(1917) 06 AHC CK 0014

Allahabad High Court

Case No: None

Bibi Lal		APPELLANT
	Vs	
Puran Mal and Others		RESPONDENT

Date of Decision: June 11, 1917

Citation: (1917) ILR (All) 651

Hon'ble Judges: Walsh, J; Piggott, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Piggott and Walsh, JJ.

In this case Birj Lal sued his father Puran Mal and his brothers Budhua and Ram Chandar for partition. There were two schedules appended to the plaint. Schedule A purports to specify the property belonging to the joint family of which the parties are members. Schedule B is a list of property belonging to the deity (Sri Thakur Ganeshji Maharaj) as worshipped in a certain shrine in the district of Muttra, and in paragraph 4 of the plaint it is stated that the joint family of the parties has a right to perform worship at the temple aforesaid and to look after the property belonging to the said temple and entered in schedule B. The relief sought therefore with regard to this property was a declaration that the plaintiff was entitled to perform worship at and manage the temple of Sri Thakur Ganeshji Maharaj and the property thereof to the extent of his 1/4 share by turns. The suit was contested on various grounds, and it may be noted at once that to a considerable extent the suit has failed even on the decree passed by the court below. For instance, the first three items specified in schedule A consist of properties situated outside the limits of British India, and with regard to these the court below has dismissed the plaintiff''s suit, not upon a finding that they were not the joint family property of the parties, but upon a finding that the court has no jurisdiction to partition property outside British India. Then again, with regard to most of the movable properties specified in schedule A, the plaintiff''s suit has in substance been dismissed upon a finding that there is no satisfactory

evidence as to the existence of the properties in question in the hands of the defendants, so that as far as the property in list A is concerned, the suit has been decreed in respect of two items only. One is described as a grant of Rs. 25 a year made by the Kashipur State. The decree declares the plaintiff''s right to receive of this grant. Another part of the decree declares the plaintiff to be entitled to 1/4 share in certain books known as birt jajmani bahis, which are as a matter of fact books containing lists of the names of clients who visit this temple and employ the services of members of this family for religious purposes. The decree of the court below gives the plaintiff a right to 1/4 of the income derived by the joint family from this source, that is to say, from the offerings made by the pilgrims visiting the shrine. It purports to enforce the plaintiff''s right by making over to him 1/4 of the birt jajmani bahis. This is a point which may perhaps be considered further when the final decree for partition comes to be prepared. It must, however, be pointed out at once that, although the appeal before us purports to be an appeal against the whole decree of the court below, it can scarcely be said that any of the pleas taken definitely challenges any portion of the decree dealing with the property specified in schedule A. At any rate, after hearing the arguments in support of the appeal, we are satisfied that no cause has been shown for modifying that portion of the decree, Although the written statement of the defendant did not in express terras admit the grant made by the Kashipur State and the income derived from the religious offerings of pilgrims to the shrine to be the property of the joint family and divisible as such, it by implication admitted this, and the defendant Puran Mal did so more definitely in his statement when examined by the court. He there tried to make out that he was taking no share in the birt jajmani offerings which his sons were as a matter of fact dividing amongst themselves. At any rate, so far as this appeal purports to be directed against that portion of the decree of the court'' below, it cannot be seriously supported,

2. The real dispute in this Court) as in the court below, is as to the property shown in schedule B. Now that schedule contains four items. The first of these is the temple itself, and the fourth refers to certain utensils and clothes appertaining to the worship of the idol. These at any rate are properties in respect of which it cannot be suggested that the trustees or managers of the shrine had any personal pecuniary interest.

3. There remain only two items, one of which is a grove appertaining to the temple. It is not suggested in the plaint that any particular income is derived from this grove, although it may of course be used for the accommodation of pilgrims visiting the shrine. Therefore, substantially, this item of property stands on the same footing as the other two.

4. There remains then in schedule B one item only, and this is a certain rent-free property in village Muraisi in the Muttra district, which is alleged to yield an annual profit of Rs. 1,765. Now if this income is shown to belong to the members of the

joint family, in this sense that it forms their remuneration for looking after the shrine of Sri Thakur Ganeshji Maharaj and performing priestly services is connection therewith, then there seems to be no reason why this item of property should not have been included in list A and partition thereof claimed on the same footing. On the contrary, in the plaint itself a clear distinction is drawn between this item of property and the other properties already referred to. The property in village Muraisi is specified in the plaint as belonging to the deity to which the temple is dedicated and there is no suggestion that the plaintiff claims to be entitled to a share in the enjoyment of its income. What the plaintiff says he wants is a share in the right to perform worship at the temple and to look after the property belonging to the said temple entered in schedule B. On the pleadings, therefore, the list B property seems to come within the principle laid down by this Court in Sri Raman Lalji Mahdraj v. Sri Gopal Lalji Maharaj ILR (1896) All. 428 and the suit becomes, to this extent, merely a claim for the partition of the right of management and superintendence in respect of property with regard to which none of the parties claim to have any personal pecuniary interest. In the case above referred to it was held by this Court that such a suit is not maintainable. That decision has been discussed in more than one subsequent case in the Madras High Court; it is sufficient to refer to the case of Ramanathan Chetty v. Murugappa Chetty ILR (1903) Mad. 192 in which the decision of the High Court was subsequently affirmed by the Privy Council on appeal, vide Ramanathan Chetty v. Murugappa Chetty ILR (1906) Mad. 283. In that case the principle laid down by the Allahabad High Court was discussed and approved of so far as it went. No doubt there is a certain difficulty about the present case, in which the claim for partition is composite, one portion of it dealing with property admitted to be the property of the joint family and not of the temple, although some of it, not all of it, is obviously connected with the rights of the joint family as managers of the temple. The suit, however, can only be dealt with on the basis on which it has been brought, and the claim, so far as the right of superintendence and management of the schedule B property is concerned, is covered by the decision of this Court already referred to. I hold therefore that this appeal should be allowed to this extent, that the following words be removed from the decree of the court below; "a preliminary decree for managing the temple of Ganeshji and other property appertaining thereto specified in list B attached to the plaint one year in every four years." These words must be struck out and in place of these words the decree of the court below should read, "as well as to 1/4 of the property specified in list A at No. 4, namely, the grant made by the Kashipur State," and after these words the words, ""be also passed in the plaintiff''s favour" must be struck out and in the latter part of the decree the words "and the years in which the plaintiff is to manage the temple" will also be deleted. We leave undisturbed the order of the court below as to the costs in that court, and as regards the costs of this appeal we direct that the plaintiff respondent do bear his own costs and half of the costs of the defendants appellants.