Math Sauna And Ors vs Kedar Nath @ Uma Shankar & Ors on 4 September, 1981

Equivalent citations: 1981 AIR 1878, 1982 SCR (1) 659, AIR 1981 SUPREME COURT 1878, 1981 ALL. L. J. 1082, (1981) ALL WC 714, 1981 UJ (SC) 740, 1981 (4) SCC 77

Author: R.S. Pathak

Bench: R.S. Pathak, O. Chinnappa Reddy

PETITIONER:
MATH SAUNA AND ORS.

Vs.

RESPONDENT:
KEDAR NATH @ UMA SHANKAR & ORS.

DATE OF JUDGMENT04/09/1981

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
REDDY, O. CHINNAPPA (J)

CITATION:
1981 AIR 1878 1982 SCR (1) 659
1981 SCC (4) 77 1981 SCALE (3)1577

ACT:
Hindu Law-Sannyasi-Whether could acquire personal property Property acquired by application of nucels-Tests for deciding.

HEADNOTE:
The plaintiffs in their suit claimed that the properties in dispute belonged to the Math Sauna temple and that one of the plaintiffs Mahant Sadashiva Yati on the death of his predecessor was elected as Mahant of the temple and that therefore as Sarbarakar he was entitled to all the properties recorded in the name of the deity or his predecessor.

The defendant claimed that by virtue of a will executed by Mahant Shivshankar Yati, the predecessor Mahant, the

properties in dispute which were his personal properties devolved on him.

The Civil Judge decreed the plaintiffs' suit with a finding that Mahant Sadashiv Yati was not the Sarbarakar.

Upholding the respondent's claim, the High Court in appeal, held that the properties did not belong either to the Math or the deity but were the personal and separate properties of Mahant Shivshankar Yati.

In appeal to this Court the appellants impugned the correctness of the High Court's view.

Dismissing the appeal,

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HELD: The properties in dispute did not form part of the properties of Math Sauna or of the deity but were the personal properties of the respondent.

[664 D-E]

It is well accepted that certain sects of Sanyasis (such as Dashnami Sanyasis in this case) could acquire personal property of their own and that the pronamis given to a Mahant are generally his personal property. The mere fact that a Mahant is an ascetic does not raise any presumption that the property in his possession is not his personal property. There is no presumption either way. In each case the burden is upon the plaintiff to establish that the properties in respect of which he is asking for possession are properties to which he is entitled. [662 F-G] 660

In the instant case the three earlier Mahants before they took to sanyasa had been grahasthas. They were entitled to possess, enjoy and acquire personal property. Mahant Shivpher Yati, one of the predecessor Mahants, whose reputation as a man of learning and personal attainments was high, received personal bhents from many of his affluent chelas. In addition, on the death of his predecessor Mahant Shivbaran Yati. Mahant Shivpher Yati inherited his personal property, all of which devolved on Shivshankar Yati. A succession certificate in respect of these properties was granted in the name of Shivshankar Yati. The revenue records also showed him as the owner of the properties and not the Math or the deity. None of the transfers of small parcels of these properties made by Mahant Shivshankar Yati from time to time was challenged by the plaintiffs at any time. [663 A-l]

Whether a property was acquired by the application of the nucleus could only be determined after taking into consideration all the facts and circumstances of a case and on a balancing of the entire evidence. The burden of proof rests on the party making the claim. [663 F-G]

In the present case there is no material on record to how whether the total income from the properties belonging to the Math and the deity, left any appreciable surplus after meeting the expenditure on bhog and other ceremonies. The High Court rightly held that the fund from which the

properties were acquired constituted the personal property of Mahant Shivpher Yati on whose death Shivshankar Yati employed it for the purchase of the properties and by virtue of his will the properties devolved on the respondent. [663 H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 196 of 1

970. From the judgment and decree dated April 21, 1969 of the Allahabad High Court in First Appeal No. 80 of 1964.

S.T. Desai, A.T.M. Sampath, Mukul Mudgal and Raju Ramachandran for the Appellants.

R.K. Garg, Mrs. Urmila Sirur and Shiv Pujan Singh, for the Respondents.

The Judgment of the Court was delivered by PATHAK, J: This appeal arises on a certificate under sub-cl. (b) of clause (I) of Article 133 of the Constitution granted by the Allahabad High Court against its judgment and decree dated April 21, 1969 disposing of appeals out of a suit for declaration and possession.

The plaintiffs filed a suit claiming that the property in dispute belonged to the Math Sauna or the deity Sri Thakur Gokarneshwar Mahadeo Ji installed in the Math Sauna temple, and that Mahant Sadashiva Yati was in possession as Mahant and Sarbarakar. It was claimed that in the event of Mahant Sadashiva Yati being found out of possession a decree for possession should be made. Sadashiva Yati pleaded that on the death of Mahant Shivshanker Yati he was elected Mahant of Math Sauna and was, therefore, entitled as Sarbarakar to all the properties recorded in the deity Mahadeo Ji or in the name of Mahant Shivshanker Yati. These properties included properties in village Amauli. He asserted that Shivshanker Yati possessed no personal property. The suit was contested by the first defendant, Kedar Nath Chaubey, also referred to as Uma Shanker Yati. He alleged that Mahant Shivshanker Yati owned personal properties which included the properties in village Amauli, that he was the chela of Mahant Shivshanker Yati and the Amauli properties had passed to him under a will executed by the Mahant. We are concerned in this appeal solely with the Amauli properties.

Math Sauna is an old Math situated in the village of that name in Tehsil Saidpur in the district of Ghazipur. One of the earliest Mahants of the Math Mahant Gokaran Yati, raised a temple in the premises of the Math and installed a deity acclaimed by the name of "Gokarneshwar Mahadeo". On his death he was succeeded by Mahant Shivbaran Yati, who executed a waqf deed on November 12, 1892 dedicating various properties to the deity with the intent that arrangements for bhog, deepdan and other expenses be met from them. The surplus, the deed directed was to be employed for acquiring further property in the name of the deity and was not to be applied by the Sarbarakar to his personal use.

The learned Civil Judge decreed the suit but included a finding in his judgment that Sadashiv Yati was not a regularly constituted Mahant of Math Sauna and Sarbarakar of the deity. Two appeals were filed in the High Court. First Appeal No. 80 of 1964 was filed by Kedar Nath Chaubey @ Uma Shanker Yati against the declaration that the Amauli properties were owned by Math Sauna or the deity and that Sadashiv Yati was in possession thereof as Mahant and Sarbarakar. The other appeal, First Appeal No. 270 of 1965 was filed by the plaintiffs for the relief that Sadashiv Yati was a properly constituted Mahant of Math Sauna and Sarbarakar of the deity. The High Court allowed both the appeals by its judgment and decree dated April 21, 1969. It held that the Amauli properties had been purchased by Shivshanker Yati in 1921 from the personal and separate funds inherited by him from his predecessor Shivpher Yati, and that the Amauli properties must, therefore, be regarded as his personal and separate properties and they did not belong to the Math or the deity. The present appeal is directed against that part of the judgment and decree of the High Court.

It is admitted between the parties that the Amauli properties were purchased by Mahant Shivshankar Yati for Rs. 40,000 forming part of a fund left behind by his predecessor Mahant Shivpher Yati. The point for decision is whether the fund was the personal property of Mahant Shivpher Yati, and if so, whether it devolved on Mahant Shivshankar Yati.

The Mahants and members of Math Sauna belonged to the Dashnami Sanyasi sect. The material on the record establishes that they could own and possess personal property. They included sanyasis who had formerly been married men and householders, men who had passed through the grihastha ashram. Some of them continued to possess and even to acquire personal property after taking sanyas. It was observed in Sushil Chandra Sen v. Gobind Chandra Das(l) that Dashnami sanyasis mixed freely in the business world and carried on trade and often accumulated property. This Court in Gurcharan Prasad v. Krishnanand (2) affirmed that Nihang Dashnami Sanyasis could pursue money-lending business and could own property as absolute owners, and enjoy them as their personal property. That certain sects of sanyasis could acquire personal property was accepted by that eminent Judge, Dr. B.K. Mukherjee, in his "Hindu Law of Religious and Charitable Trusts",(a) where he says: "A Mohunt, and for the matter of that, any other Sanyasi can acquire personal property of his own...The Pronamis given to a Mohunt are generally his personal property.. The mere fact that a Mohunt is an ascetic does not raise any presumption that a property in his possession is not his personal property. Strictly speaking, there is no presumption either one way or the other, and in each case the burden is upon the plaintiff to establish that the properties in respect of which he is asking for possession are properties to the possession of which he is entitled in the right in which he sues".

There is reason to believe that Mohant Shivbaran Yati, Mohant Shivpher Yati and Mahant Shivshankar Yati were not celibates and had been grihasthas, and were entitled to possess, enjoy and acquire personal property. The evidence discloses that Mahant Shivpher Yati was held in high regard on account of his personal learning and attainments, and has a large number of chelas including many affluent persons from whom he received personal bhents or pranamis of large amounts of money. His personal property, on his death, included cash, sovereigns and gold besides two fixed deposits with the Bank of Bengal of Rs. 45,000. He had also inherited the personal property of Mahant Shivbaran Yati, who owned three private properties in village Shiv Dass in the

district of Banaras. On his death in 1917, all those properties and wealth devolved on Mahant Shivshankar Yati. He was granted a succession certificate by the District Judge, Ghazipur in respect of the two fixed deposits made by Mahant Shivpher Yati in the Bank of Bengal. Mahant Shivshankar Yati employed the inherited money in the purchase of two properties in village Amauli in 1921 paying Rs 30,000 for a full interest in one property and Rs. 10,000 for a moiety share in the other. In respect of both properties, the revenue records mentioned the name of Mahant Shivshankar Yati and not that of the Math or the deity. Small parcels of these properties were transferred by Mahant Shivshankar Yati from time to time, and none of those transfers was challenged by the plaintiffs in the present suit.

It is urged for the appellants that where a nucleus of dedicated property exists, the acquisition of additional property should be attributed to the application of the nucleus and must, therefore, be regarded as property belonging to the Math or the deity. As has been observed, there can be no presumption either way. All the facts and circumstances must be taken into consideration and on a balancing of the entire evidence it has to be determined whether the property can be said to belong to the Math or deity or is the personal property of the Mahant, the burden of proof resting on the party who makes the claim. In the present case, it is difficult to conclude from the material before us that the total income from the properties belonging to the Math and the deity left any appreciable surplus after meeting the expenditure on account of bhog, arpan, deepdan, daily and annual puja and the other obligations specified in the waqf deed. We are in agreement with the High Court that the fund from which the Amauli properties were acquired constituted the personal property of Mahant Shivpher Yati. On his death in 1917, the fund passed to Mahant Shivshankar Yati, who in 1921 employed it for the purchase of the Amauli properties.

Mahant Shivshankar Yati executed a will in 1956, and it appears beyond dispute that by virtue of this will the Amauli properties devolved on Uma Shankar Yati.

It is pointed out before us that in assessment proceedings under the U. P. Agriculture Income Tax Act 1948, the Amauli properties were described by Mahant Shivshankar Yati as properties of the Math and therefore a claim to exemption from the levy was made. The High Court has found that the claim was not accepted by the assessing authority, and that the position in regard to those properties taken in the assessment proceedings was adopted by the Mahant only for the purpose of escaping personal liability to tax. We concur with that finding.

In our judgment, the High Court is right in the view that the Amauli properties constitute the personal property of Uma Shankar Yati and do not form part of the properties of the Math Sauna or of the deity, Sri Thakur, Gokarneshwar Mahadeoji.

In the result, the appeal is dismissed with costs.

P.B.R. Appeal dismissed.