

Ballabh Das Vs. Gaur Das

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Court : Allahabad

Decided On : Dec-14-1939

Reported in : AIR1940All261

Appellant : Ballabh Das

Respondent : Gaur Das

Judgement :

Verma, J.

1. These are two cross petitions in revision and arise out of a suit for possession under Section 9, Specific Relief Act. The plaintiffs in the suit were an idol, who was shown as plaintiff 1, and Gaur Das, who appeared as plaintiff 2 and purported to be the Mahanth of the temple. Defendant 1, Ballabh Das, on the other hand, claimed to be the Mahanth. The dispute is with regard to a building which is appurtenant to the temple. Each party denied the possession of the other over that building. The learned Civil Judge has held that both Gaur Das and Ballabh Das were the managers of the temple and had been in possession of the property in dispute in that capacity. He has also held that Ballabh Das's act, which was complained of by Gaur Das, did amount to dispossession of Gaur Das. On these findings of fact he has passed a decree in favour of Gaur Das for joint possession along with Ballabh Das. The main contention raised on behalf of Ballabh Das is that the Court below had no jurisdiction to pass a decree for joint possession in a

suit instituted under Section 9, Specific Relief Act. It has been argued that such a decree is not authorized by that Section, and reliance has been placed on *Hari Nama Dass v. Sheikh Naju* (1914) 1 AIR Cal 496 and *Para Koothan v. Para Kulla Vandu* (1916) 3 AIR Mad 587. It seems to us, however, that the language of Section 9 does not justify such an argument. The Section lays down that

if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he...may by suit recover possession thereof....

2. We see no reason to hold that the words of the Section refer to exclusive possession. On the contrary, it seems to us that a person in joint possession of immovable property is as much in possession of that property as a person who is in exclusive possession, and if the person who was in joint possession is dispossessed, there is, in our opinion, no reason why he should not be entitled to bring a suit under the Section to be restored to that possession which he enjoyed before he was dispossessed. The first case relied upon by learned Counsel for Ballabh Das, namely, the one in *Hari Nama Dass v. Sheikh Naju* (1914) 1 AIR Cal 496, has been explained by the Calcutta Court in a later decision in *Ajiman Bibi v. Sheikh Reasut* (1916) 3 AIR Cal 562. It is significant that one of the learned Judges, Chatterjee J., who was a party to the later decision was also a party to the earlier one. It has been observed in the judgment in *Ajiman Bibi v. Sheikh Reasut* (1916) 3 AIR Cal 562 that the remarks as to exclusive possession made in the judgment of the earlier case must be read in reference to the facts of that case and that they were not intended to stand in the way of that joint physical possession being restored which existed before the disturbance. The Madras case *Para Koothan v. Para Kulla Vandu* (1916) 3 AIR Mad 587 cited merely follows the case in *Hari Nama Dass v. Sheikh Naju* (1914) 1 AIR Cal 496, and no reasons are given in the judgment for the view taken. The earlier Madras case, *Sabappathi Chetti v. Subraya Chetti* (1881) 3 Mad 250 which the learned Judges in *Para Koothan v. Para Kulla Vandu* (1916) 3 AIR Mad 587 seek to distinguish, is also instructive. The view taken by us has also been held in the late Court of the Judicial Commissioner at Nagpur: vide *Ghooti v. Sitku* (1917) 4 AIR Nag 31 and *Ramchandra Fate v. Shridhar* (1922) 9 AIR Nag 115. We agree with the view taken in these cases. In our opinion, the Court below was not wrong in passing a

decree for joint possession.

3. It has also been urged on behalf of Ballabh Das that the Court below having found that the idol could not be said to have been dispossessed, no decree should have been passed. But, as the Court below has pointed out, the dispute as to possession is between the two managers of the idol who have been found to have been in possession of the property. The possession of each of them is, of course, in his capacity as the manager of the idol. The question whether the idol has been shown to have been dispossessed or not is therefore irrelevant.

4. In Civil Revn. No. 447 of 1937 it has been contended on behalf of Gaur Das that the Court below has not found that Ballabh Das was also in possession of the property and that a decree for exclusive possession should therefore have been passed in favour of Gaur Das. We are unable to accept this argument. The whole judgment proceeds on the footing that Ballabh Das is in possession, and the only question which needed consideration was whether Gaur Das also had any sort of possession which entitled him to institute the suit. The very fact that the learned Judge came to the conclusion that Gaur Das was entitled only to joint possession shows clearly that the learned Judge, on the evidence before him, came to the conclusion that Ballabh Das was in possession along with Gaur Das. There is therefore no force in the revision filed on behalf of Gaur Das also. For the foregoing reasons we dismiss both these petitions in revision with costs.