

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.3015 of 2013 (O&M)
Date of Decision:31.05.2018

Sat Parkash Bhalla

...Appellant

Versus

Raj Kumar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Rakesh Gupta, Advocate for the appellant.
Mr.S.S.Dinarpur, Advocate with
Mr.Aproov Sangwan, Advocate for the respondents.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

In the considered opinion of this Court, following substantial questions of law arise for consideration of this Court:-

- (i)Whether a written dedication of the immovable property by its owners is necessary before an immovable property being used for religious purpose for 80 years continuously, is declared to have vested in the deity resulting in divesting of ownership of private individuals?
- (ii)Whether judgments passed by the courts below are result of non-reading and misreading of substantive evidence?
- (iii)Whether in a suit filed in representative capacity for the benefit of religious institution, it is necessary that the deity in whom property is vested, is a party before the suit is held to

be maintainable?

It will be significant to note that at the time of urgent-motion hearing, counsel for the plaintiff had given up his claim for relief of declaration and confined his prayer only for the passage. However, this Court, after examination of documents available on the file, considered it appropriate to re-examine the case in entirety.

The order passed on 1.12.2014 is extracted as under:-

“After arguing for sometime, counsel for the appellant submits that though the relief in the suit was with regard to the declaration challenging the sale deeds and as well as for mandatory injunction, however, during the course of arguments, he submitted that he does not press the relief for declaration. He submits that no approach/passage has been provided to any devotee to visit the Mandir. He confines his prayer for providing passage.

Notice of motion for 4.5.2015.”

The plaintiff claiming to be representative of 'Sati Mata' of Khatri Bhalla Community, had filed a suit for declaration and mandatory injunction and permanent injunction, claiming that the plaintiff has become owner in possession of land measuring 11 kanals and 10 marlas. A further declaration was sought that the sale-deeds dated 16.2.1910,, 22.8.2003, 23.10.2003 and 6.5.2005 (subsequently added) would not affect his rights.

It is the case of the plaintiff that Khatri Bhalla community of Kaithal City and other places are worshippers of deity 'Sati Mata' situated in Patti Kaisth Seth Kaithal and property is being wrongly recorded to be owned by certain private individuals who have purchased the property illegally. The plaintiff also filed a separate application under Order 1 Rule

8 of the Code of Civil Procedure. It is further claimed that the plaintiff along with other worshippers go to the aforesaid temple on various festivals and Bhalla Community particularly have immense faith and perform their religious ceremonies at that place. It is further claimed that there was a pond attached to the temple, which has been filled up/covered and is, now being used for cultivation and the passage leading to the aforesaid temple has also been blocked.

Defendants No.1 to 4 contested the suit and pleaded that they are purchasers of the property vide registered sale-deeds dated 22.8.2003, 23.10.2003 and 6.5.2005 and the plaintiff is a habitual litigant and has filed a frivolous suit.

The plaintiff in order to prove his case has produced on file voluminous documentary evidence including revenue record to prove that in fact this property was being used for religious purpose. The plaintiff has produced revenue record i.e. jamabandi for the year 1908-09 (Ex. P30). In the ownership column, certain private individuals are recorded as owners, whereas in column no.8, property has been described as '*Gairmumkin Satti and Johar*' (pond), meaning thereby that this land is not being used for agriculture purpose but there is place of deity 'Sati' and a pond (Satti Wala) is in existence. Entire Khasra Number 2236 measuring 7 Bighas has been described as 'Sattiwala' (It belongs to deity 'Sati'). In Column No.9, it is recorded that payment of land revenue has been exempted, as the property is being used for religious purpose. This entry is continuing in the jamabandis for the years 1916-17, 1920-21, 1924-25, 1928-29, 1936-37 and 1944-45.

Thereafter consolidation of holdings took place in the area. In

Khatoni Paimish as well as in Khatoni Istemal, which are part of the record of consolidation of holdings, land measuring 11 kanals and 10 marlas land was assigned and is being used for a pond. *Khatoni Paimish* is Ex.P49. *Khatoni Istemal* has also been produced for connecting old khasra numbers of the jamabandi and the new khasra numbers, post consolidation. Even *Naksha Haqdar* has been produced. In *Sharat-Vaj-Ul-Arj*, it is recorded that pond in question is not being used for irrigation of the fields.

After consolidation of the holdings, jamabandi, which has been placed on record is Ex.P-38, 1960-61. New Khasra Number assigned post consolidation is Rectangle No.121 Khasra No.27. Entry is again 'Gair Mumkin Satti' and Johar (pond) in an area of 11 kanals and 10 marlas. In the column of land revenue, it is again recorded that payment of land revenue is exempt as the property is used for religious purpose. Jamabandi for the year 1970-71, Ex.P39, proves that revenue authorities had separated Khasra No.27 in Rectangle No.121. Land measuring 11 kanals has been shown to be a pond, whereas 10 marla land has been shown to be under 'Satti'. This entry continues in the jamabandis for the years 1975-76 and 1980-81. In the jamabandi for the year 1985-86, once again both the numbers have been consolidated and 11 kanal and 10 marla land is being shown under the pond and 'Satti'. No cultivation of any kind is shown up-to the year 1985-86 on the land in question. In other words the land covered by pond and 'Sati' was not used for any other purpose but for religious purpose. For the first time, in the jamabandi for the year 1990-91, 11 kanal land is being shown as cultivable being used for agricultural purpose.

However, in column No.9, it is being shown as pond and 'Sati'. This

position continues in the years 1995-96 and 2000-01.

The plaintiff has also produced on file certain literature which establishes that there was a temple of 'Mata Sati' in the land in question, which was also having an adjoining pond for taking bath by the worshipers.

Both the courts below, after examining this aspect, have chosen to dismiss the suit filed by the plaintiff on various technical grounds including that application under Order 1 Rule 8 CPC was not filed alongwith the plaint but later on filed and first appeal has been preferred by the plaintiff-appellant in his individual capacity and not in a representative capacity.

Now the stage is set for considering questions of law.

Question No.1.

“Whether a written dedication of the immovable property by its owners is necessary before an immovable property being used for religious purpose for 80 years continuously, is declared to have vested in the deity resulting in divesting of ownership of private individuals?”

In the considered opinion of this court, once continuous user of the property for more than 80 years for religious purposes has been established, no written dedication by the owners was necessary. Dedications for religious and charitable purposes of immovable property can even be oral. It would always depend upon conduct of the owner and continuous user of the property. No written dedication is necessary to prove that a property has been dedicated for religious and charitable purpose.

In the present case, it is established on the file that right from 1909-10 jamabandi, the property was being used only for religious purposes

and not for any other purpose although the property had become part of a town. In such circumstances, the learned first appellate court erred in dismissing the suit on the ground that no written dedication has been produced on the file. Reference in this regard has been made to a judgment passed by the Hon'ble Supreme Court in **Tilkayat Shri Govindlalji Maharaj etc. Vs. State of Rajasthan and others, AIR 1963 SC 1638.** Para 68 of the judgment, which deals with the aforesaid issue, is extracted as under:-

“This conduct on the part of the Tilkayat was naturally disapproved by the Committee and the heading of the list was objected to by it in a letter written on December 31, 1956. To this letter the Tilkayat gave a reply on January 7, 1957, and he sought to explain and justify the wording adopted in the heading of the list. It is thus clear that the heading of the list forwarded by the Tilkayat to the Committee must be ignored because that heading clearly shows a change of mind on the part of the Tilkayat and the question as to whether the two idols form part of the principal temple of Shrinathji must be decided in the light of what transpired on October 15, 1956. Judged in that way, there can be no doubt that the Tilkayat solemnly transferred the two idols to the principal temple and in that sense, gave up his ownership over the idols and a formal proposal made in that behalf was accepted by the Committee. In our opinion, the High Court was in error in not giving effect to this transfer on the ground that no gift or trust deed had been duly executed by the Tilkayat in that behalf. A dedication of private property to a charity need not be made by a writing; it can be made orally or even can be inferred from conduct. In the present case, there is much more than conduct in support of the State's plea that the two idols had been transferred. There is a formal report made by the Manager to

the Tilkayat which was accepted by the Tilkayat; it was followed by a formal proposal made by the Tilkayat to the Committee and the Committee at its meeting formally accepted that proposal and at the meeting when this proposal was accepted, the Tilkayat was present. Therefore, we must hold that the two idols now form part of the principal temple and have been properly included within the definition of the word "temple" under Section. 2 (viii). We would accordingly set aside the decision of the High Court and uphold the validity of Section 2(viii).

In view thereof, question No.1 is answered in favour of the plaintiff.

Question No.2

“Whether judgments passed by the courts below are result of non-reading and misreading of substantive evidence?”

The judgments passed by the courts below are result of misreading of evidence on the file. The courts have overlooked the fact that right from inception entire area of 7 bighas was being used for the pond and 'Satti'. 'Satti' is a deity and Hindus of the area where the property is situated have faith in the aforesaid deity being incarnation of the God, The aforesaid 7 bighas of land which was referred by the revenue authorities as 'Sattiwala' having a pond and a temple which continued to be used as such as per revenue record even after consolidation of holdings. As per the record of consolidation of holdings *Khatoni Paimish, Istemal* and *Sharat-Vaj-Ul-Arj* proves that 7 bighas of land was later on converted into kanals and marlas, and the area which came to be allotted was 11 kanals and 12 marlas. This is what has been recorded in the jamabanadi prepared post consolidation. Still further religious nature of the property is established. On careful reading of

the column meant for the land revenue in the jamabandi-revenue record, it is recorded that the payment of the land revenue was exempted even before consolidation holdings right from 1909-10 and the reasons for exemption from payment of land revenue was that the property is being used for religious purposes. Had the property not vested in the deity, official of the Consolidation Department would have not kept the entire land measuring 11 Kanals and 10 marlas as a pond and 'Satti'. As per the findings of the learned first appellate court, a temple of 'Satti' is situated in an area of 10 marlas. That area is not subject matter of purchase by the defendants. However, the learned first appellate court has erred in recording a finding that remaining land measuring 11 kanals is owned by private individuals. Once dedication of the property for religious purpose can be inferred from the revenue record and its continuous user for religious purposes is proved, the first appellate court erred in declaring the property to be individually owned.

Hence question No.2 is also answered in favour of the plaintiff.

Question No.3:

“Whether in a suit filed in representative capacity for the benefit of religious institution, it is necessary that the deity in whom property is vested, is party before the suit is held to be maintainable?

In the present case, the learned courts below have overlooked the record. Initially, when the suit was instituted, plaintiff filed an application under Order 1 Rule 8 CPC. Notice of the application was issued to the defendants. Application was allowed vide order dated 20.2.2004, which is extracted as under:-

“Learned counsel for plaintiff stressed on application u/o 1 rule 8 CPC moved by plaintiff alongwith present suit. Heard. The plaintiff filed the present suit on 13.10.03. Inadvertently the order of the application u/o 1 rule 8 CPC not passed, hence application moved by plaintiff is hereby allowed and the plaintiff is allowed to file the present suit in representative capacity.”

Thereafter, local proclamation of the application under order 1 Rule 8 CPC was ordered as is clear from the order dated 5.6.2004. However, the learned trial court wrongly held that application under order 1 rule 8 CPC was not filed along with the suit and no publication as required was carried out. Still further, plaintiff during the pendency of the suit had filed an application for adding deity as a plaintiff. Application was dismissed by the court.

However, in the considered opinion of this court, such dismissal would not come in way of the plaintiff. Suit filed by the plaintiff is in a representative capacity praying for decree of declaration that the property is a religious property and the sale deeds executed are illegal, null and void and not affecting the rights of the worshippers would still be maintainable. In such suit, once plaintiff himself is claiming that the property is dedicated to a deity, impleadment of deity was not necessary.

In view of the aforesaid, question No.3 is also answered in favour of the plaintiff.

As notice earlier, at the time of the urgent/motion hearing counsel for the appellants had given up his relief of declaration, however, such relief cannot be given up in a representative suit without leave of the court as provided under Order 8 Rule 1(4) CPC. The order reproduced in

the previous part of the judgment does not show that the court granted any leave to abandon the relief of declaration. Still further the courts should be pro-active while protecting the public properties including properties being used for religious and charitable purposes. The court should not dismiss such suits on technical grounds. If any technical requirement remained to be fulfilled, the court should ensure that the aforesaid requirement is fulfilled and the suit is not in dismissed on that count.

In view of the discussion made above, the appeal filed by the plaintiffs-appellants is allowed. The judgments passed by the learned courts below are set aside. Pending application(s), if any, shall also stand disposed of. The suit filed by the plaintiffs shall stand decreed and the sale deeds propounded by the defendants shall not affect the rights of the plaintiffs and hence set aside. The Deputy Commissioner, Kaithal is directed to ensure that the religious property is restored to its original glory and position and the worshippers are not harassed by the certain private individuals. However, such direction would not be construed as conferring any right in the State.

Appeal is allowed.

31.05.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No