

Basdeo Gir Vs. Pritam Gir

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Court : Allahabad

Decided On : Jun-12-1920

Reported in : AIR1921All351; (1921)ILR43All50

Judge : Grimwood Mears, Kt. C.J. and ;Sulaiman, J.

Appellant : Basdeo Gir

Respondent : Pritam Gir

Judgement :

Grimwood Mears, Kt. C.J. and Sulaiman, J.

1. This is an application in revision under Section 115 of the Code of Civil Procedure against an order of the District Judge of Ghazipur, dated the 14th of December, 1917. Before we can interfere in this revision we have to be satisfied that the case falls under one or other of the three clauses of Section 115 of the Code of Civil Procedure. The property in dispute in this case belongs to a Math situated in Qasba Bairia. It appears that in 1901 a suit was brought under Section 92 of the Code of Civil Procedure for the removal of the then trustee and that ultimately, in 1903, the trustee was removed and another trustee was appointed by the District Judge. There were several successors to that trustee, the last one being one RamaNand Gir. Rama Nand Gir died on the 7th of October, 1916. On his death a dispute seems to have arisen as to the succession to that math. There was an application for mutation of names made by Basdeo Gir which was resisted

by one Musammat Sewa Giri alias Sadhi Mai, and one Sheo Ram Gir. On the 20th of October 20th of October, 1916, Musammat Sewa Giri alias Sudhi Mai, filed an application in the court of the District Judge of Ghazipur to the effect that Rama Nand Gir had died and that the Math was without any head and manager. The application purported to be an application under Act No. XX of 1863 and it was prayed that an order for the management of the said Math should be passed immediately and the whole of the property should be confiscated and made over to the Collector. This application was supported by an affidavit. The learned District Judge, without issuing notice to any other party concerned and apparently without holding any inquiry at all, passed an order there and then appointing the Collector of Ballia as the manager of the Math and directing that he should continue to act as such until some other person should by suit have established his right of succession to the gaddi of the Math. After this, on the 15th of November, 1916, Basdeo Gir brought a suit for a declaration that he was a Mahant. In this suit he had impleaded Musammat Sewa Giri, Sheo Ram Gir and also the Collector of Ballia. On the 4th of April, 1917, he obtained an ex parte decree. Having obtained his decree he filed an application on the 11th of April, 1917, in the court of the District Judge praying that inasmuch as he had established his title to the Math, the property should be handed over to him. On the next day the learned District Judge passed an order directing that the Collector of Ballia should deliver the possession of the property to Basdeo Gir. This order also seems to have been passed without there having been any formal inquiry. Sheo Ram Gir, a defendant against whom the ex parte decree had been obtained, applied for setting aside that decree on the ground that the summons had not been served on him. The decree was set aside as against Sheo Ram Gir on 26th of May, 1917; the other two defendants, however, not having made any application for the setting aside of that decree, the decree against them stood good. After the case had been restored, an application seems to have been made by Sheo Ram Gir to the District Judge requesting him to hand over possession of the property to the Collector. On the 6th of June, 1917, the learned District Judge dismissed that application, holding that, inasmuch as the decree had been set aside only as against Sheo Ram Gir, he was not prepared to deprive Basdeo Gir of the Math property pending the disposal of the suit as against Sheo Ram Gir. When Basdeo Gir found that Sheo

Ram Gir was prepared to contest his claim but thought fit to withdraw his suit and exempt him. On this the learned Subordinate Judge before whom the case was pending passed an order on the 16th of August, 1917, saying that as the plaintiff did not wish to have his title threshed out as against the defendant Sheo Ram Gir his suit against that defendant must be dismissed. He accordingly dismissed the suit as against Sheo Ram Gir. In the meantime one Jagdesha Nand had brought a civil suit against Basdeo Gir for a declaration that he himself was the rightful trustee of this Math property and that the defendant Basdeo Gir was not a trustee at all. This suit appears to have been dismissed by the first court on the 25th of August, 1917. The learned Subordinate Judge held that Jagdesha Nand had failed to prove that he was the trustee of the property. He, however, also went on to find that Basdeo Gir, the defendant, had failed to prove his title. A copy of this judgment was directed to be sent to the District Judge of Ghazipur for consideration. On the arrival of a copy of this judgment in the court of the District Judge two applications were filed; one was an application by Basdeo Gir, dated the 3rd of September, 1917, and another by one Mahant Pritam Gir, dated the 18th of September, 1917. In his application, dated the 3rd of September, 1917, Basdeo Gir pleaded that Act No. XX of 1863 had no application to the Math property at all and he also urged that the finding of the learned Subordinate Judge in Jagdesha Nand's suit on issue No. 4 was wholly unnecessary for the decision of that suit and should not be taken into account. Mahant Pritam Gir, however, urged that the judgment of the Subordinate Judge was conclusive and that the endowed property ought to be confiscated. It was on these applications that the District Judge on the 14th of December, 1917, ordered that the Collector should take over possession of this property from Basdeo Gir. It is this last order which is the subject of revision in this Court.

2. On behalf of the applicant it is contended that before the learned District Judge proceeded to act under this Act he should have satisfied himself that he had jurisdiction to act. Before Section 5 of Act No. XX of 1863 can be made applicable, it is clear from a perusal of Sections 4 and 5 of the Act that the property in question should be one which had been under the management of any trustee, manager or superintendent at the time of the passing of the Act and that the said property should have been transferred to such trustee, manager or superintendent

by the Local Government as directed by that Act. Section 5 clearly says that 'whenever from any cause a vacancy shall occur in the office of any trustee, manager or superintendent to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple or religious establishment to which such property shall belong, or in the performance of the worship or of the service thereof or the trusts relating thereto, to apply to the Civil Court to appoint a manager etc.' We are of opinion that it is clear from the language of Sections 4 and 5 that the District Judge would have jurisdiction to appoint a temporary manager of trust property under Section 5 of the Act only in the case where a vacancy has occurred in the office of trustee to whom such property shall have been transferred under Section 4 of the Act. This is the view taken by the Madras High Court in *Ittuni Panikkar v. Irani Nambudripad* (1881) I.L.R. 3 Mad. 404 and *Gopala Ayyar v. Arunachallam Chetty* (1902) I.L.R. 26 Mad. 85, and by the Calcutta High Court in *Mohunt Sheonandan Gir v. Dhupan Upadhyaya* (1910) 14 C.W.N. 1104. If then it be the fact that this is not a case which falls under Section 4 of the Act, then the District Judge would have no jurisdiction to proceed under Section 5.

3. On behalf of the respondent, however, it is contended that this point had not been raised expressly before the District Judge, and that in fact the applicant Basdeo Gir had acquiesced and acted upon the order of the District Judge, dated the 20th of October, 1916, and that therefore it is clear from the conduct of Basdeo Gir himself that he had accepted that this case was governed by Act No. XX of 1863. In our opinion, in view of the clear plea raised by him in his application, dated the 3rd of September, 1917, it is impossible for us to hold that he by his act is estopped from raising the question of jurisdiction of the District Judge. If the District Judge had considered this question of jurisdiction at all, in howsoever cursory a manner, we would have been very reluctant to interfere, but in our opinion he has not directed his attention to the plea raised by Basdeo. As far as we have been able to ascertain, there is no evidence on the record to show whether this endowment existed in 1863 or not, and whether this had ever been transferred by the Local Government to the trustee. This point has not been decided. Further, we find that the learned District Judge in his order, dated the

14th of December, 1917, set aside his previous order, on the sole ground, as he says, that the ex parte decree which was the basis of his previous order had been exploded by the judgment of the Subordinate Judge in Suit No. 64 of 1917. At the time when this order was passed, the judgment of the Subordinate Judge had not become final, and our attention has been invited to the fact that on appeal the High Court has modified the decree of the Subordinate Judge and has held that the declaration contained therein to the effect that Basdeo Gir was not the trustee of the property ought to be expunged. In our opinion this also was an irregularity committed by the District Judge. At the same time we quite appreciate the contention advanced on behalf of the respondent that Basdeo Gir had not yet established his clear title in a Civil Court in a fair fight. The ex parte decree which he had obtained against the Collector, Sheo Ram Gir and Musammat Sewa Giri was subsequently challenged by Sheo Ram Gir, on whose application the ex parte decree was actually set aside. Basdeo Gir, however, showed no inclination to fight out the case against Sheo Ram Gir who was prepared to contest his claim, and feeling shy of the fight he withdrew his suit as against Sheo Ram Gir. The ultimate order passed by the District Judge was an order dismissing the suit of Basdeo Gir as against Sheo Ram Gir. As matters stand, there are in one sense two Civil Court decrees, one an ex parte decree in favour of Basdeo Gir against the Collector and Musammat Sewa Giri, and the other a decree dismissing Basdeo Gir's suit against Sheo Ram Gir.

4. If the District Judge, after an inquiry, is of opinion that Section 5 of Act No. XX of 1863 applies to the case and that he has jurisdiction to proceed under that section, he would in our opinion be quite justified in allowing the Collector to retain possession of the property unless and until Basdeo Gir establishes his title in a regular suit brought against Pritam Gir. On the other hand, if Section 5 of Act No. XX of 1863 does not apply at all and the District Judge has no jurisdiction to proceed under that section, then in our opinion the order, dated the 14th of December, 1917, passed by him would be without jurisdiction and Basdeo Gir will have to be allowed to retain possession of this property unless a suit is brought against him for his dismissal or dispossession. Pending the inquiry by the learned District Judge we think it would be advisable that the Collector should remain in possession of the estate as he at present is. We allow the application, set aside

the order of the District Judge, dated the 14th of December, 1917, and remand this case to his Court for disposal according to law. Costs of this revision will abide the event.

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