

(1937) 04 PAT CK 0026

Patna High Court

Case No: None

Mahant Ramdhan Puri

APPELLANT

Vs

Mt. Parbati Kuar and
Others

RESPONDENT

Date of Decision: April 14, 1937

Citation: AIR 1937 Patna 519

Hon'ble Judges: Madan, J; Agarwala, J

Bench: Full Bench

Judgement

Madan, J.

This second appeal is concerned with the indebtedness of a math known as the Islam pur Math, situated in the Bihar Sub-division of the Patna District. The original debt amounting to the sum of Rs. 3,000 was contracted by Mahant Madho Puri who died in the year 1912. His successor Mahant Mahabir Puri brought the total indebtedness up to the sum of Rs. 12,000. In 1917 this Mahant for the satisfaction of this debt executed a permanent mokarrari of village Chak Barai, being one of the Math properties, for a premium of Rs. 12,000 and an annual rental of Rs. 5. Eight annas of the mokarrari was in favour of defendants 1 to 4 or their predecessors-in-interest, four annas in favour of defendants 5 to 7 and the remaining four annas was in favour of certain Mahtos. Mahant Mahabir Puri abdicated in 1919, and on 1st April 1920 his successor Mahant Bed Narain Puri brought Title Suit No. 87 of 1920 in the Court of the Second Subordinate Judge of Patna for cancellation of the mokarrari and recovery of possession over the property.

2. On 12th May 1921 this suit ended in a compromise whereby Bed Narain recovered an eight annas share and left the remaining eight annas in possession of the three sets of mokarraridars on a rental of Rupees 2-8-0. Out of the debt of Rs. 12,000 the sum of Rs. 569 had been paid in cash and Rs. 580 had been paid as Government revenue, while the balance of Rs. 10,851, which appears to have been

mostly covered by usufructuary mortgages, had not been paid. Out of this balance Bed Narain contracted to pay the sum of Rs. 3,551 and the mokarraridars were to pay the balance of Rs. 7,301. There is some dispute as to whether the mokarraridars did pay this balance or whether Bed Narain paid it, but: this matter was not put in issue between the parties and has not been decided by the lower Courts. In the year 1926 Bed Narain abdicated and was succeeded by the present plaintiff Mahant Ramdhan Puri. The plaintiff's case is that he approached the mokarraridars and represented that their mokarrari was illegal with the result that the Mahtos gave up the two annas share which had been left to them after the compromise.

3. In the year 1929 he brought the present suit against defendants 1 to 7 in respect of the remaining six annas share on the ground that the loans if really taken by the Mahants were not for justifiable necessity and were not binding on the Math properties. Defendants 1 to 7 contested the suit on the ground that the loans were for legal necessity and for the benefit of the math. The Subordinate Judge who tried the case held that only Rs. 1,200 out of the debts contracted by Mahabir and the sum of Rs. 580 paid as Government revenue had been proved to be for legal necessity. The Additional District Judge on appeal held that the sum of Rs. 3,000 borrowed by Madho and the sum of Rs. 580, Government revenue, were for legal necessity, but not the balance of the debt. Both Courts however dismissed the suit on the ground that the plaintiff was bound by the compromise entered into by Bed Narain. The plaintiff has therefore appealed to this Court.

4. In *Vidya Varuthi Thiththa v. Baluami Ayyar* AIR 1922 PC 128, the Privy Council has dealt with the legal position of a Mahant in regard to the Math property. Their Lordships while reviewing the various authorities on the point observed that under Hindu law a Mahant is in no sense a trustee in the English sense of the term, but that he is a manager or custodian of the Math property on behalf of the deity who is a juristic entity vested with the capacity of receiving gifts and holding property. The property is not vested in the Mahant who is in the position of a life tenant. In these circumstances the power of a Mahant to create an interest in Math property so as to enure beyond his own lifetime or, to be more accurate, his own term of office, is limited to cases of unavoidable necessity. The Mahant's personal enjoyment of the property is limited to such portion of the usufruct as accrues to him according to the custom and usage of the Math. Even if a lease created by a Mahant and valid for his lifetime is adopted by his successor, the effect will be the creation of a new lease valid only during the successor's term of office. In that case the suit which was brought by the transferees for recovery of possession over Math property conveyed to them under a permanent lease was dismissed.

5. In *Palaniappa Chetty v. Devasikaxnony Paodara Bannadhi* AIR 1917 PC 88 their Lordships had observed that it was a breach of duty by a Mahant, unless constrained by an unavoidable necessity, to grant a lease in perpetuity of debuttar lands even at a rental which was adequate at the time. Their Lordships while

declining to give a precise definition, had given as instances of such necessity, the preservation of the estate from extinction by sequestration, and its defence against hostile litigation or from injury or deterioration by inundation. In the present case both Courts have held that the alienation was not for legal necessity or for the benefit of the Math, and the only question that arises before us is what was the effect of the compromise, entered into in 1921 by Mahant Bed Narain, the predecessor of the present plaintiff. Now this compromise which was recorded in the decree states that the plaintiff had filed the suit on the ground that the lease was without consideration and illegal, and that the defendants had claimed that the lease was valid and for consideration and had also denied that the property leased was debuttar land. Some witnesses had been examined for the plaintiff, and then owing to the uncertainty as to the result of the suit and the loss and harassment involved in the litigation, and after consultation with a local Mahant, the parties had, decided to compromise. It was accordingly agreed that the alienation should be held to be valid and that each side should take one half of the property and satisfy an agreed proportion of the debt. The compromise does not recite that the plaintiff had satisfied himself that the debts were in fact incurred for legal necessity nor does it recite the necessities for the debts, and in this litigation both Courts have found that the debts were not for legal necessity. It would appear therefore that the alienation agreed to by Bed Narain by means of this compromise was contrary to Hindu law, Mr. Manohar Lal for the plaintiff referred to the case in *Kusadhaj Bhakta v. Broja Mohan Bhakta* AIR 1916 Cal 816 where it is observed with reference to a compromise decree that it is well settled that a contract between parties is none the less a contract because there is super added to it a command of a Judge. Again in *Anandi Lal v. Jagarnath Das* (1928) 9 PLT 214 it was held that the Court was right in refusing to record a compromise whereby a Mahant agreed to alienate Math property without legal and justifying necessity. In my opinion the principle of this ruling applies to the present case; and the compromise is not binding on the present plaintiff. The defendants also in that suit must be taken to have known that Math property could not be permanently transferred except for unavoidable necessity to be proved by them, and by entering into the compromise without such proof they took the risk that the debt might not be satisfied during the tenure of the office by Bed Narain or that the arrangement; might not be accepted by his successor. The present plaintiff has now sued for recovery of possession over the property conveyed, and in my opinion he was entitled to do so.

6. Dr. Sen for the defendants referred us to *Hiladti Sahu v. Ohaturbhuj Das* AIR 1926 PC 112. In that case a Mahant had borrowed from various sources at a high rate of interest, namely 24 per cent., with the result that an original debt of about Rs. 9,000 had increased to Rs. 25,000. In these circumstances, in order to relieve the pressure on the resources of the Math, he had re-borrowed Rs. 250,00 from the plaintiff at 12 per cent interest. The High Court dismissed the suit on the ground that the debts were not incurred for legal necessity, but the Privy Council held that even if the

borrowing was unjustified, which it did not consider in that case to have been proved, still the immediate cause for the borrowing from the plaintiff was the Math's necessity for obtaining relief from the burden which the heavy rate of interest had imposed. In this view of the case the plaintiff was held to be entitled to decree.

7. It is noticeable, however, that the order passed by their Lordships in that case was that a personal decree should be passed against the Mahant and that in default enquiry should be held as to the amount legitimately attributable to the endowment under Hindu law and that a receiver should be appointed to manage the estate and make over the Mahant's share to the plaintiff after payment of a maintenance allowance to the Mahant. The decree was therefore a personal decree against the Mahant, and no question of alienating the Math properties appears to have arisen. In that case their Lordships referred to the earlier decision in *Prosunno Kumari Debya v. Golab Chand Baboo* (1875) 2 IA 145, in which case two decrees had been passed against a former Mahant in respect of a debt held to have been legitimately incurred, and those decrees were held to be binding on his successor. In that case also the Privy Council pointed out that decree had been passed, and in their opinion had rightly been passed, against the rents and profits of the debut, tar lands, and that the question had not been raised whether the lands could be sold under the decrees. Neither of these oases gives support to the proposition that a Mahant can by compromise alienate lands for debts not incurred for legal necessity, and merely to avoid the expense and trouble of proceeding with a suit which had been brought for setting aside the alienation. It is not recited in the compromise that in fact the Mahant was unable to raise the funds necessary for carrying on a suit brought for recovery of a valuable property of the Math. The compromise may have had the effect of postponing the issue so far as the parties to the compromise were concerned, but it could not operate to prevent the ultimate investigation into the nature of the original transaction, which issue has now been raised in a suit brought by the succeeding Mahant within 12 years of his succession to the Math. I must hold that the compromise entered into by Bed Narain is no bar to such a suit.

8. Another circumstance adverse to the defendants is that a large proportion of the debt payable under the compromise was the debt of the defendants themselves or their predecessors-in-interest. In *Prosunno Kumari Debya v. Golab Chand Baboo*, *Prosunno Kumari Debya v. Golab Chand Baboo* (1875) 2 IA 145 cited above, the Privy Council, while observing that actual pressure on the estate at the time of the loan is the matter to be considered, excluded the case where the danger arises from misconduct to which the lender himself has been a party. On this ground also, the defendants in my opinion are unable to take advantage from the compromise and the plaintiff's suit must succeed. As has already been observed, the learned Additional District Judge held that legal necessity had been proved for the sums of Rs. 3,000 and Rs. 580 only out of the total debt. In the case of Rs. 3,000 he held that necessity had been proved merely because the debt had been ratified by two

succeeding Mahants and on no other evidence. However this may be, it is reasonable to hold that these debts have been satisfied from the usufruct enjoyed by the defendants up to the year 1926, and no case arises for granting them an equitable relief in respect of these amounts. The result is that this appeal must be allowed and the plaintiff's suit must be decreed. The mokarrari is set aside, and the plaintiff is entitled to recover possession of the property in suit with costs throughout.

Agarwala, J.

9. I agree