Whether the management for the school and its properties became vested in the plaintiff committee as trustees?
- A (5) What is the nature and the extent of the properties up to the date of the new trust, dated November 20, 1925 ?
- (6) Whether the trust, if any, created in favour of the plaintiffs was in-valid, because possession had not been transferred to them ?
 - (7) Whether on November 26, 1925, the defendant 1 was still competent to deal with this property and create a new trust in favour of the defendants connection therewith ?

6. After considering the, oral and documentary evidence, the learned Judge decided each of the issues in favour of the defendants, and dismissed the suit. On appeal, this judgment was reversed by the High Court and decree was granted in the committee's favour, declaring that the Indaura High School buildings and the lands attached to them, the sum of Rs. 95,000 and war bonds for Rs. 5,000, and the mortgagee's rights under a deed of mortgage dated June 2, 1920, in favour of the Indaura School, are property held in trust for the benefit of the school, and that the committee have the right to manage the school and to manage this property for the purposes of the school. A perpetual injunction was granted against the interference of the defendants. The present appeal is against that decree.

7. The regrettable litigation had its origin in the following circumstances :- Chaudri Mallah Singh, who was anxious to make suitable provision for the

education of the youths of his community, had for long maintained a primary school in his village Indaura. In 1919, being anxious to extend this institution and to put its management into the hands of a representative committee of the Rajput community, sixteen leading Rajputs were selected and constituted into a committee for the management of the school. Rules and regulations and a memorandum were drawn up and filed and registered under the Societies Registration Act (XXI of 1860), the association being registered as Sunder Singh-Mallah Singh Rajput High School, and the sixteen selected Rajputs being named as the managing committee, the first-named being Mallah Singh as president. Rule 4 provided that all the moveable and Immovable property of the school should vest in the managing committee, but no specific properties were mentioned, and no deed of endowment was drawn up.

8. As many of the members of the committee lived at some distance from the school, their attendances do not appear to have been at all regular, and there seems little doubt that Mallah Singh took the main burden of management. In 1925, apparently regarding himself as still having a free hand, and having formed the desire to further extend the institution into a college, Mallah Singh executed on November 26, 1925, the deed of trust in favour of the defendant-appellants, whose attempt to enter on their duties at the school roused the respondent committee. This led to intervention of the police and proceedings under Sections 144 and 145 of the Criminal Procedure Code, which were started on May 11, 1926. Eventually the parties agreed to leave the school and its properties in the possession of Mallah Singh, and to seek their remedy in the civil Court. As the trial Judge points out, this possession of Mallah Singh was his personal possession and was not in his capacity as president of either the committee or the trust. The present suit was thereafter brought on November 8, 1926.

9. With this preliminary outline, the various issues may be taken in turn.

10. Issue No. 1 raises a question u/s 42 of the Specific Relief Act, 1877, and, in particular, the proviso, which precludes the granting of a declaration " where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so." The Subordinate Judge held that a suit of declaration did not lie, on the ground that the plaintiff was neither in possession nor in control of the management of the school and that the proper form of the suit would have been one for possession and management of the school and not merely a declaration of such right, and that the plaintiff had omitted to seek this further relief. The High Court took the contrary view, on the ground that the defendants were not in possession or in a position to deliver possession of the properties, and that therefore there was no further relief available to the plaintiffs against the defendants. Their Lordships agree with the High Court in this view ; and it may be added that where it is not open to the plaintiff to pray for possession also as against the defendant, injunction is further relief within the meaning of the proviso : see Pollock and Mulla on the Specific Relief Acts (6th edn.) at p. 853,

and authorities there cited.

11. Issue No. 3 and the first part of issue No. 2 raise the same question as to the validity of the registration of the Committee under the Act of 1860, the relevant sections of which are as follows :-

1. Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in Section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint-Stock Companies form themselves into a society under this Act.

2. The memorandum of association shall contain the following things (that is to say)-

the name of the society;

the objects of the society ;

the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

3. Upon such memorandum and certified copy being filed, the registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the registrar for every such registration a fee of fifty rupees, or such smaller fee as the Provincial Government may, from time to time, direct; and all fees so paid shall be accounted for to the Provincial Government.

5. The property, moveable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

6. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion :

Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant

16. The governing body of the society shall be the governors, council, directors,

committee, trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

19. Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection ; and any person may require a copy or extract of any document or any part of any document, to be certified by the Registrar, on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be prima facie evidence of the matters therein contained in all legal proceedings whatever.

12. The learned Subordinate Judge held that the committee was not duly registered, but his decision is vitiated by his failure to give effect to Section 19. He placed the burden of proving the seven signatures to the original memorandum on the plaintiffs, and held that, in the absence of such proof, he could not hold that the association was duly registered. The High Court reversed this finding, and held that the defendants had failed to disprove the presumption arising on the certificate of the Registrar dated December 7, 1919. Their Lordships are of opinion that the presumption arises, not on the certificate of registration granted by the registrar u/s 3, but on the copies of the rules and regulations and memorandum, certified u/s 19, which constitutes them prima facie evidence of the matters therein contained. The only evidence by which the appellants sought to overcome the presumption was that of Kharak Singh under cross-examination, when he stated :

I did not see the original articles of association (nor sign them) sent to Registrar. Nor can I tell about the other trustees as to whether they signed or not. I do not know whether Kirpa Ram sent on the letter of consent to the Registrar ... Barring the letter of consent I sent no other application or paper to Registrar. I cannot say with regard to this matter anything about Chaudri Sahib. I cannot say who produced the Articles of Association before the Registrar.

13. Whatever one might think probable, it is left uncertain whether this witness was referring to the memorandum as the articles of association ; counsel were unable to inform their Lordships definitely what was the reason of the brackets round the words " nor sign them." If the defendants really desired to displace the presumption in this respect, it was clearly their duty to seek to recover the original memorandum and to put the signature thereon to the witness. Their Lordships are therefore of opinion that the association was duly registered and had therefore locus standi to maintain the suit.

14. There remains the question under the latter part of issue No. 2, whether Kharak Singh and Ram Singh were duly authorised to institute the suit. It is now admitted that the minute of meeting of the managing committee dated July 31, 1926, constitutes ex facie a due authority to Kharak Singh and Ram Singh to institute the suit, but the appellants maintained (c) that the respondents had failed to discharge the burden of proof laid on them by Section 106 of the Indian Evidence Act, in that they had not proved that due notices of the meeting had

been given to the members of the committee, and (b) that, in any event, it had been proved by the evidence of Kharak Singh and of Mallah Singh that they had not received such notices. Their Lordships agree with the High Court that the evidence of Mallah Singh is unreliable, and the evidence of Kharak Singh does not prove anything as to the notices. But their Lordships are of opinion that the proof of the minute of meeting is sufficient to discharge any burden on the respondents, and that the appellants were bound to give notice in their pleadings if they were going to raise this point and to have had an issue framed on it. The only point taken by the appellants in their pleadings was that they were not bound by the resolution, as, after the creation of the trust, the committee ceased to have any "existence in law, and issue No. 2 is not apt to put this question in issue. Their Lordships therefore hold that the appellants are not now entitled to - raise this question.

15. Issues Nos. 4 and 6 are conveniently taken together. The first question is whether the school buildings and the land attached to them, as they stood at the time of the registration of the association, became irrevocably vested in the managing committee.

16. The High Court state :

It is not disputed that for the foundation of a charitable endowment by a Hindu in this province no writing is required. What is necessary is that the purpose be clearly specified and that the property intended for the endowment should be set apart as dedicated to that purpose. It is necessary that the donor should divest himself of the property. Whether he has done so is to be determined by his subsequent acts and conduct. All these propositions are well established. It is not disputed that a valid endowment once created cannot be revoked by the donor,

Their Lordships agree with this statement, except that the evidence of divestiture may be contemporaneous, as in this case, and, in such a case, the subsequent acts and conduct of the donor are irrelevant and cannot reinvest him. Their Lordships agree with the High Court that the Subordinate Judge wrongly laid stress on the subsequent alleged neglect of their duties by members of the committee.

17. The appellants sought to maintain that the propositions were qualified in the present case by some customary law ; but, if so, the appellants were bound to plead it and put it in issue, which has not been done. In the opinion of their Lordships, Rule 4 of the rules and regulations, to which Mallah Singh was a party, taken along with Sections 5 and 16 of the Act of 1860, was sufficient to vest the buildings of the school and the attached lands, as they then existed, in the committee. The Subordinate Judge himself has found that the committee appointed its office-bearers " and the management of the school was made over to them." It must be remembered that the Indian Trusts Act of 1882 does not apply to charitable endowments. Their Lordships are therefore of opinion, in agreement with the High Court, that the school buildings and attached lands

were irrevocably dedicated by Mallah Singh at the time of the registration of the association, and, further, that any subsequent alteration of these buildings or additions to them, must be held to have accrued to the original dedication.

18. As regards the fixed deposit of Rs. 95,000 and the Rs. 5,000 of war bonds, the letter of Mallah Singh to the Punjab National Bank, dated November 18, 1922, which included the resolution of the managing committee, and enclosed a copy of the rules and regulations, affords ample evidence of dedication and divestiture in favour of the committee of these two properties. If further evidence were needed, Mallah Singh's letter of March 21, 1924, to Kirpa Ram, an officer of the committee, affords corroboration.

19. The deed of mortgage by Anup Singh and others, dated June 2, 1920, states " We have mortgaged, without possession, the aforesaid land to the High School Indaura, Tahsil Nurpur, started in the name of Sardar Chaudri Sundar Singh and Rai Sahib Chaudri Mallah Singh, residents of Indaura, Tahsil Nurpur, for Rs. 6,000, half of which comes to Rs. 3,000, and have received the mortgage-money from Rai Sahib Chaudri Mallah Singh as per detail given below." Their Lordships agree with the High Court that this constitutes a clear dedication of the mortgagees' rights to the school, with consequent vesting in the committee.

20. This renders it unnecessary to consider separately issues Nos. 5 and 7.

21. It follows that the appeal fails, and their Lordships will humbly advise His Majesty that the decree of the High Court should be affirmed and that the appeal should be dismissed with costs.