

Privy Council Appeal No. 75 of 1928.

Allahabad Appeal No. 28 of 1927.

Mahant Basdeva Nand Gir - - - - - *Appellant*

v.

Mahant Shantanand Gir - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 28TH JUNE, 1929.

Present at the Hearing :

LORD ATKIN.

SIR JOHN WALLIS.

SIR GEORGE LOWNDES.

SIR BINOD MITTER.

[*Delivered by* LORD ATKIN.]

This appeal comes before the Board on appeal from the High Court of Judicature of Allahabad. It is a suit which raised the question as to who was entitled to the Mahantship of the Math Baghambari at Allahabad, and the question arises in respect of transactions which commenced in the year 1917. At that time there is no question but that the Mahant properly appointed and duly installed was a man named Gyananand. In March, 1917, he purported to appoint as Mahant a man named Narayan, and on November 21st, 1917, by a formal deed Narayan purported to relinquish his office. He expressed his intention of retiring from the disciples and leading the life of an ordinary householder. As far as Gyananand is concerned and as far as the disciples of Narayan are concerned, the effect of that transaction was that Narayan disappeared and that Gyananand took his place again as Mahant.

In August of 1918, Gyananand, as Mahant, appointed as his successor the present plaintiff, one Shanta Nand, and no question is raised but that, if Gyananand was Mahant at that time, the appointment of Shanta Nand was an effective appointment.

But in October of 1918 Shanta Nand executed a document upon which this case appears to turn. There are two views possible in respect of it. One is that Shanta Nand expressed his intention of withdrawing from Allahabad for a period sufficient to enable him to improve his education, increase his religious knowledge, and become qualified to deal with the affairs of the Math, and that he appointed Gyananand to act as his deputy. The other view is that Shanta Nand abdicated entirely from the position of Mahant and either did or did not—it is not quite clear on the contention—appoint Gyananand to be his successor. But in any case, if he had entirely withdrawn and abdicated, it has not been suggested that he was reappointed, and therefore he would have no title to sue as Mahant and his action would come to an end.

In September of 1919, Gyananand, in the absence of Shanta Nand, who was still pursuing his studies abroad—that is to say, away from Allahabad, appointed the defendant Basdeva. But within a short time he seems to have been dissatisfied with Basdeva and, in pursuance of a power which he appears to have reserved for himself in the deed under which he appointed Basdeva, he cancelled the appointment and deposed Basdeva for misconduct. Nevertheless, Basdeva remained in possession, and it is against him that this action is brought.

Counsel for Basdeva, feeling that he would have a difficulty, in view of the argument which he had to adduce to destroy the plaintiff's title, in saying that Basdeva had got any better title, relies upon the weakness of the plaintiff's title rather than on the validity of any title of his own.

The two points that have been raised before the Board are these: It is said, in the first place, that Narayan had been appointed, validly appointed, Mahant by Gyananand, and it is said that thereupon Gyananand's functions to appoint anybody had ceased; he was *functus officio*. It is said that Narayan, by the deed which he executed of the 21st November, 1917, merely relinquished his office and relinquished his right to the property, but did not in fact make any effective appointment of a Mahant. The consequence would appear to be, if that were true, that from that date there never has been a properly-appointed Mahant or anybody, in fact, entitled to the property of the Math—a very serious position and one which would require very careful consideration before a Court arrived at that conclusion. But it is sufficient for their Lordships to say that that point does not appear to be open to the defendant, the appellant. It was not made in the Court below; there is no issue directed

in respect of it, and it seems obvious that that is a point that would have to be raised and very carefully considered, and would depend, or might depend, very largely upon questions of fact, upon the nature of the custom of the Math, and upon the conduct of the disciples Gyananand, Narayan, and everybody else after this supposed deed. There is no trace of its having been argued in the High Court of Allahabad either before the first Judges before whom the appeal came or before the learned Judges on the Letters Patent appeal, and it is not even raised in the appellant's case. Their Lordships have no doubt whatever that in those circumstances this point is not one which is open to the defendant to raise before them. But, in saying so, lest it should be supposed they entertained any doubt as to the Mahantship and its property after Narayan had executed this deed, their Lordships think it proper to say that, on their view of the deed, as at present advised, they are of opinion that the deed was effective to transfer to Gyananand the Mahantship and the property, and that Narayan in executing it meant, before he resigned, to transfer the spiritual rights and the temporal rights to Gyananand, and effectively did so. That is the proper construction of the deed.

Leaving this contention aside, it is clear that when Shanta Nand was appointed, Gyananand was the Mahant, and Shanta Nand was therefore validly appointed.

The question that remains, therefore, is the construction of the document of the 9th October, 1918. There have been different translations of that document; but taking the official translation as put before the Board, which has been slightly amended by one of the learned Judges (and everybody appears to be content to take the document with the amendments made by that learned Judge) it appears to their Lordships that the view taken of it by the learned Subordinate Judge and by the members of the High Court on the Letters Patent appeal is the correct view, and that the Chief Justice has expressed accurately the true reasons for arriving at the construction which he eventually adopted. On the evidence, the right view is that this document is a *bona fide* document. It expresses the real intentions of the person who executed it, Shanta Nand, the then Mahant. It recites that he is not conversant with the customs and had no insight into the management of the *ilagas* appertaining to the *gaddi*, and that there may be ill consequences to the Math in consequence. He says also that, on account of the affairs of the *gaddi*, he cannot prosecute his studies well. The translation goes on to say:—

“ It is also my intention that I should sever my connection with it and pass my days for some time outstation and prosecute my studies and acquire the qualifications of a *gaddi-nashin* Mahant. Therefore I return to my *guru* Swami Gayananand Giriji Maharaj all the powers which I had acquired under the document mentioned above, dated the 3rd of August, 1918 ” —that is, the document of appointment—“ for good management of the *gaddi* and the *ilagas* appertaining thereto. My *guru* Swami Gyananand
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Giriji shall have right (*haq*) to exercise at present and also in future all the powers which he used to exercise before as Mahant *gaddi-nashin*. I shall have no objection till I acquire full literary qualifications and the qualifications to make management and those of a *fuqir* (ascetic) as required for the *gaddi*."

It appears to their Lordships, when that document is read in light of the circumstances under which it was executed, that there can be no real doubt that the meaning to be put on the document is that adopted by the High Court. In other words, Shanta, having been appointed to this high office with all its advantages, spiritual and temporal, had no intention of laying down the office entirely. He was not retiring altogether with the expectation, which might be well founded or not, that if he were to return he might in the future be fortunate enough to be, by somebody who was Mahant at that time, reappointed Mahant. On the contrary, every phrase in it, if full effect be given to it, seems to indicate that he desired to remain Mahant, that he was absenting himself for a time—an occurrence which their Lordships understand is a common occurrence among Mahants—and that he was for the time appointing a delegate to act for him in his duties during his absence. That intention seems to be made plain by all the words, which seem to point to a mere temporary absence and to his intention to remain as Mahant.

For these reasons it appears to their Lordships that they have no reason to differ from the view taken by the Chief Justice and Mr. Justice Dalal, and that this appeal should be dismissed, and their Lordships will humbly advise His Majesty accordingly. The appellant must pay the costs of the appeal.

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In the Privy Council.

MAHANT BASDEVA NAND GIR

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MAHANT SHANTANAND GIR

DELIVERED BY LORD ATKIN.

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