Kunwar Bhadur And Ors. vs Bhagwati Prasad And Ors. on 24 April, 1950

Equivalent citations: AIR1950ALL660, AIR 1950 ALLAHABAD 660

Author: Ghulam Hasan

Bench: Ghulam Hasan

JUDGMENT

Ghulam Hasan, J.

1. This appeal by the defendants arises out of a suit for a declaration which has been decreed concurrently by the two Courts below. The suit was brought under Section 59, U. P. Tenancy Act, under the following circumstances :

2. Bhagwati Prasad, plaintiff, instituted the suit against five defendants upon the allegation that certain grove plots belonged to one Baijnath Brahman, who on 26th October 1933, executed what was styled as a shankalapanama for certain charitable objects named therein. He constituted himself as the sarpanch and four persons including the plaintiff as the panchas. Half the share in the shankalapnama property was in the possession of Durgavati Debi and Brij Lal, mortgagees under a mortgage executed by Baijnath himself. Durgabati had assigned her mortgagee rights in favour of Bhagwati Prasad. Brij Lal was, therefore, the mortgagee in respect of one-quarter share of the grove plots, bat he was employed at Calcutta. Bhagwati Prasad therefore was in possession of the entire grove plots and trees in his capacity as the sarpanch and mortgagee. The plaintiff's case was that under the shankalapanama he became the sarpanch on the death of Baijnath, which took place on 23rd October 1943, and that he was also in possession as a mortgagee by taking an assignment from one of the mortgagees. According to him the defendants ware trying to obtain possession of the shankalap property without any right and two of them had cut a mango tree and removed the timber on 29th December 1943. This date constituted, according to the plaintiff, his cause of action for a suit for declaration. The relief claimed was twofold. The fires relief was that the plaintiff was the grove-holder without payment of rent of the land covered by the grove plots in the capacity of a mortgagee and a sarpanch of Baijnath trust, and in the event of his failing to prove that capacity or in the event of the grove having lost its character as such, he was entitled to retain possession as a tenant. This relief was contemplated obviously under Section 206, U. P. Tenancy Act. The second relief asked for was that half the property should be entered in the revenue papers in the possession of Bhagwati Prasad and Brij Lal and the remaining half in the name of Baijnath trust as grove holder under the management of Bhagwati Prasad sarpanch free of mortgage.

3. The two material defences with which I am concerned in the present appeal were that the revenue Court had no jurisdiction to try the suit and that the objects of the shankalapnama being vague and indefinite, the property covered by it did not constitute a valid trust.

4. Both the defences were rejected by the trial Court and the declaration asked for was granted. In the Court of appeal, although the question of jurisdiction was raised in the grounds, it does not appear to have been pressed at the time of the arguments before the lower appellate Court. Be that as it may, the decree of the trial Court was maintained in appeal.

5. In second appeal both these points have been reiterated on behalf of the defendants. As regards the question of jurisdiction, I am of opinion that the revenue Court was competent to try the suit. Having regard to the nature and the terms of the relief asked for by the plaintiff it seems clear that the plaintiff desired no more than a declaration of his status as a grove-holder on behalf of the trust and in the event of the grove being held to have lost its character as a mere tenant under Section 106, U P. Tenancy Act. The plaintiff further wanted an entry in the revenue papers in two capacities, firstly as the manager of Baijnath trust as a grove-holder free of any right of mortgagee in respect of half the plots and in respect of half the remaining half in his favour and in favour of Brij Lal, the co-mortgagee. It cannot be denied that the plaintiff was entitled to maintain a suit for a declaration that he was entitled to retain possession of the grove plots as a grove-holder. The groves still exist and had not lost their character. The trial Court granted no relief other than the relief for declaration as a grove-holder which the plaintiff sought. The plaintiff did not ask for, nor did the trial Court grant, any relief for a declaration that the deed of shankalapnama was a valid deed, or that he was a validly appointed trustee under that deed, or that the property was trust property. In fact and in substance the relief amounted to no more than a relief for declaration of plaintiff's status as a grove-holder. The facts that there was trust in respect of the grove plots and that he was the sarpanch of the trust under the shankalapnama were mentioned as supporting his right to possession of the grove land, but no relief, substantial or otherwise, was sought in respect of the trust or the plaintiff's character as a trustee. Having regard to the reliefs sought, it is clear therefore that the plaintiff's suit fell clearly within the jurisdiction of the revenue Court and was rightly instituted in that Court.

6. The next contention is that the words used in the shankalapnama are too vague and indefinite to render the deed enforceable at law. A reference to the deed will show that Baijnath made a shankalap in favour of Parmatma--Lord of all the worlds--and surrendered possession. He constituted himself as sarpanch and four other persons including the plaintiff as panchas One-fourth of the income of the property was to be retained by the sarpanch for the maintenance and preservation of the property, and the other three-fourth was to be spent by him with the advice of the majority of the panchas upon objects which were mentioned as Dhanusjag Janam Asatmi and Kisi kar khair Mazhabi (any other religious (good) object). It is not denied that the first two objects are charitable in the connotation of Hindu law and cannot be regarded as vague or uncertain. The words "kisi kar khair mazhabi" are, however, objected to be vague and render the shankalap void. I am not prepared to agree with this contention. The case in Gauri Shankar v. Mohan Lal, AIR (27) 1940 Oudh 275: (15 Luck. 674) relied upon for the appellants has no application. In that case the deed was entirely distinguishable. Nothing was said in the deed whether the property was given to

the idol in perpetuity nor as to who was to succeed upon the death of the manager. After the expenditure on Bhog of the idol the entire income was to he spent on nek kam (good works). Under these circumstances it was held that the words "nek kam" were too vague and did not mean an expenditure on charitable objects. The words "kar khair" used in the present shankalapnama are further qualified by the word "mazhabi" or "religious", which leaves no doubt whatever as to what the intention of the settlor of the trust was.

7. The case in Gordhan Das v. Chunni Lal, 30 ALL. 111: (5 A. L. J. 23) is in my opinion more applicable to the facts of the present case. There the word used was 'pun' and it was held that the dedication was for charitable purposes. A trust for such purposes, i.e., for charity generally, it was laid down, will always be carried out notwithstanding that the objects of the charity are not specifically defined. The Privy Council case in Runchordas Vandrawandas v. Parvatibhai. 26 I. A. 71 : (23 Bom. 725 P.C.) was referred to and distinguished on the ground that the word "dharma" used in that case by the testator bore a broad significance, being so wide as to include philanthropy piety or charity, and hence was too vague and uncertain for administration by Court. I am, therefore, of opinion that the words used in the present shankalpnama do not render it void on the ground of uncertainty or indefiniteness.

8. There is no force in this appeal, which is accordingly dismissed with costs.