

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.304 of 1976

(Against the judgment and decree dated 27.02.1976 passed by 1st Additional Subordinate Judge, Bettiah in title suit No.348 of 1967/32/148 of 1974).

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Bihar State Board of Religious Trusts

.... .. Plaintiff-Appellant

Versus

Gudar Raut & Ors.

.... .. Defendants-Respondents

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Appearance :

For the Appellant/s : Mr. Ganpati Trivedi, Sr. Advocate

For the Respondent/s : Mr. K.K.Tiwari, Advocate

Mr. Lokesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 24-03-2015

1. This First Appeal has been filed by the plaintiff against the judgment and decree dated 27.02.1976 passed by the learned 1st Additional Subordinate Judge, Bettiah in title suit No.348 of 1967/32/148 of 1974 whereby the learned court below dismissed the plaintiff-appellant's suit.

2. The plaintiff-appellant filed the aforesaid suit under Section 72 of the Bihar Hindu Religious Trust Act, 1950 for setting aside the transfer made by the defendant no.17 and his predecessor in office in favour of defendant 1st party and also for recovery of possession with respect to the lands described in Schedule I to XII of the plaint.

3. The plaintiff claimed the aforesaid relief alleging



that the defendants are sued in representative capacity. Defendant No.17 is trustee and manager of Hazarimal Dharamshalla situated at Lal Bazar in Bettiah town. The Dharamshalla is on plot No.5826 measuring 1 bigha 10 kathas 14 dhurs corresponding to C.S. plot Nos.381, 449, 450 and 451. Out of the aforesaid C.S. plots, the two plots namely plot Nos.450 and 451 belonged to Bettiah Maharaj who had given the said plots for construction of Dharamshalla for the benefit of the public at large. Dharamshalla was constructed in 1892 for religious and charitable purposes. In the year 1903, about 119 bighas of Brit land of village Nadwa was dedicated by the ancestor of defendant 2nd party for the upkeep of said Dharamshalla. The Dharamshalla is open to public in general. The income from the property dedicated was enough to maintain Dharamshalla. The defendant No.17 and his predecessor in office without knowledge of the plaintiff transferred the lands to defendant 1st party for valuable consideration. Therefore, the transfer is illegal and the transferee did not derive title and possession.

4. Although, six sets of written statement was filed but only defendant Nos.1 to 9 and 17 contested the suit. Their defence is in same line. Their main defence is that the land was not dedicated by Bettiah Raj for the construction of Dharamshalla. The lands over which Dharamshalla is constructed belonged to Sripati Ram, the



ancestor of defendant No.17. Shri Pati Ram had four sons namely Hazarimal, Ramchandramal, Surajmal and Mahabirmal. After the death of their father, the four sons constructed the Dharamshalla in question in the year 1892 out of the money of their mother, Smt. Narayani Devi in her memory and named it as Hazarimal Dharamshalla. In the wall of Dharamshalla, it was scribed as “built by Hazarimal and brothers in memory of their mother.” The management of the Dharamshalla was always the sole private concern of defendant No.17 and his family. It is not a trust nor it is a public trust so as to attract provision of Bihar Hindu Religious Trust Act, 1950. At the time of separation between four brothers, they appointed a Mukhtar namely Nazir Hussain to act as an arbitrator. The partition of the family property was effected by registered award dated 15.03.1902. In terms of this award, the income from village Hardinadwa was set apart for the maintenance of Dharamshalla and the mode of management of Dharamshalla was through descendants of Pati Ram. Accordingly, Surajmal managed the Dharamshalla till 1940 and thereafter, Sri Surajmal and then Mahabirmal took the management but he also died in 1947. After his death, Sri Satyanarain and Sri Durga Dutt managed. After death of Durga Dutt in the year 1963, the defendant No.17 is managing the Dharamshalla along with Sri Satyanarain. At the time of vesting, the lands of Hardinadwa vested in

the State of Bihar. Therefore, the tenants in possession of the said lands stopped paying the rent. The compensation was also not paid by the State of Bihar.

5. The further case is that Dharamshalla in question was never a public trust as contemplated under the provisions of Bihar Hindu Religious Trust Act rather it is a private trust managed and controlled by the family of defendant No.17. The ancestor of defendant No.17 had settled the lands of village Hardinadwa, who had been paying rent and after vesting, they stopped paying rent. Different lands of village Hardinadwa are recorded in the names of different raiyats. The defences of the other defendants are in the same line, therefore, so far their defences in the written statement are not repeated here again.

6. It appears that the defendant No.5 took a different stand alleging that plot No.5826 is the private property of Sagarmal, defendant No.18. The Dharamshalla is not in existence now. The house constructed on plot No.5826 is not for religious or charitable purposes. The father of this defendant No.18 was recorded as raiyat in the revisional survey khatiyan. He sold some land to the defendant No.5 by sale deed on 27.03.1951 and since then the defendant No.5 is coming in possession.

7. On the basis of the aforesaid pleadings, the

following issues were framed:

- I. Is the suit as framed maintainable?
- II. Has the plaintiff got any cause of action or right to sue?
- III. Is the suit bad for defect of parties?
- IV. Is the suit barred by law of limitation?
- V. Are the properties in suit constitute a trust for public purpose of religious and charitable nature?
- VI. Whether the transfers of the suit land allegedly made by defendant No.17 or his predecessor in office are liable to be set aside?
- VII. Is the plaintiff entitled to a decree for recovery of possession of the suit land?
- VIII. To what relief or reliefs if any is the plaintiff entitled?

8. After the trial, the learned Lower Court while deciding issue no.5, at paragraph 27, clearly recorded a finding that the properties in suit do not constitute a trust for public purposes of religious and charitable nature in order to attract the provision of Bihar Hindu Religious Trust Act and accordingly, dismissed the plaintiff's suit.

9. The learned senior counsel, Mr. Ganpati Trivedi appearing on behalf of the plaintiff-appellant submitted that in fact, the Dharamshalla was constructed on part of the land donated by Bettiah Raj. Bettiah Raj donated the land for constructing Dharamshalla for the public at large. According to the learned counsel, the public were the beneficiary. Therefore, the Dharamshalla was for the purpose of religious and charitable nature. The court below has wrongly not considered this aspect of the matter. Further, 119 bighas land was dedicated by four brothers for the management of



the Dharamshalla in question. This dedication would be evident from the registered award, Exhibit G-1. If the Dharamshalla was not for public purposes of religious and charitable nature, then there was no question of dedication of 119 bighas land by the four brothers arises. In the registered award given by the arbitrator at the time of partition of the property, there is clear mention of dedication of the land measuring 119 bighas of village Hardinadwa and it is also mentioned therein that the Dharamshalla will be managed by the income of the land by the descendants of the four brothers and if the line of the four brothers extinct, it will go to the Government. This condition mentioned in the award by the arbitrator clearly indicates that it was a public trust and, therefore, the manager who was managing the public trust i.e. Dharamshalla had no authority to transfer any land which was dedicated to the Dharamshalla which was a public trust. The learned court below wrongly interpreted this award and wrongly held that it is not dedicated to the Dharamshalla or that, it is not a public trust. The plaintiff-appellant has examined witnesses who all have stated that the public at large had access to the Dharamshalla and, therefore, in fact, the Dharamshalla was for the purpose of public at large, which also proves that it was the public trust and defendant No.17 or his ancestor were only the manager, who were managing the Dharamshalla. They had no right to transfer the land of 119 bighas of village Hardinadwa

which was dedicated to the Dharamshalla. On these grounds, the learned counsel submitted that the impugned judgment be set aside and the plaintiff's suit be decreed.

10. On the other hand, the learned counsel appearing on behalf of the respondents submitted that it is wrong to say that the Dharamshalla was the public trust and that, 119 bighas land of Hardinadwa was dedicated by the four brothers. In fact, on the death of their father, the four brothers constructed the Dharamshalla in memory of their mother and the construction was made by the money of their mother. The court below has considered all these aspects of the matter and then recorded the finding that in fact, it is a private Dharamshalla and that the property measuring 119 bighas was never dedicated to Dharamshalla for management of Dharamshalla. The learned court below also held that a general relief has been claimed to the effect that the possession of the property may be recovered without specifying as to whether when the properties were transferred by which of the defendant or ancestor of the defendant No.17. They were intermediaries and on the vesting, the properties vested in the State of Bihar. The raiyats who were in khas possession of the property became the raiyats under the State of Bihar, therefore, they did not pay the rent to the landlords. Therefore, after vesting, the defendant No.17 and/or his ancestor were managing the Dharamshalla out of their own

income. The learned court below after considering the oral as well as documentary evidences has clearly recorded the finding. In such circumstances, the appeal is liable to be dismissed with cost.

11. In view of the above contentions of the parties, the only point arises for consideration in this First Appeal is as to “whether the properties in suit constitute a trust for public purposes of religious and charitable nature and if so, whether the transfer made by defendant No.17 or his predecessors are liable to be set aside and whether the judgment and decree passed by the court below is sustainable in the eye of law.”

12. According to the plaintiff, the Dharamshalla in question constitute a public trust. Bettiah Raj dedicated two C.S. plot Nos.450 and 451 for the purpose of construction of Dharamshalla for the public purpose. So far this case of the plaintiff is concerned, it may be mentioned here that the defendant’s case is that the Dharamshalla was constructed with the help of money of the mother of four brothers in memory of their mother and this fact is scribed in the wall of the Dharamshalla. Further, it may be mentioned that the purpose of construction of Dharamshalla itself indicates that it is constructed for the use of the public in general. In private Dharamshalla, it is constructed by private person but the intention is to provide accommodation to the public in general. However, it is



constructed out of the own fund whereas in public Dharamshalla, it is constructed with the help of the public in general and is constructed on public land. Here, in support of their respective cases, the parties have adduced oral evidences. The plaintiff-appellant examined altogether six witnesses. The six witnesses who have been examined on behalf of the plaintiff have only stated that the Dharamshalla is constructed for the use of public and the public as a matter of right, come and stay in the Dharamshalla. Except this, there is no evidence. Now, therefore, as stated above, even if it is public Dharamshalla, then also it will be open for public in general and if it is private Dharamshalla then also it is open for public in general. On the basis of these statements of six witnesses, no conclusive finding can be recorded that the Dharamshalla in question is a public trust. No evidence has been adduced by the plaintiff to show that on a public land it was constructed and that with the help of the public at large or the money given by the public, the Dharamshalla has been constructed.

13. It will not be out of place to mention here that in the present case, the suit has been filed for recovery of possession of the property of village Hardinadwa. According to the plaintiff, 119 bighas land was dedicated by the four brothers for the purpose of management of the Dharamshalla. According to the defendants-respondents, the lands were never dedicated. Only the income from

the land, Rs.500 was to be spent for management of the Dharamshalla.

In view of this controversy between the parties, the other evidences produced by them are not at all necessary for consideration.

Admittedly, there is no dedication, as such, except the registered award, Exhibit G-1. Therefore, the interpretation of this document is only required to be made here, whether by this Exhibit G-1, 119 bighas of Hardinadwa land was dedicated to Dharamshalla or not. For the purpose of interpretation of the document, the other oral evidences are not necessary. The document itself will speak and this document is a registered document here which is admitted.

14. From perusal of this Exhibit G-1, which is of the year 1902, it appears that Dharamshalla in question was constructed by the four brothers out of the money of their mother in memory of their mother. It is mentioned in this Exhibit G-1 that when there was dispute between the four brothers, they nominated arbitrator, Maulvi Nazir to settle the dispute between them. The arbitrator partitioned the family property and with respect to Dharamshalla, it is mentioned that the Dharamshalla which was constructed for charitable purpose with the money of the mother, it should be allowed to continue as such. However, according to the arbitrator, unless some property is given, it may be possible that in future, there may be impossibility in continuing the charitable work, therefore, with consent of all the four



co-sharers, the annual income of the land of Hardinadwa which was about Rs.500 was donated mentioning that the management of the Dharamshalla was entrusted to Surajmal, one of the co-sharers. It was also mentioned that Surajmal will spend the income from collection for charitable work of Dharamshalla and do all necessary repairs and continue. If anybody will fail to continue the work, the other co-sharers were given the right to call the rich persons of the town and neighbourhood and others and with their consent, one person will be appointed to carry out the work of Dharamshalla who will be bound by the terms of award. In case, if there will be no survivor in the family of all these co-sharers and nobody will do the charitable work then the Government would be entitled to take charge of the entire management and control of the Dharamshalla. From these contents of this document, it appears that the lands measuring 119 bighas of Hardinadwa was not dedicated by the four co-sharers. According to the arbitrator, only the income of Rs.500 was given to the person who was managing the affairs of Dharamshalla. The lands of Hardinadwa were in possession of raiyats which were settled by the landlords co-sharers. That is why in the award, it is mentioned that after collection, which was about Rs.500, shall be spent by the manager of Dharamshalla for the purpose of repair and management of the same. It is evident that at the time of construction of Dharamshalla, no



provision was made regarding as to how the same will be maintained and who will maintain. At the time of construction in the year 1892, there was no dispute between the four brothers, therefore, out of the money of their mother, they constructed the Dharamshalla. When the dispute arose regarding partition and it was referred to the arbitrator, the arbitrator found that if no provision is made for maintenance of Dharamshalla, it may be possible that in future, the Dharamshalla will not function because of want of paucity of fund. Therefore, Rs.500 which was the collection of Hardinadwa land was given to the manager in 1902. Out of the income of the said land, the Dharamshalla was being maintained. Now, therefore, in view of this condition in the registered award, by no stretch of imagination, it can be said that 119 bighas of land was dedicated to the Dharamshalla.

15. Further, it is the case of the defendants that at the time of vesting, the property of Hardinadwa vested in the State of Bihar and the raiyats in favour of whom the lands were settled, became the raiyats of the State. They stopped payment of rent. The defendants thereafter were managing the land from their own income because the Dharamshalla was constructed in memory of the mother of four co-sharers.

16. Exhibit P-1 is the certified copy of Khewat Nos.6 and 7. Khewat No.6 is with respect to 119 bighas 7 kathas 13 dhurs of

village Hardinadwa recorded in the name of B. Hazarimal and Khewat No.7 is with respect to Dharamshalla under the management of B. Surajmal who were recorded as tenure holder.

17. So far the submission of the learned counsel for the appellants that the purpose was to give shelter to Sadhu Saint and public at large, therefore, it was for charitable purpose is concerned, it may be mentioned here that as stated above, the very nature of Dharamshalla is such that whether it is private or public, it is to be used by public at large. Merely because it is used by public at large, there cannot be any presumption that it was a public trust. Here, the admitted fact is that four brothers constructed the Dharamshalla out of money of their mother and they constructed the Dharamshalla in memory of their mother which is not denied by the appellant. In such circumstances, merely because the witnesses of the plaintiff are saying that the public have got access without interruption, there cannot be any presumption that it was public trust and that 119 bighas land was dedicated to the Dharamshalla.

18. As stated above, the terms and conditions mentioned in the award, Exhibit G-1 which is registered, I find that the terms and conditions are unambiguous and clear and from the same, it cannot be inferred that land was dedicated to the Dharamshalla. It was in fact, a private Dharamshalla constructed by

the four co-sharers i.e. ancestor of defendant No.17 which is being managed by them still today according to them. Neither it was nor it is a public trust and, therefore, the finding of the court below on this question is hereby confirmed.

19. Since the plaintiff-appellant failed to prove that the lands of Hardinadwa were dedicated to Dharamshalla and the Dharamshalla is public trust for the charitable purpose, which is answered against the appellant, it is not necessary to go other aspect of the matter regarding as to when the settlement was made and in favour of whom and whether there is any detail given by the plaintiff or not etc.

20. In the result, I find no merit in this First Appeal. Accordingly, this First Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(Mungeshwar Sahoo, J)

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