Avadh Kishore Das Vs Ram Gopal and Others

Court: Supreme Court of India

Date of Decision: Dec. 15, 1978

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 92
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 â€" Section 18, 209, 210, 6

Citation: AIR 1979 SC 861 : (1979) 4 SCC 790 : (1979) 11 UJ 251

Hon'ble Judges: V. D. Tulzapurkar, J; R. S. Sarkaria, J

Bench: Division Bench

Advocate: J.P. Goyal, Dwivedi and S.M. Jain, for the Appellant; R.K. Garg, M.C. Dwivedi, V.J. Franics, Madan Mohan and D.K.Garg, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Sarkaria, J.
The plaintiffs-respondents 1 to 3 instituted a suit in the Court of District Judge, Jhansi, u/s 92 of the CPC, against Avadh

Kishore Dass, defendant-appellant herein, inter alia, on the ground that there was a public religious endowment of considerable area of land in

Village Baha-walpura, District Jalaun (U.P.) in favour of the Temple of Shri Thakur Ram Jankiji Maharaj also known as Shri Thakurji Maharaj.

2. The founder of the endowment or trust was one Swami Sewa Das, who was a hermit of a very high Order be longing to Rihang Vaishnava

Sampraday. He had a large number of followers. His hermitage was in village Bahawalpura, Pargana Konch. District Jalaun. Sometime in the 14th

century King Mohamad Shah was passing by that way. He was impressed by the learning of Swami Sewa Das as well as his austerity and

personality. The King made a gift of 836 bighas of land as padaragh in the aforesaid village in favour of Swami Sewa Das, in trust for the specific

purpose of constructing and maintaining the Temple of Shri Thakurji Maharaj and for due celebrations or Raj Bhog, Puja, Arti, Utsav etc. of the

said Thakurji Maharaj. Swami Sewa Das accordingly installed an idol of Shri Thakurji Maharaj after constructing a Temple there. He spent the

income of the endowed property for religious purposes such as sewapuja of the idol and for maintenance of Sadhus of Nihang Vaishanaua Vairagi

of Rama Nandi Sampradaya. He. Was the first Mahant of the Math thus established.

3. In 1526 A. D., Prince Mulla Hafismet the then Mahant Shri Mahesh Das. The Prince examined the sanad granted by the King and reaffirmed

the grant. Thereafter, the territory came under various Rulers from time to time, who also granted fresh sanads to the then Mahant of the Math.

4. In 1751, the village came within the dominion of the Gwalior Raj, which granted another Sanad in favour of the then Mahant Rattan Das in the

year 1785.

5. In 1843, the village came under the control of the British Government, who resumed the Muafi of half of the village and fixed a sum of Rs. 225/-

as. the land revenue thereof, while the remaining half of the endowed property was continued as Muafi.

6. In the year 1845 at the time of the revenue settlement when Bhagwan Das was the Mahant of the Math, the land revenue was assessed in

respect of the entire endowed estate of the Temple at 50 per cent, while the remaining 50 per cent was declared as Muafi.

7. Bhagwan Das died in 1855. There upon, a dispute arose with regard to the succession to the office of the Mahant. One Kamala Das set up a

rival claim that he was entitled to become Mahant in preference to Sunder Das. All the documents and Sanads granted from time to time were filed

in those proceedings by Mahant Sunder Das in the Court of the Deputy Commissioner, Jhansi. But, thereafter, the War of Independence, also

known as ""Mutiny of 1857"" supervened. During that war, the entire record was burnt and destroyed. However, after the war, the British

Government duly recognised the endowment and in the settlement of 1869, declared the land of half of village Bahawalpura as Khalsa and the rest

as Muafi. A condition was attached that the Muafi would continue so long as the Temple continued to be there and maintained. The same entry

was renewed in the settlement of 1888.

7-A. The Mahant of the Math, according to the custom and usage of the Sampradaya, had to remain a Bramh-chari and lead a life of celibacy and

austerity. According to the usage of the Math, when a Mahant dies, the succeeding Mahant is selected from the Chelas of the deceased Mahant.

The senior Chela of the deceased Mahant, having the requisite qualifications, gets priority in the selection of the Mahant in a ceremony called

''Bhandara'' by Mandleshwaras. If the deceased Mahant is not survived by any Chela, the Mandleshf wara of Konch, Konavar, Kalpi and Rath,

gather and elect a person having the aforesaid qualifications to be the Mahant of the Math. Such elected Mahant is installed on the Gaddi by Rao

Sahab Gopalpura in the presence of Mandleshwaras and Vairagis of the said four Maths by putting a Kanthi round his neck. If the Rao Sahab is

not available for performing this ritual, the Kanthi is put by the Mandleshwaras on the elected Mahant. The Math is a Panchaiti Math.

8. Raghubir Das was the last Mahant of this Math, He died on January 23, 1955, leaving behind three Chelas, namely, Avadh Kishore Das, Ram

Sewak Das and Keshav Das. Ordinarily Avadh Kishore Das, defendant, used to live with Mahant Raghubir Das and help him in managing the

affairs of the Math.

9. On July 3, 1950, it is alleged, the defendant managed to get a registered will executed by Mahant Raghubir Das, whereby the latter nominated

the former as his successor and next Mahant of the Math. Thereafter, on March 27, 1954, Mahant Raghubir Das-executed a Gift Deed in favour

of the defendant in respect of 2/3rd share of the endowed land, but the same, according to the plaintiffs, was not given effect to.

10. On the death of Mahant. Raghubir Das, the. defendant proclaimed himself to be the Mahant on the strength of the aforesaid Will and entered

into possession and enjoyment of the entire trust properties, including the 2/3rd property obtained by him under the aforesaid Gift Deed, as

Mahant. The plaintiff further pleaded that the defendant was never installed as a Mahant in accordance with the custom and usage of the Math, nor

had he been recognised is the Mahant of the Math by the brotherhood and the Chelas of the deceased. The position of the defendant, according to

the plaintiff, is only that of a Trustee de son tort. It was further pleaded that he was setting up a title adverse to the Math and the Temple and had

got his name recorded as Bhumidhar in respect of the land belonging to the Temple. It was further alleged that on February 4, 1957, the defendant

had married the daughter of one Rameshwar Dayal and had as such, become a Patit, He had discontinued the performance of Sandhya, Article

worship and forced the Sadhus to vacate the Temple. Some allegations of mala-ministration extravagance and immoral conduct were, also, leveled

against the defendant.

11.On the preceding facts, the plaintiffs claimed these reliefs:

(a) The defendant be removed from the Mahantship of the endowed property.

(b) A new Mahant and Trustee be appointed in accordance with the custom and usage of the Math.

(c) The defendant be directed to deliver possession of the endowed property to a person entitled to its possession and management.

(d) The defendant be directed to render true accounts.

(e) A scheme for proper administration of the endowed property conforming to the custom and usage of the Math, be settled.

12. The suit was contested by the defendant, who, in his written statement, alleged that the trust was not a religious or charitable trust for the public

so as to attract Section 92 of the CPC. He traversed the allegations in the plaint and stated that Emperor Mohammad Shah had gifted 836 bighas

of land to Swami Sewa Das for the construction of a house and a private temple which was eventually constructed by the latter. The property was

personal and secular property of Swami Sewa Das and it had descended from Mahant to Chela one after another till it. came in the possession of

late Mahant Raghubir Das. The defendant denied the charges of mismanagement and suspension of sewapuja. He further stated that the Temple

was not a public one and the members of the public had no right to interfere in its management, nor did they have any right of worship in the

Temple. The defendant further admitted that he had married, because the late Mahant had advised him to remain celibate till such time as he could

afford to do so. The defendant contended that the marriage did not disqualify him. The defendant, further claimed that the properties of the Temple

were private and he was an absolute owner thereof.

13. Issues were framed and evidence were led by the parties. The District Judge recorded those findings:

(a) The trust of the idol of Shri Ram Jankiji Maharaj is a public trust so as to attract the operation of Section 92 of the CPC. It, however, further

held that it is not open to the Court to declare what properties are trust properties, and this matter can be decided in execution proceedings.

(b) The plaintiffs have sufficient interest in the suit, and as such, have the locus standi to maintain the suit.

(c) The defendant is liable to be removed from the office of the Mahant.

(d) The defendant is liable to render accounts for three years preceding the suit.

(e) The plaintiffs are entitled to get the relief of removal of the defendant from the office of Mahant and for appointment of a new Mahant in his

place in accordance with the custom of the Math.

(f) The plaintiffs are entitled to get a direction requiring the defendant to deliver possession of the Trust property to the person duly appointed as

Mahant.

(g) The plaintiffs are entitled to the relief of settlement of a Scheme for administration of the trust.

14. Against the decree of the District Court, the defendant carried a first appeal to the High Court. The High Court upheld the findings of the Trial

Court and dismissed the appeal. It further directed that a new Mahant should be elected within four months from the date of its decree, by the

Mandle shwaras in accordance with the custom and usage of the Institution; and the Mahant so elected would be entitled to obtain possession of

the Trust property from the defendant. The High Court, however, partly allowed the appeal and dismissed the suit with regard to the relief for

rendition of accounts.

15. Hence, this appeal on certificate granted by the High Court.

16. The controversy before us has narrowed down into the issue, whether the entire estate of village Bahawalpura is the property of a public

religious Trust or endowment dedicated to the Temple Idol of Shri Thakurji Maharaj? Or is it secular and absolute property of the appellant?

17. Mr. Goyal, appearing for the appellant, contended that the property in dispute had been gifted to Mahant Sewa Das King Mohammad Saha,

personally, in private trust and not as a public dedication to a Temple or an Idol. Since the donor was a Muslim in the very nature of things, he

could not have created this endowment in favour of an Idol or a Hindu Temple to be installed or constructed there. In any case, it was not an

absolute dedication, nor one of a public nature. It was secular property charged with the expenses of Sewa Puja for the private Temple of Mahant

Sewa Das. The mere fact that the property descended from Mahant Sewa Das, not in the line of natural heirs, but from Guru to Chela, does not

show that it was the property of the Thakur or the Temple and not their personal property. Stress has been placed on the fact that in the Revenue

Records (Khewat) brought on the file, the land was entered as the ownership of the Mahant.

18. The contention must be repelled. It is true that the original Sanads and documents, whereby the grants were made or recognised from time to

time by the various Rulers, are not forth coming. It is not seriously disputed that the same had been destroyed by fire during the "Mutiny" of 1875.

But, there is ample evidence of the authentic settlement records prepared during the British regime from 1864 onwards which show that it was a

condition of the grant that the Maufi in respect of half of the land in this village will continue only so long as the Temple of Thakurji was maintained.

This condition attached to the Maufi is to be found in the settlement records of 1864, 1869 and 1888.

19. Ex. A. 9 is an extract from the Wajibularz, which was prepared at the time of the settlement of 1864. The custom and usage of the Institution

governing appointment and succession to the office of Mahant has been vividly set out therein. A gist of the same has been indicated in an earlier

part of this Judgment and need not be reiterated.

20. The District Judge has observed in his Judgment that para 20 of Short Wajibularz (Ex. A-19) relating to this village from the settlement of 1864

A.D. states that this entire estate of village Bahawalpura has no other co-sharer except one, the Temple and the Mahant. It is further recorded

there in that according to the custom or us age, the Mahant is not competent to transfer any part of the land in this village because he is not the real

owner, and the real ownership vests in the Trust of which he is the Mahant. The exact words of the Wajibularz have been extracted in the

Judgment of the District Judge. Rendered into English, they read like this:

The Mahant is not entitled to alienate any part of the property without legal necessity.... The Mahant is only an ostensible owner. The real

ownership of this property vests in the Asthan (Trust) of which he is the Mahant.

This document, however, has not been produced before us; but there is no reason to doubt the correctness of the passage extracted from it in the

Judgment of the District Judge. Wajibularz is village administration paper prepared with due care and after due enquiry by a public servant in the

discharge of his official duties. It is a part of the settlement record and a statutory presumption of correctness attaches to it. Properly construed,

this Wajibularz shows that the entire revenue estate of village Bahawalpura vests in the Temple or the Math as a juristic person.

21. We need not reproduce and re-examine the various extracts produced from the settlement records pertaining to this village, because no less a

per son than Mahant Raghubir Das deceased, himself, had openly declared and admitted that the entire landed estate in this village was a religious

endowment dedicated absolutely to Thakurji. The first of these admissions is to be found in Ex. 16, which was a statement made by Mahant

Raghubir Das on July 11, 1949, wherein he stated that the land revenue paid by Thakurji for Bahawalpura for half of its land was Rs. 500/- and

the remaining half was revenue-free.

22. The second, but clear-cut admission is to be found in the registered will, dated July 3, 1950, made by Mahant Raghubir Das, whereby he

nominated the defendant as his successor Mahant. Therein, he has stated : ""I am the Mahant of the Temple of Shri Ram Janki Thakurji Maharaj,

situate in village Bahawalpura, Pargana Konch. All property movable and immovable, which stands either in my name or in the name of Thakurji,

is. owned by Thakurji Maharaj. I am only its custodian and I have no right to alienate the same.

23. Further, what is more important, in cross-examination, the defendant was confronted with this declaration in the will. He unreservedly admitted

that what was stated in the will, was correct. It is true that evidentiary admissions are not conclusive proof of the facts admitted and may be

explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them or his representative-in-

interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. Here, the defendant, far from explaining the

admission or declaration made by the deceased Mahant, under whom he (defendant) claims, has affirmed it, that the entire property in suit is the

absolute property of the God, Thakurji as a juristic person. It is, therefore, too late in the day for the defendant to wriggle out of the same. It

cannot be said that the defendant had inadvertently affirmed the correctness of the admission/declaration made in the aforesaid will by the

deceased Mahant. It was a conscious admission. The defendant himself repeatedly admitted this position with regard to the ownership of the land

being exclusively of the idol, Thakurji Maharaj, in the applications filed for receiving annuity under the provisions of the U.P. Zamindari, Abolition

and Land Reforms Act, 1952, which was granted to the idol, in respect of the Trust property.

24. Ex. 13 is a copy of an application, dated July 25, 1956, filed by the appellant on behalf of Shri Ram Jankiji Maharaj, installed in the Temple of

village Bahawalpura. In this application, he represented himself that this property of the Temple was under the management of the applicant as a

Mahant. This application was filed by the appellant before the Compensation Officer, Tehsil Konch, for grant of the compensation in the shape of

annuity, in respect of the property of the Trust. The idol of Shri Ram Janki installed in the Temple at village Bahawalpura is mentioned as the

applicant. This application bears the verification and signature of the appellant, himself.

25. Ex. 12 is another application of a similar nature made by the appellant before the Compensation Officer, on July 18, 1957, for receiving the

annuity.

26. Ex. 11 is an affidavit, dated October 14, 1958, filed by the appellant before the Rehabilitation Grant Officer, Konch. In this affidavit, the

appellant solemnly affirmed that the income of the Maufi property of the Temple had been expended and shall, in future, be expended towards

Bhog, Puja and functions held on the occasion of festivals and, also, towards the repairs of the Temple.

27. Ex 15 is a copy of the Order, dated August 16, 1955, passed by the Compensation Officer. In this Order it is stated that the Zamindari

property was in the name of Shri Ram Jankiji Maharaj installed in the temple of village Bahawalpura and the Manager recorded in the Khewat was

Avadh Kishore Das (defendant-appellant), Chela of Mahant Reghubir Das. The deity, Shri Ram Jankiji is recorded as intermediary in the Khewat

of 1849- Fasli. The Compensation Officer Ordered that an annuity of Rs. 596/6/ be paid to the appellant as Manager of the aforesaid idol.

28. Then, there is another document (Ex. 14). It is an agreement, dated August 16, 1955, between the Government of Uttar Pradesh and Shri

Ram Jankiji Maharaj Wakf Trust. This agreement was signed by the appellant himself, on behalf of the aforesaid Wakf Trust. By this document,

the appellant had made a representation to the State Government that the Trust was in urgent need of funds for carrying out the Performances of

the Wakf Trust or endowment. He further requested that pending determination of compensation and annuity, an amount of Rs. 596/6 be

advanced to the grantee on the terms and conditions mentioned in the agreement. The State Government had agreed to advance this loan on the

terms contained in the agreement.

29. In the face of this evidence, reinforced by the oral evidence on the record, the learned Judges of the High Court concluded that the Math and

the Temple in this case are a public religious Trust and not the personal property of the defendant. We do not find any reason to take a different

view.

30. Mr. Goyal cited certain observations of the Judicial Committee in AIR 1940 7 (Privy Council) In support of his contention that the mere fact

that the property descended from Guru to Chela and that there was a grant from the Rulers from time to lime for the Temple, is not sufficient to

show that it was a public endowment. This is stated only to be rejected. The facts of that case were entirely different. The points of distinction have

been fully brought out by the High Court and we do not intend to burden this Judgment by a repetition of the same.

31. In the alternative, Mr. Goyal tried to advance a new plea which was never taken by the defendant in his pleadings or at the time of arguments,

in the Courts below. The argument is that if it was assumed that Mahant Raghubir Das had no right to gift the property to the appellant, the latter

would be treated a trespasser over the same, and since no suit for his ejectment was filed u/s 209 of the U.P. Zamindari Abolition and Land

Reforms Act, within three years of his coming into possession in 1954, he became a sirdar u/s 210 of that Act. Thereafter, Raghubir Das acquired

Bhumidhari rights in the suit land, u/s 18 of that Act in his own right and there is nothing to show that the Temple or the idol got such rights. The

point sought to be made out is that Bhumidhari rights acquired by the defendant were new statutory rights and the old proprietary rights had

extinguished and become vested in the state free from all encumbrances u/s 6 of the said Act, with effect from the date of vesting (i.e. July 1,

1952).

32. An application, dated March 14, 1969, (C.M.P. No. 1437 of 1969) has also been made in this Court by the appellant for taking additional

grounds. This application has been stoutly opposed by Shri R.K. Garg, counsel for the respondent. It is submitted that this is not a pure question of

law, but one depending on evidence. No extract from the revenue records to show that Bhumidhari rights were granted not to the idol or the

Temple as a juristic person, but to the appellant personally.

33. It appears to us that this plea cannot be entertained at this belated stage. It is not even faintly adumbrated in the written statement of the

defendant, nor was it agitated at any stage before the Courts below. It is not a pure question of law. We, therefore, decline to go into it.

34. For all the foregoing reasons, we affirm the decree of the High Court and dismiss this appeal. In the circum stances of the case, we make no

Order as to costs.