

Privy Council Appeal No. 74 of 1933.

Allahabad Appeal No. 31 of 1932.

Mahant Bikrama Das - - - - - *Appellant*

v.

Mahant Gomti Das and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 10TH OCTOBER, 1935.

Present at the Hearing:

LORD THANKERTON.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal by Mahant Bikrama Das, against a decree of the High Court of Judicature at Allahabad, dated the 18th of March, 1932, which modified a decree of the Subordinate Judge of Basti, dated the 21st of March, 1928.

The suit was brought by Mahant Gomti Das (hereinafter called the plaintiff) who is the first respondent in this appeal, against Mahant Bharat Das (hereinafter called the first defendant), who is the second respondent to this appeal, and Mahant Bikrama Das, the appellant in this appeal (hereinafter referred to as the second defendant). The relief asked for in the suit was as follows:—

“(a) A decree may be passed by the Court declaring that the agreement dated the 10th of July, 1926, executed by defendant No. 1 in respect of the property in question, specified below, is null and void as against the plaintiff and the ‘Asthan’ of Amaulipur aforesaid.

“(b) It may be declared that the plaintiff as ‘mahanth’ of ‘Asthan’ of Amaulipur is in possession and occupation of the property in question, specified below and that the defendants have nothing to do with it.”

Particulars of the property were contained in two lists attached to the plaint.

The dispute relates to an “asthan” at Amaulipur, and it was agreed by the parties, that one, Ganpat Das, was the mahant of that “asthan”, that he died in 1920 and that he was succeeded by the first defendant as mahant.

On the 11th May, 1925, the first defendant executed a power of attorney in favour of the plaintiff, who was

described in the said document as "my co-disciple". The plaintiff was thereby appointed the "general-attorney" of the first defendant, and was authorised to exercise certain special powers therein set out relating, among other things, to proceedings in court, agreements as to rent to be realised, registered letters and money orders.

On the 10th of July, 1926, the first defendant executed a document, which was called "an agreement", whereby he purported to appoint the second defendant the mahant of the temple in Amaulipur together with the property specified in the said document.

It was further provided thereby that the second defendant, as representative of the first defendant, was to be the owner and manager of the entire property appertaining to the said temple, that the second defendant had from that date acquired the rights which the first defendant had in the temple and muafi property specified therein, and that the second defendant should get mutation of names effected in his favour.

There was a provision at the end of the agreement that if there were misconduct of any sort, negligence or mismanagement, the first defendant and other disciples would be authorised to appoint another mahant.

The first defendant did not file any written statement or contest the suit, though it appears from the decrees that he was represented at the trial and on the appeal to the High Court. He was not represented in this appeal.

It was alleged in the plaint that in 'Asthan' Amaulipur the rule of succession and appointment of a mahanth is that if a mahanth becomes incompetent or immoral or if he dies, then his 'chela' or, if there is no 'chela', his 'gurbhai' (co-disciple) is appointed a 'mahanth', and the 'mahal mahanth' and 'sadh' of the neighbouring places and the public accept him to be the 'mahant' in a public meeting.

It was then alleged that the first defendant was foolish and of weak intellect and that the plaintiff at the request of the first defendant and the public went into possession of the entire property as manager and the first defendant executed the power of attorney of the 11th May, 1925, hereinbefore referred to.

It was further alleged in the plaint that having seen this condition of defendant No. 1 the "Sadh", "Vairagi Mahanth", and the public of that neighbourhood held a meeting and thereby appointed the plaintiff, who is the "gurbhai" of defendant No. 1, and has, after him, a right, to succeed as a "mahanth", as the "mahanth" of Asthan Amaulipur and removed defendant No. 1 from Mahanthship.

The following issues were raised at the trial:—

"1. Whether the plaintiff is the 'Chela' of Mahanth Ganpat Das or is he a 'Girhast' Brahmin?

"2. Has he any right to sue?

" 3. Whether the plaintiff is or is not in possession of the property in dispute and is the claim barred by section 42 of the Specific Relief Act?

" 4. Whether the claim is not maintainable without the sanction of the Advocate General and does section 92 C.P.C. bar this suit?

" 5. Whether a Mahanth can be appointed to Amaulipur Asthan by a particular section of the Hanumangarhi ' Sadhu ' of Ajodhya and whether the defendant No. 2 has been so appointed or whether a general body of ' Sadhus ' can appoint a Mahanth to this Asthan and whether the plaintiff has been appointed a Mahanth in this fashion?

" 6. Whether only a ' Bairagi Nihang Sadhu ' can be appointed a Mahanth of Amaulipur Asthan and whether the plaintiff has been validly appointed a Mahanth of this Asthan?

" 7. Whether the defendant No. 1 had a right to execute the ' eqrarnama ', dated 10th July, 1926, and is it binding upon the plaintiff? "

The learned Subordinate Judge held (1) that the plaintiff is the Chela of Mahant Ganpat Das, that he is a Brahmin, but not a Girhast, and that he is a " Nihang Bairagi ". (2) That anyone interested in the welfare of the Asthan had a right to sue, and the plaintiff therefore had a right to sue. (3) That the plaintiff was in possession and that the claim was not barred by section 42 of the Specific Relief Act. (4) That section 92 of the Civil Procedure Code did not bar the suit. (5 and 6) That the custom in Amaulipur " Asthan " (which he held to be a " Maurasi " Math) was that the " Chela " succeeds first, and failing him the " Gurubhai ", and failing him a man of the " Khandan ". He held that the first defendant had executed a deed of relinquishment in favour of the second defendant of his office and property, viz. the document of 10th July, 1926, that this was tantamount to an abdication of his office, that there was thus a vacancy, and that the plaintiff was entitled to succeed and had succeeded to the office. (7) That the property was " wakf " and that the first defendant had no power to transfer either the " math " property or his office: consequently that the deed of the 10th of July, 1926, was void and not binding upon the plaintiff or the Amaulipur " Asthan " and that it conferred no title on the second defendant. He held further that the first defendant subsequently revoked the said deed which he had a right to do.

The learned Judge in view of these findings made a decree in accordance with the reliefs prayed for in paragraphs (a) and (b) of the plaint hereinbefore referred to.

The second defendant appealed to the High Court of Judicature at Allahabad.

The first defendant filed a cross-objection praying that the suit should be dismissed with costs.

The plaintiff also filed a cross-objection which referred solely to an item of the costs.

The High Court made a decree dated the 18th of March, 1932, dismissing both the cross-objections with costs and

allowing the appeal in part: It was thereby ordered that the decree of the Subordinate Judge should be modified, that the said decree declaring that the plaintiff was in the position of Mahant of the Amaulipur Asthan be set aside and that the said decree declaring that the agreement of the 10th of July, 1926, was null and void as against the Asthan of Amaulipur—that is that by the deed aforesaid no title passed to the second defendant—should stand. It is to be noted that the decree of the Subordinate Judge declared that the said deed was null and void as against both the plaintiff and the Asthan, but the decree of the High Court declared the said deed to be null and void as against the Asthan only.

The High Court directed that the parties should bear their own costs in the Court below, but that the second defendant should have the costs of the appeal to the High Court.

The learned Judges of the High Court arrived at several material findings.

They were of opinion that neither the plaintiff nor the second defendant had been able to prove the case put forward by each, namely, that he was the mahant of Amaulipur. In view of a contention, which was raised on behalf of the plaintiff before the Board that the plaintiff was entitled to maintain the suit because he was a chela of the Mahant Ganpat Das, it is worthy of note that the learned Judges of the High Court state that the case, upon which the plaintiff relied in that Court, was that he was the Mahant of Amaulipur.

The learned Judges further stated that the plaintiff sought to prove that on the 30th of August, 1926, he was installed as a "mahant", and that that statement could not possibly be accepted.

They held that it was not necessary for them to decide whether the Math was a Maurusi Math or a panchaiti Math or whether it was controlled by any particular sect, inasmuch as neither the plaintiff nor the second defendant had been able to prove that the first defendant was not the Mahant of the Amaulipur "Asthan" at the date of the suit. A material passage of the judgment is as follows:—

"The fact that Bharat Das is still living cannot be ignored. It is clear that the property in suit is property attached to the 'asthan' and when we find that the 'mahant', who was duly installed in 1920 after the death of Ganpat Das the last 'mahant', is still living and has not abandoned the 'asthan', neither party can claim the Mahantship. The position of the plaintiff seems to us to be worse, because he was the general-attorney of Bharat Das and his possession of the property cannot be treated as independent possession, or possession adverse to Bharat Das. The finding of the learned Subordinate Judge that the result of the local inspection was that Gomti Das was in possession, does not seem to us strange in view of the fact that Gomti Das was the general-attorney of Bharat Das and he must be held to be in possession of the property in his capacity of general-attorney of Bharat Das."

It is against the above-mentioned decree that the second defendant has appealed to His Majesty in Council.

In view of the above-mentioned findings of the High Court and relying on the fact that the High Court had set aside that part of the Subordinate Judge's decree which declared that the plaintiff was in the position of the Mahant of the Amaulipur Asthan, it was argued on behalf of the second defendant that the learned Judges should have dismissed the suit altogether, and should not have made the declaration contained in the High Court's decree.

In the first place it is to be noted that there is no appeal by the plaintiff against the decree of the High Court, and he must be taken to have accepted the finding that he is not the Mahant.

Indeed it was not seriously argued on behalf of the plaintiff before the Board that he was the Mahant at the date of the suit, and their Lordships are in agreement with the learned Judges of the High Court in this respect, and are of opinion that the plaintiff failed to establish the case on which he relied, viz. that he was the Mahant of Amaulipur at the date of the suit.

Their Lordships further are of opinion that the plaintiff is not entitled to maintain the suit for the declaration as to the deed of the 10th July, 1926, by reason of the fact that he was in possession of the property at the date of the suit. As the learned Judges of the High Court have pointed out, the plaintiff was in possession in the capacity of general-attorney of the first defendant, and even according to the plaintiff's case as set out in the plaint it was at the request of the first defendant that he went into possession of the property in suit as manager of the entire property, on account of his being a chela of Ganpat Das and that "accordingly" the first defendant executed a power of attorney in favour "of the plaintiff on the 11th of May, 1925".

Their Lordships therefore agree with the conclusion of the High Court that the plaintiff's possession of the property cannot be treated as independent possession, or as possession adverse to the first defendant.

There remains for consideration the contention urged on behalf of the plaintiff before the Board, to which reference has already been made, viz. : that the plaintiff is a chela of the Mahant Ganpat Das, and is next in succession on the death of the first defendant, and therefore that the plaintiff is entitled to maintain the suit for the declaration that the deed of the 10th of July, 1926, is null and void as against the "Asthan" of Amaulipur.

It is true that the Subordinate Judge held that the "Asthan" was a "Maurusi Math" and that the "chela" succeeds first, but there was no decision on this point in the High Court, as the learned Judges held it to be unnecessary: for the reason that they held that the first defendant was still alive and that he had not abandoned the "asthan".

It is therefore clear that it was not the plaintiff's case in the High Court that he was entitled to sue in his capacity of "chela", otherwise it would have been necessary for the High Court to decide the above-mentioned questions, which they expressly left undecided.

Further, it is obvious from the statement in the plaint that the cause of action accrued on the 10th of July, 1926, when the agreement of that date was executed and also on subsequent dates when the plaintiff was appointed a "Mahant" and the first defendant was removed from the "Asthan" and from the above-mentioned declaration for which he asked, that the case on which the plaintiff relied was that he had been appointed the Mahant of the "Asthan" at a meeting of the Sadhus, Vairagi Mahants and the public of the neighbourhood, and that he was entitled to a declaration that he was in possession of the property in question as Mahant of the "Asthan" of Amaulipur and that the defendants had nothing to do with it.

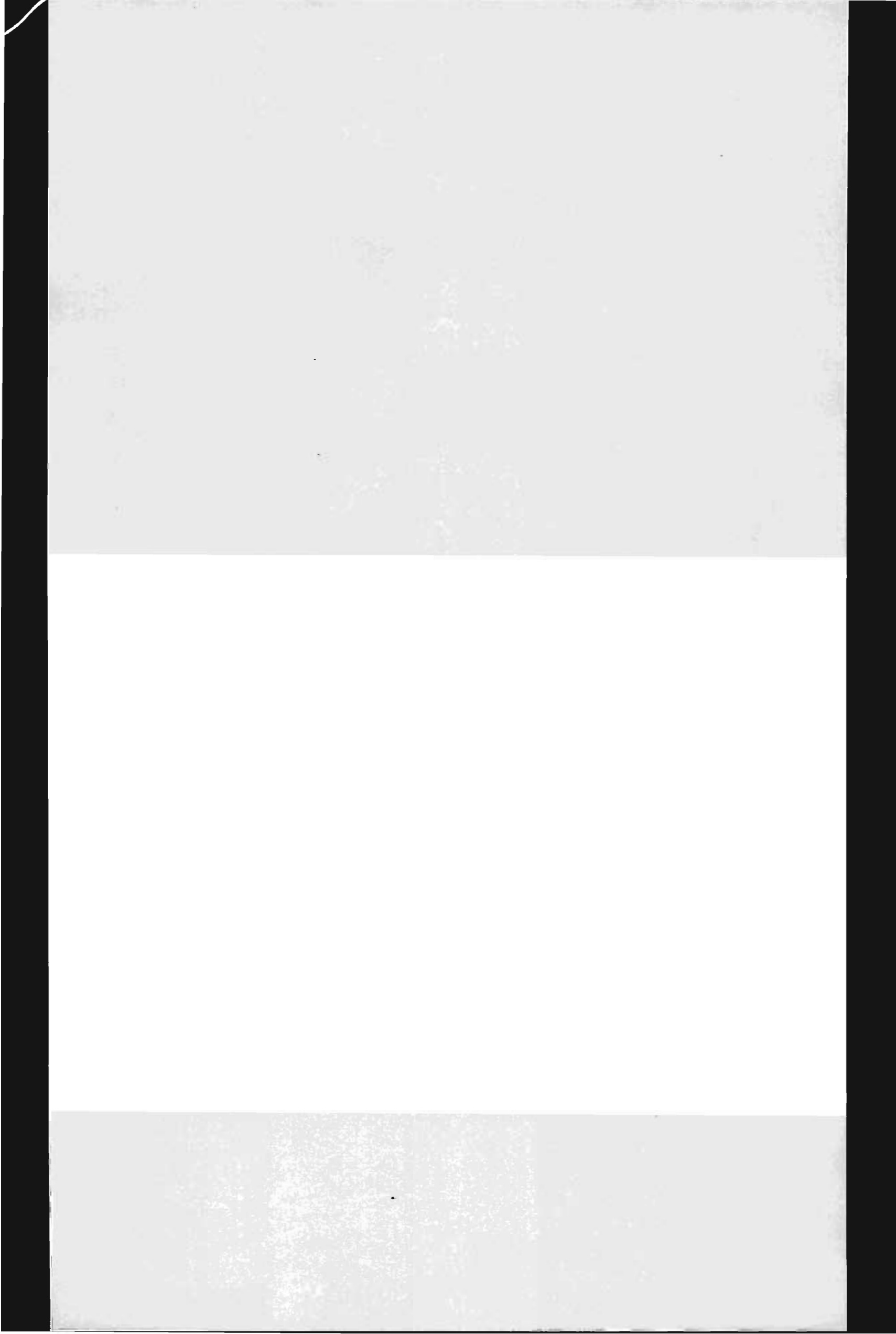
That was the case set up by the plaintiff in his plaint, the case on which he went to trial, the case which the High Court decided was not proved, a decision against which the plaintiff has not appealed and with which their Lordships agree.

The result is that the plaintiff failed to establish the only case on which he relied as entitling him to the above-named declaration, that the agreement of the 10th of July, 1926, was null and void as against him and the "Asthan", and in that event, in their Lordships' opinion, the second defendant is entitled to a decree that the suit be dismissed.

Their Lordships therefore are of opinion that the appeal should be allowed, and that the decree of the Subordinate Judge dated the 21st of March, 1928, and the decree of the High Court dated the 18th of March, 1932, should be set aside except the order of the High Court in the said decree as to the cross-objections and the costs in the Courts in India, which should stand, and that the suit should be dismissed.

The plaintiff must pay the second defendant his costs of this appeal.

Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

MAHANT BIKRAMA DAS

v.

MAHANT GOMTI DAS AND ANOTHER.

DELIVERED BY SIR LANCELOT SANDERSON.

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