

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.638 of 1974

(Against the judgment and decree dated 14.08.1974 passed by 2nd Additional Subordinate Judge, Begusarai in title suit No.25 of 1966/54 of 1973).

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The Bihar State Board of Religious Trust

.... Plaintiff-Appellant

Versus

Mahant Siya Ram Das, Chela of Late Mahanth Bharat Das

.... Defendant-Respondent

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Appearance :

For the Appellant/s : Mr. Shekhar Singh, Advocate

For the Respondent/s : Mr. Binod Kumar Ambastha, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 06-01-2015

1. The Bihar State Board of Religious Trust has filed this First Appeal against the judgment and decree dated 14.08.1974 passed by the learned 2nd Additional Subordinate Judge, Begusarai in title suit No.25 of 1966/54 of 1973 whereby the learned court below dismissed the plaintiff-appellant's suit.

2. The plaintiff-appellant filed the aforesaid suit for declaration that Rampur Asthal is a public religious charitable trust and its properties are public trust properties. The defendant-respondent is a trustee.

3. The plaintiff claimed the aforesaid reliefs on the facts inter alia that the Asthal was founded by local people by support and donation and in the Asthal, deity of Sri Thakur Sitaram Chandraji



Maharaj was installed by Sri Bankhandi Das with the help of general public. Lands were donated in favour of Asthal for the purpose of maintenance and Ragbhog. Public in general worships without any hindrance. Many more properties were acquired by the Mahanths in their own name which are Devottar properties. The office of Mahanth is not hereditary and the Mahanth is elected from among the capable bairagi chela of the late Mahanth. After election, kurta and chadar is offered by the general public. However, although, the trust is a public trust, the present Mahanth is not submitting account and budget to the plaintiff, therefore, the notice was served under Section 43 of the Act No.4 of 1951. The defendant falsely took the defence that it is a private trust. By order dated 24.02.1966, the authority constituted under the Religious Trust Act, 1950, illegally rejected the case of the plaintiff, therefore, the suit was filed.

4. The defendant-respondent filed contesting written statement denying the fact that it is a public trust. The main defence is that in fact, the trust is a private trust and by endowment dated 24.05.1921, a private trust was created by Mahanth Chintaman Das. The Chela always succeeds the Guru and, therefore, the trust always devolves from Guru to Chela.

5. The learned court below on the aforesaid pleading of the parties framed the following issues:

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- I. Is the suit as framed maintainable?
 - II. Has the plaintiff any cause of action or right to sue?
 - III. Is the suit barred by limitation and the rules of waiver, acquiescence and estoppel?
 - IV. Whether Rampur Habiv Asthal is a religious trust and the properties appertaining thereto are religious trust property within the meaning of Section 2(I) and 2(P) of the Bihar Hindu Religious Trustees Act, 1950?
 - V. Whether order dated 24.02.1966 of the Authority constituted under the Bihar Hindu Religious Trust Act, 1950 is liable to be set aside?
 - VI. To what relief or reliefs, if any, is the plaintiff entitled?

6. After the trial, on the basis of materials, the learned court below recorded the finding that the trust in question is a private trust and accordingly, dismissed the plaintiff's suit.

7. The learned counsel, Mr. Shekhar Singh appearing for the appellant submitted that the appellant has produced many reliable evidences oral as well as documentary in support of the fact that the trust is a public trust but the learned court below wrongly held that it is a private trust. According to the learned counsel, the judgment and decree passed in the earlier suit in the year 1943 is not binding on the Board-plaintiff because in that suit, the Board is not a party and moreover, the present plaintiff has been constituted by the Act of 1950. In such circumstances, the learned court below has wrongly held that the earlier decision will be binding on the present

appellant.

8. On the other hand, the learned counsel appearing on behalf of the respondent submitted that this very endowment deed dated 24.05.1921 was considered in earlier title suit No.3 of 1937. The said suit was filed for declaration that the trust is a public trust. The suit was dismissed and on appeal, the Division Bench of the Patna High Court considering the materials and evidences and interpreting the endowment deed dated 24.05.1921 held that it is a private trust. Therefore, the learned court below has rightly dismissed the plaintiff's suit.

9. In view of the above contentions of the learned counsels for the parties, the only point arises for consideration in the present First Appeal is as to "whether the trust in question created by endowment deed dated 24.05.1921 is a private trust or public trust" and "whether the judgment and decree passed by the court below is sustainable in the eye of law or not?"

10. The plaintiff in order to prove that it is a public trust examined many witnesses who have stated that the public as a matter of right offered puja path and that the account is being maintained by the public. The endowment deed dated 24.05.1921 has been produced by the plaintiff which is Exhibit 3/A. On the contrary, the defendant has also examined many witnesses who all have stated

that the public in general perform puja path or Darshan with the permission of the Mahanth.

11. It may be mentioned here that so far the oral evidences are concerned, in this case, it is not very material because the interpretation of Exhibit 3/A is important. The defendant has produced Exhibit G/1, the Division Bench judgment of the Patna High Court. This judgment of the Patna High Court is reported in A.I.R. 1943 Patna 135. From perusal of this judgment, it appears that the said suit was filed by Ramsaran Das for the declaration that certain properties were not held by him on a trust created for public purposes of a charitable or religious nature and were not governed by the provisions of the charitable and Religious Trust Act (Act No.14 of 1920). The defendant filed a written statement alleging that Bankhandi Das founded the Asthal about 200 years ago and zamindar gave him some lands free of rent for building a Thakurbari and for maintenance of idol to be installed therein for the benefit of the Hindus in general and those of the locality in particular. In course of time, many properties were purchased by the Mahanths and the property held by the Mahanth-plaintiff is a trust property for public purpose. The trial court on the basis of the evidences dismissed the plaintiff's suit. Against the judgment of the trial court, the plaintiff filed First Appeal No.54 of 1940. The Division Bench of the Patna



High Court interpreted the endowment deed dated 24.05.1921 and on the basis of the evidences held that it is private trust. The Division Bench further held that the foundation and grants show that the trust if any, was not for public purposes and that Mahanth Chintaman Das's Arpannama did not give the public any rights. Accordingly, the plaintiff's suit was decreed with cost.

12. There is no dispute that in this Division Bench decision, the same Arpannama dated 24.05.1921 has been interpreted. The same very issue as to whether the trust created by Arpannama is a private trust or public trust was decided in the earlier suit being title suit No.3 of 1937 by the Division Bench. This is the same issue also for decision in this First Appeal. It may be mentioned here that the Division Bench decision of the Patna High Court has subsequently been referred in many decisions either by the High Courts or by the Supreme Court. Admittedly, in none of these decisions, this Division Bench decision has been overruled. No doubt, considering the facts of that case, in some cases, it was distinguished and in some cases, the law laid down by the Division Bench has been followed even by the Supreme Court. In none of the decisions, it has been held that the law laid down by the Division Bench is contrary to law or against the facts. The reference may be made to the decisions of the Supreme Court in A.I.R. 1974 Supreme Court 1123, A.I.R. 1971 Supreme

Court 2057, A.I.R. 1957 Supreme Court 133 etc. Therefore, the issue involved in the present suit has already been decided as far back as in the year 1943.

13. The learned counsel for the appellant submitted that the said decision is not binding on the plaintiff. So far this submission is concerned, it may be mentioned here that the question of interpretation of the document is involved in the case and question of interpretation is a pure question of law. The Division Bench has interpreted the document. Therefore, whether party or no party question of law shall always bind everyone. Further, similar type of evidence was adduced in the earlier suit i.e. title suit No.3 of 1937.

14. In view of the above facts, now merely because the plaintiff was not party in the earlier suit, it cannot be said that the law laid down by the Division Bench is not binding on the plaintiff. This Court cannot interpret otherwise the same endowment deed and say that the Division bench has wrongly interpreted the endowment deed.

15. The learned counsel for the appellant next submitted that now the definition has changed and, therefore, in view of the new Act, the trust which was earlier held to be private trust became the public trust. So far this submission is concerned, it may be mentioned here that it is not a case of the plaintiff that although, it was private trust but now because of new Act, the earlier decision of

the Division Bench has become infructuous and the trust became the public trust. Before this Court, only argument has been advanced. Moreover, as stated above, even after the new Act, the Division Bench decision has either been followed or referred to in various decisions. In such circumstances, I find no force on the submission of the learned counsel for the appellant.

16. In view of my above discussion, I find that the point involved for decision in the present First Appeal has already been decided in title suit No.3 of 1937 arises out to First Appeal by the Division Bench of the Patna High Court in the case reported in A.I.R. 1943 Patna 135 and this decision is a binding precedent. Therefore, this finding of the Division Bench will operate as resjudicata in the present suit. Accordingly, the point formulated is answered against the appellant and the finding of the trial court is thus, confirmed.

17. In the result, this First Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

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