Mukundji Mahraj vs Persotam Lalji Mahraj on 6 May, 1955

Equivalent citations: AIR1957ALL77, AIR 1957 ALLAHABAD 77, ILR (1956) 1 ALL 421

JUDGMENT

Agarwala, J.

1. This is a plaintiff's appeal arising out of a suit for a declaration that proceedings in Suits Nos. 503 of 1928 and 138 of 1930 and 66 of 1937 do not bind the plaintiff and that the plaintiff may be awarded possession over the property in dispute. The plaintiff is an idol Sri Thakur Mukundji Maharaj, installed in a temple, situate in mohalla Bengali Gnat in the city of Mathura.

The idol sues through its next friend Surra Chaube who claims to be its Manager. The defendant is one Goswami Purshottam Lalji who is the purchaser at auction of half of the temple in which the plaintiff idol is installed. The property in dispute is this half portion of the temple which has been taken possession of by the defendant in the following circumstances.

2. The plaintiff idol was under the Shebaitship of one Mahant Bhagwat Das who was a follower of the Vaishnavite Ramanandi Sampradaya. Earlier history of the shebaits of the idol is not known. But it is common ground that the Shebaits had been Bairagis, that is to say, Vaishnavites who had renounced the world. Mahant, Bhagwat Das made a will on 11-9-1922, which was duly registered and by which he nominated Narsingh Das to succeed him as Mahant and appointed five trustees to look after the management of the idol's properties.

3. Bhagwat pas died in 1923 and Narsingh Das, as provided in the will, became the Manager of the temple and its property. Narsingh Das borrowed a sum of Rs. 380/- under a promissory note executed by him from one Mathura Dass Thackersay, belonging to Ballabhkul Sampradaya. It was mentioned in the promissory note that the amount was needed for the purpose of ragbhog expenses of the idol.

4. Nar Singh Das died some time in the beginning of 1928 and thereafter Mathura Dass Thackersay brought a suit upon his promissory note, being Suit No. 503 of 1928 against the idol Sri Thakur Mukund Ji Maharaj under the guardianship of one Kanhaiya Lal, alleged to be a disciple of Narsingh Das deceased. To this suit three other persons were impleaded as defendants, namely, Kanhaiya Lal personally, Sukhbasi, brother of Narsingh Das and Narain Das, the excluded chela.

Narain Das was, however, later on exempted from the suit which was not defended by any other defendant, and Mathura Das Thackersay obtained an ex parte decree on 1-12-1928 against the idol under the guardianship of Kanhaiya Lal and Kanhaiya Lal and Sukhbasi for Rs. 428/- and Rs.

48/7/6 as costs. It may be noted that the trustees were no party to this suit. In the plaint it was stated that Narsingh Das having died "there was a dispute as to the succession to the Mahantship between Kanhaiya Lal, Sukhbasi and Narain Das" and that for that reason all three of them had been impleaded in the suit.

5. Narain Das filed an application for setting aside the ex parte decree on 30-5-1929 alleging that he was the Manager and mutwalli of the idol after the death of Narsingh Das. that Kanhaiya Lal or Sukhbasi had nothing to do with the management, that fraudulently he had been exempted from the suit and an ex parte decree had been obtained against the idol and that the idol will suffer irreparable loss if the ex parte decree was not set aside. This application was dismissed but it does not appear on what grounds as the Judgment is not on the record.

Thereafter in 1929 Mathura Dass Thackersay put his decree in execution and had one half of the temple's building attached and sold at auction. The sale was held in favour of the defendant Goswami Purshottam Lalji Maharaj. For what sum the sale was held is also not known as the sale certificate is not on the record. But it appears that some amount which is, according to the plaintiff a sum of Rs. 1,600/- was still lying in Court as the property of the judgment-debtor after satisfying the decretal amount in full.

6. Narain Das brought a suit (No. 222 of 1929) on behalf of the idol through himself as its manager and Impleaded himself as plaintiff 2 as against Sukhbasi and Kanhaiya Lal. The trustees were also impleaded in the suit, three as co-plaintiffs and two as pro forma defendants.

In the suit Narain Das claimed to be the Mahant of the idol and alleged that he was entitled to the management of the temple and prayed that Sukhbasi Lal and Kanhaiya Lal be restrained from entering into the temple and interfering with the plaintiff's worship and management of the same, ft was alleged in the plaint that Nar Singh Das had in his life time appointed Narain Das as his successor.

7. The trial Court dismissed the suit There was an appeal and the appeal was allowed and the suit decreed and an injunction issued against Sukhbasi Lal and Kanhaiya Lal restraining them from interfering with the management of the idol and its properties by Narain Das. Kanhaiya Lal came to this Court in second appeal, but the appeal was dismissed.

It was held by this Court that there was no legal successor to the Shebaitship on the demise of Narsingh Das, that the five trustees of the temple permitted Narain Das to come back and take up the position of Shebait for the maintenance of worship of the idol and that in these circumstances Narain Das was entitled to represent the idol and the defendants had no right of management or the idol's properties. Thus it was conclusively decided as between the idol and Narain Das on the one hand' and Sukhbasi Lal and Kanhaiya Lal on the other that Sukhbasi and Kanhaiya Lal did not represent the idol at all and that Narain Das was a de facto manager of the idol.

8. After the purchase of one half of the temple building at auction sale, the defendant-respondent Goswami Purshottam Lalji filed a suit in 1930 for partition of his half share of the temple. The

defendants to the suit were Thakur Mukund Ji Maharaj (the idol), presumably under the guardianship of Kanhayalal and Sukhbasi. Narain Das was not impleaded in the suit in any form nor were the trustees. A preliminary decree was passed on 23-7-1930 and actual possession over the half share was taken by the defendant respondent on 25-12-1936.

9. On 10-2-1931 Narain Das handed over the management of the temple to Surra Chaube through Whom the present suit has been brought by the idol under a written document Ex. 14, and according to Surra Chaube he has been managing the temple since then.

10. One Ramanuj Das alleging himself to be the chela of Narsingh Das brought a Suit No. 176 of 1937 against the defendant respondent for a declaration that the decree obtained by him was not binding on the idol. The suit was filed in forma pauperis but the application to sue in forma pauperis was dismissed on the ground that Ramanuj was not a pauper.

11. The present suit was instituted by the idol through Surra Chaube on 26-5-1942 within 12 years -of the date of the delivery of possession over the half share in execution of decree in Suit No. 138 of 1930 for partition.

12. The plaintiff's case was that after the death of Narsingh Das, Narain Das become the actual Mahant and that he left the management in the hands of Surra Chaube who had been since then managing the affairs of the plaintiff idol and that Narain Das had died and Surra Chaube being the actual trustee and manager of the temple was competent to sue on behalf of the idol.

According to the plaintiff the decrees in Suits Nos. 503 of 1928 and 138 of 1930 and the proceedings taken therein were collusive and fraudulent and not binding on him, and he is entitled to get pos-

session over the property in dispute. According to him, the promissory note executed by Narsingh Das was fictitious and without consideration and without any legal necessity, and Narain Das who was the actual Mahant had no knowledge of the decree in the partition suit, and the idol was not properly represented in that suit.

13. The defence to the suit was that Narsingh Das did borrow the amount for which he executed a promissory note, that the promissory note was for legal necessity, that the decrees in Suits Nos. 503 of 1928 and 138 of 1930 and the proceedings taken thereunder were binding on the plaintiff, that the plaintiff was duly represented in those proceedings, that there was no collusion or fraud and the plaintiff could not sue through Surra Chaube who was a stranger and not in charge of the management, that the suit was barred by time and that it was also barred by Section 11, C. P. C. The Court below framed the following issues:

1. Whether Surra Chaube has the right to file this suit for the plaintiff Thakur Ji?

2. Whether in Suits Nos. 503 of 1928 and 138 of 1930 of Munsif Mathura the plaintiff deity was properly represented?

Was decree No. 503 of 1928 collusively obtained for a fictitious debt?

3. Is the claim barred by Section 41, Transfer of Property Act?

4. Is the claim time barred?

5. To what relief is plaintiff entitled?"

14. The Court came to the conclusion that after the death of Narsingh Das, Narain Das was a de facto Shebait and that when he left Mathura for good, he declared that in his absence Surra Chaube would carry on the Sewa Puja of the deity, that Surra Chaube had been paying water tax and was in possession of the property and performing the Sewa Puja and that therefore he was entitled to maintain the suit.

It further held that the promissory note was executed by Narsingh Das for consideration and for legal necessity, that the income from the property could not exceed Rs. 12/- or Rs. 15/- per mensem, that the income from the offerings was uncertain and that the loan was taken for the expenses of the deity, that after the death of Narsingh Das quarrels arose as to the succession to the office of Mahant, that there was no dejure Shebait after Narsingh Das, that Sukhbasi and Kanhaiya were persons found to be in possession in the litigation started in 1929 and therefore the plaintiff was properly represented in Suit No. 503 of 1928 by Kanhaiya Lal who was in actual charge of the temple; that in Suit N. 138 of 1930 the plaintiff idol was sued through Kanhaiya and Sukhbasi who were really in possession, that the suit was not barred by Section 41, Transfer of Property Act, that the suit was barred by limitation under Article 95, Limitation Act and that unless and Until the decree in Suit No. 503 of 1928 was set aside no relief in this suit could be granted. In the result the suit was dismissed. Against this decrea the plaintiff has come up in appeal to this Court. The case has been argued with great ability on behalf of both the parties.

15. In this Court it has been urged oh behalf of the appellant that the decrees passed in Suits Nos. 503 of 1928 and 138 of 1930 were null and void and not binding on the plaintiff idol for the following reasons:

Firstly, because the idol was not properly represented in the said suits and the decrees against the idol were, therefore, null and void.

Secondly, because there was no legal necessity for the loan and the idol's property could not be sold in execution of a decree passed on the basis of the loan.

Thirdly, even if there was legal necessity for the loan, the temple of the idol which is inalienable could not be sold in execution of the decree passed on the basis of the loan.

Fourthly, that the promissory note having been executed by Narsingh Das personally, even though for a necessity of the idol, no decree could be passed against the idol on its basis.

And fifthly, that the suit was not barred by limitation.

16. After hearing counsel for both the parties we have come to the conclusion that the decrees passed and the proceedings taken in the aforesaid suits were null and void against the plaintiff idol far more reasons than one.

17. In the first place, we find that the idol was not properly represented in those suits. The Court below has found that Narain Das was a de facto Mahant of the plaintiff idol but in Another part of the judgment it has also held that Kanhaiya and Sukhbasi were in actual possession of the management of the temple. The finding seems to be contradictory.

In Suit No. 222 of 1929 which was hotly contested upto the High Court it was held as between the plaintiff idol and Narain Das on the one hand and Sukhbasi and Kanhaiya on the other that Narain Das was the de facto Mahant of the plaintiff idol, entitled to bring a suit on its behalf and that Sukhbasi and Kanhaiya had no right to interfere in its management . The evidence in the present case also shows that after the death of Narsingh Das it was Narain Das who was actually managing the properties and doing the Sewa Puja of the plaintiff idol and that after him it was Surra Chaube who has been looking after the management.

18. In support of the plaintiff's claim we have the statements of Surra Chaube, Hari Shanker, Gokal, Gajadhar and Gopi who swear that Sukhbasi and Kanhaiya did not act as managers of the plaintiff idol or the properties of the temple and that Narain Das was the Mahant after the death of Narsingh Das. Having examined their statements ' carefully, we find no reason to disbelieve their testimony.

19. On behalf of the defendant, we have the statements of the defendant himself, of Bhikki Bam, Pairokar of the defendant, Seli Ram and Bidur. It is admitted by some of these witnesses that Narain Das worked as plaintiff's Mahant for some time after winning the case from the High Court against Sukhbasi and Kanhaiya Lal.

The defendant admitted that sia Ram (probably Kanhya Lal) or Sukhbasi did not pay water-tax in his presence. He also admitted that Kanhaiya Lal and Sukhbasi worked for the plaintiff deity for about a year only, that this was after Narsingh Das's death. Now Narsingh Das died in the year 1928 and therefore according to the defendant himself, Kanhaiya and Sukhbasi worked as the idol's Mahants only upto 1929 and not thereafter. It follows, therefore, that even according to the defendant's own statement, Kanhaiya Lal and Sukhbasi did not represent the plaintiff idol at the time when Suit No. 138 of 1930 was instituted.

In the plaint filed by Mathura Das Thackersay in July 1928 in Suit No. 503 of 1928 it was stated that there was a dispute between Sukhbasi, Kanhaiya Lal and Narain Das as to the succession to the

Mahantship of the idol upon the death of Narsingh. It appears to us that as held in Suit No. 222 of 1929 the trustees allowed Narain Das to take up the Mahantship after the death of Narsingh Das, but Sukhbasi and Kanhaiya Lal who were related to Narsingh Dag contested the right of Narain Das and interfered with his management, but were never in fact able to assume de facto Mahantship of the idol.

We, therefore, hold that in Suite, Nos. 503 of 1928 and 138 of 1930 the plaintiff idol was not properly represented and that the decrees passed and the proceedings taken under them are not binding on it.

20. In the second place, we find that the loan taken by Narsingh Das was not for legal necessity. Bhagwat Das had clearly laid down in his will that not more than Re. 1/, per day was to be spent for ragbhog. The burden of showing that there was legal necessity was on the creditor or his representative, the defendant-respondent auction purchaser, it is in evidence that a portion of the temple was let out on a monthly, rental of Rs. 10/-. Two other Kothris on the roadside which were used as shops were also let out. Then there was income from offerings.

The lower Court has recorded no finding as to what the income from the offerings was. According to the plaintiff, the income from offerings was Rs. 20/- to Rs. 25/- per month. The defendant's witnesses put it at a few rupees per month. In the circumstances it cannot be said that the income was not sufficient to meet the expenses. The fact that Narsingh Das took loans from other persons under two mortgage deeds is immaterial as they were executed to comply with a decree which was passed against him. The defendant respondent failed to discharge the burden that there was legal necessity for the loan.

Where there is no necessity for the loan and the creditor brings a suit against the idol and obtains a decree against it, represented by a Mahant Who had taken the loan and the property of the idol is sold in execution of the decree, the succeeding Mahant is not bound by the decree and may recover possession over the property on behalf of the idol treating the auction purchaser as a trespasser.

Even if the idol is represented in the suit by a Mahant other than the one who took the loan, the decree is not binding on the idol unless the issue of legal necessity was fairly raised contested and finally decided, Prosunno Kumari Debya v. Golabchand, 2 Ind App 145 (PC) (A). In the present case the said issue was never raised or contested or decided in the two suits mentioned above.

21. In the third place, we are of opinion, that a temple cannot be sold in execution of a decree obtained by a creditor on the basis of a loan taken by a Mahant even if it be for legal necessity. No case has been cited before us either in favour of or against this proposition. But considering the matter on first principles we consider that the law must be considered to be as stated by us. Where property is dedicated to an idol, it is intended to be a permanent dedication.

The idol represents a deity or a spiritual being whose existence is recognised by the Hindu Law. That deity or spiritual being is supposed to exist for ever. Obviously it being not a natural person cannot act like ordinary human beings. It cannot by itself therefore transfer any property. These actions

have to be done by a trustee or a manager or a Shebait on behalf of the idol. The endowment may be made subject to the condition that the property shall be inalienable, either by. means of a voluntary transfer or in execution of a decree or otherwise.

The prohibition against a condition absolutely restraining the transferee from transferring the interest transferred to him as laid down" in Section 10, Transfer of Property Act does not affect the idol to whom the transfer is made, because an idol by itself is incapable of making any transfer or disposing of its interest in the property. If the disposal has to be made, it has to be made by someone else and the conditions under which that someone else can make the disposal must be governed by some other law and not by Section 10, Transfer of Property Act.

There is nothing in law to prevent a donor from laying down as one of the conditions of the endowment, that the manager or shebait or trustee, acting for an idol, in whose favour the endowment is made, shall not be able to dispose of or part with the property. Where, therefore, endowment so provides, the property cannot be alienated either by voluntary transfer or in execution of a decree or order.

Where the terms of an endowment are not known, one has to turn to the general rules of Hindu law on the Subject. The general rule of Hindu law as laid down by the Privy Council in 2 Ind App 145 (PC) (A) is that property devoted to religious purposes is ordinarily inalienable. The exception to this rule has also been laid down by the Privy Council in that case. Say their Lordships :

> "notwithstanding that property devoted to religious purposes is as a rule inalienable, it is in their Lordships opinion competent for the Shebait of property dedicated to the worship of an idol in the capacity as Shebait and Manager of the estate, to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigations, attacks and the like objects, the power, however, to incur such debts must be measured, by existing necessity for incurring them."

The first and foremost duty of a Mahant or a Shebait of an idol is to preserve and maintain the idol as an institution, that is to say as an object of worship. This presumes that the temple, that is to say, the abode of the idol, is to be preserved and maintained as it was intended by the donor or founder. Property other than the temple endowed for the purposes of the idol may have to be alienated if it is absolutely necessary for the purpose of preservation of the idol and its temple. No Shebait or Mahant can, therefore, have the right of alienating the temple itself.

22. Debts may be incurred for the purposes mentioned by the Privy Council including the upkeep of the religious worship. And if the income of the idol obtained from offerings and the profits of the endowed property is not sufficient to keep up the usual religious worship, a part of the endowed property may be alienated but there is no justification for alienating the whole of the idol's properties and in any case, none whatever for alienating the temple, because religious worship under Hindu law can be performed simply with water, leaves and flowers which involve no expense. As J. C. Ghosh observed in his Tagore Law Lectures for 1904 on Religious Endowments, Vol. II, at

page 217:

> "Worship can be performed simply with water and leaves and flowers and thus there can be no necessity for alienating dedicated properties for ostentatious worship. The only valid necessity which the Courts should recognise in case of land is the payment of revenue and rent and repairs of embankments, reservoirs of water and the like. But for these purposes the income of property is ordinarily sufficient. Even for such purposes absolute alienation cannot be justified for they are only necessary for protection. The Courts should therefore only under very extraordinary circumstances recognise any necessity as justifying alienation of dedicated property."

This view finds support from the opinion of Sir Bhashyam Ayyanger J. in Vidyapurna v. Vidyanidht ILR 27 Mad 435 (B).

23. In Devasikamoney Pandarasasannadhi v. Palaniappa Chettiar, ILR 34 Mad 535 (C), the headnote ran thus:

> "The requirements of daily worship, and of performance of festivals are among the purposes for which the trustees of a temple, may alienate the corpus in the absence of other means of providing for such needs."

24. But on an examination of the judgment, we find that the headnote is misleading. What was stated in that case was:

> "The requirements of daily worship, of buildings suitable for the carrying on of such worship and even of the essential festivals intended to cultivate the religious emotions of the section of the public for whose benefit the temple is dedicated may afford grounds for the alienations of part of the corpus of the property of the temple. That such alienations ought only to be resorted to as extreme measures in the absence of other reasonable means of providing for the needs of the temple may well be accepted as the canon of judgment in regard to the validity of particular alienations."

25. When debts are properly incurred for an idol, the proper decree that should be passed in such cases whether the loan is secured or unsecured is one directing the defendant to pay the decretal amount within a fixed period, and directing further that if the amount is not paid within that period, a receiver shall be appointed to realising rents and profits of the debutter property and the proceeds from offerings, etc. and after payment of all expenses connected with the institution and the performance of the ceremonies and festivals and a reasonable provision for the maintenance of the Shebait or Mohunt, the balance shall be applied in discharge of the plaintiff's debt until such debt has been paid off, vide Mulla's Hindu Law Edn. 11, page 520, see Vibhudapriya Thirtha Swamiar v. Lakshmindra Thirtha Swamiar, ILR 50 Mad 497: (AIR 1927 PC 131) (D) and Niladri Sahu v. Chaturbhuj Das, ILR 6 Pat 139: (AIR 1926 PC 112) (E).

26. Where a Manager or a Shebait of an idol could not have permanently alienated the endowed property for a particular purpose, e.g., for daily worship, the property cannot be sold in execution of a decree obtained on the basis of a loan taken for such a purpose. The endowed property can be sold in execution of a decree only when it is shown to the satisfaction of the Court that the decretal amount cannot be realised from the profits of the property and that the loan was for such a necessity as would have justified or entitled the Shebait or the Manager to make a permanent alienation of the endowed property.

27. For an absolute alienation of a debuttor property, there must, it would seem be an imperative necessity constraining the manager to make it, ILR 34 Mad 535 (C), Anantakrishna Shastri v. Prayag Das, ILR 1937-1 Cal 84 (F), Himangshu v. Radha Madan Mohan 43 Cal WN 943 (G), Venkataramana Ayyangar v. Kasturi Ranga, ILR 40 Mad 212: AIR 1917 Mad 112 (FB) (H).

28. Whatever may be said about a permanent alienation of endowed property other than a temple, in the very nature of things, having regard to the duties of a Manager or a Shebait towards the idol or institution, there can be no necessity of alienating the temple or any portion of it in which the idol is installed. The maintenance of the entire building is the prime concern of the Manager or the Shebait.

The temple has a special sanctity distinct from other endowed property. To alienate the temple itself is to cut at the root of the very existence of the idol in the habitation intended by the founder. Hindu Sentiment views the alienation of a temple as a sacrilege. Not until the idol has been removed from the temple in accordance with shastric rites and has assumed a new habitation and the temple abandoned as a place of worship may the temple be alienated or sold in execution of a decree.

29. In our opinion the sale of the temple in execution of the decree No. 503 of 1928 was totally void and it did not bind the plaintiff idol. After the death or removal of the Mahant who represented the idol in the suit in which the decree was passed, the succeeding Mahant who was no party to the proceedings can challenge the validity of the decree and treat the proceedings as null and void.

30. In view of the above findings it is not necessary for us to decide the point whether on the promissory note executed by Mahant Narsingh pas, a decree could be obtained against the idol if it was properly represented.

31. This brings us to the question of limitation. As the idol was not properly represented in the aforesaid suits, the decrees were nullities as against the idol. , In such cases the principle laid down by the Privy Council in Rashidunnisa v. Muhammad Ismail, ILR 31 All 572 (PC) (I) and by this Court in Dwarika Halwai v. Sitla Prasad, 1940 All LJ 166: (AIR 1940 All 256) (J) applies. The decree is not merely voidable, but null and void. The decrees being nullities can be ignored and the plaintiff is not under the necessity of having them set aside before suing for possession.

Limitation would run against the plaintiff from the date on which the defendant took effective possession over the property, see Sudarsan Das v. Ram Kirpal Das, AIR 1950 PC 44 (K). This possession was taken in 1936. The period of limitation would be 12 years under Article 142,

Limitation Act. The suit was, therefore, well within time.

32. It was urged that the plaintiff came to Court on the allegation that the decrees were collusive and fraudulent and that therefore he could not be allowed to ,urge that the decrees were null and void because there was no proper representation of the idol. This plea is not open to the defendant-respondent, because a definite issue was framed by the Court below upon it, being issue No. 2, and evidence was led by both parties. In the plaint itself it was clearly stated that the plaintiff idol was not properly represented in Suit No. 503 of 1928, vide paras. 12, 13 and 14.

33. It was then urged on behalf of the defendant-respondent that the present suit was barred by Order 9, Rule 9, Civil P. C., because one Ramanuj Das filed Suit No. 66 of 1937 for the same relief as was sought in the present case and the same was dismissed in default. It is not the defendant's case that Ramanuj Das was de jure or de facto Mahant or manager of the plaintiff idol nor is it the case of the plaintiff.

Indeed the evidence of the plaintiff is that shortly before the death of Narain Das and after his death, it was Surra Chaube who was the Mahant and Manager of the plaintiff idol. No issue was framed on this point in the Court below. Moreover the application for leave to sue in forma pauperis was rejected and there was no decision in the suit itself. The decision in that case cannot operate as a bar to the present suit.

34. A half-hearted attempt was made to argue that the present suit was barred by Section 11, because of the decisions in Suits Nos. 503 of 1928 and 133 of 1930, but as has been found above, the plaintiff-appellant was not properly represented in those suits, and the decisions in those suits cannot bind the plaintiff under the doctrine of res judicata. Nor does the dismissal of the application filed by Narain Das on behalf of the plaintiff idol for setting aside the ex parte decree have the effect of res judicata on the trial of the present suit. The judgment of the Court dismissing the application has not been filed in this case and we do not know on what grounds it was dismissed.

35. The result, therefore, is that we allow this appeal, set aside the decree of the Court below and decree the plaintiff's suit with caste throughout.