

SUPREME COURT OF INDIA

Dalip Singh

Vs.

Sikh Gurdwara Prabhandak Committee

C.A.No.7418 of 1993

(K. G. Balakrishnan and P. Venkatarama Reddi JJ.)

15.10.2003

JUDGEMENT

K. G. Balakrishnan, J.

1. This appeal is against the Judgment of High Court of Punjab and Haryana in Regular Second Appeal No. 2245 of 1978. The appellants were plaintiff in a suit filed for declaration of the title in respect of 64 canals and 8 marlas comprising Khatauni Nos. 1361 to 1364 and 11 canals and 9 marlas comprising Khatauni No. 1746 in village Dheleke, Tehsil Moga in Punjab. The appellants contended that they had purchased this land by a registered sale deed from respondent Nos. 2 and 3 in June, 1957. The first respondent is Shiromani Gurdwara Prabhandak Committee (hereinafter being referred to as "SGPC"). The appellants alleged that SGPC had no title or right over the suit property. The appellants prayed that the first respondent be restrained from taking possession of their property. They alleged that the suit property originally belonged to one Jeeta Singh and he was an occupancy tenant whose rights devolved on Bhola Singh who was father of the second respondent and husband of the third respondent. According to the appellants, Bhola Singh became the absolute owner of this land by virtue of the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952.

2. The case was contested by the first respondent SGPC. First respondent raised the following contentions : Jeeta Singh did not have any title over this property and consequently Bhola Singh also did not acquire any right from him. There was an earlier litigation as suit No. 859 before the Sub-Judge, Moga and Jeeta Singh was party to that suit and by judgment dated 15-6-1943, it was held that the first respondent was the owner of the land. Bhola Singh was an office holder under the managing committee of Gurdwara Jeeta Singh Wala, Lohara, and he was managing the land in that capacity. As he began to misuse his powers, an application was filed against him under Section 142 of Sikh Gurdwara Act before the Judicial Commission and the same was allowed. As Bhola Singh had no right, title or interest on the land; the gift, if any, executed in favour of the respondent Nos. 2 and 3 was invalid and void.

3. On these allegations, several issues were framed. The suit was ultimately decreed on 20-12-1958 and the learned Sub-Judge held that Jeeta Singh was not the original owner of the property and the title of suit property vested with the first respondent - SGPC. It was held that the title in respect of the suit property never passed on to Bhola Singh.

4. Aggrieved by the same, the appellants herein filed the first appeal before the lower appellate Court. The lower appellate Court framed two issues and these issues related to the question as to whether Bhola Singh was the owner of the suit property and whether the gift deed executed by him in favour of the respondent Nos. 2 and 3 was valid or not and remitted the matter to the trial Court for decision on those issues. In view of the issues framed by first appellate Court, the trial Court again examined the question and gave a finding that Bhola Singh was not the owner of the suit land and the gift deed executed him in favour of his son and wife had no effect so far as the rights of the first respondent herein are concerned. The lower appellate Court on receipt of the decision on the two issues framed by it, reconsidered the appeal on merits and held that the suit was liable to be dismissed. The lower appellate Court also held that the appellants herein were not bona fide purchasers for value and they were not entitled to get the benefit of Section 41 of the Transfer of the Property Act. Against this decision, the appellants again filed appeal before the High Court and their appeal was dismissed by the High Court. Aggrieved by the same, the present appeal is filed.

5. We heard the learned senior Counsel Mr. P. K. Palli who appeared on behalf of the appellants and learned senior Counsel Shri Hardev Singh, who appeared on behalf of the first respondent.

6. One of the main contentions urged by the appellants' Counsel is that the suit property never belonged to first respondent SGPC and no Sikh Gurdwara was formed by dedicating the suit property. According to the appellants, in the absence of notification under Section 10(3) of the *Sikh Gurdwaras Act, 1925*, the suit property can never be considered as property of the Sikh Gurdwara.

7. In order to appreciate this contention, it is necessary to refer to some of the provisions of Sikh Gurdwara Act, 1925, to find out as to how a Sikh Gurdwara is formed and the properties are dedicated to such Sikh Gurdwara. The procedure can be briefly summarised as follows. Section 7 of the Act says that any fifty or more Sikh worshippers of a Gurdwara each of whom is more than twenty-one years of age, may forward an application to the appropriate Secretary to Government praying to have a Gurdwara to be declared as a Sikh Gurdwara. This petition shall be accompanied by a list of properties claimed for the Gurdwara. The list shall contain all the details regarding the title and interest in respect of those properties. The list shall be in such form and shall contain all particulars of the properties prescribed under the Act and rules and on receiving the petition along with the list of properties, the Government shall publish it in the prescribed manner. The State Government may also publish such notice as may be prescribed under the Act. The petition filed may be withdrawn, by notice, at any time before the publication. In case any person claims a right on any of the properties included in the list, he can file his objections as per the provisions of the Act. When a notification is published under sub-section (3) of Section 7 in

respect of any Gurdwara, a resident in the police station area in which the Gurdwara is situated, may forward to the Government within ninety days a petition verified and signed by him, or petitioners as the case may be, claiming that any hereditary office holder or any person could have succeeded to such office holder. If no petition or objection is filed under S. 9 claiming any right over the Gurdwara, and if no petition has been presented in accordance with S. 8 pursuant to the notification published under the provisions of sub-section (3) of S. 7, the Government shall after expiration of ninety days from the date of such notification publish a notification, declaring the Gurdwara to be a Sikh Gurdwara. As regards the properties dedicated to the said Sikh Gurdwara, any person may forward to the State Government within ninety days from the date of publication of notification under the provisions of sub-section (3) of S. 7 a petition claiming the right, title or interest in any property included in the lists so published. Sub-section (3) of S. 10 which is the relevant section for the purpose of this appeal, states that after the expiry of the ninety days for making a claim regarding any right, title or interest in respect of any property included in the list published under S. 7(3) Notification, the State Government shall publish a Notification. If any claim is made, such claim will be dealt with in accordance with the provisions contained in the Act. Even if there is no claim in respect of any property included in the list, there shall be a further Notification under sub-section (3) of S. 10 and this Notification shall be conclusive proof of the fact that there is no such claim in respect of any right, title or interest in the properties specified in the Notification under sub-section (3) of S. 7.

8. The contention of the first respondent was that the suit property was one of the items of property included in the list published under sub-section (3) of S.7 Notification on 19-2-1932 and Exh. D-5 Notification showed that it was a Sikh Gurdwara and the properties contained in the list attached to the Exhibit Notification were the properties of the Gurdwara, namely, Gurdwara Jeeta Singh Wala Lohara. The details of the properties in Notification show that Khasra Nos. 484, 490 and 493 are included. There was another Notification, also under S. 9(1) of the Act issued on March 13, 1936. It is true that the first respondent could not produce any document to show that there was a Notification under S. 10(3) of the Sikh Gurdwara Act, 1925. The contention of the appellants'counsel is that a Notification under sub-section (3) of S. 10 is the only conclusive proof to show that the suit properties belonged to Gurdwara Jeeta Singh Wala, Lohara and in the absence of such Notification, the claim of the first respondent is to be negated.

9. We do not find much force in the contention urged by the counsel for the appellants. There are documents to show that the suit property was included in the list of properties in the Notification dated 19-2-1932. If anybody had filed any claim in respect of these properties, there would have been an adjudication and only after the adjudication, the Notification under S.10(3) would have to be issued. It is not the case of the appellant that Jeeta Singh, the alleged predecessor-in-interest of Bhola Singh made any claim over any of the properties included in the list forming part of the Notification under sub-section (3) of S.7. True, the Notification issued under sub-section (3) of S. 10 serves as a conclusive proof of the fact that no claim was made in respect of any right, title or interest in any properties specified in the Notification. But, the failure to produce, the Notification issued under S. 10(3) by itself does not lead to the logical or necessary conclusion that the landed properties which are being

claimed by the appellants were not the properties of Gurdwara, but they were the private properties of Jeeta Singh and Bhola Singh. It is for the appellants who had filed a suit for the declaration of the title to prove that Bhola Singh acquired right, title or interest over the suit properties either under the general law of succession or tenancy law. The appellants utterly failed to prove the same and this flaw cannot be got over by relying on the fact that the Notification under S. 10(3) was not produced. The appellants who had filed a suit for declaration of their title could not produce any document to prove that the suit properties had been later divested from the ownership and management of the Gurdwara Jeeta Singh Wala, Lohara.

10. According to the appellants, the suit properties originally belonged to Jeeta Singh as occupancy tenant and were inherited by Bhola Singh. Jeeta Singh was the Mahant of the Gurdwara. Bhola Singh was not his son or legal heir and there is nothing in the evidence to indicate that he had inherited the property from Jeeta Singh. The oral evidence adduced in this case also completely negatives the case set out by the appellants. Even the appellant who was examined as P.W. 3 was not aware of the fact that this property belonged to the Gurdwara. He was also not aware of the nature of the rights enjoyed by Bhola Singh over this property. The witnesses examined on the side of the appellants admitted that Bhola Singh was the Mahant of the Gurdwara and his Guru was Jeeta Singh and that the suit property belonged to Gurdwara. The evidence of P.W. 5 shows that the case set up by the appellants was not true. The first respondent had initiated the proceedings before the Tribunal against Bhola Singh. The matter was compromised and Exh. CX/1 is the compromise statement. Learned senior counsel for the appellants strongly contended that there is nothing in evidence to show that this compromise was filed before the Tribunal and the same was accepted and a decree was passed. It seems that some of the records were destroyed and the first respondent could not produce the certified copies of such records. Be that as it may, the statement in the compromise petition to which Bhola Singh was admittedly a party, cannot be eschewed from consideration.

11. The learned senior counsel for the appellants further contended that under S. 28 of the Sikh Gurdwara Act, 1925, the first respondent could have filed a suit to settle the disputes if any, in respect of any property notified as the property of Sikh Gurdwara. It was argued that in the absence of such a suit, the claim of the first respondent is to be negated. The first respondent herein filed an application under S. 142 of the Act calling upon Bhola Singh to surrender the possession of the properties. The Commission rendered its judgment on 20-12-1958 and in that proceeding, it was mentioned that the first respondent had entered into a compromise on 5-4-1943. According to the appellant's counsel, Bhola Singh had transferred the property to his wife and son on 6-6-1957 but when a decree had been passed against Bhola Singh, he had no right over the property and, therefore, the transfer deed executed by him is not binding on respondents Nos. 2 and 3 and consequently the appellants herein are also not bound by the said decree. It is important to note that there is no document to show that Bhola Singh acquired any title over this property. The proceedings before the Judicial Commission also would only show that he was an office-holder of the Gurdwara and he was removed from office in 1951 and consequently, he was directed to vacate the office and hand over the properties including the suit lands.

12. The appellants lastly contended that there are series of revenue records to show that the suit property was being cultivated by Bhola Singh and all the entries in these records show that the first respondent had no right to possession of property. Reference was made to series of documents produced by the appellants. It is true that in some of the documents produced by the appellants, Bhola Singh is shown as the cultivator of these properties. This is not sufficient to prove that the occupancy right or the title of the suit property vested in Bhola Singh. These revenue records are quite consistent with the fact that Bhola Singh must have been in possession of this property as an employee or manager of the Gurdwara. The entries in the revenue records by itself cannot prove the title to the property unless it is supported by other evidence.

13. In the instant case, it is proved by satisfactory evidence that the property belonged to the Sikh Gurdwara and the appellants failed to prove that their predecessors-in-interest, namely, respondents Nos. 2 and 3 acquired any title from Bhola Singh. Consequently, the sale deed in favour of the appellants did not confer any title on them in respect of the suit properties. The appeal is without any merits and it is liable to be dismissed.

14. While leave was granted in favour of the appellants, this Court directed the appellants to deposit Rs. 25,000/- annually before the Additional Senior Sub-Judge, Moga, till the disposal of the appeal. If any such amount has been deposited by the appellants, pursuant to the order passed by this Court on 13-12-1993, the first respondent would be entitled to get the refund of the same with interest if any accrued thereon. The appeal is dismissed, and parties to bear their costs.

Appeal dismissed.