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Court : Rajasthan

Decided On : Jan-25-1952

Reported in : AIR1953Raj144

Judge : Bapna and; Ranawat, JJ.

Acts : [Transfer of Property Act, 1882](#) - Sections 6

Appeal No. : Civil Revn. No. 34 of 1949

Appellant : Mt. Chandi

Respondent : Rampratap

Advocate for Def. : Madhusudan Sharma, Adv.

Advocate for Pet/Ap. : Rupnarain Mathur, Adv.

Disposition : Revision allowed

Judgement :

Bapna, J.

1. This is a revision against a decision of the Judge, Small Cause Court, Jaipur.
2. The petitioner sued the opposite party for recovery of Rs. 180 on the allegations that the plaintiff had Birat Jajmani of Dhobis at Jaipur for the purpose of performing

marriages amongst Dhobis and certain other ceremonies, but that as the plaintiff was a woman and an aged lady she made arrangements with the defendant, opposite party, whereby the defendant was to perform the ceremonies relating to the Birat and to pay half of the income to the plaintiff. It was alleged that the defendant continued to make payments as agreed, but failed to do so in respect of 20 marriages performed among Dhobis within a period from, Baisakh Sambat 2005 to Jeth Sambat 2005. It was mentioned that on each of these occasions, the defendant received Rs. 18/- and thus got Rs. 360 in all, of which the plaintiff was entitled to Rs. 180/-. The plaintiff relied upon an agreement dated Posh Sudi 10 Smt. 2003 executed by the defendant incorporating the arrangement.

3. The defendant admitted the genuineness, of the agreement and further that he had performed 18 marriages among the dhobis and had received Rs. 10 on each such occasion. He however, pleaded that the agreement was inoperative as ever since the death of the plaintiff's husband, the defendant had been performing marriages among the dhobis on his own, account for the last 25 years. A plea was raised that the agreement was unenforceable at law.

4. The learned Small Cause Court Judge agreed with the defendant that the agreement Ex. 1 dated Posh Sudi 10, Smt. 2003 relied upon by the plaintiff amounted to a transfer of religious office, which was prohibited by Section 6, T. P. Act, and was not valid. He accordingly dismissed the suit. The plaintiff has filed this revision.

5. The revision at first came before a Single Judge, who referred the case to a Division Bench as the matter involved a question as to whether a Birat for solemnising marriages was a right in property.

6. It has been held in -- 'Mt. Sarda Kun-war v. Gajanand', AIR 1942 All 320 that the right to Biraj Jajmani is a right in property and that it was heritable, and in some cases transferable. It may be pointed out that a right of Birat Jajmani as regards performing marriages is simply this that the householders may avail of the services of a particular Brahmin family for officiating as Purohit or priests at the ceremony. In the present case, according to the contents of the agreement between the parties, the plaintiff had the Birat of Dhobis which, in other words, would mean that

the Dhobis were quite prepared to avail of the services of the plaintiff for the performance of the marriages, and it was the business of the lady to arrange with some one to act as Purohit and perform the ceremonies. She, therefore, seems to have come to an arrangement with the defendant by which the defendant was to perform the ceremonies of the Jajmani of the plaintiff and was allowed to retain half of the income, the other half being payable to the lady. Ordinarily, if a person officiating as a priest receives some remuneration, it would be presumed to be the earning of the person who officiates, but if the function is to be performed under an arrangement with the Birtidar the presumption is that he is officiating as a priest under- instructions of the Birtidar, & receives the amount on his behalf, subject of course to the arrangement of division of the income that may exist between the parties. Such an arrangement does not involve any breach of public policy. On the other hand, in the case of ladies being the last holder of the Birat, such arrangement is very reasonable both for the benefit of the Jajmans and for the family of the Purohit. The holding of Birat Jajmani is not 'per se' the holding of a religious office, because apart from the occasion when necessity arises to officiate as priest, there is no office which the Purohit holds.

In -- 'Ladharam v. Rallaram', AIR 1928 Lah 730 it was held that:

'a Court cannot control the selection of an Acharaj by the Jajman and if it transpires that the Jajman has chosen a particular Acharaj to the exclusion of another, the Court will not give any decree so as to affect such a selection; but as between the Acharajs themselves in the absence of an express selection by the Jajmans to whom it may be 4 immaterial whether the Brit is received by one or the other, the rights of the Acharajs 'inter se' can be adjudicated upon, and enforced by the civil Courts.'

The learned counsel for the opposite party placed reliance on -- 'Hanso Pathak v. Harmandil Pathak', AIR 1934 All 851 in support of an argument that the remuneration received by the Purohit who performed personal services could not be claimed by the family. The case related to a claim by the son against the father in respect of property built by his father out of his income as a Pandit, and it was held that the remuneration which the father received for officiating as a priest was

his personal income. That case has nothing to do with the question in dispute in this case.

7. The learned counsel next relied upon --'Mahadeva Vazul v. Mathura Suraparakasam', AIR 1915 Mad 597. Some of the observations of Sadashiva Aiyar J. support the respondent, but the other Judge, Seshagiri Aiyar J. did not concur in those observations. The decision in the Madras case has been referred to in the case of -- 'Mt. Sarda Kunwar', AIR 1942 All 320 along with certain other cases and the principle deducible from those cases has been mentioned in the Allahabad case to be that in the absence of a definite contract, a Purohit is not entitled to a decree against a rival Purohit for a share in the offerings received by him from persons alleged to be Jajmans of the plaintiff, the ground of decision being that voluntary offerings may be given to any one whom the Jajmans choose to give them. In the present case, the defendant did not plead that he was chosen by the Jajmans on his own merit. His plea that he was acting as a Purohit for the Dhobis from before the agreement has not been substantiated. In the circumstances, there is no reason to consider that the arrangement evidenced by the agreement of Posh Sudi 10, Smt. 2003 is in any way vitiated by any defect under any law.

8. The learned counsel for the petitioner at the close of the arguments stated that his client was content with accepting the version of the defendant that he had officiated at only 18 marriages and had received only Rs. 10 on each such occasion. There is, therefore, no necessity to remand the case for further enquiry on the other issues. The total income on account of performing marriages under the arrangement was Rs. 180/- as admitted by parties. And the plaintiff is entitled to receive Rs. 90/- from the defendant.

9. The revision is, therefore, allowed and the decree of the Judge, Small Cause Court, is set aside. The plaintiff's suit is decreed for recovery of Rs. 90 from the defendant. The plaintiff will receive costs both in this and the lower Court from the defendant in proportion to the amount decreed in his favour.