

Ganga Sahai vs Bharat Bhan And Ors. on 24 February, 1950

Equivalent citations: AIR1950ALL480, AIR 1950 ALLAHABAD 480

JUDGMENT

Mootham, J.

1. This is an appeal from a judgment and decree of the learned District Judge of Saharanpur granting letters of administration, with the will annexed, of the estate of one Mt. Ishwari Devi to the Arya Prati Nidhi Sabha, a society registered under the Societies Registration Act, 1860.

2. The appellant contends that the Arya Prati Nidhi Sabha (to which it is convenient to refer as the Sabha) is not a "person" within the meaning of Section 236, Succession Act, and that no grant of administration can be made to it. That is the only question raised in this appeal, and the only question which it is necessary for this Court to consider.

3. Section 236 provides that:

"Letters of Administration cannot be granted to any person who is a minor or is of unsound mind, nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by the Provincial Government in this behalf." and the argument for the appellant is that the Sabha is a mere association of individuals and, admittedly not being a company, is not therefore entitled to the grant. Reliance was placed by the appellant on *Mahashaya Krishna v. Mt. Maya Devi*, A. I. R. (35) 1948 Lah. 54 : (49 P. L. R. 228) in which *Acchru Ram J.*, held in a somewhat similar case concerning the same Sabha that the effect of registration under the Societies Registration Act was merely to confer upon the society certain privileges, and did not alter the nature of the association. I was at first disposed to accept this view, but Mr. Jagdish Sarup in his careful argument has convinced me that it is not correct.

4. The Societies Registration Act provides that any seven or more persons associated for any literary, scientific or charitable purpose--or for any purpose described in Section 20 may form themselves into a society under the Act. That society shall have a name and its property, whether movable or immovable, shall, if not vested in trustees, be deemed to be vested in the governing body of the society (Sections 2 and 5). The society may sue or be sued in the name of the president, chairman or principal secretary or trustees, as may be determined by the society, and the execution of a decree obtained against the society shall be levied only against the property of the society (Sections 6 and 8). Any pecuniary penalty imposed by a bye-law for breach of that bye-law may be recovered by the society from a member, and any member who is, inter alia, in arrears with his subscriptions, or who is wrongfully in possession of the society's property or who steals, embezzles or wilfully damages

that property, may be sued by the society as though he were a stranger (Sections 9, 10 and 11). Provision is also made in the Act for the dissolution of the society and the adjustment of its affairs (Section 13). Such a society has, in my view, an existence distinct from that of its members. It has a separate name and can hold property through trustees, it can sue and be sued, and any person having a claim against it must look to its property and not that of its members for satisfaction of his dues.

5. It is useful to compare the position of a society registered under the Societies Registration Act with that of a trade union registered Under Section 6, Trade Union Act, 1871 (34 and 35 Vic. Chap. 31). The relevant provisions of that Act are summarised by Farwell L. J., in a passage in his judgment in *Osborne v. Amalgamated Society of Railway Servants*, (1909) 1 Ch. 163 at p. 190 : (78 L. J. Ch. 204):

"The Act is framed on the lines of the Companies Act, 1862, and after excluding by Section 5 the application of that Act and of the Friendly Societies Acts and the Industrial Acts, it provides by Section 6 that any seven or or more members of a trade union may, by subscribing their names to the rules of the union, etc., register the union with a name and the exclusive right thereto. Such union can buy and sell land not exceeding one acre, and personal estate without limit of amount, for the use and benefit of such trade union and the members thereof. Trustees have power to bring and defend actions, etc., touching such property, treasurers and officers are bound to account, annual returns have to be made to the registry of the assets and liabilities and receipts and expenditure of the union, and the union must have rules in the scheduled form by which, amongst other things, it is required to state the whole of its objects, and provision is made for its amalgamation with other unions and its winding up. A registered trade union is thus a statutory legal entity, anomalous in that, although consisting of a fluctuating body of individuals and not being incorporated, it can own property and act by agents."

The accuracy of that passage and the correctness of the learned Judge's conclusion was affirmed by Lord Atkinson in the House of Lords on appeal: *Amalgamated Society of Railway Servants v. Osborne*, 1910 A. C. 87 at p. 102 : (79 L. J. Ch. 87).

6. Upon a consideration of the provisions of the Societies Registration Act I am of opinion that a society registered thereunder, even if not a corporation in the full sense, is certainly a legal person.

7. A similar conclusion was reached by Bhagwati J., in *Satyavart Sidhantalankar v. Arya Samaj*, Bombay, A. I. R. (33) 1946 Bom. 516 : (229 I. C. 84) and in an earlier case in the same Court, *A. S. Krishnan v. M. Sundaram*, I. L. R. (1941) Bom. 497 : (A.I.R. (28) 1941 Bom. 312) the same view was accepted, apparently without argument, for the suit was dismissed by Kania J., (as he then was) for failure to make the society a defendant. Horwill J., also reached the same conclusion in the case of *Rukminamma v. Venkata Ramadas*, A. I. R. (27) 1940 Mad. 949 : (191 I. C. 816).

8. Counsel for the appellant has suggested that, even if the Sabha be a corporate body, it is open to us to dissent from the recent decision of a Bench of this Court in *Banaras Hindu University v. Gauri Dutt Joshi*, 1949 A. L. J. 523 : (A. I. R. (37) 1960 ALL. 196) and to hold that the word "person" in Section 236, Succession Act, does not include a corporation. In my opinion that decision is binding on this Court, and I desire to record my emphatic dissent from the view that one Division Bench of this Court is entitled to embody in a judgment a conclusion which is contrary to that of another Bench of a co-ordinate jurisdiction.

9. In my opinion, therefore, this appeal fails, and must be dismissed with costs.

Sapru, J.

I agree.