

Dilip Kumar Bajaj Vs. Pradeep Kumar Bajaj

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Court : Allahabad

Decided On : Dec-05-2002

Reported in : 2003(1)AWC247

Judge : B.K. Rathi, J.

Acts : [Indian Trusts Act, 1882](#) - Sections 1 and 34

Appeal No. : Civil Revision No. 346 of 1998

Appellant : Dilip Kumar Bajaj

Respondent : Pradeep Kumar Bajaj

Advocate for Def. : Krishna Mohan, ;R.P. Sinha and ;Rajesh Kumar Agarwal, Advs.

Advocate for Pet/Ap. : P. Sahai, ;Pankaj Naqvi and ;Pankaj Mittal, Advs.

Judgement :

B. K. Rathi, J.

1. This is a revision under Section 115, C.P.C. against the judgment and order dated 9.7.1998 passed by District Judge, Mirzapur in Misc. Case No. 8 of 1998 by which he granted permission to sell certain properties of the trust to the respondent.

2. The trust was made by late Jamuna Das regarding his properties. He constructed a temple of Dwarika Nathji also known as Dwarikadhish Ji in district Mirzapur, a dharmshala in Brindaban and other properties at Kanpur and Calcutta. The trust was created regarding all the above properties by registered Will dated 3.2.1914. According to the terms of the Will, Jamuna Das was to remain as trustee throughout his life, and thereafter, his only son Seth Rameshwar Das Bajaj became trustee. Seth Rameshwar Das Bajaj also died on 12.3.1937. Thereafter, his son. Dwarika Prasad Bajaj, the father of the parties became the trustee. Both parties are sons of Dwarika Prasad Bajaj. The respondent claimed that there was registered Will of Dwarika Prasad Bajaj dated 22.10.1994 by which he was appointed managing trustee of the trust. He showed the need to sell certain properties of the trust and moved an application under Section 34 for permission to sell few properties. The learned District Judge considered the matter in detail and by the impugned order allowed the application in part and granted permission to sell certain properties, and rejected the same in part. Aggrieved by it, the present revision has been preferred.

3. I have heard Sri Pankaj Naqvi, learned counsel for the revisionist and Sri Krishna Murari. learned counsel for the respondent.

4. The first argument of the learned counsel for the revisionist is that trust was a private trust and. therefore, the provisions of Indian Trust Act. 1882, does not apply to the present trust and application under Section 34 of the Act was not maintainable. The learned counsel has taken me through the trust deed, which has been created by Will dated 3.2.1914 of late Jamuna Das Bajaj. In the Will, he has mentioned that he had already given certain properties to Sri Dwarika Nath Ji and so that no body may interfere in the property given to Dwarika Nath Ji, he executed the Will. According to the Will after his death, his son Rameshwar Das Bajaj was to become the trustee and thereafter, his heirs. In the Will, he has referred to the temple as his own Thakurji and no outsider has been appointed in the trust to look after.

5. It has, therefore, been argued that the contents of the Will shows that trust is private trust and the provisions of Section 34 of Indian Trust Act do not apply.

6. Learned counsel has also referred to Section 1 of the Indian Trust Act which provides that nothing herein contained affects the Rules of Mohammedan law as to waqf or the mutual relations of the members of an undivided family as determined by any customary or personal law. or applies to public or private religious or charitable endowments (emphasis given). Therefore, it appears that trust in question is private trust and, therefore, the provisions of 34 of Indian Trust Act do not apply. If it is so, the permission as granted under Section 34 appears to be without jurisdiction. This aspect of the matter was not at all considered by the Court below.

7. Learned counsel in support of the arguments has referred to the decision in the case of *Lalta Prasad v. Brahmanand and Ors.*, AIR 1953 All 449, which is a Division Bench decision of this Court. It was held that Indian Trust Act has no application to public or private religious or charitable endowment.

8. The next argument of the learned counsel for the revisionist is that the respondent cannot be sole trustee. It is contended that according to Will of Seth Jamuna Das Bajaj by which the trust was created on 3.2.1914, till his death he remained sole trustee and after his death his son Rameshwar Das Bajaj became trustee and thereafter his son Dwarika Prasad Bajaj became the trustee. It has been argued that after the death of Dwarika Prasad Bajaj, all his heirs, according to the Hindu Law will become' the trustees and also according to the Will. The respondent claimed that he was appointed as sole trustee by registered Will dated 22.10.1994 by Dwarika Prasad Bajaj. It has been argued that line of succession cannot be changed in case of trust, and in support of the argument, learned counsel has referred to the decision of the Apex Court in the case of *Rambir Das and Anr. v. Kalyan Das and Anr.*, 1997 (3) AWC 1757 (SC) : 1997 (4) SCC 102. It was held that succession to the shebaitship would be either as given by the founder or in its absence, in the lines of intestate succession.

9. The other decision on this point is *Brindaban v. Ram Lakhan Lalji and Mahadeqji and Ors.* AIR 1975 All 255, which is a Division Bench decision of this Court. It was held that :

'When a property has been dedicated by a donor and he has thereby divested himself of all Interests in the property, the rule of succession to the office of shebait assumes considerable importance in the case of trusts, and, if the line of succession has been laid down by the donor at the time of the dedication, the same cannot be changed by the donor in the absence of any reservation of power to himself of changing the line of succession. A shebait cannot also alter the line of succession to the office of shebait laid down by the founder.'

10. Even if the deed creating the trust on 3.2.1914 is silent after the death of Dwarika Prasad Bajaj, all the heirs according to Hindu Law of Dwarika Prasad Bajaj will manage the trust property and Dwarika Prasad Bajaj has no right to execute the registered Will on 22.10.1994 making the respondent as sole trustee. Therefore, the application of respondent for permission to sell the property was also not maintainable. This aspect of the matter was also not considered.

11. It appears that these facts were not considered in detail by the learned District Judge while granting permission to sell the properties. Accordingly, the order of the District Judge cannot be maintained and the matter should be sent back for reconsideration.

12. The revision, is, therefore, allowed and the impugned order dated 9.7.1998 of the District Judge, Mirzapur, is quashed. The District Judge, Mirzapur, is directed to reconsider the matter in the light of the observations made above after giving opportunity to the parties to produce fresh evidence.

13. In the circumstances, the parties shall bear their own costs of this revision.

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