Harendra Nath Bhattacharya & Ors vs Kaliram Das--Dead By L. Rs on 22 November, 1971

Equivalent citations: 1972 AIR 246, 1972 SCR (2) 492, AIR 1972 SUPREME COURT 246

Author: A.N. Grover

Bench: A.N. Grover, K.S. Hegde, Hans Raj Khanna

PETITIONER:
HARENDRA NATH BHATTACHARYA & ORS.

Vs.

RESPONDENT:
KALIRAM DAS--DEAD BY L. Rs.

DATE OF JUDGMENT22/11/1971

BENCH:
GROVER, A.N.
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HEGDE, K.S.
KHANNA, HANS RAJ

CITATION:
1972 AIR 246 1972 SCR (2) 492
1972 SCC (1) 115
CITATOR INFO :
RF 1975 SC 371 (10)

ACT:
Code of Civil Procedure 1908-S. 92-A grant made by an Ahom King in Assam to a number of Bhakats for the propagation of "Nama Dharma" and for continuance of Sravana Kirtana-Dharma-Whether- suit by the descendants of the Bhakats not maintainable because provisions of s. 92 not followed.

HEADNOTE:
The suit was instituted by the plaintiffs in a representative capacity as Bhakats. According to the allegations in the plaint, a grant of rent free land of approximately 316 bighas was made by a Kim,, during the pre-British period in the name of one G, for the establishment

of a vaishnavic institution. It was made for the propagation of Name Dharma and for continuance of Sravana-Kirtana-Dharma.

Defendants I to 20 were alleged to be the heirs of G. The plaintiffs claimed that they were the descendants of the 10 Bhakats who were mentioned in the copper plate creating the endowment. in the copper plate, the grant was termed as Brahmottar. According to the plaintiffs, the grant was a Dharmottar grant though called Brahmottar in the copper plate. In other words, it was an endowment created for religious and charitable purposes and it did not confer benefit only on the grantee or his heirs. It was asserted by the plaintiffs that the defendants were interfering with their rights relating to the institution and were also not properly repairing the Nanighar (the place of worship). The relief claimed was for a declaration that the disputed land was a gift to the institution (sat sanghee satra) and for possession.

In tile written statement. it was contended, inter alia, that the disputed land was not Dharmottar. It was a property gifted to late G, the predecessors of the defendants from generation to generation and that the suit, according to the defendants, was not maintainable because the provisions of' s. 92. Civil Procedure Code had not been complied with.

The trial court held that the Suit was not maintainable because s. 92 of the Civil Procedure Code was not followed and that the Suit property was Brahmottar and not Dharmottar.

In appeal the Additional District Judge held that the suit did not fall within s. 92 C.P.C., and so was maintainable and that the suit property was Dharmottar and not Brahmottar. According to the learned Judge, the plain meaning of the grant was that G, was made the medhi (high priest) for the satra. The grant was contemporaneous with the establishment of the Satra. The Purpose for which the grant was made was specifically for the propagation of Sravanakirtana-Dharma. The word 'Brahmottar' had been qualified by "Punvarthe", which meant "for piety". The grant was, therefore. not a personal grant. Accordingly, he held the plaintiffs entitled to file the suit and the appeal was allowed.

The Defendants filed an appeal to the High Court. Dismissing the appeal, the High Court held that the relief claimed did not come within the provisions of s. 92 C.P.C., and the High Court agreed with the translation made by the learned Addl. District Judge of the relevant passage of the copper plate.

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on an appeal by certificate,

HELD : (1) In the facts and circumstances of the case, s. 92 of the Code of Civil Procedure did not apply. It is well settled that a suit under s. 92 C.P.C., is of a special

nature which presupposes the existence of a Public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the court are necessary for the administration of the trust. In the suit. there must be a prayer for one or other of the reliefs that are specifically mentioned in the section. In the present case, none of the reliefs claimed by the plaintiffs fell within the section. The declarations which were sought could not therefore attract s. 92 of the Civil Procedure Code. [499 D]

(2) As regards the correct- translation of the copper plate on which the grant was made there was no reason to doubt the correctness of the translation appearing ,in the judgment of the Addl. District Judge which was affirmed by the High Court. Both the Addl. District Judge and the High Court were more familiar with the language and the origin of the establishment of satras and its historical background. 'They were in a better position to interpret the terms of the grant than others. Therefore, there was no reason why this Court should interfere with the conclusions arrived at by both tile Courts below especially when this Court also was inclined to the view that the grant was not a personal grant made in favour of the high priest. The word 'Brahmottar' was used in the grant but mere use of that word would not change the essential character of the grant, namely. that it was a Dharmottar grant made for the propagation of SravanaKirtana Dharma and not to the high priest and his own brothers in their personal capacity. [500 C]

Jiban Chandra Sarma Doloi v. Anand Ram Kalita & Ors. [1961] 3 S.C.R. 947, referred to and distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1273 of 1966.

Appeal from the judgment and order dated May 30, 1960 of the Assam High Court in Second Appeal No. 151 of 1958. D. N. Mukherjee, lot- the appellants.

Shikumar Ghose, for respondents Nos. 1 (a), 2 (a,), 3, 8 and 19.

The Judgment of the Court was delivered by Grover, J. This is an appeal by certificate front the judge- ment of the Assam and Nagaland High Court arising out of a suit which was filed as far back as May 1948. The main controversy arises out of a grant on a Copper Plate made by Ahom King Maharaj Sibasingha of some landed property in the year 1663 Saka Era corresponding to 1741 A. D. The suit was instituted by the plaintiffs in a representative capacity as Bhakats. According to the allegations in the plaint this grant was made by the King in the name of one Gadapani Bhattacharjya for the establishment of a Satra (Vaishnavic institution). It was made for the propagation Of Nama

Dharma and for continuance of Sraban Kirtan Dharma. Defendants 1 to 20 were alleged to be the heirs of Gadapani Bhattacharjya. The plaintiffs claimed that they were the descendants of the 10 Bhakats who were mentioned in the Copper Plate creating the endowment, the name of the Satra being Sat Sangee Satra. The original grant was in respect of 79 puras of land which would be equivalent to 316 bighas. It was rent-free. In the Copper Plate the grant was termed as Brahmottar. After the British rule commenced there was an enquiry in which the grandson of the original grantee (Gadapani Bhattachariya) made a claim of 83 puras of land with 10 bighas of Sat Sangee Satra. This was confirmed by the British Government. During the demarcation survey of 1881, the area was reduced to 304 bighas and in the survey and settlement of 1884-85 it was shown as 313 bighas roughly. In the subsequent settlement of 1905-06, the land was assessed to half revenue, known as Nispi Kheraj. The area covered by Nispi Kheraj or Nisf Kheraj was 243 bighas. During the current 30 year settlement the Nispi Kheraj land was shown to cover an area of 230 bighas odd and the suit was confined to that area.

According to the case of the plaintiffs, the grant, as a matter of fact, was a Dharmottar grant though called Brahmottar in the Copper Plate. In other words, it was an endowment created for religious and charitable purposes and it did not confer benefit only on the grantee (Gadapani Bhattacharjya) or his heirs and descendants. The Sat Sangee Satra to be established on the basis of this grant was known as Bhanukuchi Satra along with a Nam ghar. It was asserted by the plaintiffs that the defendants were interfering with their rights relating to the Satra and were also not properly repairing the Nam ghar etc. It was alleged that some of the plaintiffs were still living in the land covered by the Nispi-kheraj Patta. Paragraph 12 of the plaint may be reproduced:-

> "12. In fact the land described in the Schedule of disputed patta is the Dharmottar land gifted to the Bhanukuchi Satsangi Satra. The land has been absolutely endorsed for religious purpose, hence the defendants have not possessed any title of their own over those. They are the trustees only on behalf of the Satra. They are bound to maintain the said Satra with the income of these lands by observing the Doul festival and the usual Nam- Kirtan and the plaintiffs as the Bhakats of the said Satra are entitled to possess their own basti and paddy lands etc. by going and observing the NamKirtan in the Satra house of Dag No. 472 and the Doul festival by erecting the Doul stage as before in Dag No. 428. Hence it is necessary to obtain a decree after a declaration from the Civil Court and with the said end and view it is necessary to obtain possession from the Court on behalf of the plaintiffs. If it is necessary the plaintiffs will file a scheme case afterwards".

The relief which was claimed was for a declaration that the disputed land was a gift to the Bhanukuchi Sat Sang as mentioned in paragraph 12 and for possession. In the written statement the position taken up was that the disputed land was not Dharmottar. It was a property gifted to late Gadapani Brahmin, the predecessor of the defendants. Gadapani Bhattacharjya was a good religious minded Brahmin and the Ahom King, for the advantage of preaching religion, gifted the land to him as Niskar Brahmottar generation to generation. Gadapani Bhattachariya became the full proprietor and the defendants were his descendants and they had been in peaceful possession in that capacity all along. It was denied that there was any Sat Sangee Satra of Bhanukuchi. It was further pleaded

that the plaintiffs had no locus standi to file the suit.

Paragraph 4 of the written statement was in these, terms:

> "4. It is true that these defendants are the absolute owners in respect of the disputed land. The English had conquered this Assam province. There by all the claims and the arrangements of the former ruler over the land etc. of the country were extinguished and the British Government also issued an order to that effect. Though it is taken for granted that the disputed land was gifted to the Satsangi Satra in ancient time yet by an order of the British Government the nature of that Dharmottar land was extinguished. That by a lakheraj investigation during the British rule the patta has been issued in every_ settlement in the name of late Debi Datta by keeping Brahmottar in force and on the basis of that form the patta has been issued in every settlement in the name of Debi Datta and after him in the name of these defendants, who are his descendants. On the basis that patta these defendants have been entitled to become the full proprietors to possess the disputed land. The plaintiffs are not entitled to have any right in respect of the disputed land on the basis of the patta also and in they have not acquired any right thereon".

According to the defendants the suit was not maintainable because the provisions of the law relating to a suit based on breach of trust had not been complied with. The Trial Court framed 7 issues out of which only the following may be mentioned :-

> "1. IS tile Suit maintainable in its present form ?
>
> 2. Have the plaintiffs locus standi to bring the suit ?
>
> 3. Is the disputed land a Dharmottar property and absolutely endowed for religious purposes as alleged?".

The Trial Court found that the suit was not maintainable owing to non-compliance with the provisions of section 92, Code of Civil Procedure. On issue No. 2 its decision was in favour of the plaintiffs as also on issue No. 5. On that issue it was held that the suit property was Brahmotttar and not Dharmottar. In view of the finding on issue No. 1, the suit was dismissed .

An appeal was taken to the Court of the Additional District Judge, Lower Assam. He held that the suit did not fall within section 92, Code of Civil Procedure, and was therefore, maintainable. The learned Judge referred to the relevant portion of the grant which according to him was to be translated as follows:-

> "Be it known to all that the Satsangi Satra of 10 Bhakats is established. Gadapani Brahmin is made the Medhi of the said Satra; and the lands are granted to him as Brahmottar for religious purposes. Let him occupy the land from generation to generation after propagating the Sraban Kirtan Dharma".

In the opinion of the Additional Distt. Judge the plain meaning of the grant was that Gadapani Brahmin was made the Medhi of the Satra. The grant was contemporaneous with the establishment of the Satra. The purpose for which the grant was made was specifically stated to be for the propagation of Sraban Kirtan Dharma. The word "Brahmottar" had been qualified by "Punyarthe" which meant for piety. The grant was, therefore, not a personal grant. The words of the grant indicated that it had been made for some religious purpose for which the Satra was established. But for his appointment as Medhi and the establishment of the Satra, the grant to Gadapani would have been a personal one. The learned Additional Distt. Judge appears to have been fully conversant with the various Satras which were to be found in Assam and with the manner in which they were created. After considering the entire evidence, he came to the conclusion that there was a Satra at Bhanukuchi and that the grant was to the Satra and not to Gadapani in his personal capacity. It was further held by him that the establishment of the Satra and the creation of the office of the Bhakats was contemporaneous so far as the present case was concerned. The plaintiffs, therefore by virtue of the original grant, were entitled to file a suit. 'The appeal was allowed and a decree was granted for a declaration that the disputed land was the Dharmottar property of the Bhanukuchi Sat Sangee Satra and that the plaintiffs were the Bhakats of that Satra having a right to perform religious functions prescribed for them in the Satra. The suit for possession, however, was dismissed.

The defendants filed an appeal to the High Court. Only two points were raised before the High Court. They Were :-

1. As to whether the suit is hit by section 92 of the Code of Civil Procedure; and

2 . As to whether Ext. 1, the Copper Plate, has been correctly interpreted to hold that the original grant created by the Ahom King was of the nature of Dhannottar grant or a religious trust for the benefit of the Satra or that it was merely a personal gift in favour of Gadapani Bhattachariya who was the original Medhi or the high priest named in regards to the Satra created by the Copper Plate?"

The High Court held that the reliefs claimed in the suit did not come within the provisions of sec. 92. As regards the correct interpretation of the relevant passage on the Copper Plate by which the grant was created, the High Court agreed with the interpretation put by the Additional Distt. Judge on the relevant passage. The original text was quoted as agreed to by counsel for both the parties and its English translation was given as follows :-

"The King has for the purpose of earning merit for himself and his brother, made this Brahmottar grant consisting of the lands as mentioned herein along with three Paiks and ten families of Bhakats to Gadapani Brahman who is appointed to be the Medhi (high priest) of the Sat Sangi Satra. He will for generations enjoy the land by being in the service of God and for the purpose of perpetuation of the cult of the Sravan Kirtan Dharma".

The High Court examined the text in the background of the institution of Satras in Assam and came to the conclusion that the intention of the King in making the grant was for the benefit of Sat Sangee Satra. The High Court also took into consideration Exhibit 2, a copy of a petition of claim made by Debi Datta Sarma in the Lakheraj enquiry in the year 1884 and came to the conclusion that the predecessor-in- interest of the defendants had accepted the position that he or other descendants of Gadapani Brahmin were merely trustees in respect of the land which be-

longed to the Satra and the Bhakats or the predecessors-in- interest of the plaintiffs had interest in the same. The appeal of the defendants was consequently dismissed. Learned counsel for the plaintiffs ha,, sought to raise the same points which were agitated before the High Court. The first one relates to the applicability of sec. 92 of the Civil Procedure Code. The second relates to the correct interpretation of the terms of the original grant with regard to its true nature, namely, whether it was a Dharmottar grant or a religious trust for the benefit of the Satra or that it was merely a personal gift in favour of Gadapani. Section 92, Code of Civil Procedure provides that in case of any alleged breach of any express or constructive trust created for public purpose of a charitable or religious nature or where the direction of the court is deemed necessary for the administration of any such trust, the consent of the Advocate General has to be obtained for institution of the quit by two or more persons having an interest in the trust. Further the suit must be for obtaining a decree for the following :-

> "(a) removing any trustee-,
>
> (b) appointing a new trustee;
>
> (c) vesting any property in a trustee; (cc) directing a trustee who has been removed or a person who has ceased to be a trustee to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
>
> (d) directing accounts and inquiries;
>
> (e) declaring what proportion of the trust-

property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(b) granting such further or other relief as the nature of the case may require".

The High Court analysed the plaint which is primarily to be looked at for deciding the question of applicability Of See,

92. The High Court was of the view that the reliefs claimed in the plaint were stated mainly in para 12, which if analysed, would involve the following :-

> (1) A declaration that the suit land was Dharmottar land gifted to 'Bhanukuchi Sat Sangi Satra for a religious purpose and that the defendants had no personal interest therein except as trustees for the management of the Satra; (2) A declaration that the defendants were bound to maintain the Satra with the income of the suit lands by observing the Doul festival and the usual Nam-Kirtan;
>
> (3) For a declaration that the plaintiffs as Bhakats of the Satra were entitled to possess their own Basti and paddy lands and that they had a right of access to the use of the Satra for various religious purposes;
>
> (4) A claim for possession of the lands confined to the above reliefs.

It was added in the plaint that a scheme case would be instituted later on if considered necessary. The High Court was of the view that none of the reliefs claimed in the plaint brought it within the terms of sec. 92. It is well settled by the decisions of this Court that a suit under sec. 92 is of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the Court are necessary for the administration of the trust. In the suit, however, there must be a prayer for one or other of the reliefs that are specifically mentioned in the section. Only then the suit has to be filed in conformity with the provisions of section 92 of the Code of Civil Procedure. (See Mahant Pragdasji Guru Bhagwandasji v. Patel Ishwar lalbhal Narsibhai and others) (1). It is quite clear that none of the reliefs claimed by the plaintiffs fell within the section. The declarations which were sought could not possibly attract the applicability of sec. 92 of the Civil Procedure Code. The High Court was, therefore, right in holding that non-compliance with that section did not affect the maintainability of the suit. On the second point our attention has been invited to the translation of the Copper Plate on which the grant was made by the Ahom King. This translation. it has been pointed out, was accepted by both sides. According to this translation the land and the estate described "together with three Bhakats and 10 Paiks have been given for piety as Brahmottar to the godly Brahmin Gadapani with his own brothers making him a Medhi of Satsangi Satra. He will remain in devotion of God and will enjoy and occupy and continue to enjoy and occupy together with (1) [1952] S.C.R. 513 his own brothers from father to son, son's son etc. and will scatter Sravana-Kirtana-dharma." It is contended on behalf of the plaintiffs that the grant was clearly described as Brahmottai and it was made to the Brahmin Gadapani with his own brothers and he was made Medhi of the Sat Sangi Satra. Medhi means a high priest. He and his descendants were to enjoy and occupy the property from generation to generation. Of course, it was laid down as a part of their duties that they should propagate Sravana-Kirtanadharma but that did not convert the grant into Dharmottar.

As regards the correct translation, we are unable to accept the contention that the translation set out in the judgment of the High Court along with the original text does not represent the correct translation. The learned Addl. Distt. Judge and Deka J, who delivered the judgment of the division

Bench in the High Court, were fully familiar with the language and we find no reason to doubt the correctness of the translation appearing in the judgment of the High Court. Both the Addl. Distt. Judge and the High Court were more familiar with the establishment of Satras and the historical background in which such institutions came to be established and were in a better position to interpret the terms of the grant than ourselves. Moreover, their judgments were based or, other evidence which was produced and it would not be right for us even if we took a different view to depart from the practice of this Court not to interfere with the conclusions into which familiarity with the local language, customs and enactments plays a vital part. Even otherwise we have not been persuaded to take the view that the grant was only a personal grant in favour of Gadapani Brahmin. The word Brahmottar was certainly used but mere use of that word would not change the essential character of the grant. In this connection our attention has been invited to a decision of this Court in Jibon Chandra Sarma Doloi v. Anandi Ram Kalita and others(1). In this case a question arose about certain grant made by Assam Rajas to the Bardeuries (temple officials) to enable them to render services to the Deities installed in the temple. On certain alienations having been made, a suit was instituted on behalf of the temple that the alienations were invalid and unauthorised. The principal point which was urged was that the High Court had come to a wrong conclusion that the lands in suit which were admittedly described as Brahmottar lands in the revenue records were transferable without any restriction. After going into the history of lands described as Nisf-Khirai in the revenue records it was observed by this Court that a Nisf-Khierajdar was ordinarily a person whose lands were .claimed by his ancestors revenue free on the ground that they were grantees of the Assam Raja for sonic religious or charitable pur-

(1) [1961] (3) S.C.R. 947, Pose. Reference was also made to the provisions of Regulation 1 of 1886 called "The Assam Land and Revenue Regulations".After referring to the relevant provisions it was stated that it could not be hold that the lands in question were burdened with the special condition that they could be transferred only to Bardeuries and not to any strangers outside the group. It was, finally observed :-

> "As the High Court has found, and that is no longer in dispute, these lands are described as Brahmottar lands in revenue records and to the said lands and their holders the statutory provisions of the Regulation to which we have just referred applied, therefore, it is im possible to escape the conclusion that by virtue of the relevant statutory provisions of the Regulation the lands must be deemed to be heritable and transferable without any restrictions.
>
> It is quite obvious that the question involved in this case was quite, different from the one under examination by us. It was not argued at' any stage in the present case including the appeal before the High Court that by virtue of the provisions and the other facts relied upon in the aforesaid judgment, the mere fact that the lands were described as Brahmottar would be the personal property of those in whose names they were shown in the revenue records. Nor has our attention been drawn to any entries from the revenue records produced in the present case which would' show the exact and precise terms in which those entries had been made.

> Lastly it was contended that even in the plaint the lands were admitted to have been held under a Nisaf-Khiraj or Nispi-Kheraj Patta and that according to the entire history and other facts stated in Jibon Chandra Sarma Doloi's case (supra), such a patta could be held only in a personal capacity. The difficulty again is that no such contention was raised before the High Court or before any of the Courts below. We are unable in these circumstances to either allow this point to be agitated or to enter into its discussion.

In the result the appeal fails and it is dismissed with costs.

S.C. Appeals dismissed