

APPELLATE CIVIL.

1911.
June 19

Before the Hon'ble Mr. H. G. Richards, Chief Justice, and Mr. Justice Banerji.
PHUNDAN LAL AND OTHERS (DEFENDANTS) v. ARYA PRITHI NIDHI
SABHA (PLAINTIFF) AND MUSAMMAT SUBARNI AND OTHERS (Pro forma
DEFENDANTS).*

Hindu law—Gift in favour of "the Thakurji in his Thakurdwara"—No temple built or idol installed—Gift void for uncertainty.

Held that a dedication, not to any particular deity which was subsequently to be installed in a temple, but to "the Thakurji in his Thakurdwara," without mentioning the particular Thakurji to whom the property was dedicated, was void for uncertainty. *Bhupati Nath Smrithitirtha v. Ram Lal Moitra* (1), *Mohar Singh v. Het Singh* (2) and *Chatarbhuja v. Chatarjit* (3) distinguished.

THE facts of this case were as follows:—

One Hulas Rai executed a deed of endowment on the 30th of May, 1903, in respect of eight shops of his in favour of Sri Thakurji, the idol to be installed in a house of his, to which the deed of endowment did not relate. He appointed himself manager and superintendent of the property. He was subsequently converted to the Arya Samaj creed and gave up the idea of his turning his house into a *thakurdwara*. Some time later he made a gift in favour of the Arya Samaj of his eight shops and two houses, in one of which he had originally intended to set up the idol. Hulas Rai had been dispossessed by certain Hindus of the locality in the meanwhile, and he brought a suit under section 9 of the Specific Relief Act for delivery of possession of the shop and the house. The suit was decreed on the 14th of July, 1905. He got possession on the 17th August, 1905, and on the 27th of August, 1905, he put up the Arya Samaj in possession. They are the plaintiffs in the suit. Hulas Rai died on the 11th of December, 1905. The plaintiffs were dispossessed by the defendants, and hence the suit. The Subordinate Judge dismissed the claim in respect of the shops, but decreed it as to the houses. The District Judge held that the house was not complete when the idol was installed, and that the idol was not installed but put in surreptitiously. He decreed the suit in its entirety.

* Second Appeal No. 870 of 1910 from a decree of H. M. Nanavutty, Additional Judge of Bareilly, dated the 29th of March, 1910, modifying a decree of C. Raj Kishore Datt, Subordinate Judge of Bareilly, dated the 29th of June, 1907.

(1) (1909) I. L. R., 37 Cal., 128. (2) (1910) I. L. R., 32 All., 337.
(3) (1910) I. L. R., 33 All., 253.

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Pandit *Ramahant Malaviya* (with him *Munshi Gokul Prasad*),
for the appellants.

Hulas Rai could not revoke the gift after he had once dedicated the property. The deed operated even if the installation was not complete. There was no vagueness about the expression *Thakurji*, it always meant the god worshipped in the family. *Mohar Singh v. Het Singh* (1), *Chatarbhuji v. Chatarjit* (2), *Bhupati Nath Smrithitirtha v. Ram Lal Moitra* (3).

Munshi Ishwar Saran (with him *Dr. Satish Chandra Banerji*), for the respondents.

Having given up the old faith it became impossible for him to set up the idol. The object of the gift having failed, the property reverted back to the donor. Tudor on Charities, pp. 105, 106.

RICHARDS, C. J., and BANERJI, J.—The suit out of which this appeal has arisen was brought by the plaintiff, who is the President of the Arya Samaj at Agra, for possession of two houses and eight shops, which originally belonged to one Hulas Rai. On the 30th of May, 1903, Hulas Rai executed a document by which he made a gift of the eight shops in favour of "Sri Thakurji of the thakurdwara, called after his name, situated in Kasba Puranpur." Subsequently he became a convert to the doctrines of the Arya Samaj. On the 4th of February, 1905, he made a gift of two houses and the shops to the Samaj. He died on the 11th of December, 1905, and after his death disputes arose about the possession of the property. Finally the plaintiff brought the suit which has given rise to this appeal. It has been found that at the time of the execution of the document of the 30th May, 1903, no thakurdwara was in existence, and of course there was no Thakurji in the thakurdwara. It is common ground that during his life-time Hulas Rai did not build any thakurdwara, or temple, though, no doubt, he was building houses with the intention of converting one of them into a thakurdwara, prior to his conversion. The question is, whether, under these circumstances, the gift which he made on the 30th of May, 1903, can operate as a complete and effectual gift of the eight shops and can prevail as against the subsequent document of the 4th of February, 1905.

(1) (1910) I. L. R., 32 All., 387. (2) (1911) I. L. R., 33 All., 253.

(3) (1909) I. L. R., 37 Cal., 128.

If the dedication was complete, it is clear that he could not revoke it and make another gift. We are of opinion that in the present instance the first dedication was not valid. It was not a dedication to any particular deity which was subsequently to be installed in a temple. It was a dedication to the Thakurji in his thakurdwara without mentioning the Thakurji to whom the property was dedicated. As we have already said, there was no Thakurji and no thakurdwara, therefore the dedication was bad on the ground of uncertainty. This case is distinguishable from the case of *Bhupati Nath Smrithitirtha v. Ram Lal Moitra* (1), *Mohar Singh v. Het Singh* (2) and *Chatarbhuji v. Chatarjit* (3). In all those cases the gift was in favour of the deity named in the deed of dedication and it was held that although the image of the deity had not been installed and consecrated, the endowment was nevertheless valid. We dismiss the appeal with costs.

Appeal dismissed.

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PHUNDAN
LAL
v.
ARYA PRITHI
N. DEH
SABHA.

Before The Hon'ble Mr. H. G. Richards, Chief Justice, and Mr. Justice Banerji.

BHUP (DEFENDANT) v. RAM LAL (PLAINTIFF).*

Act (Local) No. II of 1901 (Agra Tenancy Act), sections 95, 137—Civil and Revenue Courts—Jurisdiction—Dispute between rival claimants to a tenancy.

Section 95 of the Tenancy Act was not intended to apply to the case of disputes between rival claimants to a tenancy. It was intended to apply to questions arising between the landlord on the one side and the tenant on the other. *Prima facie* the Civil Court is the proper court to try all questions, and it is only when suits are expressly excluded from its cognizance that its jurisdiction is ousted. *Kali Charan v. Musammat Utmi* (4) referred to.

THIS was an appeal under section 10 of the Letters Patent from a judgement of KARAMAT HUSAIN, J.

The facts of the case are stated in the judgement under appeal, which was as follows :—

“The admitted facts of the case are, that Mawashi was an occupancy tenant and that on his death the names of his widow, Musammat Sarupi, and Bhupan, alleged to be the adopted son of Mawashi, were entered as occupancy tenants. Ram Lal applied that his name be entered as the occupancy tenant for he was the adopted son of Mawashi. The zamindar was made a party to this application and opposed it. The Court of Revenue came to the conclusion that Bhupan was

* Appeal No. 27 of 1911 under section 10 of the Letters Patent.

(1) (1909) I. L. R., 37 Calo., 128.

(2) (1910) I. L. R., 32 All., 337.

(3) (1910) I. L. R., 33 All., 253.

(4) (1910) 7 A. L. J., 658.

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