Mahant Har Kishan Das vs Satgur Prasad on 14 September, 1951

Equivalent citations: AIR1953ALL129, AIR 1953 ALLAHABAD 129

JUDGMENT

Agarwala, J.

1. These are two applications for leave to appeal to the Supreme Court. They arise from a decision of a Bench of this Court in two appeals disposed of by one judgment, These two appeals were brought against a decision of the Civil Judge of Lucknow in one suit. The suit related to properties alleged to belong to a Sangat by the name of Bagh Baba Hazara. These properties mainly consisted of Eagh Baba Hazara, Bagh Suraj Kund, certain muafl villages, certain non-muafi villages and certain movable properties of the total valuation of over Rs. 5500000/-.

2. The plaintiff's case was that the Sangat was founded by Baba Hazara, a Faqir of the Nihang Udasi Sect, that the Sangat was a public religious endowment managed by Mahants, that the first Mahant was Baba Hazara, who was succeeded by his disciple, Amriti Das, who again was succeeded by Mahant Gur Narain pas, that a bulk of the property was acquired in the name of Gur Narain Das, that the property thus acquired was either given to Gur Narain Das for the purpose of the Sangat or was acquired by him out of the profits of the previously endowed property in his possession or was dedicated by him for the purposes of the Sangat, and that Gur Narain Das was succeeded by his disciple, Har Charan Das, who was succeeded by Sant Rain Das, who, in his turn, was succeeded by Mahant Har Narain Das, who died in 1933. The plaintiff claimed that he was a disciple of Mahant Har Narain Das and was installed as the Mahant by the community of Nihang Udasi Sect and was entitled to possession over the properties as a Mahant.

3. The defence, inter alia, was that there was no Sangat, that Bagh Baba Hazara was not a public religious endowment, that two properties Bagh Baba Hazara and Bagh Suraj Kund were acquired by Baba Hazara as his personal property and remained so up to his death and were inherited by his disciple Amriti Das, that Gur Narain Das acquired valuable personal properties which were never dedicated by him for a public trust, that the properties were confiscated by the British Government after the mutiny and were regranted to him as a Taluqdar in his own right with full power of alienation and that they were secular properties to which the defendant was entitled to both as the sister's son of Sant Rain Das, the last owner, and as his disciple and also on account of a family settlement arrived at between Mahant Har Narain Das and himself by which Mahant Har Narain Das reserved to himself a life interest only in the properties and acknowledged the defendant's title to reversion after Har Narain Das's death.

4. The trial court held that there was a Sangat of Nihang Udasi Sadhus founded by Baba Hazara, situated in Bagh Baba Hazara with certain endowed properties, that it was a public religious

endowment and that the properties appertaining to the Sangat were Bagh Baba Hazara and thirteen muafi villages. It further found that the plaintiff was the lawful Mahant of the Sangat and was entitled to the possession of the properties appertaining to it and that he was also entitled as heir and successor of the late Mahant Har Narain Das to his secular properties. The properties acquired by Gur Narain Das, other than the muafi vil-lages were held to be secular properties which belonged to Gur Narain Das and after him were inherited by his heirs and successors and not by the plaintiff. The trial court, therefore, decreed the suit with regard to properties which it declared to be endowed properties and in regard to the personal properties of Mahant Har Narain Das and dismissed the suit with regard to the rest of the properties. Against that judgment there were two appeals to this Court, one by the plaintiff and the other by the defendant These two appeals as already stated, were disposed of by one judgment by a Bench of this court.

5. The Bench held that although there was a Sangat in existence it was not proved that it was a public religious trust and that it was not established that any property was endowed by Baba Hazara or his successors or that any property was acquired by them as endowed property. It held that Mahant Har Narain Das having, under the family settlement, obtained a life interest in the properties and the remainder having vested in the defendant, the plaintiff had no title to the properties and was merely entitled to certain movable properties personally belonging to Har Narain Das. One of the Judges constituting the Bench expressed the opinion that the Sangat might be a private religious endowment. In the result the plaintiff's appeal was dismissed and the defendant's appeal was allowed with the exception of certain properties in respect of which the parties had entered into a compromise, and with the exception of certain secular properties of Mahant Har Narain Das. The defendant's appeal having been allowed in part, the decree of the court below was varied and since the valuation of the subject-matter of the suit both in the court of first instance and in the proposed appeal was over Rs. 20,000/-, it was conceded that the case fulfilled the requirements of Section 110, Civil P. C., and Article 133 of the Constitution and the application for leave to appeal arising out of that appeal must be granted.

6. The other application for leave to appeal arising out of the dismissal of the plaintiff's appeal, however, stands on a different footing. There was, no doubt, a small variation even in the plaintiff's appeal inasmuch as certain properties were decreed to the plaintiff on the basis of a compromise, but it is agreed that this variation is not a variation within the meaning of Section 110, Civil P. C., and that it must be assumed that the decree is of affirmance. The property involved in this appeal is the bulk of the property and is valued at over Rs. 33,00,000/-. The question therefore, is whether in the proposed appeal to the Supreme Court arising out of the dismissal of the plaintiff's appeal a substantial question of law is involved or whether it is otherwise a case which should be certified as a fit one for appeal under Article 133(1)(c) of the Constitution. We are of opinion that a substantial question of law does arise in the proposed appeal and it should also be certified as a fit one for appeal under Article 133(1)(c) of the Constitution.

7. The basis of the plaintiff's claim was that there is a public religious endowment by the name Sangat Bagh Baba Hazara and that the properties in dispute are endowed properties appertaining to the Sangat, The existence of the Sangat was found as established both by the court below as well as by the Bench of this Court. This Court, however, did not agree with the court below that the Sangat

was a public religious trust.

8. The question whether Sangat Bagh Baba Hazara is a public religious charitable trust or is a private trust or is no trust at all had to be decided upon the basis of inference to-be drawn from the proved facts of the case it was found that the enclosure known as Bagh Baba Hazara was gifted to Baba Hazara who was a Nihang Udasi Faqir about 200 years ago, that he did not execute any deed endowing this property or the property which had been acquired by him subsequently, namely Bagh Suraj Kund, but that he founded a Thakurdwara in Bagh Baba Hazara, in which Granth Sahib was placed, idols were installed and Samadhs constructed which were worshipped by the members of the public, that Sadhus came and stayed in the Bagh and held religious discourses, that they were fed free of cost and that festivals were observed and were attended by the members of the public. The learned Chief Justice observed that "it may be that the defendant has now no right to stop the people visiting the temple or the Thakurdwara to perform religious rites and it also may be that the defendant is bound to carry on various festivals which had been carried on in the past." But it was held that the circumstances did not establish that it was a public religious trust. The muafi villages had been acquired by Gur Narain Das in the Nawabi rule. In respect of three of these villages, Asakhera, Dhanpur and Daulatpur, Sanads were produced. The Sanad in respect of Asakhera was by the Queen of Oudh for the purpose of expenses of Faqirs, the poor and destitutes. The Sanad in respect of Dhanpur and Daulatpur was for meeting the expenses of the Sangat and of the Sadhus who came to the Sangat and the poor. The donee was described as "Mahant" Gur Narain Das. The question was whether these grants were made personally to Gur Narain Das 'sub conditione' or whether they were made to him in his capacity as the Mahant of the Sangat for the purposes of the Sangat and, therefore, belonged to the Sangat. Gur Narain Das used to receive cash grants from the time of the Nawabs of Oudh. The object of the grants was that the amount may be spent on the expenses of the Sadhus coming to the Sangat of Baba Hazara. The question was whether these cash grants were made to Gur Narain Das in his personal capacity or were made to him as Mahant of the Sangat and, therefore, were the property of the Sangat. Later, Gur Narain Das acquired large number of properties in three ways by means of 'supurdigi' by purchases and by mortgages. The question was whether these acquisitions were made by Gur Narain Das as Mahant of the Sangat on behalf of the Sangat or on his own personal behalf, and further the question was what the presumption would be as to the source of the consideration paid for some of these acquisitions -- whether the consideration came from the trust funds or from the personal fund of the Mahant, when the Mahant mixed up the trust funds with his personal income and there was no positive evidence to prove the source from which the consideration was paid. The income of all the properties thus acquired was lumped together and out of it the expenses of the Sangat were met and no distinction was made between the income from the muafi villages and the rest of the property, Gur Narain Das and subsequent Mahants made various declarations that the income of these properties was utilised for the purposes of feeding the Sadhus who came to the Sangat and on other religious observance. At the same time there was evidence that Gur Narain Das and some of his successors lived in great pomp and show and not like ascetics and kept mistresses by whom they had children and they made alienations of the property for their personal benefit. The question was whether by the declarations and user of the property and its profits Gur Narain Das and the subsequent Mahant could be said to have made an implied endowment of the properties. To our minds all these questions are mixed questions of law and fact. They are all involved in the plaintiff's appeal. The plaintiff cannot succeed

in his appeal without displacing the findings of the Bench of this Court even with regard to those matters which were decided in his favour by the Civil Judge and which mainly arose in the defendant's appeal. Without upsetting those findings he cannot possibly uphold his claim to the properties which were the subject-matter of his own appeal. In this respect common questions of law are involved in both the appeals. The question which is exclusively involved in the proposed appeal arising out of the dismissal of the plaintiff's appeal is also a mixed question of law and fact.

9. It was held in -- 'Kumar Purnendu Nath Tagore v. Sree Sree Radhakanta Jew', (54 CWN 538) that the inference as to the Legal nature of a particular property, whether it is secular or debottar, is an inference of law, and leave to appeal to the Federal Court was granted. That the question of law involved is a substantial question, can admit of no doubt. A substantial question of law need only be of importance between the parties and need not necessarily be of public importance: -- 'Raghunath Prasad Singh v. Deputy Commissioner of Pratabgarh', (54 IA 126). No doubt, it must be substantial, that is to say, of substance and not a question which, on the face of it, is of no force or is immaterial for the decision of the appeal. In this sense the questions involved in the proposed appeal are undoubtedly substantial. The dispute relates to a property in which not only the parties to the suit but a section of the public belonging to the Nihang Udasi Sect and also other members of the public who worship at the Sangat are interested. It can be said that the case is not only of private importance but of public importance also. On the whole, therefore, we think that this application should also be granted. (10) We, therefore, certify that the proposed appeal which arises out of the decree allowing the defendant's appeal fulfils the requirements of Section 110, Civil P. C., and Article 133 of the Constitution and is a fit one for appeal. We further certify that the proposed appeal which arises out of the decree dismissing the plaintiff's appeal also satisfies the requirements of Section 110, Civil P. C., and Article 133 of the Constitution and involves substantial questions of law and the case is otherwise a fit one for appeal under Section 109(c), Civil P. C., and Article 133(1)(c) of the Constitution. We make no order as to costs of these applications.