

ishri Prasad Misir Vs. Ram Krishan Das

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Court : Allahabad

Decided On : Apr-15-1930

Reported in : AIR1930All620

Appellant : ishri Prasad Misir

Respondent : Ram Krishan Das

Judgement :

Niamatullah, J.

1. This is an appeal from the decree of the learned Additional Subordinate Judge of Benares reversing that of a Munsif of that district in a suit brought by the plaintiff-respondent for a declaration that an agreement dated 21st May 1925 executed by him in favour of the defendant is ineffectual. In substance the suit was one for the cancellation of the aforesaid document.

2. The plaintiff-respondent owned a house No. 12/8 situate in the city of Benares. By a deed dated 7th May 1924 he dedicated it to Sri Ram Chandraji and constituted himself a shebait for life. The deed appointed five persons including one Moti Lal as manager. Subsequently on 21st May 1925 he executed the agreement which is now sought to be cancelled by which he appointed the defendant-appellant as a shebait to hold office after him and to be in possession of the dedicated property generation after generation.

3. Two suits were instituted, one by Moti Lal and another by the plaintiff, the present respondent, which has given rise to this appeal impugning the validity of the agreement dated 21st May 1925. Both the suits were disposed of by the same judgment. No appeal has been preferred in the suit of Moti Lal which has been dismissed by both the Courts below. As regards the plaintiff's suit the Court of first instance dismissed it. The lower appellate Court has cancelled the agreement dated 21st May 1925 so far as it related to the appointment of a shebait in succession to the plaintiff after his death. No relief was granted as regards the present position of the defendant-appellant which, according to the lower appellate Court, the defendant held at the pleasure of the plaintiff under whose supervision he is to discharge certain duties in consideration of a right of residence in a part of the dedicated house. The question we are called upon to decide is whether the decree of the lower appellate Court cancelling the agreement dated 21st May 1925 so far as it affects the defendant's right to succeed the plaintiff as shebait thereunder is correct.

4. The learned advocate for the appellant has addressed two main arguments before us which seem to us to be mutually destructive. Firstly, he urges that the declaration granted by the lower appellate Court is in respect of a truism. He, however, proceeds to contend that the defendant-appellant is entitled to succeed the plaintiff under the agreement of 21st May 1925 which in that respect is a valid and irrevocable document. We have carefully considered the terms of the so-called agreement dated 21st May 1925 and agree with the lower appellate Court that in so far as it nominates the defendant as the plaintiff's successor in office it is of a testamentary character. By the deed of endowment dated 7th May 1924 the plaintiff reserved to himself the power of appointing a suitable successor to himself. It is not a power which is exhausted after being once exercised. In our opinion it enables the plaintiff to make repeated nominations necessitated by death, incompetency or other cause. His discretion in making a choice as regards his successor in office is unfettered and he is perfectly at liberty to revise his views on that matter from time to time. Like all testamentary dispositions his nomination is to speak as on his death and his last direction is to cancel all previous declarations on the subject. The plaintiff was, therefore, competent to cancel the nomination of the defendant which he did by executing another document dated

6th March 1926.

5. As regards the argument that a declaration of what is palpably true should not be granted, reference has been made to two cases, Narendra Bahadur Singh v. Basudeo Misra [1912] 14 I.C. 81. and Ganga v. Kanhai Lal[1919] 41 All. 154, both of which are only authorities for the proposition that the relief of declaration is in the discretion of the Court which should be granted with due regard to all the circumstances of the case. The view there expressed is unquestionably right. Each case, however, depends upon its own facts. If the document impugned in a suit is of such a character that if left standing it may be a fruitful source of litigation, the Court may well grant a declaration to the plaintiff. The lower appellate Court considered the present one as a fit case in which the declaratory relief should be granted in the exercise of its discretion. In second appeal we will not be justified in interfering with the exercise of that discretion. The fact that the defendant-appellant has contested the plaintiff's claim on the merits and maintained that the nomination of the defendant-appellant once made by the agreement dated 21st May 1925 could not be subsequently questioned by the plaintiff was a justification for the lower appellate Court to have considered it to be a fit case in which all doubt as regards the defendant's right to succeed to the plaintiff on foot of that document should be negatived if he is not entitled so to succeed. In substance the question has reference to the power reserved by the plaintiff in the deed of endowment to nominate his own successor as shebait. It is clear to us that the nature and extent of that power is an important question in the case.

6. In the view of the case that we have taken this appeal is dismissed with costs, including counsel's fee in the Court on the higher scale.

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