

Fateh Chand Vs. Daulat Chand

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Court : Allahabad

Decided On : Dec-19-1949

Reported in : AIR1952All358

Judge : Malik, C.J. and ;Bind Bansi Prasad, J.

Acts : [Religious Endowments Act, 1863](#) - Sections 14

Appeal No. : First Appeal No. 321 of 1944

Appellant : Fateh Chand

Respondent : Daulat Chand

Advocate for Def. : Prem Narain Shukla and ;G.P. Pathak, Advs.

Advocate for Pet/Ap. : Shambhu Nath Seth, ;J.N. Chaterji and ;H.N. Seth, Advs.

Disposition : Appeal dismissed

Judgement :

Malik, C.J.

1. A temple was built at Maheshwari Mohal, Kanpur City, in the year 1872 by one Raghunath Pershad, who installed in that temple an idol of Shri Dharam Nath Swami. A dharamshala was later purchased by Santokh Chand, father of the defendant-respondent, but it is admitted that there is no income from the

Dharamshala. It is, however, alleged by the plaintiff that this was property of the temple and did not belong to Santokh Chand. In a partition in 1918, it was found that a sum of Rs. 19,337-1-9 belonging to the temple was in deposit in the parties' ancestral firm Sukhrup Mal Raghunath Pershad. At the time of the partition, the defendant was made responsible for payment of this money to the temple and a charge was created on the two houses allotted to him and it was provided in the arbitration award that he would not be entitled to sell these houses except with the object of raising money to repay the sum due to the temple. With this money some land had to be purchased with the income of which the temple was to be maintained. The money was not paid nor was any property purchased or endowed for the maintenance of the temple. On 2-9-1948, Fateh Chand appellant filed an application under Section 14, Religious Endowments Act (XX [20] of 1863) and asked for the following reliefs :

'(a) That opposite party be ordered to pay the whole amount Rs. 19,337-1-9 with interest thereon at 6 annas per cent. per month from the date of the award aforesaid till the date of payment together with all the profits which the opposite party and his father made out of that money and to account for it, and to purchase with the said amount some immoveable property in the name of the deity.

(b) That the opposite party be ordered to render account of all the offerings and to deposit it in some reliable Bank.

(c) That the Court be pleased to direct the removal of the opposite party from his position of the trustee of the said deity and temple.

(d) That the Court be pleased to grant any other relief which be proper in the circumstances of the case.'

A written statement was filed by the respondent in which among other pleas an objection was taken that Act XX [20] of 1863 was not applicable to the present case and the plaintiff's suit under Section 14 of the Act was not maintainable. The suit was dismissed by the lower Court on the preliminary ground and this appeal has been against that order of dismissal.

2. The lower Court held that Section 14, Religious Endowments Act only related to a case where the circumstances were such that the Bengal Regulation XIX [19] of 1810 would have applied, and as the Bengal Regulation XIX [19] of 1810 would have only applied to a temple which had land granted for its support, the lower Court was of the opinion that the suit must fail. Two rulings, one of the Calcutta High Court and the other of the Madras High Court, were mentioned by the learned Judge in his judgment, namely, Jan Ali v. Ram Nath, 8 Cal. 32 and Muthu v. Gangathara, 17 Mad. 95. We have looked into the Bengal Regulation and these cases and some others that have been cited before us, and, in our view, the suit was rightly decided by the lower Court. The Preamble of the Religious Endowments Act is to the effect that the Act was being passed to relieve the Boards of Revenue, and the Local Agents, in the Presidency of Fort William in Bengal, and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX [19] of 1810 of the Bengal Code, and Regulation VII [7] of 1817 of the Madras Code. In the Bengal Regulation XIX [19] of 1810 the Board of Revenue had to see that the rents and produce of lands granted for the support of mosques, Hindu temples, colleges and for other purposes were duly appropriated and also that bridges, Saraia Kattras and other public buildings were maintained and repaired and that Nazul property or escheats were in proper custody and were properly disposed of. The scope of the Madras Regulation, it appears from the Regulation, was a little wider than that of the Bengal Regulation. While the Bengal Regulation begins with the words,

'Whereas considerable endowments have been granted in land by the preceding Governments of this country and by individuals, for the support of mosques, Hindoo temples . . . ,'

the Madras Regulation says:

'Whereas considerable endowments have been granted in money or by assignments of land, or of the produce, or portions of the produce of land, by former Governments of this country, as well as by the British Government, and by individuals for the support of mosques. Hindoo temples. ...'

When the Religious Endowments Act was enacted in 1863 that portion of the Madras Regulation, which was similar to the Bengal Regulation, was expressly mentioned in the preamble, and the portions relating to endowments in money were omitted. In any case, Regulation VII [7] of 1817 of the Madras Code was not applicable to these Provinces, and we are only concerned with the Bengal Regulation, XIX [19] of 1810, and if that Regulation was not applicable to the temple of the kind now in suit, Section 14, Religious Endowments Act cannot be applied to it. In *Jan Ali v. Ram Nath*, 8 Cal. 32 it was held by Prinsep and Field JJ., that this Act would not apply to any mosque but only to a mosque for the support of which endowments in land have been made by the Government or by private individuals. To the same effect is the decision of the Madras High Court in *Muthu v. Gangathara*, 17 Mad. 95 where Collins C. J., and Parker J. said that:

'Act XX [20] of 1863 was not applicable to the temple unless it was admitted or proved by evidence that the endowment was one which would have fallen under the provisions of Regulation VII [7] of 1817'.

The point was considered at some length by a Full Bench of the Avadh Chief Court in *Kedar Nath v. Pearey Lal*, 7 Luck. 648 and it was held by the Full Bench following the decision in *Jan Ali v. Ram Nath*, 8 Cal. 82 that,

'the provisions of Section 14, Religious Endowments Act, are not applicable to temples for the maintenance of which no endowment in land has been made.'

To the same effect is the decision of the Patna High Court in *Ram Prasad v. Ramkishn Prasad*, 11 Pat. 594. We see no reason to differ from the view expressed in the above cases.

3. It was urged by learned counsel for the appellant that the fact that a charge was created on the two houses for the money due to the temple must be interpreted to mean that the charge on this property was an endowment in favour of the temple. We are not impressed by this argument. It cannot be said that there was any endowment of the charge. The money was no doubt endowed property and it was for the recovery of the money that the charge was created on the two houses, but it cannot be urged that the houses were endowed property. Neither the charge

could be deemed to be endowed property, nor is it possible to hold that the charge was land within the meaning of that term in the Bengal Regulation XIX [19] of 1810.

4. It was further argued that the Dharamshala, which is endowed property and is a part of this temple, must be deemed to be land. The Regulation provides that the Board of Revenue has to see to the due appropriation of rents and produce of lands granted for the support of mosques, Hindu temples, colleges etc. There is admittedly no income from the Dharamshala. It cannot, therefore, be said that there is any rent or produce arising out of it, the due appropriation of which would have been a part of the duty of the Board of Revenue, if the Bengal Regulation had been applicable.

5. The result, therefore, is that the appeal has no force and is dismissed with costs.

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