

APPELLATE CIVIL

Before C. G. Suri, J.

MAMAN RAM AND ANOTHER—Appellants

versus

MANAGING COMMITTEE SHRI GAUSHALA, JIND AND OTHERS—
Respondents.

Second Appeal from Order No. 16 of 1969

February 3, 1970.

Indian Oaths Act (X of 1873)—Sections 8, 9, 10 and 11—Counsel of a party offering to abide by oath of the opposite party—Counsel not specifically authorised to make the offer—Such offer—Whether valid—Terms and conditions of the proposed oath—Whether has to be strictly complied with—Parties agreeing to have the oath in a temple—Such oath—Whether can be administered in the temple without consent of the temple authorities.

Held, that for the purposes of section 9 of Indian Oaths Act, 1873, if the offer to abide by an oath is made by a counsel on behalf of a party, it is not necessary that the counsel should be specifically authorised to make such an offer. It is enough if he has been duly authorised to conduct the case generally on behalf of his client. The general power of an advocate would include the authority to make a proposal for the decision of the case on the oath of the opposite party. (Para 2)

Held, that the mode of decision of a case on oath is unconventional, if not primitive. The sanctity of this mode of disposing of a case on any particular type of oath being taken depends on the strict religious beliefs and ideas of the parties. A slight variation in the proposed oath can create the feeling that the religious sanction behind the obligation to speak the truth has been weakened. It is, therefore, desirable in such cases to see that the terms and conditions of the said oath proposed by the one party and agreed to by the other are strictly complied with before the oath can be treated as conclusive proof of the matters stated under section 11 of the Act. (Para 3)

Held, that the temple is a juristic person which is no party to the proceedings in the suit. If the parties agree to have the proposed oath in a temple, this may offend the provisions of section 8 of the Act. Such an oath, therefore, cannot be administered in the temple without the consent of the temple authorities. (Para 3)

Second Appeal from the order of Shri K. C. Grover, Additional District Judge, Jind, dated the 17th December, 1968, reversing that of Shri Salig Ram Bakshi, Senior Sub-Judge, Jind, dated the 7th March, 1968 (dismissing the suit) and remanding the case to the trial Court for a fresh decision on merits.

S. P. GOYAL, ADVOCATE, for the Appellants.

B. L. GOSWAMI, ADVOCATE, for the Respondents.

ORDER

SURI, J.—A suit filed for the recovery of Rs. 2,500 by the sale of the mortgaged property,—*vide* registered mortgage deed was disposed of by the Senior Sub-Judge, Jind, on the basis of an oath taken by Shri Maman Ram, defendant No. 1. The plaintiffs' counsel made an offer for the oath and the proposed oath was to be taken in a special form before the *murti* of Lord Krishna installed in the Dina Nath temple at Jind. The trial Judge went personally to the temple on 5th March, 1968 to see whether the oath was taken. The temple was found closed but an idol of Lord Krishna was secured from somewhere and an oath was administered to Maman Ram, defendant in the presence of the parties and the trial Judge. Judgement was to be announced in the case on 7th March, 1968 and on the same date an application was filed on behalf of the plaintiffs that the special oath proposed to be taken in a specific form inside the temple had not been taken strictly in accordance with the offer and that since the Presiding Officer was to be examined as a witness in the proceedings, he should not proceed further with the case and should grant an adjournment to enable the plaintiffs to move the District Judge, Rohtak, for the transfer of the case from his Court. No orders were passed on this application and the Presiding Officer dismissed the suit the same day on the basis of the oath taken by the contesting defendant.

(2) The plaintiffs went up in appeal and the Additional District Judge, Jind, has remanded the case for a decision on merits. It is this remand order which is challenged in this appeal by Maman Ram, defendant No. 1 and his wife, Smt. Jiwani, who had also executed the registered mortgage deed along with her husband. She had also been impleaded as a defendant in the case. The offer about the oath had been made on 5th March, 1968, by the plaintiffs' counsel but it had been stated that this offer was being made according to the instructions of his clients. The counsel was authorised to conduct the case on behalf of the plaintiffs and had the implied authority to propose that the dispute may be resolved in this manner. This was so held in *Mathura Prasad and others v. Sita Ram and others* (1), *Narain Singh and others v. Har Bux Singh and others* (2) The counsel for the plaintiff-respondents cites the case of *Bansilal v.*

(1) A.I.R. 1940 Oudh 314.

(2) A.I.R. 1953 All. 312.

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Jasraj (3), but in that case the pleader was expressly debarred by the *vakalatnama* from compromising a suit or for referring it to arbitration or making an offer under section 9 of the Indian Oaths Act. The implied authority of the counsel did not extend to making an offer of a settlement of the dispute on oath because of the special terms and conditions of the *vakalatnama*. Similarly, in *Pethayya Pillai v. Karuppiah Nadar and others* (4), an oath proposed by the advocate was held not binding on the party because the proposed oath was contrary to the provisions of section 8 of the Oaths Act on the ground that it affected a third person also. The general power of an advocate would however include the authority to make a proposal for the decision of the case on the oath of the opposite party. In *Mathura Prasad's case* (1), it was observed that the expression "any party to any judicial proceeding" in section 9 must be interpreted as including the counsel representing him in the case. For the purposes of section 9, if the offer to abide by an oath is made by a counsel on behalf of a party, it is not necessary that the counsel should be specifically authorised to make such an offer. It is enough if he has been duly authorised to conduct the case generally on behalf of his client. The action of such a counsel could also be upheld on the ground that he had a general authority to conduct the case. I therefore see no force in the objection of the plaintiff-respondents that the proposal for the decision of the case on the oath of Maman Ram defendant had not been made by a duly authorized person.

(3) It must, however, be said that this mode of decision of a case is rather unconventional, if not primitive. The sanctity of this mode of disposing of a case on any particular type of oath being taken depends on the strict religious beliefs and ideas of the parties. A slight variation in the proposed oath could create the feeling that the religious sanction behind the obligation to speak the truth has been weakened. It is, therefore, desirable in such cases to see that the terms and conditions of the said oath proposed by the one party and agreed to by the other are strictly complied with before the oath can be treated as conclusive proof of the matters stated under section 11 of the Indian Oaths Act. In the present case the oath was to be taken before the idol of Lord Krishna installed in the Dina Nath temple. It can be that the parties attached special sanctity to that

(3) A.I.R. 1961 Raj. 209.

(4) A.I.R. 1953 Mad. 708.

particular idol and the interior of the temple. The proposal further was that at the time of the taking of the oath the defendant was to keep in his hand the water of the holy river Ganges. The parties did not consider that the taking of an oath inside the Court would be sufficient and the Presiding Officer was supposed to accompany the parties to the temple. According to section 10 of the Indian Oaths Act, where the oath cannot be administered inside the Court room the Presiding Officer should issue a commission to some other person to go and administer the oath at the place suggested. This provision of law may appear intended to keep out the Presiding Officer from any disputes as to whether an oath proposed to be taken outside the Court room had actually been taken or not. Moreover, it was found that the temple authorities had closed up the institution on coming to know that an oath was going to be taken inside the temple in front of the *murti* of Lord Krishna. There is nothing on record to suggest that the plaintiffs had any control or power over the temple authorities or that the idea in closing up the temple was not to prevent its defilement or sacrilege. Temple is a juristic person which was no party to the proceedings and if the oath affected this institution or person it may seem to offend the provisions of section 8 of the Oaths Act. That being so, the oath was illegal and could not have been administered without the consent of the temple authorities. On similar reasons, oath was not allowed to be administered in *Pethayya Pillai's case* (4). In that case the party agreed to take an oath on the head of his son. This oath was found to be contrary to the provisions of section 8 of the Oaths Act and as such to have no binding force. Moreover, the entire object in proposing that special type of oath may appear to have been defeated when the temple was found to be closed and the oath was taken not inside the temple as proposed but outside. The different idol secured from some other temple had been substituted and this was not in accordance with the proposal made by the plaintiffs. It has also been alleged that ordinary water was substituted for the holy 'Ganga Jal' which alone could have cast that spell of reverence on the party taking the oath. If that party had the feeling in his mind that the substituted idol or the ordinary water did not impose on him the same obligation to speak the truth as the idol or water in which the parties had faith, then the entire religious sanction behind the oath may have been non-existent.

(4) The learned trial Judge had observed that the parties had agreed at the spot to these variations in the form of the oath. The

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original proposal for the oath and its acceptance had been formally reduced into writing. If there were any variations in the proposal and acceptance, it was desirable that these should have been recorded with the same formalities. The plaintiffs had denied at the earliest possible opportunity that they had agreed to the modified form of the oath. In any case the learned trial Judge appears to have acted in rather too great a haste. It was not desirable on his part to have gone personally to the temple to administer the oath. If he found that the special oath could not be administered strictly according to the terms and conditions of the offer, he should have postponed the administration of the oath or, in any case, to have passed proper orders on the plaintiffs' application before disposing of the case. Under the circumstances, the Additional District Judge, Jind may appear to have been fully justified in directing that the case may be decided on merits in due course.

(5) The learned counsel for the appellants, Shri Goyal, then argued that Maman Ram defendant may be given another opportunity to take the proposed oath. Such a course had been adopted in *Pudusseri Vadakkethil Vikraman alias Kunnikuttan Nair v. V. Krishnan Nair* (5) and *Bhaghavathi Vannan v. Veera Vannan* (6). This course would not however be possible in our case since the temple authorities appear to be averse to a sacrilege or defilement of their institution by the taking of such an oath. Moreover, this oath is against the provisions of section 8 of the Act as a third person is affected and he is not prepared to allow such an oath to be taken inside the holy premises.

(6) No real prejudice may appear to have been caused to the parties by the impugned order of remand as the case is going to be disposed of on merits.

(7) The appeal fails and is hereby dismissed. Parties are however left to bear their own costs. They are directed to appear before the Senior Sub-Judge, Jind, for further proceedings on April 2, 1970.

R. N. M.

(5) A.I.R. 1953 Mad. 396.

(6) A.I.R. 1935 Mad. 591.