

Sri Krishna Singh vs Mathura Ahir And Ors. on 7 September, 1981

Equivalent citations: AIR1982SC686, (1981)4SCC421, 1981(13)UJ762(SC), AIR 1982 SUPREME COURT 686, 1982 ALL. L. J. 193, (1982) 1 APLJ 6, (1981) 7 ALL LR 150, 1981 UJ (SC) 762, (1982) 1 SCJ 171, 1981 (4) SCC 421

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Bench: A.P. Sen, S. Murtaza Fazal Ali

ORDER

S. Murtaza Fazal Ali, J.

1. In order to dispose of the CMP in question it may be necessary to give a brief resume of the facts leading to this petition.

2. The dispute relates to the property in question which is house No. C-27/33 situate in Mohalla Jagatganj, Varanasi and has now been found by all the courts, including this Court, to belong to Garwaghat Math being constituted an endowment to the Math itself by its owner Guru Atma Vivekanand. In fact, Guru A??ma Vivekanand was the father of Shri Krishna Singh and in the suit which was filed, Sri Krishna Singh admitted the fact that his father had become a Sanyasi. Sri Krishna Singh therefore knew very well that his father having taken Sanyas, he died a civil death and the question of inheriting his property or laying any semblance of any title over it did not arise and yet he chose to resist the suit filed by the plaintiff. It appears that in view of the fact that Sri Krishna Singh refused to deliver possession to the Math, Mathura Ahir (later known as Harswanand and who was duly installed as Mahant according to the tenets of Sant Mat) brought a suit for recovery of possession of the house in question from the possession of Sri Krishna Singh who was a trespasser and was asserting rights adverse to the Math. This suit for declaration of title and recovery of possession was decreed by the trial court of learned Munsiff, Varanasi. The defence taken by Sri Krishna Singh was rejected. In appeal, the Civil Judge modified the decree of the Munsiff but on further appeal to the High Court, the decree of the Munsiff was restored as a result of which the plaintiff's suit for possession was decreed.

3. Sri Krishna Singh then filed an appeal by special leave to this Court and that appeal, which was numbered as C.A. 1802/1971, was decided by us on December 21, 1979 and we affirmed the findings of the High Court and clearly held that the property in question belonged to the Math and that Sri Krishna Singh was a rank trespasser In fact, this Court referred to the evidence of Sri Krishna Singh himself where he admitted that his father had become a Sadhu and had taken Sanyas Thus, on his

own showing Sri Krishna Singh's father had become a Sadhu and in the eye of law he died a civil death and therefore Sri Krishna Singh could not put forward any title to this property. In this connection, this Court while rejecting the finding of the Civil Judge observed as follows :

The learned Civil Judge in his judgment observes : 'The fact of Harsewanand being a Sanyasi remains undoubted', The underlying fallacy lies in his overlooking that the question had to be determined not according to the orthodox view, but according to the usage or custom of the particular sect or fraternity,.... We must accordingly hold that the plaintiff was the validly initiated Chela of Swami Atma Vivekanand and upon his demise was duly installed as the Mahant of Garwaghat Math according to the tenets of his 'Sant Mat' Sampradaya.

4. Secondly, this Court while agreeing with the learned Munsiff upheld the plaintiff's claim and clearly held that Sri Krishna Singh and others were rank trespassers. The observations in this regard may be extracted thus :

The defendants have been held to be rank trespassers. The decree under appeal crystallizes the rights of the parties. The cause of action did not die with the plaintiff. In the circumstances, the respondent No. 1 Harshankaranand, who now claims to be the Mahant, has the right to contest the appeal as representing the Math, being the de facto Mahant, for preservation of its properties.

(Emphasis supplied)

5. While the appeal was pending, the plaintiff died and this Court rejected the argument of Sri Krishna Singh that the suit itself had abated and held that when the suit for possession is brought by a Mahant of Asthal and the defendant is adjudged to be a trespasser, no question of abatement can ever arise. The decree-holder Harshankaranand was alleged to have been duly installed as Mahant of Garwaghat Math. This was, however, challenged by Sri Krishna Singh and others, but this Court clearly held that Harshankaranand was undoubtedly in management and control of the property and being a de facto manager had the undoubted right to recover possession of property belonging to the Math. In this connection, this Court observed thus :

The High Court agreeing with the learned Munsiff has upheld the plaintiff's claim. It was held that the house in suit was acquired by Swami Atmavivekanand from out of the offerings (Bhent) made by his disciples and therefore, was not his secular property, but was an accretion to the Garwaghat Math.... The cause of action did not die with the plaintiff. In the circumstances, the respondent No. 1, Harshankaranand, who claims to be the Mahant, has the right to contest the appeal as representing the math, being the de facto mahant, for preservation of its properties.... In the instant case, the appellant himself has, of course, without prejudice to his rights to challenge the right of the original plaintiff, Harsewanand, to bring the suit, substituted respondent No, 1, Harshankaranand, s his heir and legal representative,.... In his reply, the respondent No 1, Harshankaranand, alleges that after the demise of

Mahant Harsewanand he was duly installed as the Mahant of Garwaghat Math by the 'Sant -Mat' fraternity. He further asserts that he was in possession and enjoyment of the math and its properties. The fact that he is in management and control of the math properties is not in dispute.

(Emphasis supplied)

6. Thus, the combined effect of the admitted findings of the final decision of this Court was as follows :

(1) That the property in question belonged to the Garwaghat Math, (2) That Sri Krishna Singh and others were rank trespassers and were directed to be evicted from the property in question.

(3) That even though the title of Harshankaranand was left open, he had undoubtedly the right to intermeddle with the estate and evict the trespassers so as to protect the Math Properties. Vide Section 2(11) of the CPC which defines the term 'Legal Representative' as also the decision of the Privy Council in 60 I.A. 124 and 62 I.A. 47.

7. It is, therefore, manifest that as a logical conclusion of these findings, the executing Court had no option but to deliver possession of the property to Harshankaranand by evicting Sri Krishna Singh and others. The question of the title of Harshankaranand could only be raised by persons interested in the fraternity of the Math or the members of the Sant Mat Sampraday.

8. Not content with his acrimonious defeat right up to the highest Court of the land, Sri Krishna Singh in order to nullify the decision of the High Court and this Court, filed a civil suit in which he raised almost the same pleas which he had taken in defence of the previous suit. The suit was encouraged by the observations made by us that the title of Harshankaranand was left open. Sri Krishna Singh further contended that as Harshankaranand was not a duly installed Mahant, he had no right to evict him and others-a plea which had been clearly negated by this Court.

9. Counsel for Sri Krishna Singh submitted before us that unless Harshankaranand had established his title, he was not entitled to evict Sri Krishna Singh or for that matter any trespasser. This argument has to be stated only to be rejected.

There is no doubt that this Court had decreed the plaintiff's suit for recovery of possession of property from trespassers. Execution of the decree, therefore, could be accomplished, in fact, only if the trespassers were evicted and property handed over either to the real owner or to the person who was in de facto management of the property. This Court has in clear terms held that Harshankaranand was undoubtedly in de facto management of the property and this fact was not disputed. In these circumstances, therefore, Harshankaranand was undoubtedly competent to execute the decree and take possession from the trespassers, namely, Sri Krishna Singh and others.

10. Thereafter, it appears that Sri Krishna Singh filed a suit before the Civil Judge, Varanasi mainly for a declaration that Harshankaranand had no title to the property and had no right to recover possession from the plaintiff. In the body of the plaint, however, Sri Krishna Singh had repeated the self-same allegations which he had made in plaint of the previous suit which was the subject-matter of the appeal arising from the suit decided by this Court. Perhaps, Sri Krishna Singh may have mentioned this fact by way of narrating the history of the case because in the main relief he had only prayed for a declaration that Harshankaranand was not a duly installed Mahant of the Math.

11. We should have expected that after decree for possession was passed by this Court on December 21, 1979 affirming the judgment of the High Court, the executing court would at once deliver possession of the property to Harshankaranand.

12. As this was not done and the matter was delayed on one pretext or the other at the instance of Sri Krishna Singh, an application was filed in this Court for taking proceedings for contempt against Sri Krishna Singh.

13. In that petition, we issued notice to Sri Krishna Singh to show cause why he should not be committed for contempt and when the matter came up for final hearing before us, the Rule was discharged because certain concessions were made by Dr. Chitale and we felt that a clear direction to the executing court for delivering possession of the property in dispute to the plaintiff through police help would meet the ends of justice. We further clearly mentioned in our order that the act of Sri Krishna Singh in bringing the suit in the form in which it was brought was to be strongly deprecated and Dr. Chitale, then appearing on behalf of Sri Krishna Singh, gave an undertaking to this Court that the suit would be only confined to the title of Harshankaranand and all other questions adjudicated upon in the judgment of this Court relating to the title of the original plaintiff would not be reagitated and would be only confined to the title of Harshankaranand and all other questions adjudicated upon in the judgment of this Court relating to the title of the original plaintiff would not be reagitated and would be taken as barred by res judicata. In view of these circumstances, we decided not to proceed against Sri Krishna Singh and discharged the rule for contempt. We further gave directions that all the averments in the plaint seeking to re-open final determination of the questions by this Court would have to be deleted. We do not know whether even this direction has been carried out by the plaintiff so far. This order was passed by us on August 10, 1981. In case these direction has not been carried out, the trial court would see to it that the portions referred to in the plaint relating to find determination of questions by this Court are deleted.

14. It appears that before our order dated August 10, 1981 was passed, Sri Krishna Singh in the suit filed by him before the Additional Civil Judge, Varanasi filed an application under Order XXI Rule 29 praying that, as the title of Harshankaranand was in dispute, the execution of the decree may be stayed. We regret to mention that this fact was concealed from us when we discharged the notice for contempt although this application was decided by the Civil Judge as far back as 31-1-1980 and was fully known to Sri Krishna Singh. Perhaps, if our attention had been drawn to this fact, we may not have discharged the notice for contempt and would have seen to it that our orders were complied with. Unfortunately, however, it now transpires that Sri Krishna Singh seems to have adopted subterfuge in order to nullify the execution of the decree.

15. We are rather amazed to find that the totally unwarranted plea taken by Sri Krishna Singh seems to have found favour with the Civil Judge who readily accepted the prayer of Sri Krishna Singh of staying the execution of the decree without realising the scope and ambit of Order XXI, Rule 29. Under this provision, jurisdiction has to be exercised with very great care and only under special cases. The Civil Judge also prima facie held that Harshankaranand was not a legal representative of late Mahant when this question was only left open and had to be decided by the Civil Judge. This shows the casual and perfunctory approach which was made by the Civil Judge. It is rather unfortunate that even the District Judge in revision affirmed the order of the Civil Judge.

16. There is yet a very formidable defect in the order passed by the Civil Judge. Under Order XXI, Rule 29 jurisdiction is vested only in the Court which had passed the decree to stay its execution. In the instant case, the suit which was the subject matter of the appeal was decided by the Munsiff, Varanasi who had passed the decree. Therefore, an application for stay of execution, if any, could have been made before that Court and not before any other Court, including the Civil Judge. We are fortified in our view by a decision of this Court in *Shaukat Hussain @ Ali Akram and Ors. v. Smt. Bhuneshwari Devi (dead) by Lrs. and Ors.*, where this Court observed as follows :

Rule 29 clearly shows that the power of the Court to stay execution before it flows directly from the fact that the execution is at the instance of the decreeholder whose decree had been passed by that court only. If the decree in execution was not passed by it, it had no jurisdiction to stay the execution.

(Emphasis supplied)

17. It was contended by Mr. Asthana that Order XXI, Rule 29 was amended by Section 72 of Act 104/1976 which introduced the following words :

or of a decree which is being executed by such Court.

The amendment is of no avail to Sri Krishna Singh because the words "such Court" appear in the amendment also. Furthermore, the execution in the instant case was first filed before the City Munsiff who alone had the jurisdiction to proceed under Order XXI, Rule 29. As the execution case was transferred to the Civil Judge, he ceased to have any jurisdiction in the matter. Thus, on this ground also the order of the Civil Judge and as affirmed by the District Judge in revision is a nullity. Moreover, the judgment of the Civil Judge in view of the circumstances detailed above appears to us to be an order passed in defiance of and in disobedience to the clear directions given by us and the decree passed by us in C.A. 1802/1971 and therefore would be non est and absolutely without jurisdiction and violative of article 141 of the Constitution of India.

18. It was submitted by Mr. Sorabji that even if the order of the Civil Judge, which was upheld in revision by the District Judge, was legally erroneous it had to be formally set aside by bringing the matter before this Court in special leave. Where an order is absolutely non est and non existent, it

need not be set aside but would have to be completely ignored as if no such order was ever passed or existed.

19. It was also contended that the decree-holder has filed a writ petition in the High Court. That, however, is of no consequence because in view of our finding, the writ petition would become infructuous. Thus, taking an overall picture of the situation, we are constrained to observe that despite the clear directions contained in the decree of the High Court as also of this Court, the Civil Judge made no attempt to comply with the decree passed by the Court but used his discretion to perpetuate injustice so as to continue and legalise an unlawful and wrongful possession of a person who had been held to be a rank trespasser by the High Court as also by this Court. The execution was stayed at the instance of a person who had exhibited an adverse interest to the Math properties and was not at all concerned with the preservation of the Math proprieties. As a de facto manager Harshankaranand could recover the property for the benefit of the Math from the possession of the trespassers an ! there was no occasion for the Civil Judge to have resorted to the extraordinary discretion under Order XXI, Rule 29 of the Civil Procedure Code, even if it was applicable.

20. It was contended by Mr. Asthana that Harshankaranand in his application for execution the decree did not clearly mention the fact that he was a de facto manager of the property. This fact need not have been mentioned because it is expressly indicated in the concluding portion of our judgment which has been extracted above.

21. So far as the suit filed by Sri Krishna Singh is concerned, we are extremely doubtful if Sri Krishna Singh having been found to be rank trespasser has any locus to bring and maintain the present suit. However, we leave this question open to be decided by the Court concerned which shall frame a preliminary issue on this point and decide it after hearing the parties and after recording such evidence as may be adduced.

22. The next question that arises is what orders have to be passed on this application.

23. Having regard to the most reprehensible conduct of Sri Krishna Singh who has shown scant respect for and utter disregard of the orders of this Court and tried to delay or defeat the delivery of possession by adopting ingenious devices and subterfuges, we find a prima facie case for taking proceedings for contempt of Court has been made out against Sri Krishna Singh. Let notice be issued to Sri Krishna Singh to appear in person on September 25, 1981 to show cause why he should not be punished for contempt of Court.

24. We also direct the Civil Judge to send an explanation as to why despite our clear orders, he did not proceed to deliver possession of the property to Harshankaranand from Sri Krishna Singh as also the circumstances under which he passed the extraordinary and palpably wrong order under Order XXI, Rule 29 of CPC. We further direct the Civil Judge to deliver possession of the property from Sri Krishna Singh and others to the decree-holder Harshankaranand and report compliance within a week from the receipt of this order. If necessary, the Civil Judge can take the aid of police. Let a copy of this order be send to the Civil Judge so as to enable to give his explanation.

25. Our order dated August 10, 1981 stands, except regarding discharge of notice for contempt.