

Allahabad High Court

Sukhbir Singh vs Nihal Singh And Ors. on 2 January, 1913

Equivalent citations: 18 Ind Cas 232

Bench: H Richards, Banerji

JUDGMENT

1. The facts connected with this appeal are as follows. On the 7th of October 1879, one Musammat Jawahir Kunwar made a deed of endowment of certain property. This deed provided that she herself was to be the manager during her life-time. After her death, her husband's brothers were to be the managers. And after them, a member of her husband's family. On the 20th of December 1867, the same lady made a second deed of endowment of other property. In this deed, she stipulated that she should be the manager during her life-time but no further provision was made for the management of the property after her death. On the 21st of May 1898, an elaborate deed was prepared. It set forth that there were no trustees of the property and it appointed some seven persons to be managers and a scheme for the proper administration of the charity was laid down. Amongst the person named as trustees were Lala Nihal Singh, the present plaintiff, Babu Sukhbir Singh, (defendant No. 1), Lala Murli Dhar (defendant No. 2), Lala Har Prasad (defendant No. 3) and Lala Dilwali Singh (defendant No. 4). There were also two other persons who have since died. There can be no doubt that the lady had power to make the first two deeds of endowment. Either the property was her own or she was acting in accordance with the provisions of a prior document executed in the year 1875 between herself and her husband's relatives. There can be no doubt that the deed of the 21st of May 1898 was acted upon, Mutation of names was effected and the property was entered in the names of all the trustees nominated by the Musammat. In the year 1901, the lady executed a further document. In this, she refers to the two endowments and also to the appointment of trustees. Provision is made how the trustees are to act, and it is provided that four trustees should constitute a quorum. In this last mentioned document, there is the following provision: "I, the executant, have power to alter or cancel the conditions entered in the document, or to make an addition to them for the purpose of good management and completely give effect to the particulars mentioned in the said documents. I, the executant, amend, cancel and add the following conditions in the said document." This power evidently refers to possible alterations and amendments of the document of the 21st of May 1898, which appointed the seven trustees and laid down the scheme for the management of the two properties, the subject-matter of the two endowments. On the 10th of February 1902, the same Musammat executed a further document. By this document, she revoked the document of the 12th of August 1901, leaving the document of the 21st of May 1893 still in force. IN September 1902, the Musammat executed a further document. In it she revoked the deed of the 21st of May 1898, stating that she was dissatisfied with the management of the property. She does not state with whom she was dissatisfied, nor does the document make any provision for the appointment of new trustees after her death or during her life-time. The lady then died in the year 1903 at an advanced age. In 1906 a suit was brought by the present appellant and the defendant Murli Dhar seeking to remove the plaintiff Nihal Singh and Dilwali Singh from the office of trustees on the ground of misconduct and misappropriation of the property.

2. The Court of first instance dismissed the suit holding that there had been no misappropriation proved against either Nihal Singh or Dilwali Singh. It may here be mentioned that these two persons

were members of the family of the husband of the deceaseds The Court held that the deed of the 21st of May 1898 was invalid.

3. On appeal to the High Court, it was held, in agreement with the Court of first instance, that no misconduct or breach of trust was established, and that, therefore, the suit failed. But the Court was careful to point out that it was quite unnecessary to decide the validity or invalidity of the deed of the 21st of May 1898.

4. The plaintiff now brings the present suit alleging that in the events which have happened, he is the sole trustee and manager of both the endowments, that he is in possession of the property and that Dilwali Singh, although a member of the family of the husband of the deceased founder, is a man of bad character, and has, therefore, no right to be trustee as against him. The relief claimed is somewhat peculiar. The plaintiff merely asks that all the defendants may be declared not to be trustees of the endowed property.

5. The Court below has made a somewhat peculiar decree which is, in our opinion, very unsatisfactory. The decree is in the following terms: "it is ordered and decreed that it is declared that neither the plaintiff nor the defendants are trustees under the deed, dated the 21st of May 1893. This declaration, however, cannot affect any other right of the parties which the plaintiff and defendant No. 4 may have in the endowed property independently of the said deed of 1898." Notwithstanding the form in which the relief is claimed, we think that the plaintiff's real claim was to have a declaration that he, and be alone, was trustee and manager of the two properties, the subject-matter of the two deeds of endowment. In our opinion, unless he was in a position to establish that in the events which have happened, he was the sole trustee, he was not entitled to have a declaration against the defendants. With regard to the second endowment, as already pointed out, no provision whatever was made for the management of the property after the death of the Musammat. We think that this being so, she had a perfect right to appoint and nominate trustees at any time prior to her death, and that, therefore, the deed of the 21st of May 1898 was a valid document, which the Musammat had full authority to make see *Sheoratan Kunwari v. Ram Pargash* 18 A. 227; A.W.N. (1896) 37. In that case the learned Judges say: "it is well accepted law that when a Hindu creates an endowment of a temple or a shrine, or more strictly speaking of a Thakurji, and does not provide by the endowment for the nomination of a trustee or trustees being made by any person other than himself or his heirs, or being made by election amongst the disciples of the Thakurji, the nomination remains vested in the founder of the endowment and the right to nominate continues to his heirs. That was the principle accepted by their Lordships of the Privy Council in *Gossawmi Sri Girdhariji v. Romanlalji Gossami* 16 I.A. 137; 17 C. 3." This document of the 21st of May 1898 contained no power of revocation and, as already pointed out, it was acted upon and mutation of names in favour of the nominated trustees was made in accordance with its provisions. The document, therefore, was a complement to the earlier endowment, and we do not think that the lady had any power subsequently to revoke the appointment of the trustees. The provisions of the document completed what was left undone by the earlier endowment. It will, therefore, appear that, so far as the property, the subject-matter of the second endowment, is concerned, the persons nominated in that document are still trustees of the property and cannot be removed without a suit properly instituted for that purpose.

6. With regard to the property which was the subject of the first endowment, it is true that provision was made that after the death of the Musammat and her husband's brothers, members of his family should be trustees and of course it may be contended that the lady had no power to appoint trustees by any subsequent document. We, however, find that whether the lady had power to do so or not, the document of the 21st of May 1898 was in fact executed and the plaintiff in the present suit allowed his name to be entered with the other trustees as trustee of this property as well as of the property, the subject-matter of the second endowment. That entry has remained in the revenue papers up to the present time. Besides this, the defendant Dilwali had certainly an equal right to be a trustee with the plaintiff even assuming that no other trustees were ever validly appointed and for all we know to the contrary there may be other members of the family of the husband of the Musammat who are equally entitled. With regard to this property, the plaintiff has altogether failed to prove that he is the sole trustee and he is, in our opinion, not entitled to maintain the present suit in respect of this property either.

7. In our opinion, the appeal should prevail and we accordingly allow the appeal, set aside the decree of the Court below and dismiss the suit with costs, to be borne by the plaintiff-respondent.