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RANJIT SINGH v. MAGHI MAL.

COLDSTREAM J.

the present case the property being ancestral, cannot for the reasons laid down in *Jagdip Singh v. Bawa Narain Singh* (1), be attached in execution of the respondents' decree.

I would accordingly accept this appeal, set aside the order of the Senior Subordinate Judge dismissing the objection, and order the ancestral property concerned to be released from attachment, leaving the parties to pay their own costs throughout.

ADDISON J. ADDISON J.—I agree.

ABDUL RASHID J. ABDUL RASHID J.—I agree.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

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Oct. 8.

TEJA SINGH AND ANOTHER (OBJECTORS) Appellants

versus

MST. KARTAR KAUR AND OTHERS (PETITIONERS) Respondents.

Civil Appeal No. 48 of 1936.

Sikh Gurdwaras Act, VIII of 1925, section 18 : Presumption that right, title or interest in a property belongs to the Gurdwara — when applicable — Civil Procedure Code, Act V of 1908, Order XLI, r. 20 : Court of appeal — competency of — to implead a person as respondent.

Held, that the presumption under section 18 (1) of the Sikh Gurdwaras Act, can be availed of only, if (*a*) the denial is made by any past or present office-holder, and (*b*) the denial is of a right, title or interest recorded in *his* name. The words ' his name ' connote the idea of the land being held in the capacity of an office-holder and not in any other capacity.

S. one of the petitioners under section 10 of the Sikh Gurdwaras Act died during the pendency of the suit, his son

(1) 4 P. R. 1913 (F. B.).

P. was not brought on the record as respondent until after the limitation for the appeal to the High Court had expired. Counsel for the appellants (objectors) contended that the Court of Appeal was competent under the provisions of Order XLI, r. 20, Civil Procedure Code, to implead P. as a respondent, as a person who was interested in the result of the appeal.

Held (overruling the contention), that the power conferred on the Court of Appeal by Order XLI, r. 20 can be used in favour of that person alone who is interested in the result of the appeal, and that a defendant against whom the right of appeal has become barred is not a person interested in the result of the appeal filed by a plaintiff against the other defendants.

V. P. R. Chokalingam Chetti v. Seethai Acha (1), and *Badri Narayan v. East Indian Ry. Co.* (2), relied upon.

First appeal from the decree of the Sikh Gurdwaras Tribunal Lahore, dated 31st October, 1935, declaring that the Petitioners are owners of all the lands in dispute.

CHARAN SINGH, for Appellants.

TIRATH RAM and DARBARI LAL, for Respondents.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—On the publication of a notification under section 7 of the Sikh Gurdwaras Act relating to Gurdwara Manji Sahib, a petition under section 10 of the Sikh Gurdwaras Act was presented by Kartar Kaur, widow of Kesho Das, Ganesh Das and Mulk Raj, sons of Bhagwan Das, and Surain Das, claiming their right, title and interest in the lands now in suit. This application was resisted by Teja Singh and Attar Singh, but the Gurdwaras Tribunal came to the conclusion that the petitioners were entitled to the declaration prayed for. From the

(1) I. L. R. (1928) 6 Rang. 29 (P. C.). (2) I. L. R. (1926) 5 Pat. 755.

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said order of the Tribunal the present appeal has been preferred by the objectors.

Counsel for the appellants has confined his argument to a plot of land measuring 244 *kanals* odd. He contends that this land was originally granted to the Gurdwara for charitable and religious purposes, and that the ancestors of the present petitioners held it as office bearers of the institution and not in their private capacity and that the petitioners too are in possession of the land on the same account. He has mainly relied on a statement made by Uttam Das, an ancestor of the present petitioners, on the 24th February, 1852, as well as on the revenue records relating to the various settlements conducted since.

The following pedigree table may facilitate the understanding of this case:—

MAHI DAS
|
Bhagat Heman
|
Bhagat Ram Kaver
|
Bhagat Bhawani Das
|
Sahib Das
|
Jodh Ram
|
Baba Uttam Das
|
Hira Das

Sahib Das had a brother, Sain Ditta, who had seven sons. Two of his sons Jodh Ram and Uttam Das figure in this pedigree. Another son of his, Thakar Das, was the father of Hira Das who is the predecessor-in-title of the present petitioners. From among these persons Hira Das was the only person to marry or to beget children and on his death the land in suit was mutated in favour of his descendants.

Reverting now to the statement of Uttam Das. It is true that he stated that the land was given by one

Mehtab Singh to Sahib Das 40 years before and that it was gifted for charitable purposes, yet both from the order of the Collector, dated the 30th September, 1861, and the report of the Naib-Tahsildar, dated the 14th October, 1861, it appears that this statement was not in accordance with facts. The Collector held that the land in question was not "*muaf* for the good of the public or in the name of any religious institution and that it was shown as owned by, and under the personal cultivation of, Uttam Das, caste Brahmin, *Muafidar*." This clearly indicates that the statement of Uttam Das was made merely with the object of securing a remission of the land revenue. Moreover it is not consistent with the position taken up by the appellants that the land was gifted to Mahi Das, the founder of the institution.

The revenue excerpts, too, do not advance the case of the appellants any further. Since the time of the British annexation of the Punjab, this land has been shown as owned by one or the other member of the family of the respondents, and in none of these documents has it been shown that the owner of the land was holding it on behalf of the institution. The contention raised by the appellants, that the fact that Sahib Das was succeeded in the first instance by Jodh Ram and on his death by Uttam Das to the exclusion of their other brothers clearly shows that the descent of the land was from *guru* to *chela*, has no force, as the land in suit has all along been shown in the revenue papers as the personal property of every incumbent of the *gaddi* and was held to be so, even in the civil litigation which terminated in the High Court in 1924. It is further significant that on the death of Hira Das which took place about 1884, all his sons succeeded

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to the land, and that on the death of one of his sons, his widow inherited the estate of her deceased husband. This state of affairs was never objected to by any person concerned, until the time the Sikh Gurdwaras Act was enacted. We have no hesitation, therefore, in holding that the objectors have failed to prove that the land in suit was granted to the institution for any charitable or religious purpose.

Counsel for the appellants has next drawn our attention to section 18 of the Sikh Gurdwaras Act and urged that the objectors are entitled to avail themselves of the presumptions provided for in that section. We, however, do not agree. Those presumptions come into play only, if the other requirements laid down in section 18 are fulfilled. The material portion of that section on which we rely for the purpose of the present case is reproduced below :—

" In any proceedings before a Tribunal, if any past or present office holder denies that a right, title or interest recorded in his name or in that of any person through whom he claims . . . . . there shall, notwithstanding anything contained in section 44 of the said Act be a presumption . . . . . ".

Now, it is clear that these presumptions can be availed of only, if (*a*) the denial is made by any past or present office holder, and (*b*) that the denial is of a right, title or interest recorded in *his* name.

In this case it is, firstly, doubtful whether the present denial is being made by any past or present office holder and secondly, it is indisputable that the denial that is being made is not of a right, title or interest which is recorded in the name of any such office holder denying it.

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Counsel for the appellants contends that as Surain Das was admittedly an office holder of the institution and that as he was one of the petitioners, it should be held that the denial was being made of a right that was recorded in his name, but this contention is not sound, as, not only the land did not stand in the name of Surain Das alone, but it was owned by him along with his other brothers, not as an office holder of the institution, but in his private capacity. We have no doubt that the words ' his name ' connote the idea of the land being held in the capacity of an office holder and not in any other capacity, on this ground too the appeal fails.

The most serious objection to the appeal, however lies in the fact that although Surain Das had died during the pendency of the suit, his son Pritam Das was not brought on the record until after the limitation for the appeal to the High Court had long expired. The application made for that purpose was not supported by an affidavit nor was any valid reason urged why Pritam Das had not been brought on the record at the time when the appeal was presented to this Court. Counsel for the appellants has relied on Order 41, rule 20, Civil Procedure Code, which empowers the Court of appeal to implead as a respondent any person who is interested in the result of the appeal and has not been made a party to the appeal. That rule, however, does not help the appellants. In *V. P. R. Chokalingam Chetty v. Seethai Acha* (1) their Lordships of the Privy Council in a case similar to the present observed that the power conferred on the Court of appeal by that rule can be used in favour of that person alone who is interested in the result of

(1) I. L. R. (1928) 6 Rang. 29 (P. C.).

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the appeal, and that the defendant against whom a suit has been dismissed and as against whom the right of appeal has become barred is not a person interested in the result of the appeal filed by a plaintiff against the other defendants. A similar question came before the Patna High Court in *Badri Narayan v. East Indian Ry. Co.* (1) and a Division Bench of that High Court remarked that an appeal against some of the persons in whose favour a decree had been passed was incompetent, and that the appellate Court had no jurisdiction to add the omitted respondents as parties to the appeal. In the case before us a declaration had been made jointly in favour of all the petitioners who had claimed the right, title or interest in dispute and one of them had been omitted from the appeal. The appeal could not, therefore, proceed against the other respondents inasmuch as the declaratory decree had become final in favour of the person omitted. In the light of the observations made in *V. P. R. Chokalingam Chetty v. Seethai Acha* (2) this Court is incompetent to implead Pritam Das as a respondent after the expiry of the period of limitation provided for the appeal.

On all these considerations, therefore, we hold that this appeal cannot succeed. We accordingly dismiss it with costs throughout.

A. N. C.

Appeal dismissed.

(1) I. L. R. (1926) 5 Pat. 755. (2) I. L. R. (1928) 6 Rang. 29 (P. C.).