

Privy Council Appeal No. 63 of 1929.

Allahabad Appeal No. 30 of 1927.

Mahant Bhagwanpuri - - - - - *Appellant*

The Secretary of State for India in Council and others - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 14TH FEBRUARY, 1930.

Present at the Hearing :

LORD ATKIN.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

SIR BINOD MITTER.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal by Mahant Bhagwanpuri, who was one of eight defendants in a suit instituted by the Secretary of State for India in Council on the 23rd of September, 1921, against a decree of the High Court at Allahabad, dated the 3rd of February, 1927, which affirmed a decree of the Subordinate Judge of Saharanpur, dated the 31st of January, 1923.

The Secretary of State appeared as respondent to the appeal. The other seven defendants were added as respondents, but they were not represented at the hearing before the Board.

The suit was brought to recover possession of certain land specified in the plaint which is situate at Hardwar, within the limits of the Municipal Board of the Hardwar Union.

The main question in dispute is whether the said land was granted by the Crown to an institution or association called the "Juna Akhara" by a *sanad* dated the 10th of January, 1854.

Both the Courts in India have held that the said land was not so granted. There is no necessity to enquire into the history relating to the land in suit prior to 1854, for it was agreed at the hearing of the appeal that the above-mentioned main question depends upon the construction of the said *sanad* of the 10th of January, 1854. The terms of the *sanad* are as follows :—

“ *Sanad* in favour of the Gosains of Juna Akhara, Hardwar.

“ Pursuant to paragraph 4 of G. O. No. 907 dated the 6th of March, 1848, addressed to the Secretary Board of Revenue, 1,000 yards out of 10,455 cubic yards of land, named of Juna Akhara, was as per enquiry made in 1848, found in your possession. Subsequently the objections were heard and a report was made in this case. In reply to that report the Commissioner sent his letter, No. 30, dated 6th December, '53, along with other letters of the Board and the Government. It is written in it that this land is only one plot, that it measures 10,455 cubic yards, and that it is called by the name of Juna Akhara and the sitting place of the *Faqirs* who come here at the time of the *kumbh* fair. This plot has been relinquished in favour of the *jogis* in 1315 F (?)

“ Therefore, in accordance with paragraph 7 of the Commissioner's letter to the Sudder Board of Revenue, No. 197, dated 27th of May, '53(?) which has been sanctioned by the Government—this *sanad* in respect of 10,455 cubic yards, is given in favour of the Juna Akhara. The object of this *sanad* is that the Government has no more any claim in respect of the land and the Government has granted this land for the sitting place of the *Faqirs*. But without the sanction of the Government the *Goshains* will have no power to transfer it. No. of plot 175.

“ *Name of house*.—Mandir Bhairosi, Mandir Mahadevi and Charan Badgats (?) situate at the Juna Akhara.

“ *East—West*.—41 yards.

“ *North—South*.—255 yards.

“ *Area in cubic yards*.—10,455.

“ *Approximate cost*

“ *Eastern Boundary*.—Bed of the river.

“ *Western Boundary*.—Nuzul lands.

“ *Southern Boundary*.—Mango and Gular trees.

“ *Northern Boundary*.—Bed of the river, etc.

“ Dated the 10th of January, 1854.

The word “ cubic ” is a mistake for “ square ” ; this mistake is in itself obvious, but a reference to the list prepared by the Collector in 1848 shows that the plot mentioned in the *sanad*, viz., plot 175, was 10,455 square yards.

It was admitted by the learned counsel for the appellant that the “ Juna Akhara ” is in possession of land measuring 10,455 square yards, and that the land claimed by the Secretary of State in this suit is no part of the said plot of 10,455 square yards, but is land lying outside the said plot.

It is to be noted that the above-mentioned terms of the *sanad* have been translated from the original.

In such translation the eastern boundary of the land granted thereby is stated to be “ bed of the river,” and the northern boundary “ bed of the river, etc.” The learned Judges of the High Court said that “ much of the misunderstanding in this

case was due to mistranslation of the boundaries given in the *sanad*." and they stated what, in their opinion, was the true translation as follows :—

" East—Arazi Zer Dhank (land on the lower side of the pit).

" West—Ditch and Nazul land.

" South—Up to the Mango and Gular trees.

" North—Dhank Khodana (a mound and pit)."

The learned counsel who appeared for the appellant did not dispute the correctness of the translation adopted by the High Court.

Consequently the description of the boundaries given by the learned Judges must be accepted by this Board.

That being so, the question now under consideration really becomes unarguable, for on reference to the plan which was before the High Court and this Board it is apparent that the boundaries given in the translation adopted by the High Court include plot 175 only, which is not in dispute in this suit, and do not include the land which is in dispute.

The title given by the *sanad*, therefore, is limited to plot 175 and the 10,455 square yards therein mentioned, and does not extend to the lands claimed by the Secretary of State in this suit.

Inasmuch as the appellant's appeal in relation to this part of the case was based on the construction of the *sanad*, their Lordships are of opinion that the decision of the High Court in respect thereof was correct.

A further point was taken by the learned counsel for the appellant. It is of a technical nature and has no relation to the merits of the case. It was argued that the defendants were not the proper parties to the suit and that no leave was asked for or obtained from the Court as required under Order I, Rule 8, of the Civil Procedure Code, 1908.

It appears that the defendants were elected managers by the *akhara* at the *kumbh* in Hardwar in 1915, and on the 9th of May, 1915, a power of attorney was given by them to four persons, of whom Hardayalgirji was one, to act as their general attorneys, and among other matters to file suits, to set up a defence and affix their signature to a written statement, and it was further provided that all such proceedings taken by the said *muktars* should be admitted and accepted as having been done by the defendants personally in the capacity of *mahants*.

Hardayalgirji gave evidence for the defendants to the effect that there was a *kumbh* every three years at different places, Hardwar, Prayagraj, Nasik and Ujjain, and that different *mahants* were elected at each successive *kumbh* at the four places to officiate for three years. He, however, made certain material admissions in cross-examination, and the result was that there were concurrent findings of fact by both the Courts in India to the effect that the power of attorney had not been with-

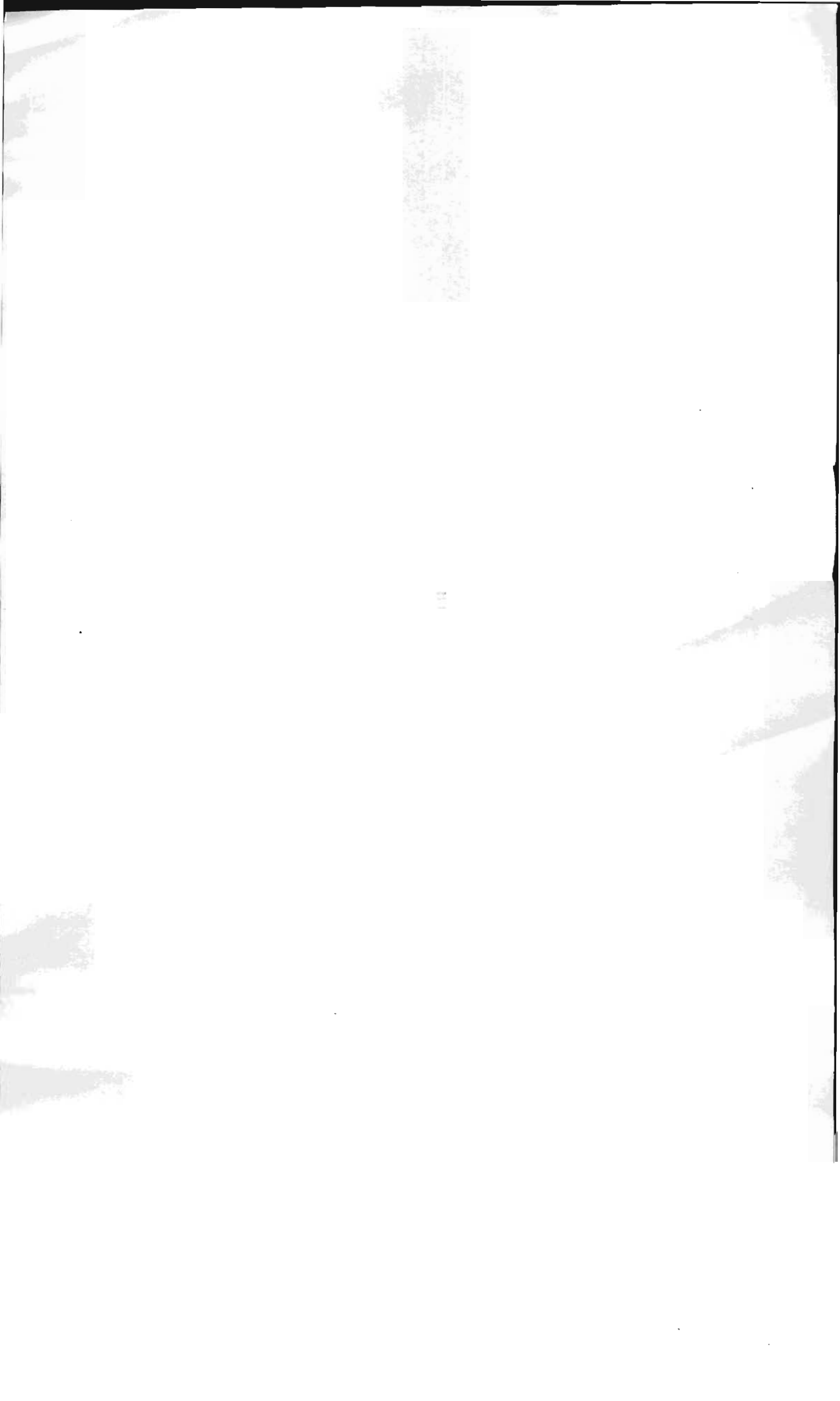
drawn, and that Hardyalgirji was actually managing the *akhara* properties by virtue of the said power of attorney executed by the defendants and was looking after the *akhara* litigation, and that the defendants were still managers of the Hardwar properties of the *akhara*.

Their Lordships are of opinion that there was ample evidence to justify the above-mentioned concurrent findings of the Courts in India, and they see no ground for disturbing such findings. Their Lordships agree with the finding of the High Court that the proprietary title to the lands in suit is in the plaintiff, and they are of opinion that the defendants, through their agents, were in possession of the said lands at the time when the suit was instituted, and that they were rightly joined as parties to the suit.

Order I, Rule 8, contains provisions which enable the Court to grant the permission therein mentioned in a case which comes within the scope of the rule; but, having regard to the facts of this case, their Lordships are of opinion that it was not necessary for the plaintiff to have recourse to the said rule.

The decree of the Trial Court was that the plaintiff be, on dispossession of the defendants, put in possession of the property in dispute, and that the map attached to the plaint should form part of the decree.

This was confirmed by the High Court. Their Lordships are of opinion that the decree of the High Court was correct, and that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.



In the Privy Council.

MAHANT BHAGWANPURI

2.

THE SECRETARY OF STATE FOR INDIA IN
COUNCIL AND OTHERS.

DELIVERED BY SIR LANCELOT SANDERSON.

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