

## **Madhusudan Lal vs Sachchidanand Purshji Mahraj And Anr. on 31 August, 1950**

**Equivalent citations: AIR1951ALL382, AIR 1951 ALLAHABAD 382**

### **JUDGMENT**

Brij Mohan Lall, J.

1. This is an appeal by the defendant against a decree of the learned Civil Judge of Pilibhit, who affirmed a decree of the learned Munsif of that place. The latter had decreed the suit.

2. It appears that one Hardwari Singh owned certain property. By a deed of endowment dated 12-11-1935 he transferred the property to an idol which he had installed, and provided in the deed that after meeting the necessary expenses in connection with the temple the rest of the income was to be distributed among his daughter (hereafter described as respondent), his son and certain other relations. He constituted the respondent to be the manager and lambardar of the endowed property.

3. After Hardwari Singh's death the respondent herself moved an application before the revenue authorities praying that her brother, the appellant, be appointed as the lambardar. This Was done.

4. In 1943 the respondent and the idol (acting through the respondent) instituted the suit which has given rise to this appeal against the appellant. It was alleged that the petition for appointment of the appellant, as the lambardar had been presented by the respondent under the appellant's undue influence, that her signature had been obtained by fraud on a blank paper and she was never acquainted with the contents of the document which was subsequently drawn up on that paper. She contended that under the terms of the deed of endowment she had been constituted the manager and the lambardar. She charged the appellant with gross misconduct and accused him of not paying the profits, of recovering the Nazarana from the tenants and of certain other irregularities. She sought an injunction restraining the appellant from acting as lambardar and also restraining him from interfering in the discharge of the duties of the lambardar by her.

5. The appellant controverted all the allegations made by the respondent in respect of fraud, undue influence and alleged misconduct on the appellant's part.

6. The learned Munsif held that the allegations about the alleged fraud, undue influence and the misconduct were not proved. But he was of the opinion that since it was the intention of the author of the trust that the respondent should be the manager he decreed the suit. The appellant preferred an appeal which was heard by the learned Civil Judge of Pilibhit. He did not record any finding on the aforesaid questions of fact but he agreed with the learned Munsif that since the founder of the trust appointed the respondent to be the manager his wish should be enforced. In this view of the

matter, he dismissed the appeal with costs.

7. The result of the decisions by the two Courts below is that the appellant has been denied the right of making collections. But since he has not yet been removed by the revenue authorities from the office of the lambardar his liability to pay the land revenue remains intact. The decisions of the Courts below have placed the appellant in a very uncomfortable position. Moreover the Courts below have in substance assumed the jurisdiction to remove the lambardar and to appoint another person in his place. This power does not vest in Civil Courts. Under Section 234 (f), Land Revenue Act, the power vests in the State Government to make rules for appointment and dismissal of lambardars. In exercise of this power, the State Government had made rules which are found as Rules 216 to 239 of the Revenue Manual. Under these rules power is vested in the revenue authorities to make appointments and dismissals of lambardars. If the respondent feels aggrieved against the appointment of the appellant or if she thinks that he had been guilty of misconduct her remedy lies in making an application under Rule 234 of the Revenue Manual to the Collector or the Assistant Collector for appellant's dismissal on the ground that he has neglected to perform his duties. It will then be for the Collector or the Assistant Collector to examine the case and to either remove the appellant from the office of lambardar or to reject the respondent's application. It did not lie within the competence of the Civil Courts to remove a lambardar by a decree in a suit like the present one.

8. Section 233 (b), Land Revenue Act also says that no person shall institute any suit in respect of any claim by any person to any of the offices mentioned, inter alia, in Section 45 of the Act. Here the respondent has in substance laid a claim to the office of lambardar. Her suit( was, therefore, barred by Section 233 (b), Land Revenue Act also. On merits too, she has a bad case. She is seeking an injunction to restrain a person from performing the duties imposed on him by statute. Civil Courts shall ordinarily be reluctant to issue such injunctions. Section 56 (i), Specific Relief Act provides that "when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust"

an injunction should not be issued. Here since the respondent could obtain relief by making an application to the Collector no injunction should be granted by a Civil Court. I am, therefore, of the opinion that this appeal must be allowed.

9. I do not consider it proper in a case like this to return the plaint for presentation before the Collector. The proceedings before the Collector shall start with an application and not by means of a plaint. Moreover, most of the allegations contained in the present plaint will be irrelevant for the purposes of the Collector. In the circumstances the only proper order to pass is to dismiss this suit.

10. The appeal is allowed and the decrees of both the Courts below are set aside. The suit shall stand dismissed. The appellant shall get his costs from Shrimati Lokeshwari Devi (respondent) in all Courts.

11. Leave to file a Letters Patent appeal is refused.