A THE BIHAR STATE BOARD OF RELIGIOUS TRUST

v.

RAMSUBARAN DAS

FEBRUARY 29, 1996

B [S.P. BHARUCHA AND S.B. MAJMUDAR, JJ.]

Evidence Act, 1872—Section 102—Onus of proof—Suit filed claiming an act done by a predecessor was not binding on the plaintiff as it was done due to mistake of fact and law—Held, onus of proof to establish mistake of C *law and fact is on the plaintiff.*

Hindu Law—Temples—Nature of—Public or private Determination of.

One S, who was a Muslim, granted certain area of land to one M, who had constructed a temple on the said land. M died leaving behind two D **'chelas'. H, who was one of the chelas of M, purchased some land in another village and constructed a temple on the said land. H died and was succeeded by various persons. R, who was the successor of H at the time of abolition of Zamindari in 1951, filed returns in which he claimed an annuity on the basis that the two temples were public temples.**

E **In 1961, the respondent, who was the nephew and chela of R, filed a suit against the appellants claiming that the returns filed by R showing the temples to be public temples were filed under mistaken view of law and fact and were not binding on the respondent. It was claimed by the respondent that the properties were his secular properties or at best,** F **private trust properties.**

The Trial Court decreed the suit of the respondent holding that a Muslim could not have donated land to a Hindu deity. The Trial Court further held that there was no evidence to show that the public had anything to do with the construction of the temple and that the oral G **evidence led by the appellant to the effect that members of public were allowed to enter the temples for 'darshan' was not of much importance as it would be against Hindu sentiments or practice to turn away the worshippers. In respect of evidence of endowment of certain properties to one of the temples by a lady, the Trial Court observed that an additional grant** H **by a pious lady to the deity of the temple did not make the temple a public**

trust. The Trial Court further recorded that the evidence of the respondent showed that R was ill at the time he filed the above mentioned returns. Against the order of the Trial Court, the appellant filed an appeal before the High Court and it was dismissed.

Before this Court, the appellant claimed that since the temples were ancient, proof of its dedication to the public was difficult to find and therefore, circumstances in respect of the management of the temple and worship should be taken as the indicators of the public or private nature of the temple.

Allowing the appeal, this court

HELD : 1. 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 Plaintiff Respondent 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. There is no credible evidence to establish that R had acted on a mistake of fact or law and therefore, the suit ought to have been dismissed. [60-D, F]

2. The fact that a pious lady could make a dedication of land to deity of the temple, and that it 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. [61-C-D]

3. The Trial Court was in error in stating that the respondent had given sworn evidence that, during the relevant period in which he had filed the returns, R was ill. The evidence of the plaintiff does not say that R was ill. This is making out a case of incapacity that was not pleaded. [61-E]

4. The basis upon which the Trial Court observed that the grant did not appear to be a grant to the deity and that it could not have been granted to a Hindu deity by a Mohamaden is not clear and it seems to be erroneous. [61-F]

Bala Shankar Maha Shankar Bhattjee & Ors. v. *Charity Commissioner, Gujarat State,* [1995] Supp. 1 SCC 485, referred to.

A CIVIL APPELLLATE JURISDICTION : Civil Appeal No. 846 of 1981.

From the Judgement and Order dated 21.5.80 of the Patna High Court in F.A. No. 88 of 1966.

B Lakshmi Raman Singh Adv. for the Appeallant.

The Judgment of the Court was delivered by

BHARUCHA, J. The order under appeal was passed by a learned single judge of the High Court at Patna. Thereby the appeal of the C present appellants against the order and decree of the Subordinate Judge of Muzaffarpur in a suit filed by the respondent against them was dismissed.

The suit related to two temples-one in the village Ramchaura and D 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. E Garibdas went to the village of Khalishpur and installed the deities of Ramjankijee 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 Ramjankijee and Laxmi Narayanjee were installed. After the death of Garibdas, the Khalispur properties also came to be in possession F 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 G 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 newphew and a chela of Raghubardas and he came into possession of the properties upon the death of Raghubardas. On 29th September, 1961, the respondent filed a suit against the appellants in the court of the Subordinate Judge at Muzaffarpur averring that the act of H Raghubardas of filing an application in the Land Reforms Office claiming

annnity, 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 plaintiff or at best private trust properties and not public trust properties and the defendant cannot claim any supervision over acts and deed of 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 Mohamaden". 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 1961 by one Hulasbati Devi. She had dedicated certain properties to Laxmi Narainjee 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 Mohamaden 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.

A 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.

The respondent has not appeared before us.

B Learned counsel for the appellant drew our attention to the judgment of this Court in *Bala Shankar Maha Shanker Bhattjee & Ors.* v. *Charity Commossioner, Gujarat State,* J.T. (1994) 5 S.C. 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 C 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.

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 D 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 themeselves was whether the plaintiff had discharged the onus of proving that Raghubardas had made the E 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 : "Reghubardas had submitted some returns before the Religious Trust Board. He was advised by 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 F 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 G 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.

In any case, the evidence ought to have been scrutinised in the light H 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 Lachmi Narainjee. 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 Astami 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.

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 Mohamaden". The basis upon which this statement was made does not appear, and it seems to us quite erroneous.

In the result, the appeal is allowed. The judgement 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.

J.N.S. Appeal allowed.