Bihar State Board of Religious Trust

Vs

Ramsubaran Das

Civil Appeal No. 846 of 1981

(S. P. Bharucha, S. B. Kajmudar JJ)

29.02.1996

JUDGMENT

BHARUCHA J.

1. The order under appeal was passed by a learned Single Judge of the High Court at Patna. Thereby the appeal of the present appellants against the order and decree of the Subordinate Judge of Muzaffarpur in a suit filed by the respondent against them was dismissed.

2. The suit related to two temples - one in Village Ramchaura and the other in the village of Majhauli, both in the district of Muzaffarpur. By a sanad given in the year 1177 Fasli, one Madhodas alias Mohandas was granted 55 bighas of land in Ramchaura by Syed Suleman Raja Khan. This was done because Madhodas was a pious and religious man. Upon this land Madhodas constructed a temple and installed the deities of Ram Jankiji and Charan-Paduka. He left two chelas, one of whom was Garibdas. Garibdas went to the village of Khalishpur and installed the deities of Ram Jankiji on 7 bighas of fakirana land granted by Babus of that village. The other chela, Hanumandas, who remained at Ramchaura, acquired lands by purchase in Majhauli and thereon constructed a temple where the deities of Ram Jankiji and Lachhmi Narayanji were installed. After the death of Garibdas, the Khalishpur properties also came to be in possession of Hanumandas. Hanumandas was succeeded by Gangaramdas and he, in his turn, by Hareram, Harbhajandass, Harakh Narain and Raghubardas. Raghubardas, upon the abolition of zamindari in 1951 made returns and claimed an annuity on the basis that the properties were the properties of a public temple. He also submitted returns, accounts and expenditure to the appellants on the basis that the temples were public temples. These returns were made from 1951 till 1958-59, when Raghubardas died. The respondent was a nephew and a chela of Raghubardas and he came into possession of the properties upon the death of Raghubardas. On 29-9-1961, the respondent filed a suit against the appellants in the Court of the Subordinate Judge at Muzaffarpur averring that the act of Raghubardas of filing an application in the Land Reforms Office claiming annuity, treating the properties as those of a public religious trust and giving an account of income and expenditure to the appellants upon that basis "was under mistaken view of law and fact and the said actions are not binding on the plaintiff'; the same had been done "under misapprehension of fact and law". The plaint prayed for a declaration "that the properties were secular properties of the plaintiff or at best private trust properties and not public trust properties and the defendant cannot claim any supervision over the acts and deeds of the plaintiff'. The appellants, in defence, maintained that the temples and the properties attached thereto were public religious trust properties and the respondent was liable to render accounts to the appellants and remained under their control. Issues were framed and evidence was led. The trial court was of the view that the grant by Syed Suleman Raja Khan to Mohandas of the land at Ramchaura did not appear to be a grant to the deity"and in fact it could not

have been granted to a Hindu deity by a Mohammaden". There was no evidence that the public had anything to do with the construction of the temple or its management. In regard to the temple at Majhauli, the trial court observed that if the properties had been dedicated to the deities, then the revenue records would have stood in their names and not in the name of Raghubardas. The trial court referred to a deed of endowment made in 1916 by one Hulasbati Devi. She had dedicated certain properties to Lachhmi Narainji in the temple at Majhauli. This, in the opinion of the trial court, was merely an accretion to the asthal and it could not be said that because some additional grant had been made by a pious lady to the deities in the temple, the temple became a public trust. The trial court relied upon the evidence, as it read it, of the respondent that Raghubardas had been ill when he made the returns aforementioned to the appellants and "under mistaken view of fact and wrong legal advice that though it was not public trust... " Admissions, the trial court said, could be shown to be wrong and placed reliance again on the fact that the grant had been given by a Mohammaden to a Hindu to hold that the admission was shown to be wrong. Reference was then made to certain documents which showed that the mahanths had executed sale deeds and given rent receipts regarding the properties in their own names. The oral evidence, according to the trial court, was not of much importance; the mere fact that members of the public were allowed to enter the temples for darshan, to make offerings and to attend functions held therein did not justify the inference that they were public temples for it had been said that it would not, in general, be consonant with Hindu sentiment or practice that worshippers should be turned away. In the result, the suit was decreed.

3. In the appeal before the High Court the respondent did not appear. The High Court was, however, not persuaded to take a view different from that of the trial court.

4. The respondent has not appeared before us.

5. Learned counsel for the appellant drew our attention to the judgment of this Court in Bala Shankar Maha Shanker Bhattjee v. Charity Commr., Gujarat State, [1995 Supp(1) SCC 485: JT (1994) 5 SC 152] where the law relating to the public character of temples has been set out. It has been said that where temples are ancient, proof of dedication to the public is difficult to find and circumstances which obtain in regard to the management of the temple and worship therein afford indications of its character, that is to say, whether it is a public or a private temple.

6. In our view, the High Court and the trial court failed to appreciate that this was a suit on the basis of a mistake of law and fact. It was for the respondent (plaintiff) to discharge this onus and the onus was made heavier by reason of the fact that the mistake alleged was not of the respondent but of his deceased predecessor. The first question to which the courts ought to have addressed themselves was whether the plaintiff had discharged the onus of proving that Raghubardas had made the relevant returns "under mistaken view of law and fact" or "under misapprehension of fact and law". The evidence of the respondent in this behalf is only this: "Raghubardas had submitted some returns before the Religious Trust Board. He was advised by the lawyer that public and private trust both are liable to submit return. I have not submitted any return. " In the first place, to act on the basis of legal advice is not, ipso facto, to act on a misapprehension of fact or law. Secondly, the respondent did not depose that he was present when the lawyer gave the alleged advice. He did not name the lawyer. The lawyer was not examined. The conclusion inescapably is that there was no credible evidence to establish that Raghubardas had acted on a mistake of fact or law and that the suit should be dismissed. Secondly, upon the case of the respondent himself, his suit failed. It was his case that the temples were Raghubardas's private temples. Raghubardas's filing of the relevant returns that they were public temples was tantamount to their dedication by him as such.

7. In any case, the evidence ought to have been scrutinised in the light of the fact that Raghubardas had treated the temples as public temples and if there was evidence which could indicate that the temples were public temples, the courts ought to have held that the temples were public temples. The courts were unjustified in brushing aside the evidence led by the appellants which showed that members of the public worshipped at the temples and gave offerings to the deities, and did so without seeking any permission. This is the evidence of 17 witnesses and no one of them was cross-examined in this regard. At Ext. D on the record before the trial court was the deed of dedication made by Hulasbati Kuer to Lachhmi Narainji. The executant dedicated, according to the desire of her late husband, the property therein described for Rag Bhog worship of Lachhmi Narainji on Ram Naumi and Janam Asthami in the Majhauli temple. The trial court was right in saying that it was an accretion but in error in saying that merely because an additional grant has been made by a pious lady to the deities in the temple, the temple did not become a public temple. The fact that the said pious lady could make such a dedication, which was accepted, showed the public character of the temple. That the mahanths dealt with the properties in their own names does not detract from the fact that the temples were public temples as they could well be said to be dealing therewith on behalf of the deities to whom the properties were dedicated.

8. There are two other aspects which we must note. First, the trial court was in error in stating that the plaintiff had given sworn evidence that, during the relevant period in which he had filed the returns, Raghubardas was ill and the High Court was in error in not noticing this. The evidence of the plaintiff in this behalf has already been quoted and it does not say that Raghubardas was ill. This is making out a case of incapacity that was not pleaded. Again, the trial court observed that the grant did not appear to be a grant to the deity and "in fact it could not have been granted to a Hindu deity by a Mohammaden". The basis upon which this statement was made does not appear, and it seems to us quite erroneous.

9. In the result, the appeal is allowed. The judgment and order of the courts below are set aside and the suit filed by the appellant is dismissed. The respondent shall pay to the appellant the costs of the appeal.