
(1924) 04 AHC CK 0053
In the Allahabad High Court

Thakur Sri Gat Ashram Narainji

APPELLANT

Vs

Jaishth Madho Acharia and Others

RESPONDENT

Date of Decision : 15-04-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1924 All 504 : (1924) ILR (All) 651 : 80 Ind. Cas. 406

Hon'ble Judges : Sulaiman, J;Kanhaiya Lal, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Sulaiman and Kanhaiya Lal, JJ.—The dispute in this appeal relates to the income derivable from the village, Khasrai Bhajanpura and the question for consideration is whether the right to receive an eight anna share of the said village belongs to the temple of Thakur Sri Gat Ashram Narainji at Muttra.

2. The temple in question was constructed by Pandit Pran Nath Shastri, a learned divine, a long time ago. He died in 1830. The income derived from the temple and the endowments appertaining thereto used to be applied, after his death, to the maintenance of religious services at the temple and the support of the Acharis or heirs of the founder. For a considerable time the endowed property was under the management of Raja Pitambar Singh, the then proprietor of the Awah estate. Some time in 1850 disputes appear to have arisen between the heirs of the deceased founder and a reference was made to arbitration, which resulted in an award by which the proportion of the income to be applied to the maintenance of religious services in the temple and to be distributed among the heirs of the deceased founder was determined. In pursuance of that award, an agreement was executed by the heirs of the deceased founder, on the 26th of March, 1850, which provided that an eight anna share of the income of the entire property shall be applied towards the expenses connected with the temple and the support of Vaishnavas Acharis and servants of the temple and the payment of a certain allowance to two other persons named therein, and the balance was

to be distributed among the heirs of the deceased founder; By a subsequent agreement executed on the 2nd of November, 1874, the heirs agreed that a half of the total income, which was then estimated to amount to Rs. 3,200 per annum, was to be applied to the maintenance of worship and other services at the temple and the other half was to be appropriated by the heirs personally. The proportion in which each of the heirs was to contribute to the expenses of the worship and services at the temple was also specified. The agreement further provided that none of the heirs shall have any power to transfer the half of the property and income aforesaid which belonged to the Thakurji, but they would have power to transfer their share of the remaining half of the property and income.

3. The agreement of the 26th of March, 1850, expressly mentioned the village Khasrai Bhajanpura as a part of the property, the income of which was to be dealt with in the manner therein specified. There was no express reference to that village in the agreement of the 22nd of November, 1874, but a reference was made therein to the award of the 26th of March, 1850, and it was provided that all the conditions entered therein shall be maintained and be enforceable among the heirs of the deceased founder.

4. The plaintiff claims to be one of the trustees of the temple in question. The defendants are the other trustees or heirs of the deceased founder. The allegation of the plaintiff was that the village Khasrai Bhajanpura was under the management of the Raja of (sic) and that the temple was entitled to the income thereof to the extent of an eight anna share. The complaint was that the defendant No. 1 had received a larger portion of that income than he was entitled to, thereby depriving the temple of that portion which he had received in excess of his share. In the plaint a reference was made to a previous suit said to have been filed by the plaintiff through Musammat Sundar Kunwar against the present defendants in the court of the Subordinate Judge of Agra for the rendition of account's in respect of the income of the said property from the 5th of November, 1902, till the 15th of November, 1906, and it was mentioned that that suit had been decreed on the 8th of December, 1909, and the appeal filed by the defendants against that decree had been dismissed in 1910. Those facts were admitted by the principal contesting defendant respondent, Jaisht Madho Achari. He contested the suit mainly on the ground that whatever was paid to him was paid voluntarily by the Raja of Awah and that the temple was not entitled to recover the same from him. The court below accepted his contention and dismissed the claim.

5. In doing so it appears to have entirely disregarded the decisions in the previous suits, in which the nature of the title held by the plaintiff in the villages in question and the right to receive the income thereof was in issue. One of the suits was brought by Musammat Sundar Kunwar, the widow of Prasadi Lal, one of the heirs of the deceased founder, in her capacity as one of the trustees of the temple aforesaid against the present defendants respondents on the 14th of

November, 1904, in the court of the Subordinate Judge of Agra for a declaration that the property in dispute, including the village now in question, belonged to the said temple and was a public and charitable endowment, that the idol was the absolute owner of the said property, and that the parties to the suit had no personal interest therein. That suit was decreed after a prolonged contest by the Subordinate Judge of Agra and his decree was upheld by this Court on the 28th of October, 1909. The finding of this Court in that suit was that the whole property in question appertained to the temple and that its income was intended for the expenses of the temple and the support of the Acharis and Vaishnavas worshipping there. Subsequently there was another suit instituted by Musammat Sundar Kunwar against the present defendant respondent, Jaishth Madho Achari, for the rendition of accounts. Musammat Sundar Kunwar sued in her capacity as one of the trustees of the temple. Jaishth Madho Achari and the other trustees were impleaded as defendants. Jaishth Madho Achari contested that suit on various grounds, amongst others, that the temple was only entitled to one-fourth of the income of the village Khasrai Bhajanpura. One of the issues framed by the learned Subordinate Judge was whether one-half of the income of the village Khasrai Bhajanpura formed the share of the Thakurji and should go to it. His finding on that issue was that the Thakurji was entitled to one-half of the income and that the defendant dishonestly wanted to reduce the share of the Thakurji to one-fourth and to appropriate the remaining one-fourth to himself. He pointed out that the Awah estate collected the rent of the village and paid the income to the mutawallis of the temple. That decision was upheld on appeal, the finding being that the waqf was a public one and the temple was entitled to receive half of the income of the said village from the Raja of Await.

6. It is not open to the defendant, Jaishth Madho Achari, to go behind those findings. In the previous suit all the trustees were impleaded and the effect of the decree of this Court was that the entire property then in question, including the village now in dispute, was declared to be a public endowment for religious and charitable purposes connected with the temple and in favour of the idol. In the latter suit the effect of the decree was that one-half of the income of the village now in question was declared to be the share of the property of the idol and the defendant, Jaishth Madho Achari, was found to have no right to receive any portion of the same from the Raja of Awah or to appropriate it to his own use. A decree obtained by one of the trustees on behalf of the trust against the other trustees either for a declaration that the property in dispute was trust property or for rendition of accounts in a suit brought in the interests of the trust or for the protection of the trust property is binding as much on the trustees who are parties to the suit as on all persons interested in the trust; for, as observed by their Lordships of the Privy Council in *Prosunno Kumari Debya v. Golab Chand Baboo* (1875) L.R. 2 IndAp 145, the shebaitis of a trust form a continuing representation of the idol's property. Each of the above suits was instituted by Musammat Sundar Kunwar, not in her private right but on behalf of the trust, and as such the decision arrived at in those suits is conclusive between the

parties thereto within the meaning of explanation VI of Section 11 of the Code of Civil Procedure.

7. It is urged on behalf of the defendant respondent that the payment which is sought to be challenged was made to him voluntarily by the Raja of Awah and that the plaintiff was not entitled to claim a refund. But the payment formed part of the distribution of the entire income derived from the villages in question. The Raja kept no part of the income himself. He distributed the income in a particular manner between the persons who were considered by him to be entitled to receive the same. The dispute is virtually one between the different persons claiming a title to it, and if one party has received a larger portion than he was entitled to and has thereby deprived another party of that which he ought to have received, the latter is entitled to claim from the other to the extent to which he was entitled. The Raja did not purport to make any payment to the defendant respondent, Jaishth Madho Achari, out of any personal fund of his own. The income of the village in question was ear-marked for a specific purpose, namely, for the maintenance of the services connected with the temple and distribution of the income among the heirs in the manner settled in the previous case. The defendant respondent, Jaishth Madho Achari, was not entitled to receive payment in excess of what he was declared entitled to in the previous proceeding, and the mere fact that for some years the payments had not been made precisely in the manner in which they ought to have been made, would not destroy or prejudice the right of the plaintiff to receive it in the manner he was entitled to receive. The proceedings of the Court of Wards filed show that there was some dispute between the heirs of the deceased founder as to the manner in which the income was to be distributed by the Awah estate. The Court of Wards proposed to act only as a stake holder and they did not undertake any liability for anything beyond what was payable by them on account of the said villages. That dispute having been settled by a decree of the proper court, the rights of the parties should now be adjusted in accordance with that decision. The appeal must, therefore, be allowed and the suit remanded to the court below with a direction to reinstate it under its original number and to proceed with its disposal in the manner required by law. Costs will abide the result.