Privy Council Appeal No. 69 *of* 1927.

Honasa Ramasa Lad Dhakad and others - - - - *Appellants*

v.

Kalyanchand Lalchand Patni Gujrathi and others - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 9TH JULY, 1929.

Present at the Hearing:

LORD BLANESBURGH.

LORD TOMLIN.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

At Shirpur, in the District of Akola, there has stood for five hundred years, and it may be for much longer, the Jain Temple of Antanksha Parasnath. The Jains are roughly ranged into two main divisions—the Digambaris, represented in this suit by the appellants, and the Swetambaris, represented by the respondents. One of the essential religious differences between the two is that Digambari idols are worshipped in a state of complete nudity, while the idols of the Swetambaris are revered draped and decorated with jewellery and ornaments. This deep-seated doctrinal or liturgical difference between these influential sections of the Jain community lies at the root of the dispute which has ripened into this portentous litigation.

In the temple at Shirpur there is an ancient idol, "Shri Antariksha Parnasnathy Maharaj," believed by the Swetambaris to be self-existent. The deity is held in deep veneration by them, also by the Digambaris. It has apparently been a subject of controversy time out of mind whether it is a Swetambari or a Digambari idol, and whether as originally existent it was covered at the

waist by a tie or band carved out of the stone or sand of which it is composed—as the Swetambaris assert—or whether, it being apparently agreed that the private parts are not visible to the worshipper, this resulted not from any tie or band or other physical covering but from the actual posture of the idol itself, as is the contention of the Digambaris. The Swetambaris had been used from time to time to plaster the idol's body as a result of which that which was alleged by them to be a self-existent waist band had in the Digambari view been produced and the immediate occasion of the suit was that on the 13th February, 1908, the defendants 1 to 7, with other Digambaris acting in the interests of that sect, chiselled, as the plaintiffs alleged, by means of iron instruments, the alleged self-existent tie and waistband from the body of the idol and removed the plaster and erased the lines on its hands and ears, outraging thereby the religious feelings of the Swetambaris. For all this the plaintiffs claimed Rs. 15,003 as damages. But the scope of the suit was not limited to that claim. It became the medium for vindicating Swetambari pretensions ranging far beyond its immediate occasion. By their plaint the plaintiffs asserted that the property in and right of management of the entire temple was and always had been exclusively in the Swetambaris. On that footing they claimed substantive relief against the defendants as representing the Digambaris. And the defendants were not slow to take up the challenge so thrown down, for although from time to time objecting to the regularity of the suit during its progress in India, they joined, without regret apparently, in this prolonged conflict, which, after nearly 23 years of litigation in India, has at length been brought before His Majesty in Council for final adjudication.

The Swetambari case as put forward by them can be shortly stated. Both the Temple of Shri Antanksha Parasnath at Shirpur and that idol therein belong to their sect of the Jain community. It had been the uninterrupted privilege of the sect from time immemorial to worship the idol with the part showing the male organ covered up by a waist-tie and band and jewels and pastings on the body. The Swetambaris alone had uninterruptedly managed the affairs of the temple and of this idol, the Digambaris having no part or lot therein, until 1905, when, with due consideration, as it is put, for the desire of the Digambaris to worship the sacred deity in their own way, some members of the Swetambari sect disinterestedly effected an arrangement whereby the Digambaris were permitted to worship the idol at specified times without ornaments and under certain rules which safeguarded the religious beliefs and the customs of the Swetambaris. But after two years' co-operation the Swetambari followers had become convinced that the continuance of the association with the Digambaris was detrimental to the religious sentiments, rights and management of the Swetambaris, and on the 13th February, 1908, matters came to a head, when the idol was mutilated by

defendants 1–7 in the manner already referred to. Since then the defendants had been obstructing the Swetambaris in placing upon the deity its accustomed ornaments and in restoring it to its self-existent form. And the plaintiffs claimed damages : injunctions restraining the defendants and other Digambari followers from raising any obstacle to the management of the Samsthan by the Swetambaris or the restoration of the image to its original form by them. Declarations were asked for, framed so as to obtain a decision from the Court that the Swetambari management of the temple and idol was absolute and uncontrolled ; that no worship of the deity except in its self-existent condition and covered as required by the religious principles of the Swetambaris should take place, and injunctions were sought to make these declarations effective at the instance of the Swetambari.

The answering case of the Digambaris may not inadequately be described as a complete repudiation of the claims of the Swetambaris, with the counter-assertion, by themselves, of rights over the temple and the idol as extensive and as absolute as those put forward by the Swetambaris. Their case is to be found in the written statement of defendant No. 8, which was adopted as their own by the other defendants.

In the course of that statement the charges of the plaintiffs with reference to the alleged mutilation of the idol by defendants are repudiated, and the views of the Digambaris with reference to the original form of the idol are put forward. With reference to these charges it may at once be stated that the plaintiffs' allegations as to the defendants' responsibility were not established at the trial, and their claim for damages, which was resisted by the defendants on technical as well as on substantial grounds, has failed and is no longer persisted in.

For the rest, the case presented by the written statement referred to was that the temple in question originally and absolutely belonged to the Digambari Jains, the Digambaris at Shirpur doing all the management, with the help and advice of other followers at Khamgaon and Karanja. The association between the two sects referred to in the plaint was stated to have been brought about by an invitation from the Digambaris to some respectable gentlemen from among the Swetambaris to join in a committee of management under an arrangement which continued until 1908, when the Treasurer and Vice-President of the Committee, both Swetambaris, with a view of withholding the entire wealth of this Digambari temple, had kept back the accounts which, when called upon, they had agreed to present ; in consequence of which conduct, as appears to be implied in the written statement, the association, itself originated by the Digambaris, came to an end at their instance. In confirmation of the assertion that the temple and the idol were Digambari, it was pointed out in the statement that the Deity in question was Digambari in its position, having been installed by a Jain Digambari King in a temple of Digambari style and construction,

and that, itself a principal idol, it was surrounded by Digambari idols worshipped only by Digambaris. The Swetambari had never worshipped this deity with the *chaksu* and *tika* and ornaments, and they had never been permitted by the Digambari so to do.

No conflict could be more complete or elaborate. Each of the two sects asserted an exclusive property in the temple and idol, with a right of management entirely uncontrolled. Joint control imposed by the one sect upon the other was a suggestion foreign to the cases of both. It was the common position as pleaded that the period of association, so vaguely referred to by both contestants, in no way impinged upon the absolute and exclusive rights claimed by each of them. The association as put forward on both sides was no more than a temporary arrangement that could at any time be brought to an end by those who by invitation had brought it into being. The vital importance of these identical pretensions will emerge in the sequel.

The cases so put forward were litigated at great length and over many years, first in the Court of the Additional District Judge of Akola, and on appeal before the learned Judicial Commissioner of the Central Provinces. At the trial, many witnesses were called on both sides and many exhibits produced; 600 of these were put in on the plaintiffs' side alone. In the result, on the cases so made, the findings of both Courts are concurrent and are expressed in judgments of great elaboration and meticulous care. Broadly, the findings are in favour of the Swetambaris. These had all along been in actual management of the temple and idol; their title and right of management had been exclusive, and they had been worshipping the image with jewels, ornaments and paintings, the male organ of the deity being covered with the waist-tie and band for a period which could not be definitely ascertained, but at any rate from 1847–48. The Digambaris had also been allowed to worship in their own way in the temple; but the witnesses of the Digambaris on the point of the ownership of the temple and its management were not believed.

As the result, however, of the evidence taken, the period of association, guardedly dealt with by both disputants, assumed a significance more decisive than either of them had been prepared to acknowledge. It was disclosed that, at the commencement of the present century, the management of the temple, although nominally in the hands of the Swetambaris, had been in fact usurped by the servants of the temple, known as Polkars, who for many years had exercised independent control and had become "perfect masters of the situation," as the learned Trial Judge expressed it. They set their employers at defiance, and, to consolidate their own position, tried to play off the Digambaris against the Swetambaris. They also maltreated and plundered the pilgrims. The two sects united to face a common enemy, and in order to deprive the Polkars of the powers they had usurped, the Digambaris, at the instance of the Swetambaris, agreed to co-operate,

with the result that in May, 1901, a joint committee of equal numbers of Swetambaris and Digambaris was formed to undertake the management of all affairs, the prime mover in the arrangement on behalf of the Swetambaris having apparently been Kalyanchand Lalchand, one of the present respondents.

This committee, acting on behalf of both sects, joined in instituting criminal proceedings against the Polkars, who, as a result, were reduced to the position of servants of both. It was clearly the view of the learned Trial Judge, not dissented from on appeal, that but for the aid of the Digambaris then rendered, and but for the monetary assistance then provided by them, the temple and all control over it would have been lost to both sects.

This made all the more significant the proceedings at a general meeting of the Jains in 1905, at which, the Joint Committee still being in managment, there was framed a scheme whereby the worship of the idol was to be performed by both sects in turns according to a regular time-table, which allocated precisely the same length of time for worship to each sect. The result, as held by both Courts, was that for the further period between the ejectment of the Polkars and the quarrel over the plastering of the idol in 1908, the two sects managed the temple through their committee, and worship was carried on by each sect in accordance with its own ceremonies and observances as prescribed by the time-table propounded in 1905. And, in the view of the learned Trial Judge, these arrangements set at rest all disputes as to worship and as to the management of the Samsthan so far as the peculiarities of their worship and devotion went, and they practically set a seal upon the recognised privileges of each party. Giving effect, therefore, to a plea of estoppel set up by the defendants, he held that the plaintiff Swetambaris could no longer deny the right of the Digambaris to the joint management of the temple and to the worship of the idol in their own way as both of these matters were left in the year 1905.

The learned Judge's decree is dated the 27th March, 1918. Naturally no declaration that the Swetambaris are entitled to any exclusive right of management is made, while the claims of the Swetambaris to exclusive privileges of worship are disallowed. The parties are to adhere to the time-table of 1905 and to obey the time regulations and procedure of worship in their own time as settled then. The collections of money and offerings are to be made by the two sects as hitherto from the time of the separation of their *gadis* and cash. The Swetambaris are to be entitled to worship the image with the ornaments *chaksu*, *tika* and the like, according to their forms of worship, but only in their own time : no injunction is to restrain the Digambaris from insisting upon their right to worship the image without ornaments, and in their own way and in their own time according to the time-table. Each party is therefore directed strictly to adhere to the time-table and the time limit imposed therein.

Finally, an injunction is granted against the defendants and all other Digambaris restraining them from interfering with the Swetambaris in the plastering of the idol so as to show the configuration on it of a waist-band and waist-tie and certain marks on the ears and palms, but the order directs that " these marks shall not be so bold and prominent so as to be offensive in any way, and that they shall be shown with as light a touch of plaster and as faintly as possible."

Both parties were dissatisfied, and the surviving plaintiff Swetambaris by notice of appeal and the defendant Digambaris by cross-objections to the decree, set up again before the Court of the Judicial Commissioner, Central Provinces, their respective cases as originally pleaded. Before that Court, however, as stated in its judgment, the Swetambari appellants no longer contested the right of the Digambaris, as declared by the decree of the Trial Judge, to worship in their own way and in their own time, according to the time-table, to which must be added the statement of their Counsel before the Board that they now make no claim to the collections of money and offerings made by worshippers during the periods of worship assigned to the Digambaris. The cross-objections of the Digambaris having failed to impress the Court, the issue there, at the end of the day, resolved itself into the question whether the Subordinate Judge was wrong in refusing to grant to the Swetambaris a declaration of their exclusive right of management, Counsel for the Digambaris finally contending only for the retention of the joint management as decreed by the Subordinate Judge. In the result the Appellate Court declared and held that the Swetambaris were, on the facts found, entitled to the exclusive management of the temple, and that the plea of estoppel set up by the written statement had no reference to that position.

The conclusions of the Court are embodied in its decree of the 1st October, 1923. It is from that decree that the present appeal is brought.

On full consideration of the whole case their Lordships have reached the conclusion that the decree is right.

The plea of estoppel contained in the written statement is perfectly general in its terms, and the defendants, when asked, refused to give any particulars of its meaning. In the absence of such particulars it seems to their Lordships impossible for the appellants to contend with success that it was thereby intended to set up against the plaintiffs' claim to exclusive management an estoppel which would at once be fatal to the same claim then being substantively put forward by themselves.

But the question is not only one of form or of pleading. It is also one of substance. The appellants' case forcibly presented to the Board was that the facts found by the learned Trial Judge imported an agreement between the two sects as definite and permanent in the matter of joint management, as the time-table in the matter of worship was now admitted to be.

No such agreement, however, is pleaded even in the alternative. No issue with regard to it was directed. No such issue could have been directed as the existence of such an agreement was entirely contary to the only pleaded case either of the plaintiffs or of the defendants. Moreover the evidence taken was not pointed to any such issue, and, as it stands, is, in all its prolixity on this issue, incomplete. In saying this, their Lordships have specially in mind the absence of Kalyanchand from the witness-box—an absence only justifiable by the fact that this matter on which his evidence must have been so direct was not in issue at the trial. Lastly, the concession of the time-table now made by the respondents does not, as it seems to their Lordships, carry with it any admission of a right on the part of the Digambaris to participate in the management. No one has, in fact, suggested that the time-table without management is valueless. On the contrary, the evidence shows that this has been the prevailing order since the final rupture between the parties took place in 1908.

Their Lordships need hardly affirm that what they may call the Digambari right to the time-table as now declared, with all its implications, is in no sense a matter of favour. It is a matter of right capable of being enforced in execution. The Swetambaris will understand that any interference with the full enjoyment of that right by the Digambaris will bring them into conflict with the Courts. Nor will they forget that, by the admission of their learned Counsel before the Board, they make no claim to the collections of money and offerings made by worshippers during the Digambari periods of worship. With these matters kept fully in mind by the Swetambaris there seems to their Lordships to be no reason why under this arrangement the relations between the two sects should not in this matter be in the future entirely harmonious.

In the result, therefore, the appeal fails and their Lordships will humbly advise His Majesty that it be dismissed with costs.

Their Lordships will further humbly advise His Majesty that a petition lodged by the appellants for a stay of execution of the decree of the Judicial Commissioner be also dismissed with costs.

In the Privy Council.

HONASA RAMASA LAD DHAKAD AND OTHERS

v.

KALYANCHAND LALCHAND PATNI GUJRATHI AND OTHERS

DELIVERED BY LORD BLANESBURGH.

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