

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Madho Prasad v. Mahant Ramrattan Gir and another, from the High Court of Judicature at Fort William in Bengal; delivered the 16th June 1911.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.

LORD ATKINSON.

LORD ROBSON.

MR. AMEER ALI.

[DELIVERED BY LORD MACNAGHTEN.]

This is an Appeal against a decree of the Calcutta High Court reversing a decree of the Subordinate Judge of Chapra, and dismissing the Appellant's suit with costs.

The suit was brought to enforce a mortgage bond executed by the late Raghubans Gir, and purporting to charge certain property appertaining to the Bakulabar Math, of which one Ishwar Gir was formerly Mahant.

Mahant Ishwar Gir died on the 4th of October 1887. On his death disputes arose as to the succession to the Mahantship. The rival claimants were Raghubans Gir and the Respondent Ram Rattan Gir. Both had been grand Chelahs of Ishwar Gir. Raghubans produced a will in his favour which he succeeded in establishing. Ram Rattan alleged that Ishwar Gir had installed him in his place, and he managed to obtain and keep possession of the property of

the Math. Each had strenuous partisans. And the contest was waged with much spirit and a lavish expenditure of borrowed money.

On the 9th of September 1891 a compromise was effected by an ekrarnama of that date executed by both Ram Rattan Gir and Raghubans Gir. The ekrarnama stated that for the past three years disputes had been going on with regard to the gaddinashinship of Math Baku-lahar, that none of the matters had been set at rest, that there was no hope that even on the disposal of the cases for mutation of names in respect of the mouzahs appertaining to the Math the disputes would come to an end, and that there was great likelihood that in the meantime all the properties of the Math would be wasted and ruined. Then the instrument proceeds as follows :—

“ Therefore we two persons having waived our respective
 “ claims have come to the following settlement. During
 “ our lifetime the Gaddi of Mahant Ishwar Gir will remain
 “ vacant, and no person should sit in that place, and in his
 “ place his charan paduka (wooden sandals) should be
 “ placed and we should do pujah to the same; neither of
 “ the parties has, except the right to administer the pro-
 “ perty of the Math which are waqf properties, any
 “ proprietary title thereto, and the proceeds thereof should
 “ be jointly managed by us and applied for religious
 “ purposes and used for religious expenses in connection
 “ with the Asthal, for which they are designed, and what-
 “ ever may be left should be treated as belonging to the
 “ god Sri Mahadeoji Swami.”

Then there were provisions for the registration of the names of the two parties as managers of the property of the Math, for the indemnification of their respective partisans, and for the survivor becoming “Malik and possessor like unto the late Mahant Ishwar Gir.” It was also provided that if during the joint administration it should be necessary to raise a loan for the necessary expenses of the Math, or for the payment of old or of future debts, then they two

would jointly take the loan and repay the same from the profits of the properties of the Math, and the survivor should be bound to repay the loan which might have been raised jointly.

The mortgage which it was the object of this suit to enforce was dated the 8th of April 1891. It will be observed that it is not specifically mentioned in the ekramama, and no provision was made by the parties to that instrument for the payment of the money which it purported to secure.

Raghubans Gir died on the 13th of November 1891, and thereupon Ram Rattan Gir became the Mahant.

The plaint in this suit was not filed till the 14th of July 1902.

The Subordinate Judge made a decree in favour of the Plaintiff.

The High Court dismissed the suit on the ground that the Plaintiff had failed to show that the mortgage was binding on the properties of the Math in the hands of the present Mahant Ram Rattan Gir.

In their Lordships' opinion the decision of the High Court is right. It cannot be disputed that the original mortgagee now represented by the Plaintiff was aware that the property which the mortgage bond purported to charge was property belonging to the Math, and also aware that the mortgagor Raghubans Gir had not succeeded in establishing his title to the Mahantship. It is enough to say that it was for the Plaintiff to prove his title and he has not done so.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be dismissed.

The Appellant will pay the costs of the Appeal.

In the Privy Council.

MADHO PRASAD

v.

MAHANT RAMRATIAN GIR AND
ANOTHER.

DELIVERED BY LORD MACNAGHTEN.

LONDON:

PRINTED BY FYKE AND SPOTTSWOOD, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1911.