

Supreme Court of India

Dhyan Singh vs Chandradip Singh on 16 January, 1969

Equivalent citations: 1969 I UJ 43 SC

Author: Bachawat

Bench: Sikri, Bachawat, Hegde

JUDGMENT Bachawat, J.

1. The dispute in this appeal relates to 16.35 acres of properties situate in village Berna Gossain Math, pargana Pillich, thana Bukhtiarpur in the district of Patna. The properties were attached under Sub-section (1) of Section 145 the CrPC and are mm in the custody of the Sub-Divisional Officer, Barh. The plaintiffs instituted a suit for a declaration that they were entitled to the properties. The trial court dismissed the suit. An appeal against the decree was dismissed by the Patna High Court.

This appeal has been filed by the plaintiff after obtaining special leave.

2. The plaintiffs claimed the properties under a registered deed of settlement dated June 3, 1947 executed by one Baldeogir. It is said that he was then the Mahant of the Berhna Gossain Math. The trial court found that the properties were endowed properties belonging to the Math and/or the deity installed therein and that the plaintiffs did not acquire any title to the lands under the deed dated June 3, 1947. This finding was not challenged in the High Court nor is it challenged before us. The plaintiffs have thus no title to the properties nor any right to possess them. The defendants claimed that the Hindus of village Berna elected them as members of a Board for managing and supervising the endowed properties. The trial court negatived this claim and found that the defendants also had no title to the properties nor any right to possess the same. The concurrent finding is that the properties belonged to a public religious endowment and neither the plaintiffs nor the defendants have any title to the properties nor any right to possess them.

3. The plaintiffs contended that they were in possession of the properties and were entitled to a declaration of their possessory title. Both the courts have negatived this claim. The trial court held:--

"It is, in my opinion, a case where there was a scramble for possession merely. Even assuming, therefore, that the plaintiffs came in possession, such possession was not only by fraud inasmuch as in Ext. 5 the property of the institution was described as the personal property of Baldeo but also by force, namely, by forcible removing the paddy crops and by employing lathis and also armed by the order of the S.D.O.

Such possession cannot possibly be respected when the plaintiffs have no title notwithstanding the fact that the defendants are in no better position.

4. On appeal the High Court recorded the following finding:--

"In such circumstances, it cannot be held that the plaintiffs established their possession over the suit lands at the time of attachment under Section 145 of the Criminal Procedure Code so as to take

possession from the criminal court. Whatever little act of possession they exercised at some time, long before the attachment by the Magistrate, was not free from force. Such acts, besides being of a time much earlier than the attachment, would hardly constitute the basis for a declaration of plaintiffs' right to the whole of the suit property."

5. The courts below have thus recorded the concurrent finding that the plaintiffs had no possessory right to the properties. We find no reason for disturbing this concurrent finding of fact under Article 136 of the Constitution. Assuming that the plaintiffs could obtain a declaration of a mere possessory title, they have failed to prove such a title. The trial court observed:-- "The property belongs to the deity and/or the Math and it can be possessed by the Mahant duly installed or by a board in conformity with a scheme prepared and approved for its due administration by the competent authority. Admittedly there is no Mahant nor there is any board appointed by the competent authority for the same. Till such time, namely, till a Mahant is duly installed or a board is formed for its administration, the property, in my opinion, should remain in custodia legis. This is the only order which, I think, I can pass in this suit."

6. We entirely agree with the above observations. But obviously the properties cannot continue in custodia legis indefinitely. It will be the duty of the Bihar State Board of Religious Trusts, constituted under the Bihar Hindu Religious Trusts Act, 1950 (Bihar Act No. 1 of 1951), to take all necessary steps under the Act for the proper administration of the Berhna Gossain Math. We direct that a certified copy of this judgment be sent to the Bihar State Board of Religious Trusts so that necessary steps may be taken by them in this behalf.

In the result, the appeal is dismissed. There will be no order as to costs.