

## **Kapoor Chand And Others vs Ganesh Dutt And Others on 8 December, 1992**

**Equivalent citations: AIR 1993 SC 1145, 1992 (3) SCALE 356, 1993 SUPP(4) SCC 432, AIR 1993 SUPREME COURT 1145, 1993 AIR SCW 326, 1993 (4) SCC (SUPP) 432, 1993 SCC (SUPP) 4 432, 1993 (1) UJ (SC) 219, 1992 ( ) JT (SUPP) 529, (1993) 3 RRR 703, (1993) 49 DLT 351**

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**Bench: M.N. Venkatachaliah, S.C. Agrawal**

ORDER

S.C. Agrawal, J.

1. We have heard learned Counsel for the parties. We hereby grant special leave in SLP (Civil) No. 12981 of 1987 which is directed against the judgment of the Rajasthan High Court dated July 23, 1987 in S.B. Civil Second Appeal No. 123 of 1979, and proceed to dispose of the appeal.

2. This appeal arises out of a suit filed by the appellants wherein they had challenged is that sale of a shop by Ganesh Dutt, respondent No. 1, in favour of respondents nos. 2 and 3 under sale deed dated October 14, 1968. The suit was brought by the appellants in a representative capacity as worshippers at the temple of Shri Radha Govindji situate at Bharatpur. The appellants have claimed that the said temple is a public temple and that respondent No. 1 was manager of the said temple. It was claimed that the shop in question, which belonged to Laxmi Narain, had been dedicated to the deity by his widow, Shrimati Bhagwati Devi, and that its income was in fact used for the expenses of 'Bhograg' of the deity and that Respondent No. 1 had no right to sell the same and the sale deed dated October 14, 1968 executed by him in favour of the respondents nos. 2 and 3 was null and void. The said suit was contested by the vendees, respondents nos. 2 and 3 as well as by the vendor, respondent No. 1 Respondent No. 4 who was a tenant in the said shop admitted the claim of the appellants. The contesting respondents pleaded that there was no such temple as that of Shri Radha Govindji and that it was a place of private worship established by Shrimati Bhagwati Devi. It was asserted that the suit shop was never dedicated to the deity, it was further pleaded that even if there was any such dedication by Shrimati Bhagwati Devi, it had no effect in law because Shrimati so Bhagwati Devi had already taken Ram Babu in adoption. The said suit was decreed by the Additional Civil Judge No. 1, Bharat pur, on the view that the temple of Shri Radha Govindhji was a public temple and that the suit shop had been dedicated in favour of the temple and Ganesh Dutt, who was only a manager, had

no right to sell the shop. On appeal, the Additional District Judge, Bharatpur, affirmed the finding of the trial Court that the temple was a public temple, The appellate court, however, held that the suit shop belonged to Laxmi Narain, the husband of Shrimati Bhagwati Devi, and after the death of Laxmi Narain, Shrimati Bhagwati Devi had adopted Ram Babu in 1926 according to wishes of her deceased husband Laxmi Narain. As regards the suit filed by Shrimati Bhagwati Devi for cancellation of the adoption of Ram Babu wherein an ex-parte decree was obtained it was found by the appellate court that Ram Babu was a minor and was impleaded through his natural father, Shri Nawal Kishore, as guardian and that Nawal kishore did not contest the suit and did not appear in the Court and that the procedure contained in Order 32 Rule 3 C.P.C. was not followed and, therefore, the ex-parte decree in that suit was void ab-initio and could not have the effect of cancelling the adoption of Ram Babu by Shrimati Bhagwati Devi. The appellate court, therefore, held that Shrimati Bhagwati Devi had no right to dispose of the property of her deceased husband in the presence of adopted son Ram Babu and she could not dedicate the suit shop in favour of the deity. The appellate court was also of the view that the dedication of the suit shop by Shrimati Bhagwati Devi was not proved by evidence on record and that the plaintiffs had failed to establish that the suit shop belonged to the temple. In view of the said findings, the appellate court reversed the judgment and decree of the trial Court and dismissed the suit. The High Court, in second appeal, has upheld the said judgment and decree of the Additional District Judge. SLP (Civil) No. 12981 of 1987 was filed against the said judgment of the High Court dated July 23, 1987. The appellants also moved a review petition in the High Court for review of the judgment dated July 23, 1987. The said review petition was dismissed by the High Court by order dated December 14, 1990. SLP (Civil) No. 6544 of 1992 has been filed by the appellants against the said order on review petition.

3. We will first deal with appeal arising out of SLP (Civil) No. 12981 of 1987 which is directed against the judgment dated July 23, 1987. In this context, it may be mentioned that the High Court has agreed with the finding recorded by the Trial Court as well as the Additional District Judge that the temple is a public temple. The only question which requires consideration is whether the suit shop has been dedicated to the deity and it belongs to the temple of Shri Radha Govindji, and the respondent No. 1 was only a manager of the temple and its properties including the said shop. The appellants have adduced evidence to show that

(i) Shrimati Bhagwati Devi had dedicated the shop in favour of the deity; and

(ii) Ram Babu, the father of Respondent No. 1 had admitted that the suit shop was the property of Shri Radha Govindji and that he was the manager of the temple.

4. With regard to the dedication by Smt. Bhagwati Devi, the High Court has affirmed the finding of the appellate court that the ex-parte decree passed in the suit filed by Smt. Bhagwati Devi for cancellation of the adoption of Ram Babu was void and Ram Babu continued to be the adopted son of Laxmi Narain and as such Smt Bhagwati Devi had no right to make a dedication of the shop in favour of the deity.

5. In order to prove the admission of Ram Babu the appellants have placed reliance on the judgment (Ex.D2), warrant (Ex. 3) and decree (Ex. 4) in Civil Suit No. 31 of 1952, decided by the Civil Judge,

Bharatpur on February 25, 1953. The said suit was instituted on February 8, 1952 by Ram Babu against one Nathi. The suit was described as "Pauper Suit under Order 33 CPC for declaration that plaintiff No. 2 is the Manager (Muhatmim and guardian-ad-litem (Mutalvi) of the temple of Shri Thakurji Radha Govindji and for recovery of possession of temple". In the said suit, a decree was passed by the Civil Judge on February 25, 1953 in the following terms-

...it is ordered and decreed that the plaintiff is the owner and Manager and guardian-ad-litem of disputed temple alongwith properties mentioned in para 8 of the plaint and the defendant should hand over possession of all the properties to plaintiff. Decree be prepared accordingly and details of all the properties as per para 8 be mentioned in it.

6. The suit shop is mentioned at item No. (iii) in the particulars of properties as per para 8 of the plaint.

7. It appears that during the pendency of the said suit. Ram Babu had died and on his death Ganesh Dutt, his minor son, under the guardianship of Shrimati Sushila, was brought on record in the place of Ram Babu. This is evident from the cause title of C.S. No. 31 of 1952 wherein the plaintiff has been described as under-

Shri Radhagovindji installed in temple of Radhagovindji through Rambaboo alias Shyam Mohan adopted son of Laxmi Narayan Brahmin, Bharatpur deceased Ganesh Dutt minor son of Rambaboo minor under the guardianship of Mst. Sushila.... Plaintiff

8. In execution of the decree (Ex. 4) passed in the said suit, Ganesh Dutt. Respondent No. 1, obtained possession of the temple and the properties, including the suit shop, through warrant (Ex. 3). The case of the appellants is that the aforesaid suit was brought by Ram Babu on the basis that the suit shop belongs to the temple of Shri Radha Govindji and he was manager of the temple and that in view of the said admission of Ram Babu, respondent No. 1 must be held to be in occupation of the temple and its properties as a manager only, having no right to alienate the said properties.

9. Dealing with this aspect of the case, the High Court has observed -

It is no doubt correct that the above documents show that the suit shop has been shown as one of the properties of the temple. But it is important to note that even that suit was brought when Ram Babu was minor and one Sushila Devi was acting as his guardian. That suit was brought against one Nathi, who was claiming independent right over the entire properties of the temple including the shop in question. That suit was decreed in favour of deity Radhagovindji and Ram Babu minor. In that litigation there was no issue involved with regard to dedication of any property in favour of temple. The main question which calls for determination in the present case is as to whether the shop in question had been dedicated to the deity and if so when and by whom.... If we examine the effect of admission by Exs. B2, 3 and 4 the question of dedication of the shop in favour of the deity by Ram Babu is totally ruled out. In fact litigation Ram Babu has been shown admittedly as minor is and there could not have been any dedication by Ram Babu earlier in point of time to that litigation. There is no iota of any evidence nor any allegation or pleading by plaintiff that the shop was

subsequent to that litigation dedicated by Ram Babu or the present defendant Ganesh Dutt, who is the son of Ram Babu.

10. From these observations, it appears that one of the considerations which weighed with the High Court was that the suit was filed by Ram Babu on behalf of the deity Shri Radha Govindji against Nathi, as a minor and Sushila Devi was acting as his guardian. The High Court failed to notice that Sushila Devi was the guardian of Ganesh Dutt, the minor son of Ram Babu, who had been brought on record on the death of Ram Babu during the pendency of the suit. The High Court was, therefore, in error in refusing to attach importance to the admissions of Ram Babu in the earlier suit which, in the absence of an explanation, were binding on his successor-in-interest, Ganesh Dutt, Respondent No. 1, who obtained possession of the properties of the temple, including the suit shop under the decree passed in that suit.

11. As regards dedication of private property for a religious or charitable purpose, the law is well-settled that dedication need not be made in writing and can be made orally or can be inferred from conduct. [See : B.K. Mukherjea, Hindu Law of Religious and Charitable Trusts, 5th Ed. p. 106; Tilkayat Shri Govindlalji Maharaj V. The State of Raj as than and Ors. ]. The admission by Ram Babu in the suit which he filed on behalf of the deity against Nathi claiming the suit property as property of the temple and himself being the manager of the temple and Ganesh Dutt, Respondent No. 1 having obtained possession of the suit property on that basis under the decree passed in the suit shop are relied upon by the appellants herein as evidence of conduct from which an inference can be drawn that prior to the filing of the suit the shop has been dedicated to the deity of Shri Radha Govindji and was part of the properties of the temple and Ram Babu and, after his death, his son Ganesh Dutt, Respondent No. 1 were managers of the temple and other properties including the suit shop. Since an earlier admission can be explained by the maker it was open to Ganesh Dutt, Respondent No. 1 to explain the admission contained in the plaint of the said suit No. 21 of 1952. The question whether the aforesaid admission has been explained and, if not, it constitutes conduct from which dedication may be inferred has not been considered by the High Court which has proceeded on erroneous assumption that at the time of institution of the suit Ram Babu was a minor. We consider it appropriate that this aspect is considered by the High Court and the matter should be remitted to it for consideration. But before we do so, we would deal with the contentions urged by the learned Counsel for respondents Nos. 2 and 3.

12. The learned Counsel for respondents nos. 2 and 3 has urged that the matters in issue in the earlier suit against Nathi were different from those which were in issue in the present suit. This contention, in our view, proceeds on a misconception. The earlier judgment in the suit filed by Ram Babu against Nathi is not being invoked in support of a plea of res judicata. If that were so, it would have been necessary to examine the matters in issue in the earlier suit and how they were decided. Here, we are only concerned with the admission of Ram Babu as plaintiff in the earlier suit that the suit shop was the property of temple of Shri Radha Govindji and Ram Babu was the manager of the said temple and other properties and the said admission is sought to be proved by judgment (Ex. 2) and decree (Ex. 4) in the earlier suit.

13. The learned Counsel for respondents nos. 2 and 3 has also assailed the right of the appellants to challenge the sale of the suit shop in their favour. We find no substance in this submission. The temple has been found to be a public temple. In respect of a public temple, the law is well-settled that the true beneficiaries of religious endowments are not the idols but the worshippers and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers. (See: Deoki Nandan V. Murlidhar, 1956 SCR 756 at p. 762). The worshippers have a right to file a suit to set aside a transfer of immovable property comprised in a Hindu religious or charitable endowment made by a manager thereof for valuable consideration. In such a suit, though the plaintiff worshippers may have the transfer set aside but they cannot claim to recover possession. (See. B.K. Mukherjea, Hindu Law of Religious and Charitable Trusts, 5th Ed., pp. 367-368; and Section 94 of the Limitation Act, 1963). In the instant case, suit filed by the appellants was for a declaration that the sale deed dated October 14, 1968 executed by Ganesh Dutt in favour of respondents nos. 2 and 3 was null and void as the suit property belongs to the temple and Ganesh Dutt had no right to sell the shop. The said suit, in our opinion, was maintainable.

14. For the reasons aforementioned, the decision of the High Court dismissing the suit filed by the appellants cannot be upheld. The appeal is, therefore, allowed. The judgment and decree of the Rajasthan High Court dated July 23, 1987 in Civil Second Appeal No. 123 of 1979 is set aside and the matter is remitted to the High Court for consideration of the question whether the shop is also endowed to the deity, according to law. There will be no orders as to costs.

15. This petition has been filed for grant of special leave to appeal against the order dated December 14, 1990 whereby the review petition filed by the petitioners for review of the judgment dated July 23, 1987, has been dismissed by a learned judge of the High Court on the ground that since special leave petition has been filed before this Court against the main judgment, the review petition was not maintainable because the order of the High Court would merge automatically in the order of this Court. This special leave petition has become in fructuous since the said judgment of the High Court dated July 23, 1987 has been set aside by us. We, however, wish to indicate that the High Court was not right in dismissing the review petition on the ground that in view of special leave petition having been filed against the judgment sought to be reviewed, the review petition was no longer maintainable because the judgment of the High Court would merge in the order of this Court. The question regarding merger of the judgment under review in the order of this Court would have arisen only after this Court had considered the special leave petition on merits and had passed an order on the matters dealt with in the judgment of the High Court dated July 23, 1987. Till such an order was passed by this Court, it was competent for the High Court to review its judgment dated July 23, 1987 and the review petition could not be dismissed as not maintainable merely because special leave petition had been filed against the said judgment before this Court and was pending. The special leave petition is dismissed with the aforesaid observations.