

Satya Dev Vs. Behariji Maharaj, Birajman Mandir and anr.

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Court : Allahabad

Decided On : Feb-11-1980

Reported in : AIR1980All220

Judge : Amitav Banerji, J.

Acts : Hindu Law; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

Appeal No. : Second Appeal No. 1259 of 1971

Appellant : Satya Dev

Respondent : Behariji Maharaj, Birajman Mandir and anr.

Advocate for Def. : P.C. Gautam, Adv.

Advocate for Pet/Ap. : S.N. Verma, Adv.

Disposition : Appeal dismissed

Judgement :

Amitav Banerji, J.

1. This is a second appeal by the defendants.

2. Plaintiff's suit through Shri Janaki Prasad for removal of the defendants from Shebaitship of the idol-Behariji Maharaj-plaintiff No. 1 and for possession of the

temple and the properties was dismissed by the trial Court. On appeal by the plaintiffs the judgment and decree of the trial Court were set aside and the suit was decreed only for joint possession of the properties described in the plaint. The suit in respect of the other reliefs was dismissed. The defendants have come up in second appeal in this Court and the plaintiffs have filed a cross-objection.

3. The relevant facts are as follows: The plaint case was that Lachhman the common ancestor of the parties had constructed the temple of Behariji Maharaj in village Daulatabad and dedicated the property which belonged to him to the temple. He also executed an Iqrarnama on 1st Jan., 1865 indicating the scheme of the waqf and also the order of succession in regard to the office of the Shebaitship. According to the terms of the Iqrarnama Parshot-tam, who was the eldest son of Kewal Ram became a Sarbarkar of the disputed temple until he died in the year 1944. Janki Prasad, plaintiff No. 2 claimed that he was the eldest son of Parshottam and in accordance with the order of succession laid down in the Iqrarnama dated 1st Jan., 1865 he was entitled to the office of the Shebaitship and to the possession of the properties. He claimed that defendants had wrongly mentioned their names as Sarbarkar of the temple and were also illegally in possession of the properties in dispute. Defendant No. 1 Satya Dev admitted that Lachhman was the common ancestor but denied that Lachhman was owner of the properties in suit. According to him Lachhman was the proprietor of only two plots Nos. 514 and 518. He, however, admitted that Lachhman had created a waqf and dedicated the aforesaid two plots to the temple of Behariji which he had constructed in his lifetime. The alleged Iqrarnama was said to be a forged document and it was stated that Lachhman had never executed it. Mathura Prasad was a Sarbarkar of the temple even in the lifetime of Lachhman and the temple had fallen down during the management of Mathura Prasad. After the death of Lachhman, Parshottam got the temple re-constructed and dedicated his own properties to the temple to maintain it. Parshottam also executed a registered deed dated 2nd July, 1951 dedicating his own property to the temple but had at the same time laid down a new line of succession. The defendants have been serving as Sarbarkar and were in possession of the properties in pursuance of the aforesaid deed. It was further pleaded that even if the deed dated 1st Jan., 1865 was held to be valid and genuine then after the death of Janki Prasad, the plaintiff

No. 2 Maheshwar Dayal had no right to be the Sarbarkar of the temple in dispute and the suit was liable to be dismissed.

4. The trial Court enquired into the question if Lachhman was the owner of the entire properties described in the plaint and had created a waqf in regard to all the properties mentioned in the plaint. Another question was whether Lachhman had executed a deed dated 1st Jan., 1865 and whether Parshottam had created a waqf and laid down the line of succession. A fourth question was whether Maheshwar Dayal was entitled to maintain the suit. The trial Court held that the deed dated 1st Jan., 1865 was a forged and fictitious document. Lachhman was the owner of only two plots Nos. 514 and 518 and he had created a waqf only in respect of the aforesaid two plots and not in respect of the remaining plots. The suit was dismissed. In the appeal by the plaintiffs the lower Appellate Court held that the document. Ext. 22, alleged to have been executed, by Lachhman in the year 1865 was not a genuine document. Parshottam had not created any new waqf and the finding to the contrary of the trial Court was set aside. It was also stated that Parshot-tam had only managed the temple and executed a deed showing his intention to dedicate a certain proprietary share to the temple. The Court below also held that Parshottam was neither a founder or co-founder of endowment but made some certain additions to the already existing waqf in the capacity of Sarbarkar but he had no power to lay down a line of succession to the office of Shebaitship. Since, the documents relied upon by the parties were rejected the Court held that the ordinary law of succession would govern and that the plaintiff No. 2 would be deemed to be a co-shebait of the waqf. The lower Appellate Court, therefore, allowed the appeal in part and passed a decree for joint possession of the properties described in the plaint.

5. Mr. S. N. Verma, learned counsel for the appellants contended that the lower Appellate Court has erroneously treated the entire property described in the plaint as that of Lachhman and to be waqf property, which was based on no evidence, there being no issue, discussion or finding on the point. Since only two plots Nos. 514 and 518 were found to have been dedicated by Lachhman, it was contended by the learned counsel for the appellants that the Court below erred in holding the other plots to be also dedicated.

6. There is clear finding of fact that the deed dated 1st Jan., 1865 was forged and fictitious document. There is no dispute that there is a temple and that certain properties had been dedicated to the said temple. There is also no dispute that Lachhman was the holder of two plots Nos. 514 and 518 and that both these plots are part of the waqf. Although the deed of 1st Jan., 1865 had been found to be forged and fictitious but the finding is that the property in Plots Nos. 514 and 518 were the part of the waqf property. The only effect of the deed of 1st Jan., 1865 holding it to be a forged and fictitious one would be that the line of succession indicated in that deed in favour of the eldest son of the 1st Sarbarkar succeeding would not be effective. It is also not disputed that certain other properties were dedicated to the temple subsequently. It was dedicated by Parshottam while he acted as Sarbarkar. Parshottam executed a deed, Ext. 22, on 2nd July, 1944 indicating the line of succession to Shebaitship or Sarbarkar excluding other branches of the family.

7. This raises a very interesting question as to whether a Sarbarkar can change the line of succession by dedicating a property to the already existing waqf. A Sarbarkar is in the capacity of a Manager of a waqf. He can always accept a gift whether of movable or immovable property to the waqf. If there are conditions attached to the gift he may or may not accept the gift. If he were to accept the gift with the condition, then he would be bound by the condition. But where the maker of the gift is himself the Sarbarkar, would it be permissible for him to make a gift with a condition and accept that condition so as to bind the waqf? If this position is accepted it may lead to a very depressing situation. It would then mean that any Sarbarkar merely by making a gift to the waqf with a condition attached change not only the line of succession but also the nature and purpose of the waqf. In that event it would permit the Sarbarkar to get round the original deed of dedication or the original act of dedication and impose his sweetwill on the waqf. As indicated earlier this would lead to a disastrous consequence for many a waqf.

8. The question, therefore, arises as to whether a Sarbarkar can change the line of succession or the nature or object of the waqf by making a gift to the waqf. Whether he would be competent to accept the gift with condition to his own advantage. In my opinion, the donor and the acceptor cannot be the same person.

The acceptor must act in the best interest of the waqf. If there is a line of succession of the aims and objects of the waqf are well settled, the acceptor cannot change the same unless it is in the interest of waqf. This can only be judged by the Sarbarkar if he is acting in the best interests of the waqf. The Sarbarkar has to consider whether the attached conditions are beneficial or conducive to the interest of the waqf. If the Sarbarkar himself is interested in changing the aims or objects or the purpose of the waqf or the line of succession of Shebaitship himself he cannot act truly as the Sarbarkar of the temple or the waqt. The moment the Sarbarkar makes a gift in favour of the waqf with a condition he precludes himself from accepting the same in his capacity as Sarbarkar. Reference may be made to B. K. Mukherjee's Book on the Hindu Law of Religious and Trusts, III Edition, page 166, dealing with 'Additional Endowments and Alteration of the line of Shebaits.'

'Additional endowments in favour of the family deity are frequently made by the descendants of the original owner, who may be Shebaits themselves and obviously such grants are beneficial to the deity. It is settled law that the persons who subsequent to the foundation furnish additional contributions do not thereby become joint founders, and their benefaction is regarded as nothing but an accretion to an existing endowment. No difficulty arises if such additional gifts are made by a donor without any condition attached to it. The gift would become the property of the idol and whoever the donor might be, the existing She-bait of the idol would have the powers to manage the property on behalf of the idol..... Complications are created when the donor, in making the gift, purports to give directions which would alter the devolution of the office of the Shebait, making the course of succession to depart either from the terms of the original grant, or in the absence of a grant, that which is in accordance with ordinary rules of Hindu Law. The question arises in such cases, whether in giving effect to the additional gift, effect has to be given to the new directions given by the donor regarding the right of management of such property.'

9. In the case of Lalit Mohan v. Brojendra ((1926) ILR 53 Cal 251) Page, J. considered the question whether it was permissible for a person who was a Shebait and not a founder to alter the line of succession. It was held that a Shebait

was incompetent of his own will and pleasure to alter the line of Shebait laid down by the founder by the common law of the land. There were two conflicting decisions of a Division Bench of the Calcutta High Court in respect of the above view of Page, J. but the matter was considered by the Judicial Committee of the Privy Council in *Goswami v. Bumanlalji* ((1889) 16 Ind App 137). Their Lordships laid down that the representatives of the idol might either reject the gift deed or accept the gift deed with the condition attached. If they accept the gift deed with the condition attached it must be observed. It was not open to them to have a gift and not to observe the condition in his book. B. K. Mukherjee has dealt with the question as follows :--

'Ordinarily two questions arise for decision in the cases of this description: (i) whether the appointment of a new line of Shebaits is a condition attached to the additional grant and (2) if so, whether the deity or his representatives elected to accept or reject the gift. If acceptance is proved the condition must be obeyed. In this case it is further pointed out that a Shebait making additions to an existing foundation cannot himself accept the gift with the condition attached to it, even if it be for the benefit of the idol. It is the will of the idol which is to decide the matter. The question then arises, how is the will of the deity to be expressed. The deity can express its desire only through human agents, and obviously it is in the Shebait who is entitled to speak on its behalf on earth. If the Shebait for the time being is himself the donor, the will of the deity should be expressed through all those who are interested in the worship of the idol and in the case of family Debutter they would include all members of the family, male and female.'

10. It is therefore, clear from the above that in case if a gift by a donor who himself happens to be a Shebait or Sarbarkar cannot be accepted by him but has to be accepted on behalf of the deity or the idol by the entire body of persons who are interested in the worship of idol and in the case of family Debutter by all the members of the family.

11. Applying the above principle in the present case it is evident that it was not open to Purshottam Lal to accept his own gift deed with a condition attached and change the line of succession. According to the finding of the Court below the

deed of 1865 was non est and consequently the line of succession mentioned in that deed has to be ignored with the result that the ordinary law of succession would be there. It is well settled that Shebaitship like any other species of heritable property follows the line of inheritance from the founder unless the founder has disposed of the Shebaitship in any particular way or where a usage or custom of a different nature prevails. See *Pro-fulla Choron v. Satya Choron*. A change in the line of succession which is based on ordinary law of succession cannot even be made by the Shebait or Sarbarkar by accepting a gift with condition attached where he himself is the donor. It is, therefore, apparent from the above that Parshottam Lal could not change the line of succession by his deed of 1941. The ordinary line of succession would continue to prevail. The gift, if accepted, would only be in the nature of accretion to the endowment and nothing more.

12. The debutter can come to existence only when some property is dedicated for worship or the service of the idol. The finding of the lower Appellate Court is that Parshottam Lal had no property and consequently he could not dedicate any property. Thus no new debutter could be created by him. Even if he had some property and dedicated it to the deity it would be merely an accretion to the endowment and nothing more.

13. The next question is whether only two plots or all the plots were dedicated to the deity. The trial Court gave a categorical finding that only two plots were dedicated by Lachhman Prasad. Lachhman Prasad was the owner of the plots Nos. 514 and 518 and as such his dedication of the above two plots could be understood. The finding of the trial Court was that other plots were not dedicated. The evidence on record shows that not only these two plots but some other plots were shown in the name of Behariji in the year 1872 revenue entries. All the plots in dispute were shown as belonging to Behariji in the entry of 1308 Fasli. The lower Appellate Court has decreed the suit for all the plots shown in the plaint, holding plots Nos. 514 and 518 to be originally dedicated and the remaining plots to have been added subsequently being accretion to the waqf. The lower Appellate Court considered the question whether the disputed plots other than 514 and 518 belonged to Parshottam Lal and were dedicated by him to the deity. The point was answered by saying that Parshottam Lal did not create any new waqf

but had only managed the temple and executed a deed showing his intention to dedicate a certain property share to the temple, and at most he can be said to have added something to the already existing endowment. Parshottam Lal thus would be deemed to have added something to the waqf.

14. The finding of the Court below rejecting the plea that Parshottam Lal had not created any new waqf and holding that at the most he can be said to have added some thing to the already existing endowment seems to be a finding in accordance with law. I am not impressed by any argument raised at the bar that the above finding is erroneous in law, in view of the very fact that a number of plots were being shown as attached to this waqf even in 1308 Fasli. It is, therefore, not possible to hold that the waqf in this case related to only two plots Nos. 514 and 513. I am, therefore, unable to accept the contention of the learned counsel for the appellants that the waqf in the present case related to only two plots.

15. The Court below has found that plaintiff No. 2 Janaki Prasad was a member of the family of which Lachhman Prasad was the common ancestor and he could not be excluded from being the joint Shebait on the basis of the gift deed made by Parshottam. This finding must be accepted as it is in accordance with law. The Court below has correctly held that Janaki Prasad plaintiff No. 2 would not only be a joint Shebait but would also be entitled to act as such and would be in joint possession of the properties along, with the defendants.

16. I will now consider the cross-objection filed by the plaintiff-respondent. Mr. S. N. Verma, learned counsel for the appellant raised an objection that no cross-objection lay for the challenge was against a joint decree. I find no force in this objection. The cross-objection is in respect of the deed of 1865. Mr. G. N. Verma, learned counsel for the respondents contended that the 1865 deed was not a forged or a fabricated document but was a genuine document and the view taken by the Court below to the contrary was patently erroneous. His contention further was that that document laid down the line of succession and that could not be altered subsequently. In other words, his contention was that so long as that document stood the ordinary laws of succession in respect of Shebait-ship rights would not even prevail.

17. Mr. G. N. Verma then sought to argue that the various reasons given by the lower Appellate Court to hold that the deed of 1865 was not a genuine document were patently erroneous. He argued that the stamped paper showed the name of the purchaser and the contention to the contrary was erroneous. But these are not the only considerations which have weighed with the lower Appellate Court. The lower Appellate Court has given various reasons to hold why the document could not be held to be a genuine document. Even the plots Nos. 514 and 518 were not mentioned in the document. The document purports to be written in future tense. Although the document is said to have been executed in 1865 no entries were made in favour of the deity until 1872. The Court below has also recorded that if Lachhman Prasad was keen enough to execute a deed he would have been equally keen to have the entries made in favour of the deity at least in respect of the plots which had been dedicated to the deity. Even the question of the custody from which the document has been filed in the Court makes the position doubtful. The Court below has also given reasons as to why the execution of the registered deed in the year 1941 is suggestive of the fact that there was no earlier document in existence. The document in question was also found not to be registered. Taking note of all these circumstances the Court below has come to the conclusion that the document was not a genuine document. Whether a document is genuine or not depends upon a whole bunch of facts and circumstances. The inference drawn from facts also are questions of fact. The finding that the document, Ex. 22 is not a genuine document is a finding on a question of fact. It is well settled that the finding on a question of fact however grossly erroneous it may seem to be is not liable to be interfered with in second appeal. See *Durga Choudharain v. Jawahir Singh* ((1890) 17 Ind App 122); *Rama Chandra v. Ramalingam* : [1963]3SCR604 and *Afsar Shaikh v. Soleman Bibi* : [1976]2SCR327 . It is also well settled that unless a finding is vitiated by an error of law or procedure the finding is not to be interfered with. I do not find any case made out to show that the finding is vitiated by any error of law or procedure in the present case. For the reasons indicated above, no case has been made out for interference with the above finding arrived at by the Court below. Consequently, I find no force in the cross-objection.

18. For the reasons indicated above, I find no force either in the appeal or in the cross-objection. Both must fail.

19. In the result, therefore, the appeal and cross-objection both are dismissed but in the circumstances of the case I direct the parties to bear their own costs.

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