Gokul Nathji Maharaj And Anr. vs Nathji Bhogi Lal on 1 February, 1952

Equivalent citations: AIR1953ALL552, AIR 1953 ALLAHABAD 552

JUDGMENT

Malik, C.J.

(1) This is a plaintiffs appeal against the decree passed by a learned single Judge of this Court allowing a Second Appeal and dismissing the plaintiffs' suit. The plaintiff-appellants are represented by Dr. N. P. Asthana, but learned counsel for the respondent. Sri Harnandan Prasad, states that he has received no instructions from his client. The suit was filed by Shri Thakur Gokul Nathji Maharaj, 'birajman' at Gokul through plaintiff 2, who claimed to be the owner oi the property in suit, but to prevent the defendant raising the question whether it was plaintiff 1 or plaintiff 2 who was the owner of the property it was said in the plaint that plaintiff 2 had joined plaintiff 1 also as a co-plain-tiff and the suit was, therefore, filed in the name of both the plaintiffs.

The allegations in the plaint were that the land in suit belonged to the plaintiffs and one Dwarka bad his house on it that in the flood of 1924 the house of Dwarka was washed away and in 1933 the defendant took wrong ful possession of the materials worth Rs. 100/-lying on the site and built a Dharamshala thereon. The reliefs claimed by the plaintiffs were for removal of the constructions made by the defendant and for vacant possession being given to them; an injunction to be issued to the defendant not to interfere in future with the plaintiffs' possession of the land; Rs. 100/- as damages for the price of the materials unlawfully used by the defendant; and for costs. The plaintiffs' claim for Rs. 100/-was dismissed by the lower appellate Court on the ground that it was not proved that the defendant had utilised any part of the materials of Dwarka's house. The other reliefs were given to the plaintiffs.

(2) In appeal a learned single Judge of this Court held that plaintiff 1 was not a juristic person and could not own property, that Plaintiff 2 had no right of ownership and that mandatory injunction could not be granted because the suit was filed almost three years after the constructions were made. He allowed the appeal and dismissed the plaintiffs' suit.

(3) It has been urged by learned counsel for the appellants that as regards the first finding that plaintiff 1 was not a juristic person the learned Judge was clearly in error. The point was very carefully considered by the lower Courts and we must say they wrote excellent judgments and took great care in the consideration of all the materials placed before them. The temple in question is a very old one dating back to some year prior to 1640 A. D. According to the traditions prevailing in the locality one Shri Ballabhacharya flourished in the sixteenth century of the Christian era, He was a devotee of Lord Krishna and was held in great esteem by the people. He had two sons, one of

whom died issueless but the other had seven sons. To these seven grandsons Shri Ballabhacharya gave seven idols as representing Lord Krishna of whom he was a 'Bhakta'. These seven idols which were given to each grandson were installed by them in various parts of northern and western India. To the grandson, Shri Gokul Nathji was given the idol which was installed in Gokul in the temple known under the same name, i. e., Gokul Nathji.

Grandson Gokul Nathji was himself a very pious man and a great devotee of Lord Krishna, so much so that some people started worshipping him as the incarnation of the Lord himself. Gokul Nathji, however, used to worship plaintiff 1 as the idol of Lord Krishna, and some followers, instead of worshipping Gokul Nathji the grandson of Shri Ballabhacharya, worshipped the idol and held that the idol as well as Gokul Nathji and his descendants were the representatives of God. These two sects that grew up were known as the 'Bharuchis' and the 'Nimar Yas'. 'Nimar Yas' worshipped plaintiff 1, while the 'Bharuchis' worshipped Gokul Nathji in his lifetime and after his death they worshipped his clothes, sandals, and such other things as were used by him and enshrined these articles of personal use in a temple.

(4) The defendant challenged the plaintiffs' claim on several grounds but, one of the grounds was that plaintiff 1 was not a consecrated idol and was, therefore, incapable of holding properties. There was no serious dis-

pute as to the facts already stated by us above and as a matter of fact those facts have been found by the lower Courts on the evidence available on the record and thus they could not be made subject matter of challenge in this Court in second appeal, According to the traditions these idols that were handed over by Ballabhacharyaji to his seven grandsons were self-revealed idols of Lord Krishna and it is on that account that the learned Judge came to the conclusion that there could not have been due consecration according to law and it could not be said that the spirit of God ever came to reside in them. As it was pointed out by the learned Munsif in his very careful judgment that according to true Hindu belief the idol is not worshipped as such but it is the God behind the idol which is the object of worship.

The learned Munsif has pointed out that there are elaborate provisions in Hindu Law which enable a stone image or an image made of wood to be changed and replaced by another. It cannot be said that the stone image or image made of wood or of gold or other materials is the real object of worship or the real person owning the property. The real owner of the property is deemed to be God Himself represented through a particular idol or deity which is merely a symbol.

From the evidence it is clear that plaintiff 1 as such a symbol has been the object of worship by a large sect of people known as 'Nimar Yas' for over three hundred years and extensive properties are owned by and are in the possession of the said idol. In the circumstances, we think it was unreasonable for the learned Judge to expect that there would be any direct evidence of consecration, nor is it reasonable after such a length of time to require the plaintiffs to prove affirmatively that such ceremonies were performed as would entitle the plaintiff to claim to be a juristic personality.

(5) From the fact that the idol was said to be self-revealed the learned Judge assumed that there could have been no consecration of it. It is impossible after this length of time to prove by affirmative evidence whether there was or there was no consecration and we have not been referred to any book of authority or any evidence which would go to show that in the cases of idols which were deemed by their followers to be self-revealed no consecration takes place. From the fact and circumstances, however, it is abundantly clear that the idol was duly recognised by all those who believed in it as an idol of Lord Krishna and was worshipped as such. Properties were dedicated to it and properties have been brought to its use through centuries that it has existed.

After all the question whether a particular idol is or is not duly consecrated must depend upon the religious faith and belief of its followers and we have no doubt that all that was necessary to deify it must have been done by those who believed in the said idol. On the facts found by the lower Courts, the lower Courts were right in coming to the conclusion that there was sufficient material for a presumption that plaintiff 1 was a juristic person recognised as such by the followers of that sect and, therefore, capable of owning property.

(6) As regards the claim of plaintiff 2, no doubt some controversy was raised in the trial Court whether the title vested in plaintiff 1 or plaintiff 2. The lower appellate Court held that plaintiff 2 had failed to prove that he was the owner of plaintiff 1 or 'Gaddinashin', but that he had been managing the temple and its affairs since 1916 and was thus the 'de facto Gaddinashin' of the temple. The learned Judge of the lower appellate Court rightly held that as the suit had been filed on behalf of both the plaintiffs it was not necessary to go further into the question about the rival claims between the plaintiffs 'inter se'. The learned Judge has held as follows :

".....the determination of this question (whether the owner is plaintiff 1 or plaintiff 2) in this case is otiose, as it is essentially a question between the plaintiffs themselves. At least one of them is such owner."

On the findings recorded by the learned Judge he might as well have held that it was plaintiff 1 who was the owner of the property. The other findings recorded by the learned Civil Judge appear to us to be clear findings of fact based on evidence. The learned Judge held that the land in suit was in the possession of a tenant of the plaintiffs named Dwarka; that this 'kachha' house of Dwarka existed and was in his possession till 1924 when there was a flood and the house was washed away and the land lay vacant; that it was not till 1933 that the defendant took possession of the land and started building Dharmshala; and that there could, therefore, be no question of limitation as the suit was filed in 1936. On these findings the plaintiffs' suit for possession was rightly decreed.

(7) The learned single Judge held that the defendant has not succeeded in proving that the plaintiffs have acquiesced in any way in the building of the Dharmshala and in the circumstances, therefore, there is no reason why the plaintiffs' suit for the other reliefs, except the claim for Rs. 100/- as damages, should not have been decreed.

(8) The result, therefore, is that we set aside the decree of the learned single Judge and restore the decree passed by the lower appel late Court, but as the respondent is not repre sented before us we

make no order as to costs of this appeal.