

Baqridan And Ors. vs Bashir Ahmad Khan And Ors. on 10 October, 1955

Equivalent citations: AIR1956ALL94, AIR 1956 ALLAHABAD 94, ILR (1956) 1 ALL 586

JUDGMENT

Agarwala, J.

1. This, is a plaintiffs' appeal arising out of a suit for a declaration that plaintiff 1 was the 'mutwalli' of the mosque in dispute and none of the defendants had any connection with the mutwalliship; that Amanullah, plaintiff 4, was the duty appointed Imam' of the mosque and none of the defendants had any right to 'Imamship'; and for a perpetual injunction restraining the defendants from interfering with the plaintiffs in going to the mosque and offering their prayers under the 'Imamship' of a person according to their choice, and for further direction to the defendants not to interfere with the management of the mosque by plaintiff 1.

The suit was filed by eleven Muslim residents of the town of Chandauli, in the district of Banaras, as representatives of their community under Order 1, Rule 8 of Schedule I, Civil P. C. The defendants to the suit were one hundred and forty eight Muslims.

2. The plaintiffs' case was that the mosque was a public 'waqf,' that the Muhammadans or Bazar Chandauli had always been offering their prayers in it that Abdul Rahman, plaintiff 1, who resided in the vicinity of the mosque was managing the mosque as its 'mutwalli' with the consent of the worshippers and that defendant 1 who claimed to be the mutwalli' interfered with the management of the mosque by plaintiff 1 and with the functioning of plaintiff 4 as 'pesh Imam'.

3. Some of the defendants contested the suit and alleged that Jangi Khan, father of defendants 1 to 3, was the 'mutwalli' of the mosque during his lifetime, and that after him defendant 1 was the present 'mutwalli'. The rights of plaintiff 1 to act as a 'mutwalli', and of plaintiff 4 to act as 'Pesh Imam' were disputed.

4. The trial Court decreed the suit in part declaring that Abdul Rahman, plaintiff 1, was the 'mutwalli' of the mosque. It also issued an injunction to the defendants restraining them from interfering with the right of management of the mosque by plaintiff 1 and with the right of the plaintiffs to enter the mosque and to offer prayers. The rest of the plaintiffs' claim was dismissed.

5. Against its judgment and decree ten of the defendants preferred an appeal before the learned Civil Judge; the plaintiffs filed a cross-objection. When the appeal came up before the learned Civil Judge

for hearing a compromise was entered into on behalf of the parties. The compromise was signed by Bashir Ahmad Khan, defendant 1, and Abdul, Rahman, plaintiff 1, and also by the learned counsel, for the parties. A decree in terms of the compromise., was passed.

6. Some of the plaintiffs who had not signed the compromise brought a second appeal to this Court and contended that the compromise was not binding on them. Abdul Rahman who was a signatory to the compromise was joined as a respondent. A preliminary objection to the hearing of the appeal was taken that the appeal being from a consent decree ho second appeal lay to this Court.

The learned single Judge accepted this contention and held that the appeal did not lie. He therefore dismissed the appeal but granted leave to file an appeal under the Letters Patent, and hence this appeal.

7. Learned counsel for the appellants urged two points before us. First, that the decree passed by the Court below was not a valid consent decree because it offended against the provisions of Section 51, U. P. Muslim Waqfs Act, No. 13 of 1936; and, secondly, that even if it was a valid consent decree, an appeal against it was not barred under Section 96(3), Civil P. C., as that section barred appeals only against original decrees.

8. As regards the first point, we have to see whether Section 51, U. P. Muslim Waqfs Act, applies to the case or not. That section reads as follows:

"No suit or proceedings in any Court by or against a mutwalli of a waqf to which this Act applies, and relating to title to waqf property or to the rights of the mutwalli shall be compromised without the sanction of the Central Board".

The Muslims Waqfs Act applies to public 'waqfs'. It is conceded that the 'waqf in question is a public 'waqf'. The Act therefore applies. The suit did not relate to the title to the waqf property but certainly related to the rights of the mutwalli. One of the plaintiffs claimed to be the mutwalli and constested the right of one of the defendants to that office.

The defendant No. 1 alleged himself to be the 'mutwalli'. The suit was consequently related to the rights of the 'mutwah". The bar imposed b,y the section therefore directly applies to the suit. It was urged by learned counsel for the respondents that Section 51 must be confined to suits falling within the purview of Section 48, Muslim Waqfs Act.

The section refers to suits in which the reliefs mentioned in Section 92, Civil P. C. are claimed and provides that such suits may either be instituted by the Central Board itself, or by any person interested in the waqf with the previous sanction in writing of the Central Board, and without obtaining the consent of the Advocate General, as provided by Section 92 of the Code.

It does not appear to us that Section 51 is confined to suits mentioned in Section 48. Section 51 refers, 'inter alia', to suits relating to title to property, whereas such suits are not within the purview of Section 92, Civil P.C. or of Section 48, Muslim Waqfs Act. We are clearly of opinion that the.

present suit could not be compromised without the sanction of the Central Board.

It is conceded that no sanction was obtained from the Central Board, and, consequently, the consent decree passed by the lower appellate Court was invalid.

9. The learned single Judge held the appeal to be barred because of the provisions of Section 96(3) of the Code. This was with respect, perfectly correct provided the consent decree was a valid decree, This point is covered by a decision of a bench of this Court: -- 'Sagwa v. Dalwa', AIR 1952 All 97 (A) where it was held that in order that an appeal may be barred against a so called consent decree the consent decree must be a valid consent decree.

In that case the question was whether an appeal lay against a compromise decree passed against a minor for which leave of the Court was not obtained by the guardian under the provisions of Order 32, Rule 7 and it was held that such a consent decree was not valid and that an appeal lay against that decree. The same principle in my opinion applies to a decree passed on consent of parties which is vitiated by reason, of any provision of law.

10. At one stage learned counsel for the appellants urged that even if it was a valid decree, a second appeal would lie against it because Section 96(3) was confined to appeals from original decrees. In support of this argument learned counsel relied upon a single Judge decision of this Court in -- 'Audh Behari v. Faqir Rai', AIR 1951 All 236 (B).

In that case our brother V. Bhargava held that Section 96 dealt with appeals from decrees passed by Courts exercising original jurisdiction, that appeals from decrees passed by appellate Courts were governed by Section 100 which had no such provision as has been made in Sub-section (3) of Section 96, and that consequently an appeal from a consent decree passed by an ' appellate Court would lie.

It does not appear from the judgment that our brother's attention was drawn to the provisions of Section 108 of the Code. That section provides that the provisions of Part VII of the Code relating to appeals from original decrees shall, so far as may be, apply to appeals from appellate decrees. Section 96(3) is a provision appearing in Part VII relating to appeals from original decrees, and so would apply to appeals from consent decrees passed in appeal by virtue of Section 108.

11. Furthermore, the principle of estoppel upon which Section 96(3) is based applies equally to appellate decrees which have been passed on consent of the parties. That principle was applied by the Privy Council in -- 'Zahirul-Said-Alvi v. Lachmi Narayau', AIR 1932 P.C., 251 (C) to appeals from appellate decrees passed on consent.

12. In the result I would allow the appeal, set aside the decree of the learned single Judge as well as that of the lower appellate Court and remand the case to the lower appellate Court for decision of the appeal according to law. I would direct the parties to bear their own costs of the second appeal and of this Letters Patent Appeal.

Mootham, C. J.

13. I agree. On the question, which is of some importance, whether an appeal lies from a consent decree passed by an appellate Court, I am of opinion that the answer must be in the negative.

14. In my opinion the principle that a judgment by consent acts as an estoppel applies no less to the case of a consent decree passed by an appellate Court than to a consent decree passed in an original Court; and I have no doubt that it was on this principle that the Privy Council in -- 'Zahirul-Said-Alvi v. Lachmi Narain', AIR 1932 P.C. 251 (C) dismissed an appeal from a decree passed by consent on an appeal before the Court of Judicial Commissioner of the Central Provinces. Lord Blanesburgh delivering the opinion of the Board said:

"As the Court of the Judicial Commissioner has declared that it proceeded entirely upon the consent of parties in making the decree appealed from their Lordships have not thought it necessary to consider the other statements in its report as to the sufficiency or otherwise of that consent. Upon that declaration alone, they must deal with the appeal on the footing that it is entirely incompetent"

That principle has been embodied in Section 96(3), Civil P. C. the provisions of which have been made applicable to appeals from appellate decrees by Section 108. This latter section does not appear to have been brought to the notice of the learned Judge who decided AIR 1951 All 236 (B). That case was in my opinion wrongly decided and must be overruled.

BY THE COURT

15. We allow the appeal, set aside the decrees of the learned single Judge and the lower appellate Court and remand the case to the lower appellate Court for hearing according to law. The parties will bear their own costs of the second appeal and of this letters patent appeal.