

Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Mahant Bishambhar Das v. Thakur Drigbijai Singh and others; and of Mahant Bishambhar Das v. Thakur Drigbijai Singh and others, from the Court of the Judicial Commissioner of Oudh; delivered the 29th June 1905.

Present at the Hearing :

LORD MACNAGHTEN.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[Delivered by Sir Andrew Scoble.]

In the suits upon which these Appeals are founded, the Plaintiff (who is now the Appellant) sues as "disciple and successor of Mahant Gopal Das, trustee and manager of Sri Raghu Nathji, of the Raj Gopal temple at Ajodhia," in the District of Fyzabad, in the Province of Oudh, to recover from the Respondent Thakur Drigbijai Singh the amount due under two mortgages executed by him. The first of these mortgages is dated the 7th day of January 1890, and relates to a sum of Rs. 20,000, whereof Rs. 15,000 was borrowed from Gopal Das, and Rs. 5,000 from another person, whose interest the Plaintiff subsequently acquired. The second bears date the 10th of January 1890, and relates to a further sum of Rs. 4,000 borrowed from Gopal Das. In both documents the lender is described, in practically the same language, as "Mahant Gopal Das, trustee and manager of the Raj Gopal temple of Sri Raghu Nathji at Ajodhia, and Zamindar of Taluka Agar Buzurg." The Respondent Thakur Drigbijai

Singh, who is the first Defendant upon the Record, does not deny the execution of the mortgages, or his liability under them, but he disputes the Plaintiff's title to sue upon them. The Subordinate Judge passed decrees in both suits in favour of the Plaintiff, but they were reversed on Appeal by the Judicial Commissioners.

The facts are simple, and of a character not unusual in India. Gopal Das, as both Courts below have concurred in finding, was the Mahant of an order of Bairagis, or religious mendicants, and in that capacity was trustee and manager of certain temples at Ajodhia, dedicated to the worship of Vishnu, under the name of Sri Raghu Nathji. He appears to have been a man of considerable property, a Zemindar and a money lender, and had built one of these temples, called the Raj Gopal temple, at his own expense. The Plaintiff was one of his *chelas* or disciples, and, as a matter of fact, succeeded him as Mahant, but it is unnecessary for their Lordships to determine what rights of property he thereby acquired, as Gopal Das, before his death, executed a *tamlinama*, or deed of endowment, by which he not merely designated his successor in the Mahantship, but also provided for the management of certain property which he dedicated to the service of the temples, and the worship of the idol.

By this deed dated the 13th February 1889, Gopal Das, after reciting that he had retired from the world and was leading a life of celibacy, always engaged in the worship of Sri Raghu Nathji, and spending all he earned by labour in good and charitable works; and after setting out particulars of the temples under his management and trusteeship, went on to say—

“Now, it is my heartfelt and sincere desire
 “that after my death, the good and charitable
 “work be continued in future by means of my

“ property ; that all the property granted by Sri
 “ Raghu Nathji be after me employed, as usual,
 “ in the worship of Sri Raghu Nathji, and
 “ other charitable works . . . therefore, cancel-
 “ ling my former will . . . I do hereby execute
 “ a *tamliknama* ” (or deed of endowment) “ of my
 “ entire *Ilaka* . . . called Agar Buzurg, and
 “ valued at Rs. 74,000 . . . and which is my own
 “ self-acquired property, owned and occupied by
 “ me without the intervention of any other person,
 “ as follows :

“ 1. I make a *waqf* of all these villages in the
 “ name of Sri Raghu Nathji of the Raj Gopal
 “ temple situate at Ajodhia

“ 2. During my life, I shall myself manage
 “ and deal with all these villages as a trustee
 “ and manager, the income and profits being
 “ appropriated in the worship of Sri Raghu
 “ Nathji as detailed below.

“ 8. After my death one Bishambhar Das,
 “ my disciple, shall be the trustee and manager,
 “ provided that I may not have during my life-
 “ time made any change by nominating any
 “ other person. . . .”

Gopal Das died on the 20th October 1892,
 without having nominated any other trustee in
 the place of the Plaintiff. After some litigation,
 the Plaintiff was installed as his successor in the
 Mahantship, and on the 10th March 1893, on
 the application of the Plaintiff, the Agar Buzurg
 estate was recorded in the Revenue Register as
 the property of Sri Raghu Nathji, under the
 management and trusteeship of the Plaintiff “ in
 “ the same capacity in which the deceased (Gopal
 “ Das) was in possession.”

The learned Judicial Commissioners held, and
 their Lordships are disposed to agree with them,
 that “ there is nothing in the deed of endowment
 “ to indicate that Gopal Das created a trust in
 “ respect of any property except the Agar Buzurg

“ estate.” There is evidence that it was the intention of Gopal Das to dedicate all his property to the service of the deity, but it is not necessary to refer to this, as their Lordships consider that the evidence shows that the money lent to the first Defendant was part of the profits of the Agar Buzurg Estate, which had undoubtedly been so dedicated. Madari Lal and Bhim Sen both appear to be trustworthy witnesses, who had means of knowledge of these transactions, and whose testimony is not in any way impeached or contradicted. Their Lordships agree with the Subordinate Judge in holding that it has been proved “that the money advanced to the Defendant 1 belonged to Sri Thakurji, as “ receipts from the endowed *Ilaka*.” And as the Appellant was appointed by Gopal Das to succeed, and did in fact succeed, him as trustee and manager of the temple property under the deed of endowment above referred to, their Lordships consider that, as such trustee and manager, he is entitled to maintain these suits and to recover the moneys due by the Defendant Thakur Drigbijai Singh to the trust estate under the mortgages.

The Respondents were not represented before their Lordships at the hearing of these Appeals, but in the Subordinate Court it was one of the grounds of the first Defendant's Appeal that he ought not to have been charged with interest at the rate of 2 per cent. per month, and that this rate was penal and unconscionable. The Subordinate Judge held that this rate was chargeable in the event of possession not being given to the mortgagee as stipulated in the bond, and that the mortgagor not only failed to give possession, but on the 8th October 1891 wrote a letter to Gopal Das in which he said, “I shall not deliver possession “ to you, but will repay the money advanced by

“ you according to the terms of this deed.” In fact, the first Defendant appears to have been all along in possession of the mortgaged property, and in receipt of the profits and produce thereof, and their Lordships see no reason to interfere with the Subordinate Judge’s Decrees on this point.

Their Lordships will humbly advise His Majesty that the Appeals in both cases ought to be allowed, and that the Decrees of the Judicial Commissioners ought to be set aside with costs and the Decrees of the Subordinate Judge restored. The Respondent Thakur Drigbijai Singh must pay the costs of these Appeals, including the costs of the Appellant’s interlocutory Petition for addition of parties and consolidation.
