Anayatullah and Others

Vs

Commissioner of Muslim Wakf of Jammu

Civil Appeal No. 1484 of 1974

(Kuldip Singh, K. Ramaswamy JJ)

07.02.1991

JUDGMENT

KULDIP SINGH, J. –

1. Hazrat Baba Ibrahim, a saint, lived in the area called Rakhbahu in the city of Jammu. After this demise in the year 1872 his grave became a place of worship for those who had faith in him. The place was called Ziarat Hazrat Baba Ibrahim (hereinafter called "the Ziarat"). The Ziarat was managed by Sain Ladha, a nephew of Baba Hazrat Ibrahim. After Sain Ladha's death his son Mian Lal Din succeeded him. At present the Ziarat is being managed by the sons of Mian Lal Din who died in the year 1963.

2. The Jammu and Kashmir Muslim Wakf Act came into force in the year 1959 (hereinafter called "the Act") whereunder a Committee of Muslim Wakf (hereinafter called "the Committee") has been incorporated.

3. The Committee filed a suit against Anayatullah and eight others (sons of Mian Lal Din) restraining them from alienating, raising construction or recovering the rent from the wakf land in dispute vested in the Ziarat. According to the plaintiff, the Government of Jammu and Kashmir vide two orders dated September 22, 1955 and November 29, 1958 granted land measuring 3 acres and 6 acres 2 kanals 6 marlas respectively to the Ziarat. It was alleged that the defendants were treating the property to be their personal property. They were mismanaging and also alienating the same. The defendants in their written statement resisted the suit on a number of grounds and stated that the land in dispute was transferred by the government in favour of their father in lieu of his possessory right over about 400/500 kanals of land which was taken over by the government. It was further claimed that the land was the absolute property of their father and the same has devolved upon the defendants by succession. It was further claimed that notwithstanding the word "Ziarat" in the government orders the grants were in favour of the defendants father in his personal capacity. The transfer of the land was not in the form of any dedication and as such was not a property of the Ziarat. The defendants claimed the right to deal with the property in any manner they liked on the ground that the same belonged to them.

4. The trial court by its judgment dated August 6, 1970 came to the conclusion that the two grants by the State Government were in fact made in favour of Mian Lal Din and not in favour of the Ziarat. The suit of the Committee was dismissed with costs. The District Judge, Jammu by his judgment dated February 28, 1973, upheld the findings of the trial court and dismissed the appeal of the committee. The committee went up in second appeal before the Jammu and Kashmir High Court. Murtaza Fazal Ali, C.J. (as the learned Judge then was) by his judgment dated April 26, 1974

set aside the judgments of the courts below and allowed the appeal of the committee. The learned Chief Justice decreed the plaintiff's suit for injunction as prayed for. This appeal via special leave petition is against the judgment of the High Court.

5. Mr. Ashoke Sen, learned counsel appearing for the appellant has taken us through the judgment of the trial court and that of the lower appellate court. According to him, the High Court has erred in upsetting the findings of the courts below based on appreciation of evidence. Mr. Sen contended that the appellant's ancestors were in possession of more than 140 kanals of land for a very long period and had established possessory title over the said land. According to him, the government took over the said land from the father of the defendants and in lieu of that two grants in the years 1955 and 1958 were given to Mian Lal Din in his personal capacity. It was contended that on appreciation of the evidence produced before the trial court the courts below found as a fact that the defendants were the owners of the property subject matter of the government grants and as such the High Court acted illegally in upsetting the same. The learned counsel relied upon the following findings of the lower appellate court in support of his contention :

> "As discussed above, the possession of the defendants and their father and grandfather and Hazrat Baba Ibrahim over 40 kanals of land as Arak and about 100 kanals of land under cultivation is proved, and it is further proved from the government order Ex. D.A./4 refusing the recommendation of the Financial Commissioner that the basis for the grant of proprietary rights in respect of 74 kanals of land was the personal possession of the father of the defendants and his predecessors and it was in lieu of the possession of that chunk of land that the government parted with 74 kanals of land. The counsel for the plaintiff has further argued that because the government orders of 1955 and 1958 mentions the word "Ziarat" as the grantee it is not permissible for the civil court to hold that the grant was in favour of the father of the defendants. Keeping in view the background as discussed above, I am unable to agree with the contention of the learned counsel for the plaintiff. The mere fact that Mian Lal Din was associated with the Ziarat as a descendant of Hazrat Baba Ibrahim Sahib and the mere fact that the word "Ziarat" was used in the government orders of 1955 and 1958 would not preclude this Court from holding that the grant was not in favour of the Ziarat but was in fact in favour of the father of the defendants. The contents of the government orders of 1955 and 1958 referred to above are to be considered with the facts that Mian Lal Din and his ancestor possessed the land in their individual capacity; that the government repelled the claim of Mian Lal Din for additional grant of land on the simple ground that the land already granted to him was costlier than the land which he held in possession; that there was no intention on the part of the government to dedicate the land to the Ziarat out of any pious intention; that it was a sort of bargain between Mian Lal Din, the father of the defendants and the government whereunder the land measuring 74 kanals was parted within the proprietary rights by the government in consideration of Lal Din's having abandoned possession of over 400 kanals of land; the fact that the Committee plaintiff also treated the grant in favour of Lal Din as is evident from Ex. PD also supports my view. The fact that the defendants and their father leased out a part of the property on a long lease to third parties, the fact that the defendants got compensation for a portion of the land acquired by the government; the fact that there was no claim laid to the land by the Waqf Committee up to the year 1966 even when the government orders were passed in 1955 and 1958, the fact that no demand was ever made from Lal Din to render accounts in respect of the income specially

derived by him from the suit land, the fact that a large number of shops, khokhas and buildings have been constructed by the defendants (assuming that one room was constructed by the Waqf Committee) also is determinative of the fact that the transfer was in fact made in favour of Lal Din and not in favour of the Ziarat as such."

6. It is not disputed that the property which is subject matter of the dispute was granted by the State Government under the two orders dated September 22, 1955 and November 29, 1958. The respondent-plaintiff claims that the grant was in favour of the Ziarat whereas the appellant-defendants claim that the property was given to the father of the defendants absolutely and in his personal capacity. The two documents of title by which the grant was made may now be referred to. The Government Order dated September 22, 1955 is as under :

"It is ordered that 3 acres of land of Rakh Bahu of the Rakhs and Farms Department surrounding the Ziarat Shareef of Baba Ibrahim Shah be granted to the said Ziarat-e-Shareef permanently.

By order of the Cabinet

Sd/- (G.M. Bakshi) Prime Minister"##

7. The Government Order dated November 29, 1958 runs thus :

"(1) The confirmation of the action taken by the Prime Minister in granting land measuring 6 acres 2 kanals and 6 marlas to Ziarat Sharif Baba Ibrahim Shah Sahib at Gandhi Nagar Jammu and (11) The grant of compensation amounting to Rs. 12,500 by debit to housing grant in favour of the said Ziarat for 12.5 kanals of land @ Rs. 1000 per kanal, taken over by the Public Works Department for development of Gandhi Nagar out of the area of 3 acres sanctioned vide Cabinet Order No. 1418-C dated September 20, 1955.

By order of the Jammu and Kashmir Government.

Sd/- Noor Mohd. Secretary to Government"##

8. The abovequoted orders of the government are absolutely clear and unambiguous and can admit one and only one interpretation that the government intended to grant the land to the Ziarat alone and not to the appellant-defendants in their personal capacity. In fact the names of the appellants-defendants or their ancestors are not even mentioned in the two orders. The High Court interpreted the abovequoted two orders as under :

"The order of 1955 specifically stated that the lands in Rakh Bahu surrounding the Ziarat Shareef of Baba Ibrahim Shah be granted to the said Ziarat permanently. The later order of 1958 also says the same thing. It is nowhere mentioned in any of these orders that the land was given not to the Ziarat but to the defendant who was Mujawar of the Ziarat either in his personal capacity or in lieu of compensation for his personal lands acquired by the government. Since the recitals in the documents are absolutely clear and are expressed in unmistakable terms, there is no room for adducing evidence adduce to contradict the recitals of these two documents. Thus the evidence adduced by the defendants to show that the grant was made not to the Ziarat but to them is clearly hit by Sections 91 and 92 of the Evidence Act and is, therefore,

inadmissible. Furthermore the grant was made in 1955 and 1958, that is to say several years before and the government has not come forward after such a long lapse of time of support the stand of the defendants that the grant was intended for them in their personal capacity and not for the Ziarat. I fail to understand how in face of such clear recitals in the documents the courts below have by a process of evisceration and interpolation construed the documents to mean as if it was a grant in favour of the defendants. The courts below appear to have been influenced by the fact that when the defendants represented to the government that the lands in their cultivating possession had been taken over by the government without paying compensation, some government officers replied that a substantial grant of land had been made to the Ziarat. This obviously was a wrong stand taken by the government officers and could not clothe the defendants with the right of wiping out the legal validity of the grant made year before the officers gave this reply. Indeed the remedy of the defendants was to sue for damages or for compensation for the land unlawfully acquired by the government. There was no justification for the defendants to cast their covetous eyes on the property of the Ziarat, taking advantage of their possession over the same which was as managers or trustees and assert a hostile title to it. The law on the subject is absolutely clear that a manager or a trustee in possession of a religious shrine cannot be allowed to assert a hostile title unless he formally surrenders possession to the lawful authority. Before going into this point of law at some length it may be necessary to refer to certain proved facts in the case :

(1) It is not disputed that the present Ziarat existed since a long time and became a wakf by long public user.

(2) That the first defendant was the Sajadanashin or caretaker of the Ziarat.

(3) That the land belonged to the government originally.

(4) That the government granted the land in dispute to the Ziarat and not to the defendants.

(5) That the defendants were admittedly in possession of the Ziarat as also the properties appurtenant thereto.

In these circumstances it is clear that even if the defendants were in possession of the lands, their possession would have to be referable to a lawful title and cannot be treated to be adverse to the Ziarat. In other words the possession of the defendants would be for the benefit of the Ziarat."

9. We agree with the abovequoted findings of the High Court and approve the same. We do not agree with the argument of Mr. Ashoke Sen that the High Court was in error in upsetting the findings of the courts below. The question before the High Court was the interpretation of two government orders which was essentially a question of law. The High Court was justified in observing that in the face of clear and unambiguous terms of the government orders it was not permissible for the appellant-defendants to adduce evidence to show that the grant was made to them and not to the Ziarat. No other point was raised before us.

10. We, therefore, dismiss the appeal. The respondent-plaintiff shall be entitled to costs throughout

which we quantify as Rs. 15,000.

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