Management Committee T. K. Ghosh's Academy

Vs

T. C. Palit and Others

Civil Appeal No. 570 of 1969

(H. R. Khanna, P. Jagmohan Reddy JJ)

09.04.1974

JUDGMENT

KHANNA, J. -

1. A decree for ejectment from the premises in dispute and for recovery of Rs. 7,163/12/3 was awarded by learned Additional Sub Judge Patna in favour of the two plaintiff-respondents against, the Board of Trustees T. K. Ghosh's Academy Patna and other defendants. On appeal filed by some of the defendants the Patna High Court set aside the decree for ejectment. The amount for the recovery of which decree had been awarded by the trial Court was also reduced to Rs. 3,725/2/-. The present appeal has been filed on certificate by the Managing Committee T. K. Ghosh's Academy and other defendant against the decision of the High Court.

2. The two plaintiff-respondents are the sons of Shri Jadu Nath Palit who founded in 1876 a school known as T. K. Ghosh's Academy. The school attracted some of the best students and Dr. Rajendra Prasad, Dr. B. C. Roy, Mr. Hasan Imam and Mr. Sachidanand Sinha received their education in this school. The school was run in premises which originally belonged to one Mr. Boilard. Shri Jadu Nath died in 1901 leaving behind three minor sons, two of whom were the plaintiff-respondents and the third was their brother Dr. K. L. Palit. After Jadu Nath's death, the management of the school was looked after by the sons of Shri T. K. Ghosh in whose memory the school had been founded. Shri T. K. Ghosh was the brother-in-law of Shri Jadu Nath. A Managing Committee was formed by the sons of T. K. Ghosh for the management of the school 1905 or 1906. Nearabout 1914 the management of the school was taken over by Shri Jadu Nath's sons. In 1918-19 the Managing Committee of the school was reformed under the directions of the Board of Secondary Education. On September 11, 1919 the school building was purchased by the three sons of Shri Jadu Nath from Mr. Boilard as per sale deed Ex. C. On July 28, 1930 Dr. K. L. Palit sold his share in the school building in favour of his two brothers, viz., the plaintiff-respondents, as per sale deed Ex. C1. On August 13, 1950 the two plaintiff-respondents executed Deed of Trust Ex. P appointing Rai Bahadur Nirmal Chandra Ghosh, Retired District and Sessions Judge and six others as trustees of the school. The object and the subject matter of the trust would be clear from the following :

Whereas the settlors are the proprietors of the High English School named T. K. Ghosh's Academy not located in a building owned and possessed by the settlors situated in Mahalla Chowahatta thana Pirbahore district Patna.

And Whereas the settlors being desirous of the continuous of the school and the perpetuation of the memory of the person after whom it is named and the association of same with the name of the institution, of the retention in it of Bengali as a subject of instruction and also as a medium of

instruction as far as possible and also of the improvement, extension or alteration as regards the standard and subjects of instruction in the institution as may be considered suitable for the benefit of students, have decided to settle in trust for this purpose the said school consisting of its name good will together with its funds, furniture, library and other educational appliances and equipments as a functioning institution affiliated to the Patna University in the Manner and on the condition hereinafter following :

Now this Deed witnesses as follows :

1. In pursuance of the said desire of the settlors the settlors do hereby transfer and assign unto the trustees the said High School T. K. Ghosh's Academy with all that property consisting of the funds, furniture, library and equipments described and detailed in the schedule hereto to held the same upon trust to fulfil the object of the settlors and on the conditions and with and subject to the powers provisions and agreements herein contained.

Clauses 4, 6, 9, 10, 11 and 15 of the trust read as under :

> (4) The trustees will be entitled to nominate 2 (two) members out of themselves, to the managing committee of the school in addition to the Head Master who will ex-officio be a member.
>
> (6) At least one male descendant of Babu Jadu Nath Palit deceased shall, if available, be always a member of the body of trustees.
>
> (9) The trustees shall find other premises for the location of the school and shift the school there within 5 (five) years of the date of the deed and vacate the present premises to the settlors.
>
> (10) The trustees shall forthwith start a building fund for the school.
>
> (11) The settlors will receive a house rent of Rs. 250 per month for the said period of 5 (five) years for the premises now occupied by the school as owners of the premises. The settlors have agreed that any surplus left over therefrom, after deducting the amount spent on necessary repairs of the house and on taxes, ground rent and other necessary outgoings in respect of the premises for the said period of 5 (five) years will go as the contribution of the settlors to the building fund as provided in the preceding paragraph, and the trustees will be entitled to receive directly from the school such surplus and deposit it in the said building fund.
>
> (15) All matters and questions relating to the proprietary rights in the school (exclusive of the land and buildings where in the school is as present located, which does not form apart of the trust property) and its properties will be disposed of by the trustees.

It may be stated that the school building initially stood on holding No. 20. In 1951 the building was extended to holding No. 22 also. The upper portion of the building on holding No. 22 is used for the Headmaster's residence and the lower portion for running the classes. According to the plaintiff-respondents, it was agreed that they would be paid a rent of Rs. 37/8/- for the building on holding No. 22. The total rent thus came to Rs. 287/8/- i.e. Rs. 250 for the building on holding No. 20 and Rs. 37/8/- for the building on holding No. 22. It is further the case of the plaintiffs that in or about

June 1956 it was settled by the trustees and the Managing Committee of the school with the consent of the plaintiffs that out of the monthly rent of Rs. 287/8/- a cash amount of Rs. 190 would be paid directly to the plaintiffs and the balance of Rs. 97/8/- would be paid by the Managing Committee of the school to the trustees for payment of latrine and water taxes of the municipality to the trustees for payment of latrine and water taxes of the municipality and for meeting costs of periodical repairs. As the premises were not vacated within five years of the execution of the Deed of Trust, the plaintiff-respondents after serving notice of demand filed the present suit on July, 28, 1959 against the Board of Trustees T. K. Ghosh's Academy and other defendants. One of the reliefs claimed was for ejectment of the defendants from the premises in dispute. The other relief claimed was for recovery of Rs. 7,163/12/3 on account of arrears of rent from August, 1956 till July, 1959 and other items, the details of which were given in Schedule I to the plaint.

3. The suit was contested by defendants No. 2, 3, 7 and 12 in their capacity as members of the Managing Committee. The other defendants, including the trustees, did not contest the suit. According to the contesting defendants, there was no relationship of landlord and tenant between the plaintiffs and T. K. Ghosh's Academy and its Managing Committee. It was also stated that there was no contract to pay the rent of Rs. 287/8/- per month. The Deed of Trust was stated by the contesting defendants to be fraudulent, illusory and void document. Further according to the contesting defendants, the school was founded by the father of plaintiffs for the uplift of education and for public good with no motive to derive any personal benefit. The building was also stated to have been dedicated by the founder for the use of the public.

4. The trial Court, as mentioned earlier, decreed the suit. It was held that the Deed of Trust was a genuine and valid document and was binding on the school and its Managing Committee. As regards the existence of the relationship of landlord and tenant, the trial Court held that the contract of tenancy was evidenced by the Deed of Trust and was binding upon the parties.

5. In appeal before the High Court contention was advanced on behalf of the contesting defendants that there had been a dedication of the school building in favour of the school by the father of the plaintiff-respondents who had founded the school. Argument was further advanced that there was no relationship of landlord and tenant between the parties and the Deed of Trust was not binding upon the contesting defendants. Contention was also raised that the suit for ejectment was not maintainable unless the tenancy had been determined by the giving of a notice under Section 106 of the Transfer of Property Act. The High Court rejected the contention that there had been dedication of the school building. Likewise, the contention that there did not arise the relationship of landlord and tenant between the parties was rejected. The High Court set aside the decree for ejectment because it was of the view that such decree could be awarded only after determination of the tenancy by giving a notice under Section 106 of the Transfer of Property Act. The High Court further reduced the amount for the recovery of which the decree had been awarded, because it was of the view that certain deductions were permissible out of the amounts claimed by the plaintiffs. In the result the amount for which decree had been awarded was reduced to Rs. 3,725/2/-.

6. At the hearing of the appeal Mr. Agarwal on behalf of the plaintiff-respondents has contended that the High Court was in error in granting a certificate of fitness for appeal to this Court in favour of the defendant-appellants. An application has also been filed on behalf of the plaintiff-respondents for canceling the certificate of fitness granted by the High Court. This application has been resisted by the appellants.

7. We may state at the outset that the High Court granted the certificate of fitness under Clauses (a)

and (b) of Article 133(1) of the Constitution. Mr. Uniyal on behalf of the appellants had frankly stated that the certificate could be granted only under Clause (b) and not under Clause (a). We agree with Mr. Uniyal in this respect, and are of the opinion that there is no sufficient ground for cancelling the certificate of fitness.

8. The plaintiff-respondents, as would appear from the resume of facts given above, had prayed for a decree of ejectment from the premises in dispute and for recovery of Rs. 7,163.76. The jurisdictional value of the suit was mentioned to be Rs. 10,613.76 consisting of the amount of Rs. 7,163.76 and Rs. 3,450 representing 12 months rent at the rate of Rs. 287.50. The present case did not fall under Clause (a) of Article 133(1) because it could not be said that the amount or value of the subject-matter of the dispute was not less than twenty thousand rupees. Question then arises whether the defendant-appellants were entitled to certificate under Clause (b) of Art. 133(1). Article 133(1) at the relevant time read as under :

> 133. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies -
>
> (a) that the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or
>
> (b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or
>
> (c) that the case is a fit one for appeal to the Supreme Court;

and, where the judgment, decree or final order appealed from affirms the decision of the Court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law.

It may be stated that there has been a subsequent amendment of Art. 133(1) by the Constitution (Thirtieth Amendment) Act, 1973. We are, however, in the present case concerned with the article as it stood before the amendment. Perusal of Clause (b) of Art. 133(1) shows that an appeal shall lie to this Court from any judgment, decree or final order in a civil proceeding of a High Court if the High Court certifies that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the value of not less than twenty thousand rupees. It is further necessary that where the judgment, decree or final order appealed from affirms the decision of the Court immediately below, the High Court should certify that the appeal involves some substantial question of law. The judgment of the High Court in the present case plainly did not affirm the decision of the trial Court because the High Court set aside the decree for ejectment and also reduced the amount for the recovery of which decree had been awarded by the trial Court. It is no doubt true that the variation of the decree of the trial Court was in favour of the defendant-appellants but that circumstance would not detract from the fact that the judgment of the High Court was not one of affirmance of the decision of the trial Court. As observed by the Constitution Bench of this Court in the case of Tirumalachetti Rajaram v. Tirumalachetti Radhakrishnayya Chetty ((1962) 2 SCR 452 : AIR 1961 SC 1795 : (1962) 1 SCJ 568), in determining the character of the appellate decree, we have to look at the appellate decree taken in its entirety and compare it with the decision of the trial Court as a whole and decide whether the appellate decree is one of affirmance

or not. In this enquiry the nature of the variation made whether it is in favour of the intending appellant or otherwise would not be relevant.

9. As regards the applicability of Clause (b) of Art, 133(1), we may observe that there is a vital distinction between Clauses (a) and (b) of Art, 133(1) and the areas covered by the two clauses are clearly demarcated. Clause (a) speaks of the subject-matter of the dispute and what is required by the clause to bring a case within its ambit is that the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law. As against that, Clause (b) of Art. 133(1) makes no mention of the subject-matter of the dispute and it is immaterial for this clause as to what is the amount or value of the subject-matter in dispute. What is essential to invoke Clause (b) is that the judgment, decree or final order should involve directly or indirectly some claim or question respecting property of the amount or value of not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law. Clause (b) thus deals with a claim or question respecting property. If a judgment, decree or final order involves claim or question respecting property and it is shown that the property is of the amount or value of not less than twenty thousand rupees, the clause would be attracted. It is plain from the language of Clause (b) that the property respecting which claim or question is involved in the judgment, decree or final order is not the subject matter of the dispute, for if that property were the subject matter of the dispute the case would fall not under Clause (b) but under Clause (a) Art. 133 (1). It may also be mentioned that the requirement of Clause (b) would be satisfied if the judgment, decree or final order involves, not directly but even indirectly, some claim or question respecting property of the amount or value of not less than twenty thousand rupees.

10. To attract the application of Art. 133(1)(b) it is essential that there must be - omitting from consideration other conditions not material - a judgment involving directly or indirectly some claim or question respecting property of an amount or value not less than Rs. 20,000. The variation in the language used in Clauses (a) and (b) of Art. 133 pointedly highlights the conditions which attract the application of the two clauses. Under Clause (a) what is decisive is the amount or value of the subject-matter in the Court of first instance and "still in dispute", in appeal to the Supreme Court : under Clause (b) it is the amount or value of the property respecting which a claim or question is involved in the judgment sought to be appealed from. The expression "property" is not defined in the Code, but having regard to the use of the expression "amount" it would apparently include money. But the property respecting which the claim or question arises must be property in addition to or other than the subject-matter of the dispute. If in a proposed appeal there is no claim or question raised respecting property other than the subject-matter, Clause (a) will apply : if there is involved in the appeal a claim or question respecting property of an amount or value not less than Rs. 20,000 in addition to or other than the subject-matter of the dispute Clause (b) will apply (see Chhitarmal v. M/s. Shah Pannalal Chandulal ((1965) 2 SCR 751 : AIR 1965 SC 1440 : (1966) 1 SCJ 88)).

11. Keeping the above principles in view, we have no doubt that the case of the appellant falls under Clause (b) of Art. 133(1). As would appear from the resume of facts given earlier, the case of the plaintiffs was that the defendants were liable to pay rent for being in occupation of the school premises. As against that, the case of the defendant-appellants was that they were entitled to occupy the said premises for carrying on the school without payment of rent. It is manifest that the judgment and decree of the High Court as well as the trial Court involved a claim or question respecting the school premises. The said premises are admittedly of the value of more than twenty thousand rupees. The school premises were plainly not the subject-matter of the dispute because if

that had been so, the case would have fallen under Clause (a). On the contrary, the present was a case relating to claim respecting property of the value of more than twenty thousand rupees. The case as such would fall within the ambit of Clause (b). We may in this context refer to a decision of the Judicial Committee in the case of Surapati Roy v. Ram Narayan Mukherji (50 IA 155, 161 : AIR 1923 PC 88). Question which arose in that case was regarding the validity of a certificate granted by the High Court under Section 110 of the Code of Civil Procedure. Though the rent claimed in the suits was less than Rs. 10,000 the High Court granted a certificate of fitness. Objection was taken before the Judicial Committee regarding the validity of the certificate on the ground that the subject-matter was of a value of less than Rs. 10,000. The objection was repelled by the Judicial Committee in the following words : (at p. 161)

The subject matter in dispute relates to a recurring liability and is in respect of a property considerably above the appealable value. The certificate in the circumstances is quite in order.

12. Reference has been made by Mr. Agarwal to the decision of this Court in the case of Bombay Gas Co. Ltd. v. Jagan Nath Pandurang. ((1972) 3 SCR 929 : (1972) 2 SCC 119) The respondent in that case filed application under the Payment of Wages Act claiming overtime wages for the period 1957 to 1958 and wages for weekly off days for the period 1962 to 1963. The appellant filed appeal to this Court against the judgment of the High Court setting aside the order of the appellate authority holding the claim to be time-barred. The appeal was filed on the basis of a certificate under Art. 133(1)(b). It was held that the certificate issued by the High Court under Art. 133(1)(b) was not proper. Question was posed in that case that the certificate could be granted under the above clause as there was a recurring liability which if calculated for subsequent years would come to Rs. 20,000 or more. This Court was not impressed with the above argument. The said case cannot be of much assistance to the plaintiff-respondents because in that case there was no claim or question respecting property of the value of more than Rs. 20,000. In the present case we have both the element, namely, of a recurring claim and of a claim in respect of property of the value of more than Rs. 20,000. We, therefore, hold that the appeal is maintainable under Art. 133(1)(b) of the Constitution. The application for cancellation of the certificate of fitness granted by the High Court is dismissed.

13. Coming to the merits of the appeal, we find that till the execution of the Deed of Trust on August 13, 1950, the school in question was treated as proprietary school. This is clear from the inspection note dated December 10, 1947 of the Inspector of Schools. According to the inspection note, this institution was a proprietary school and the proprietors made good any deficit that accrued in running the school efficiently. In the annual statement dated January 8, 1950 relating to the school which had to be furnished by the school authorities to the Board of Secondary Education, it was mentioned that the proprietors of the school were the plaintiff-respondents. It was by Deed of Trust dated August 13, 1950 that the plaintiff-respondents transferred and assigned to the trustees property consisting of the funds, furniture, library and equipment described and detailed in the Schedule to the Trust Deed. The Trust Deed, however, made it clear that the land and building wherein the school was located did not form part of the trust property. As the school did not own any building of its own and was being run in the building belonging to the plaintiff-respondents, it was resolved by the trustees that efforts be made for acquiring land for the school building and for collecting and depositing funds for the construction of the building. This is clear from the resolutions passed in the meetings of the trustees held on May 21, 1951 and April 20, 1952.

14. It has been argued on behalf of the appellants that no liability for payment or rent can be fastened upon the defendants and that the High Court was in error in holding to the contrary. There

is, in our opinion, no force in this contention. It has been proved upon the material on record that the Managing Committee has been receiving deficit grants from the Government on the basis of statements showing house rent payable by it for school building to be Rs. 250 plus Rs. 37.50 per month. In view of the fact that the school receives grant from the Government on the representation that an amount of Rs. 287.50 has to be paid on account of house rent, it hardly lies in the mouth of the appellants to assert that there is no liability for the payment of rent for the school building. In addition to that, we find that the Managing Committee in its resolution passed in the meeting held on December 23, 1954 admitted that an amount of Rs. 287.50 was to be paid as rent to the proprietors for the school premises including the portion in the occupation of the headmaster. The fact that rent of Rs. 287.50 was agreed to be paid for the school building was also mentioned in the audit report relating to the school for the period April 1956 to October 1956.

15. In view of the above material, we find no cogent ground to interfere with the judgment of the High Court maintaining decree for recovery of money to the extent of Rs. 3,725/2/- in favour of the plaintiff-respondents. The appeal consequently fails and is dismissed, but in the circumstances without costs.

</html