Mahant Har Kishen Das Vs Satgur Prasad

Court: Bombay High Court

Date of Decision: Dec. 21, 1937

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 25

Citation: (1938) 40 BOMLR 760

Hon'ble Judges: Shadi Lal, J; Russell, J; George Rankin, J

Bench: Full Bench

Final Decision: Allowed

Judgement

George Rankin, J.
This consolidated appeal arises out of execution proceedings in the Court of the Subordinate Judge at Bahraich to

enforce a certain provision in a decree made on November 28, 1927, by a Judge of the Chief Court of Oudh in its original jurisdiction. This decree

had been modified as a result of appeals to that Court in its appellate jurisdiction and to His Majesty in Council. The decree of the appellate bench

is dated May 2, 1928, and the judgment of the Board was delivered on January 18, 1932 L.R. 59 IndAp 147, The suit in which the decree was

passed was brought on February 21, 1927, by Mahant Har Narain Das (in this judgment referred to as Narain Das) against the present

respondent, whom their Lordships will refer to as Satgur. Prasad, and two other persons. The plaintiff''s case in outline was as follows :-

For many years there had existed in the city of Lucknow a sangat or Udasi shrine to the mahant of which valuable taluqdari property and certain

other property moveable and Immovable belonged. This institution had been founded by one Baba Hasara in the eighteenth century or earlier ; and

at the annexation of Oudh the taluqa had been granted to the then mahant (Gur Narain Das) by a primogeniture sanad and entered in Lists 1 and 2

prepared u/s 8 of Act I of 1869 (The Oudh Estates Act). The other Immovable properties had been acquired by the succeeding mahant (Har

Charan Das) who died in 1910 and was succeeded as mahant by one Sant Rain Das. When Sant Rain Das died on January 8, 1922, the plaintiff

succeeded him as gurubhai, i.e. as.having been with him a chela of his guru Har Charan Das ; but claims to succeed to the property were made by

Sheoraj Kuer, mother of Sant Rain Das, and also by the respondent Satgur Prasad (then aged about sixteen years). The claim made for the latter

was that he had been chela to Sant Rain Das and was entitled therefore to be mahant. This dispute was compromised by an agreement dated

January 20, 1922, which in substance provided that the plaintiff should hold the properties for life, and Satgur Prasad should be remainder-man. In

1924, however, the respondent Satgur Prasad induced the plaintiff to enter into an agreement dated November 25, 1924, whereby the whole of

the properties were released to the respondent on the terms (inter alia) that the plaintiff would receive a monthly allowance of Rs. 1,000. Under

this agreement the respondent, in addition to the immovables, obtained possession of the cash at the banks and estate treasuries together with the

proceeds of War Bonds and other effects. The amount of money so obtained by the respondent was specified (in schedule C of the plaint) as

amounting to over two lacs of rupees. [For the purposes of the present case two items fall to be deducted and the amount may be taken as Rs.

1,83,000].

2. The plaint alleged that by the agreement of January 20, 1922, the respondent was to succeed the plaintiff as mahant and was to become and

behave himself as a Udasi and to appoint a successor of that sect, but that the respondent had violated these obligations and had failed to pay the

plaintiff''s monthly allowance. Also that the plaintiff''s consent to the agreement of November 25, 1924, had been obtained by the fraud and undue

influence of the respondent and his co-defendants.

3. By the decree (November 28, 1927) of the trial Judge (Pullan J.) the deed of November 25, 1924, was set aside, and the plaintiff was held

entitled to possession of the Immovable properties mentioned in schedules A and B to the plaint as well as of the properties in schedule C and to

mesne profits (to be subsequently ascertained). A declaration was also made that the respondent was not entitled to any benefit under the

agreement of January 20, 1922 ; but this declaration was set aside by the appellate bench. The appellate decree (May 2, 1928) affirmed the relief

given as to the agreement of November 25, 1924, and the order for possession of the properties in schedules A, B and C of the plaint, but

determined that mesne profits were to be calculated as from the date of the suit (February 2,1, 1927) and not from the date of the agreement. The

question as to the date from which mesne profits should be calculated was the only point on which the appellate decree was modified by His

Majesty in Council in 1932.

4. Meanwhile the plaintiff having obtained possession of the Immovable properties, applied on January 6, 1931, to the Subordinate Judge of

Bahraich for execution of that part of his decree which was expressed (incorrectly) as a decree for possession of the properties in schedule C to

the plaint, but which was really a simple money decree for the value thereof. As already mentioned this was limited to the figure of Rs. 1,83,000.

The Court was asked to attach and sell the interest of the respondent under the agreement of January 20, 1922, in certain villages in the Ranipur

Estate and neighbourhood within the district of Bahraich. The respondent filed objections which the Court dismissed on May 26, 1933. He

thereupon appealed to the Chief Court on August 25, 1933 [Execution Appeal No, 52 of 1933] and his appeal was pending when on December

26, 1933, Narain Das the decree-holder died.

5. The controversy in the present case is entirely concerned with the effect of the death of Narain Das upon the respondent''s liability under that

part of the decree which awards the sum of Rs. 1,83,000, as due from him. The respondent''s contention is that the right of the decree-holder has

passed to himself, the judgment-debtor. On February 13, 1934, he applied to the Chief Court [Miscellaneous Application No. 92 of 1934] raising

this contention and asking that the appellant now before their Lordships (Har Kishen Das, who will be referred to as Har Kishen) be made a party

to his appeal as a person claiming to be entitled to the benefit of the decree. The Chief Court by two decrees dated May 3, 1934, have accepted

the respondent''s contention, have held that the decree can no longer be put in execution since the decree-holder''s right has vested in the

judgment-debtor, and have accordingly allowed the respondent''s appeal from the Subordinate Judge''s order of May 26, 19''33. Hence these two

appeals by Har Kishen which have been consolidated.

6. The case of the respondent was that the right to the benefit of the decree of November 28, 1927, as regards the sum of Rs. 1,80,000, in

respect of the. moveables referred to in schedule C of the plaint had on the death of Narain Das vested in the respondent by virtue of the terms of

the agreement, of January 20, 1922. The Chief Court has found in his favour by upholding his construction of that instrument the general effect of

which was to; leave Narain Das in possession for his life and to give a vested remainder to the respondent. Before the Board a further ground of

claim has been suggested for the respondent, namely, that he is now the mahant of the semgat or (more correctly, perhaps) the general heir of

Narain Das entitled to succeed to his moveables not otherwise disposed of by him.

7. The appellant Har Kishen makes an overriding claim, to the effect that the sangat is a religious endowment, that Narain Das as mahant was

merely manager of properties impressed with a trust for the objects of the endowment, and that the agreement of January 20, 1922, was

accordingly invalid. He claims that on the death of Narain Das the person duly appointed to the office of mahant was himself, and that he is entitled

to recover the funds of the endowment so as to apply them to their proper objects. For this he has brought a suit [No. 3 of 1934] in the Chief

Court which though dismissed by the trial Judge is now pending in appeal. The second claim of the appellant Har Kishen is that he is entitled to the

benefit of the decree under execution by reason of a registered will dated December 28, 1931, whereby Narain Das expressly bequeathed to him

all decrees which stood in the testator''s name. His third case is that Narain Das had disposed of the decree and of other effects by an oral

dedication for religious and charitable purposes and by a written instrument executed shortly before his death had appointed the appellant and

other persons as trustees thereof.

8. Their Lordships think it necessary to put on one side all argument which proceeds upon the footing that the property in question belongs to a

religious endowment and that the mahant is a mere manager or trustee of its funds. This contention was expressly raised by Narain Das at the trial

as the fifth issue. It was disputed by Satgur Prasad and the trial Judge upon careful enquiry into the facts held that "" the property in suit cannot be

regarded as appurtenant to the sangat of Baba Hasara but it is the absolute property of the mahant for the time being as a taluqdar under Act I of

1869."" The appellate bench note in their judgment : "" The trial Court rejected this case of the plaintiff and found that the estate in suit was held by

Mahant Gur Narain Das in his own right without any obligations of a religious trust and that the incidents of an estate as defined in Act I of 1869

are applicable to it. This finding of the learned Judge was not questioned before us by learned Counsel for the plaintiff-respondent and is therefore

agreed to by both sides."" The view accepted by the Courts and by the parties was in effect that the taluqdari estate must be held to fall under that

provision in Act I of 1869 (cl. (II) of Section 22) which allows succession in default of an agnate to such person as would be entitled to succeed

by the personal law (including custom) of the taluqdar-in this case by the guruchela method of succession. Whether this view of the matter be right

or wrong their Lordships think that in these execution proceedings under the decree of November 28, 1927, the question is no longer open (1881)

L.R. 8 I.A. 123 (Privy Council) and Ram Kripal Shukul v. Mussumat Rup Kuari (1883) L.R. 11 IndAp 37.] It may or may not be that the

appellant or the respondent has become mahant of the sangat, but neither can be heard to lay claim in that capacity to the benefit of the decree as

regards the sum of Rs. 1,80,000 on the ground that it is part of the trust property of an endowment. The Chief Court has rightly ruled out the

appellant"s objection taken on that ground and he must be left to prosecute it in the suit he has already brought for the purpose.

9. The next point for decision is whether or not the respondent Satgur Prasad can validly claim the benefit of the decree for Rs. 1,80,000 as a

matter of construction of the agreement of January 20, 1922. That agreement purports to be a settlement of disputes in respect of the six portions

of Taluqa Maswasi lying in six districts of Oudh "" as well as of non-taluqdari and moveable property."" The disputants as already noted were

Narain Das (aged about sixty), the respondent (aged sixteen) for whom his father was acting, and Musammat Sheoraj Kuer mother of the last

mahant Sant Rain Das and of Rup Kuer the respondent"s mother.

10. The agreement contains provision for the education and maintenance of the respondent by Narain Das and for his assisting the latter in the

management of the property when he comes of age ; and for Rs. 50,000 being invested for his benefit. It provides that Sheoraj Kuer is to get the

cash in a certain safe and Rs. 8,000. It provides maintenance for Sheoraj and allowances for her daughter Rup Kuer, her husband and family. The

important clauses for the present purpose are as follow :-

1. This entire taluqa property is governed by Act No. 1 of 1869, and shall always remain governed by the said Act and the person in possession

thereof for the time being shall be deemed as taluqdar.

2. The first party, Mahant Har Narain Das, shall remain owner and in possession of the Immovable property, taluqdari and non-taluqdari, for his

life-time, without the: power of transfer in any form.

4. After the death of Mahant Har Narain Das, the first-party, Satgur Prasad, the third-party, who is called Baba Hari Saran Das, shall own and

possess the entire moveable and Immovable property, taluqdari and non-taluqdari.

5. Because Baba Hari Saran Das belongs to the same order of Udasi Nanakshahi to which Mahant Gur Narain Das, deceased, the first taluqdar,

(also) belonged and (as) hitherto the successors of the said Mahant have belonged to the same order, it shall be the bounden duty of Baba Hari

Saran Das, the third-party, to appoint one belonging to the same order as his successor and he (Baba Hari Saran Das, the third-party) shall have

no power to appoint anyone of a different order as his successor : and the same mode of succession, govened by Act No. 1 of 1869, shall always

be maintained.

9. As to the movable property, it has been settled that Mahant Har Narain Das, the first-party, shall be the owner of the whole except the

following property.

(a) Musatnmat Sheoraj Kuer, the second-party, shall be the owner of the entire cash locked in the iron-safe at the bungalow in Bagh Baba Hazara

as well as of the entire jewellery and clothes.

(b) Out of the money in deposit in the Bank and invested in War Bonds and United Provinces Loan Bonds, War Bonds, United Provinces Loan

Bonds and cash. of the value of Rs. 50,000, shall be deposited in any Bank in the name of Baba Hari Saran Das, and Baba Hari Saran Das, the

third-party, shall have no power to alienate the same. Mahant Har Narain Das shall, at the proper time, cause immovable property to be

purchased in the name of Baba Hari Saran Das, the third-party, out of the said amount and pending such purchase, interest on the said money shall

continue to be deposited in the name of Baba Hari Saran Das.

(c) Out of the remaining cash, the first-party, Mahant Har Narain Das, shall set apart Rs. 20,000 for Bhandara (giving feast to Sadhus) in honour

of Mahant Har Charan Das.

(d) Out of the remaining money, Rs. 60,000 shall be set apart for a marble tomb (Samadh) of Mahant Sant Rain Das deceased, and Mahant Har

Narain Das shall commence its construction within six months.

(e) Out of the remaining money, Mahant Har Narain Das, the first-party, shall give Rs. 8,000 to Musammat Sheoraj Kuer, the second-party.

10. The question is : does this agreement carry to the respondent the decree for Rs. 1,83,000 on the death of Narain Das? Whether the decision

that the property was the absolute property of the mahant be right or wrong it will be noticed that this is the footing upon which the agreement

proceeds. Two persons having conflicting claims to be manager or trustee of a religious endowment can hardly adjust their dispute by dividing the

property between themselves. Clauses 1 and 5 are entirely consistent with the view taken by the Chief Court. They do show, however-as is indeed

otherwise apparent-that it was contemplated that the respondent would succeed Narain Das as mahant of the sangat and as his successor under

the Oudh Estates Act. This could only happen by application of the guru-chela principle which in the events contemplated would make the

respondent the general heir of Narain Das. This has a double bearing upon the question before their Lordships : (a) it may have an effect upon the

proper construction of the agreement of January 20, 1922 ; (b) if in fact and in law the respondent did become the successor and heir of Narain

Das according to the personal law applicable to him, this may be a ground of claim by the respondent dekors the agreement.

11. The construction of the agreement does not seem to present difficulty save for the words "" moveable and "" in the concluding phrase of Clause

4. Clause 2 gives Narain Das a life estate in the Immovable property. Clause 9 makes him owner of the moveable property or rather of what is left

thereof after satisfying thereout the heavy requirements of Sub-clauses (a) to (e). It seems to be quite impossible to construe Clause 9 as giving to

Narain Das a life estate in the moveables by its use of the word "" owner."" As is emphasised by its use in Sub-clause (a) this word is used in the

ordinary sense in which it is applicable to moveables and by Sub-clause (b) Rs. 50,000 out of the moveables has been set aside for the

respondent. Clause 9, however, is concerned only with assets then existing. Prima facie, at least, Clause 4 would appear as regards the

immovables to deal with the remainder expectant upon the determination of the life interest given by Clause 2 in the existing property ; but to find a

meaning for the reference to moveables in this clause is by no means easy.

12. The Chief Court held that "" owner "" in Clause 9 meant "" owner for his lifetime only "" and that Clause 4 gave to the respondent a remainder-

man''s estate in the moveables. Further they held that the agreement gave the respondent a similar estate in remainder in rents and profits accruing

in the lifetime of Narain Das and indeed in all future acquisitions of moveable or Immovable property. In one passage they treat the agreement as

including a settlement of future property and in another they say :-

Rents and profits of an estate are incidents of that estate, and they must go with the estate. Mahant Har Narain Das''s interest, therefore, in such

rents and profits must be taken to have been the same as in the estate itself, that is to say, a life interest.

13. On this view of the agreement the Chief Court have reached the conclusion that Narain Das had no power to make either an alienation inter

vivos or a testamentary disposition of his interest in the decree for Rs. 1,83,000.

14. Their Lordships cannot accept the views of the Chief Court as to the nature of a life estate in Immovable property ; they discern no merits in

the novel doctrine that a tenant for life of immovables has only a limited interest in the rents and profits which have accrued in his lifetime and is not

complete owner thereof. With great respect to the learned Judges their Lordships consider that the cases cited in support of their opinion have

been misapplied to the agreement in the present case.

The entire moveable and Immovable property taluqdari and non-taluq-dari "" in Clause 4 of the agreement cannot in their Lordships'' opinion be

stretched to cover all property, whatsoever, which Narain Das might acquire ; or which he might acquire out of the interests conferred on him by

the agreement; or even all property which he might possess at the time of his death. It was no part of the purpose of the agreement, as their

Lordships construe it, to constitute the respondent the general heir of Narain Das, still less so to do this as to defeat the latter"s right to leave the

smallest legacy by will or to deal with accrued rents and profits as in his lifetime he might. desire. The words "" moveable and "" in Clause 4 like the

rest of the clause must be construed with reference to property then in existence, and their Lordships are not satisfied to give to them any effect in

construction which is repugnant to Clause 2 or Clause 9. The words on this footing are not necessarily insensible : if the qualification "" taluqdari and

non-taluqdari"" applies to them, they may just possibly refer to moveables connected in some special manner with the estate, e.g. bonds in

connection with loans to tenants against rent, or growing crops.. On this their Lordships make no decision. The general structure of the agreement

and the opening words of Clause 9 give some ground for the opinion that the words in question were put in by some confused afterthought. In any

case the utmost weight that can be given to the circumstance that the respondent was intended to become chela to Narain Das and in this manner

to be his successor will not in their Lordships" view justify a construction which on the death of Narain Das would carry to the respondent his

interest in the decree of November 28, 1927, so far as regards the sum of Rs. 1,83,000. The cash and War Bonds obtained by the respondent

from Narain Das under the agreement (voidable and in due course avoided) of November 25, 1924, are not shown or alleged to have been assets

in existence in January, 1922. All that is known or need be known about them is that they were the property of Narain Das and they must be taken

in the present proceedings to have been his own property in the ordinary sense. Whether or not the respondent or the appellant can show that he

has succeeded to the office of mahant of the smgat or as the heir to Narain Das by virtue of the guruchela principle, the respondent"s application

and appeal must fail if it be shown either that Narain Das in his lifetime created a trust in respect of the interest now sought to be enforced in

execution or that he effectively disposed of it by will. For the correct disposal of the case it is necessary to decide these questions. The Chief Court

have noted that the respondent admitted before them the genuineness and execution of the alleged will : this may or may not remove all difficulty on

that claim.

15. Their Lordships will humbly advise His Majesty that the order to be made on this appeal should direct as follows : That this appeal be allowed

: that the two decrees dated May 3, 1934, be set aside save as regards the provision in the decree in appeal No. 52 of 1933 whereby Rs. 500

was awarded to Satgur Prasad as costs of an adjournment; that the case be remanded to the Chief Court of Oudh (a) to decide (1) whether

Narain Das in his lifetime made a valid disposition of his rights in the decree under execution so far as regards the Rs. 1,83,000 now in question,

(2) if not, whether he did so by his will dated December 28, 1931, (3) if not, who is entitled to succeed to the moveable property of Narain Das as

his heir, (b) to determine accordingly who is now entitled to the benefit of the decree dated November 28, 1927, in respect of the said sum of Rs.

1,83,000 and whether the said decree can no longer be enforced against the respondent by reason that he is entitled to the benefit thereof; if not,

who are the persons proper to be substituted as respondents to execution appeal No. 52 of 1933 depending in the Chief Court, (c) what is the

proper decree to be made in respect of that appeal. That for the purposes (a) and (b) aforesaid the Chief Court do either take evidence or if it

thinks fit frame issues and send them to be investigated by such other tribunal as in the exercise of their appellate powers they may direct under

Order XLI, Rule 25, Civil Procedure Code, or otherwise. That the costs already incurred in respect of application No. 92 of 1934 and appeal

No. 52 of 1923 be dealt with by the Chief Court at the conclusion of the proceedings under this remand.

16. The respondent Satgur Prasad must pay the appellant''s costs of this consolidated appeal.