

1927

BIHAGWAN
SINGH
v.
Mst. KEWAL
KAUR.
CAMPBELL J.

The only question which has been argued with any great vehemence is the appropriate amount of the monthly allowance. In regard to this the trial Judge has considered carefully the evidence about the value of the family property and the status of the family, and, in my opinion, he has come to a just conclusion which I would not disturb.

I would dismiss the appeal with costs.

TEK CHAND J.

TEK CHAND J.—I agree.
A. N. C.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Jai Lal.

KESAR SINGH AND OTHERS (PLAINTIFFS) Appellants

versus

SHIROMANI GURDWARA PRABANDHAK
COMMITTEE, AMRITSAR, AND ANOTHER
(DEFENDANTS) Respondents.

Civil Revision No: 381 of 1926.

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Feb. 11.

Sikh Gurdwaras Act, VIII of 1925, sections 3 (4), 32—whether applicable in absence of a notification—Revision from order of Civil Court that the Act applies—whether competent—Validity of a gift to a Gurdwara—whether determinable by a Civil Court or the Tribunal.

In a suit by plaintiffs (as reversioners of one M. S.) for a declaration that the gift by his widow of his entire landed estate to the *langar* (kitchen) of Guru Ram Das attached to the Darhar Sahib, Amritsar, was invalid and inoperative as against them, the defendants pleaded that the claim fell within the ambit of section 32 of the Sikh Gurdwaras Act, which ousted the jurisdiction of the Civil Courts. The trial Court accepting the plea submitted the record to the District Judge asking him to forward it to the Tribunal under the Act. Plaintiffs applied to the High Court for revision and it was contended by defendants that no revision was competent as the order of the lower Court was interlocutory.

Held, that the revision is competent as the order of the Civil Court holding that the Gurdwaras Act applies goes to the root of the case and practically terminates the proceedings in the Civil Court.

Held also, that no notification under the provisions of section 3 (4) of the Act having been published, section 32 does not apply to the case.

Held further, that the question whether a person having a limited interest in the property was competent to alienate it by gift to the Gurdwara was one for the Civil Court to determine and not for the Tribunal.

Application for revision of the order of Sardar Sewa Singh, Subordinate Judge, 1st class, Amritsar, dated the 19th January 1926, submitting the records to the District Judge for forwarding the same to the Tribunal, etc.

JAGAN NATH BHANDARI, for Petitioners.

M. L. PURI, for Respondents.

The judgment of the Court was delivered by--

ZAFAR ALI J.—The plaintiffs-petitioners who claim to be the reversionary heirs of one Mihan Singh, Jat of the village Pindori Sidhwan in the Amritsar District, sue for a declaration that the gift of his entire landed estate made by his widow *Mussammatt Chandi* to the *langar* (kitchen) of the Guru Ram Das, which is attached to or is an institution of the famous Sikh Temple at Amritsar known as Darbar Sahib was invalid and inoperative as against them. The Shiromani Gurdwara Prabandhak Committee, Amritsar, through whom the gift was made pleaded *inter alia* that the claim fell within the ambit of section 32 of the Gurdwaras Act which ousted the jurisdiction of the Civil Courts.

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The trial Court accepted that plea and submitted the record of the case to the District Judge, asking him to forward it to the Tribunal under the Gurdwaras Act.

The plaintiffs seek revision of this order on the following grounds :—

- (1) That the gift not having been directly made to a declared Sikh Gurdwara as such, the lower Court acted with material irregularity in refusing to exercise jurisdiction vested in it by law.
- (2) That the Gurdwaras Act, No. VIII of 1925, does not apply to this case, the lower Court had full jurisdiction to entertain and try the suit.

Counsel for the respondents takes a preliminary objection that no revision lies. He argues that the order in question is after all an *interlocutory* order because the Tribunal under the Act has to return the record with a copy of its decision and the suit is finally to be determined by the Civil Court though in accordance with the decision of the Tribunal. This argument does not appear to us to be sound. If the points in issue were to be determined by the Tribunal the Civil Court becomes *functus officio* for all purposes but one, *viz.*, the carrying out of the order of the Tribunal which it may eventually pass. Thus the order of the Civil Court holding that the Gurdwaras Act applies goes to the root of the case and practically terminates the proceedings so far as that Court is concerned. That being so, this application for revision is, in our opinion, competent.

The next point is that section 32 of the Gurdwaras Act does not come into operation unless

the provisions of section 3 of that Act have been complied with. The learned counsel for the respondents admits before us that no notification has yet been published under section 3, clause 4 of that Act. Section 32 therefore is not applicable.

Thirdly, the question whether a person having a limited interest in the property was competent to alienate it by gift is obviously not one for the Tribunal to determine. That question must be enquired into and decided by the Civil Courts whether the gift is to a Gurdwara or anybody else.

We, therefore, accept this petition, set aside the order in question and direct that the case be proceeded with in accordance with law. The respondents will pay petitioners' costs in this Court.

A. N. C.

Revision accepted.

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