Privy Council Appeal No. 42 *of* 1936

Oudh Appeal No. 11 *of* 1934

Mahant Har Kishen Das - - - - - *Appellant*

v.

Satgur Prasad *alias* Hari Saran Das - - - - *Respondent*

Mahant Har Kishen Das - - - - - *Appellant*

v.

Satgur Prasad *alias* Hari Saran Das - - - - *Respondent*

Consolidated Appeals

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST DECEMBER, 1937.

Present at the Hearing:

LORD RUSSELL OF KILLOWEN.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

This consolidated appeal arises out of execution proceedings in the Court of the Subordinate Judge at Bahraich to enforce a certain provision in a decree made on 28th November, 1927, by a Judge of the Chief Court of Oudh in its original jurisdiction. This decree had been modified as a result of appeals to that Court in its appellate jurisdiction and to His Majesty in Council. The decree of the appellate bench is dated 2nd May, 1928, and the judgment of the Board was delivered on 18th January, 1932 [L.R. 59 I.A. 147]. The suit in which the decree was passed was brought on 21st February, 1927, by Mahant Har Narain Das (in this judgment referred to as Narain Das) against the present respondent, whom their Lordships will refer to as Satgur Prasad, and two other persons. The plaintiff's case in outline, was as follows:—

For many years there had existed in the City of Lucknow a *sangat* or Udasi shrine to the mahant of which valuable taluqdari property and certain other property moveable and immoveable belonged. This institution had been founded by one Baba Hasara in the eighteenth century or earlier; and at the annexation of Oudh the taluqa had been granted to the then mahant (Gur Narain Das) by a primogeniture sanad and entered in Lists 1 and 2 prepared

under section 8 of Act I of 1869 (The Oudh Estates Act). The other immoveable properties had been acquired by the succeeding mahant (Har Charan Das) who died in 1910 and was succeeded as mahant by one Sant Rain Das. When Sant Rain Das died on 8th January, 1922, the plaintiff succeeded him as *gurubhai*, i.e., as having been with him a *chela* of his *guru* Har Charan Das; but claims to succeed to the property were made by Sheoraj Kuer, mother of Sant Rain Das, and also by the respondent Satgur Prasad (then aged about 16 years). The claim made for the latter was that he had been *chela* to Sant Rain Das and was entitled therefore to be mahant. This dispute was compromised by an agreement dated 20th January, 1922, which in substance provided that the plaintiff should hold the properties for life, and Satgur Prasad should be remainder-man. In 1924, however, the respondent Satgur Prasad induced the plaintiff to enter into an agreement dated 25th November, 1924, whereby the whole of the properties were released to the respondent on the terms (inter alia) that the plaintiff would receive a monthly allowance of Rs.1,000. Under this agreement the respondent, in addition to the immoveables, obtained possession of the cash at the banks and estate treasuries together with the proceeds of War Bonds and other effects. The amount of money so obtained by the respondent was specified (in schedule C of the plaint) as amounting to over two lacs of rupees. [For the purposes of the present case two items fall to be deducted and the amount may be taken as Rs.1,83,000.]

The plaint alleged that by the agreement of 20th January, 1922, the respondent was to succeed the plaintiff as mahant and was to become and behave himself as a Udasi and to appoint a successor of that sect, but that the respondent had violated these obligations and had failed to pay the plaintiff's monthly allowance. Also that the plaintiff's consent to the agreement of 25th November, 1924, had been obtained by the fraud and undue influence of the respondent and his co-defendants.

By the decree (28th November, 1927) of the trial judge (Pullan J.) the deed of 25th November, 1924, was set aside, and the plaintiff was held entitled to possession of the immoveable properties mentioned in schedules A and B to the plaint as well as of the properties in schedule C and to mesne profits (to be subsequently ascertained). A declaration was also made that the respondent was not entitled to any benefit under the agreement of 20th January, 1922; but this declaration was set aside by the appellate bench. The appellate decree (2nd May, 1928) affirmed the relief given as to the agreement of 25th November, 1924, and the order for possession of the properties in schedules A, B and C of the plaint, but determined that mesne profits were to be calculated as from the date of the suit (21st February, 1927) and not from the date of the agreement. The question as to the date from which mesne profits should be calculated was the only point on which the appellate decree was modified by His Majesty in Council in 1932.

Meanwhile the plaintiff having obtained possession of the immoveable properties, applied on 6th January, 1931, to the Subordinate Judge of Bahraich for execution of that part of his decree which was expressed (incorrectly) as a decree for possession of the properties in schedule C to the plaint, but which was really a simple money decree for the value thereof. As already mentioned this was limited to the figure of Rs.1,83,000. The Court was asked to attach and sell the interest of the respondent under the agreement of 20th January, 1922, in certain villages in the Ranipur Estate and neighbourhood within the district of Bahraich. The respondent filed objections which the Court dismissed on 26th May, 1933. He thereupon appealed to the Chief Court on the 25th August, 1933 [Execution Appeal No. 52 of 1933] and his appeal was pending when on 26th December, 1933, Narain Das the decree holder died.

The controversy in the present case is entirely concerned with the effect of the death of Narain Das upon the respondent's liability under that part of the decree which awards the sum of Rs.1,83,000, as due from him. The respondent's contention is that the right of the decree holder has passed to himself, the judgment debtor. On 13th February, 1934, he applied to the Chief Court [Miscellaneous application No. 92 of 1934] raising this contention and asking that the appellant now before their Lordships (Har Kishen Das, who will be referred to as Har Kishen) be made a party to his appeal as a person claiming to be entitled to the benefit of the decree. The Chief Court by two decrees dated 3rd May, 1934, have accepted the respondent's contention, have held that the decree can no longer be put in execution since the decree holder's right has vested in the judgment debtor, and have accordingly allowed the respondent's appeal from the Subordinate Judge's order of 26th May, 1933. Hence these two appeals by Har Kishen which have been consolidated.

The case of the respondent was that the right to the benefit of the decree of 28th November, 1927, as regards the sum of Rs.180,000, in respect of the moveables referred to in Schedule C of the plaint had on the death of Narain Das vested in the respondent by virtue of the terms of the agreement of 20th January, 1922. The Chief Court has found in his favour by upholding his construction of that instrument the general effect of which was to leave Narain Das in possession for his life and to give a vested remainder to the respondent. Before the Board a further ground of claim has been suggested for the respondent, namely, that he is now the mahant of the *sangat* or (more correctly, perhaps) the general heir of Narain Das entitled to succeed to his moveables not otherwise disposed of by him.

The appellant Har Kishen makes an over-riding claim to the effect that the *sangat* is a religious endowment, that Narain Das as mahant was merely manager of properties impressed with a trust for the objects of the endowment, and that the agreement of 20th January, 1922, was

accordingly invalid. He claims that on the death of Narain Das the person duly appointed to the office of mahant was himself, and that he is entitled to recover the funds of the endowment so as to apply them to their proper objects. For this he has brought a suit [No. 3 of 1934] in the Chief Court which though dismissed by the Trial Judge is now pending in appeal. The second claim of the appellant Har Kishen is that he is entitled to the benefit of the decree under execution by reason of a registered will dated 28th December, 1931, whereby Narain Das expressly bequeathed to him all decrees which stood in the testator's name. His third case is that Narain Das had disposed of the decree and of other effects by an oral dedication for religious and charitable purposes and by a written instrument executed shortly before his death had appointed the appellant and other persons as trustees thereof.

Their Lordships think it necesary to put on one side all argument which proceeds upon the footing that the property in question belongs to a religious endowment and that the mahant is a mere manager or trustee of its funds. This contention was expressly raised by Narain Das at the trial as the fifth issue. It was disputed by Satgur Prasad and the trial judge upon careful enquiry into the facts held that " the property in suit cannot be regarded as appurtenant to the *sangat* of Baba Hasara but it is the absolute property of the mahant for the time being as a taluqdar under Act I of 1869". The appellate bench note in their judgment: " The Trial Court rejected this case of the plaintiff and found that the estate in suit was held by Mahant Gur Narain Das in his own right without any obligations of a religious trust and that the incidents of an estate as defined in Act I of 1869 are applicable to it. This finding of the learned Judge was not questioned before us by learned counsel for the plaintiff-respondent and is therefore agreed to by both sides." The view accepted by the Courts and by the parties was in effect that the taluqdari estate must be held to fall under that provision in Act I of 1869 (cl. (11) of section 22) which allows succession in default of an agnate to such person as would be entitled to succeed by the personal law (including custom) of the taluqdar—in this case by the *guru-chela* method of succession. Whether this view of the matter be right or wrong their Lordships think that in these execution proceedings under the decree of 28th November, 1927, the question is no longer open [*Mungul Pershad Dichit* v. *Grija Kant Lahiri Chowdhury* (1882) L.R. 8 I.A. 123, *Ram Kirpal Shukul* v. *Mussamat Rup Kuari* (1883) L.R. 11 I.A. 37, 41]. It may or may not be that the appellant or the respondent has become mahant of the *sangat,* but neither can be heard to lay claim in that capacity to the benefit of the decree as regards the sum of Rs.180,000 on the ground that it is part of the trust property of an endowment. The Chief Court has rightly ruled out the appellant's objection taken on that ground and he must be left to prosecute it in the suit he has already brought for the purpose.

The next point for decision is whether or not the repondent Satgur Prasad can validly claim the benefit of the decree for Rs.180,000 as a matter of construction of the agreement of 20th January 1922. That agreement purports to be a settlement of disputes in respect of the six portions of Taluqa Maswasi lying in six districts of Oudh "as well as of non-taluqdari and moveable property." The disputants as already noted were Narain Das (aged about 60), the respondent (aged 16) for whom his father was acting, and Musammat Sheoraj Kuer mother of the last mahant Sant Rain Das and of Rup Kuer the respondent's mother.

The agreement contains provision for the education and maintenance of the respondent by Narain Das and for his assisting the latter in the management of the property when he comes of age; and for Rs.50,000 being invested for his benefit. It provides that Sheoraj Kuer is to get the cash in a certain safe and Rs.8,000. It provides maintenance for Sheoraj and allowances for her daughter Rup Kuer her husband and family. The important clauses for the present purpose are as follow:—

1. This entire taluqa property is governed by Act No. 1 of 1869, and shall always remain governed by the said Act and the person in possession thereof for the time being shall be deemed as taluqdar.

2. The first party, Mahant Har Narain Das, shall remain owner and in possession of the immovable property, taluqdari and non-taluqdari, for his life-time, without the power of transfer in any form.

4. After the death of Mahant Har Narain Das, the first-party, Satgur Prasad, the third-party, who is called Baba Hari Saran Das, shall own and possess the entire moveable and immoveable property, taluqdari and non-taluqdari.

5. Because Baba Hari Saran Das belongs to the same order of Udasi Nanakshahi to which Mahant Gur Narain Das, deceased, the first taluqdar, (also) belonged and (as) hitherto the successors of the said Mahant have belonged to the same order, it shall be the bounden duty of Baba Hari Saran Das, the third-party, to appoint one belonging to the same order as his successor and he (Baba Hari Saran Das, the third-party) shall have no power to appoint anyone of a different order as his successor: and the same mode of succession, governed by Act No. 1 of 1869, shall always be maintained.

9. As to the movable property, it has been settled that Mahant Har Narain Das, the first-party, shall be the owner of the whole except the following property.

(*a*) Musammat Sheoraj Kuer, the second-party, shall be the owner of the entire cash locked in the iron-safe at the bungalow in Bagh Baba Hazara as well as of the entire jewellery and clothes.

(*b*) Out of the money in deposit in the Bank and invested in War Bonds and United Provinces Loan Bonds, War Bonds, United Provinces Loan Bonds and cash, of the value of Rs.50,000, shall be deposited in any Bank in the name of Baba Hari Saran Das, and Baba Hari Saran Das, the third-party, shall have no power to alienate the same. Mahant Har Narain Das shall, at the proper time, cause immovable property to be purchased in the name of Baba Hari Saran Das, the third-party, out of the said amount and pending such purchase, interest on the said money shall continue to be deposited in the name of Baba Hari Saran Das.

(*c*) Out of the remaining cash, the first-party, Mahant Har Narain Das, shall set apart Rs.20,000 for Bhandara (giving feast to *Sadhus*) in honour of Mahant Har Charan Das.

(*d*) Out of the remaining money, Rs.60,000 shall be set apart for a marble tomb (Samadh) of Mahant Sant Rain Das deceased, and Mahant Har Narain Das shall commence its construction within six months.

(*e*) Out of the remaining money, Mahant Har Narain Das, the first-party, shall give Rs.8,000 to Musammat Sheoraj Kuer, the second-party.

The question is: does this agreement carry to the respondent the decree for Rs.183,000 on the death of Narain Das? Whether the decision that the property was the absolute property of the mahant be right or wrong it will be noticed that this is the footing upon which the agreement proceeds. Two persons having conflicting claims to be manager or trustee of a religious endowment can hardly adjust their dispute by dividing the property between themselves. Clauses 1 and 5 are entirely consistent with the view taken by the Chief Court. They do show, however—as is indeed otherwise apparent—that it was contemplated that the respondent would succeed Narain Das as mahant of the *sangat* and as his successor under the Oudh Estates Act. This could only happen by application of the *guru-chela* principle which in the events contemplated would make the respondent the general heir of Narain Das. This has a double bearing upon the question before their Lordships: (*a*) it may have an effect upon the proper construction of the agreement of 20th January 1922; (*b*) if in fact and in law the respondent did become the successor and heir of Narain Das according to the personal law applicable to him this may be a ground of claim by the respondent *dehors* the agreement.

The construction of the agreement does not seem to present difficulty save for the words "moveable and" in the concluding phrase of clause 4. Clause 2 gives Narain Das a life estate in the immoveable property. Clause 9 makes him owner of the moveable property or rather of what is left thereof after satisfying thereout the heavy requirements of sub-clauses (*a*) to (*e*). It seems to be quite impossible to construe clause 9 as giving to Narain Das a life estate in the moveables by its use of the word "owner." As is emphasised by its use in sub-clause (*a*) this word is used in the ordinary sense in which it is applicable to moveables and by sub-clause (*b*) Rs.50,000 out of the moveables has been set aside for the respondent. Clause 9, however, is concerned only with assets then existing. *Prima facie,* at least, clause 4 would appear as regards the immoveables to deal with the remainder expectant upon the determination of the life interest given by clause 2 in the existing property; but to find a meaning for the reference to moveables in this clause is by no means easy.

The Chief Court held that "owner" in clause 9 meant "owner for his lifetime only" and that clause 4 gave to the respondent a remainder-man's estate in the moveables. Further they held that the agreement gave the respondent a similar estate in remainder in rents and profits accruing in the lifetime of Narain Das and indeed in all future

acquisitions of moveable or immoveable property. In one passage they treat the agreement as including a settlement of future property and in another they say:—

"Rents and profits of an estate are incidents of that estate, and they must go with the estate. Mahant Har Narain Das's interest, therefore, in such rents and profits must be taken to have been the same as in the estate itself, that is to say, a life interest."

On this view of the agreement the Chief Court have reached the conclusion that Narain Das had no power to make either an alienation *inter vivos* or a testamentary disposition of his interest in the decree for Rs.183,000.

Their Lordships cannot accept the views of the Chief Court as to the nature of a life estate in immoveable property; they discern no merits in the novel doctrine that a tenant for life of immoveables has only a limited interest in the rents and profits which have accrued in his lifetime and is not complete owner thereof. With great respect to the learned Judges their Lordships consider that the cases cited in support of their opinion have been misapplied to the agreement in the present case.

"The entire moveable and immoveable property taluqdari and non-taluqdari" in clause 4 of the agreement cannot in their Lordships' opinion be stretched to cover all property, whatsoever, which Narain Das might acquire; or which he might acquire out of the interests conferred on him by the agreement; or even all property which he might possess at the time of his death. It was no part of the purpose of the agreement as their Lordships construe it to constitute the respondent the general heir of Narain Das, still less so to do this as to defeat the latter's right to leave the smallest legacy by will or to deal with accrued rents and profits as in his lifetime he might desire. The words "moveable and" in clause 4 like the rest of the clause must be construed with reference to property then in existence, and their Lordships are not satisfied to give to them any effect in construction which is repugnant to clause 2 or clause 9. The words on this footing are not necessarily insensible: if the qualification "taluqdari and non-taluqdari" applies to them they may just possibly refer to moveables connected in some special manner with the estate, *e.g.*, bonds in connection with loans to tenants against rent, or growing crops. On this their Lordships make no decision. The general structure of the agreement and the opening words of clause 9 give some ground for the opinion that the words in question were put in by some confused afterthought. In any case the utmost weight that can be given to the circumstance that the respondent was intended to become *chela* to Narain Das and in this manner to be his successor will not in their Lordships' view justify a construction which on the death of Narain Das would carry to the respondent his interest in the decree of 28th November 1927 so far as regards the sum of Rs.183,000. The cash and War Bonds obtained by the respondent from Narain Das under the agreement (voidable and in due course avoided) of 25th November

1924 are not shown or alleged to have been assets in existence in January 1922. All that is known or need be known about them is that they were the property of Narain Das and they must be taken in the present proceedings to have been his own property in the ordinary sense. Whether or not the respondent or the appellant can show that he has succeeded to the office of mahant of the *sangat* or as the heir to Narain Das by virtue of the *guru-chela* principle, the respondent's application and appeal must fail if it be shown either than Narain Das in his lifetime created a trust in respect of the interest now sought to be enforced in execution or that he effectively disposed of it by will. For the correct disposal of the case it is necessary to decide these questions. The Chief Court have noted that the respondent admitted before them the genuineness and execution of the alleged will: this may or may not remove all difficulty on that claim.

Their Lordships will humbly advise His Majesty that the order to be made on this appeal should direct as follows: That this appeal be allowed: that the two decrees dated 3rd May 1934 be set aside save as regards the provision in the decree in appeal No. 52 of 1933 whereby Rs.500 was awarded to Satgur Prasad as costs of an adjournment; that the case be remanded to the Chief Court of Oudh (*a*) to decide (1) whether Narain Das in his lifetime made a valid disposition of his rights in the decree under execution so far as regards the Rs.183,000 now in question (2) if not whether he did so by his will dated 28th December 1931 (3) if not who is entitled to succeed to the moveable property of Narain Das as his heir, (*b*) to determine accordingly who is now entitled to the benefit of the decree dated 28th November 1927 in respect of the said sum of Rs.183,000 and whether the said decree can no longer be enforced against the respondent by reason that he is entitled to the benefit thereof; if not, who are the persons proper to be substituted as respondents to execution appeal No. 52 of 1933 depending in the Chief Court (*c*) what is the proper decree to be made in respect of that appeal. That for the purposes (*a*) and (*b*) aforesaid the Chief Court do either take evidence or if it thinks fit frame issues and send them to be investigated by such other tribunal as in the exercise of their appellate powers they may direct under O. XLI r. 25 C.P.C. or otherwise. That the costs already incurred in respect of application No. 92 of 1934 and appeal No. 52 of 1923 be dealt with by the Chief Court at the conclusion of the proceedings under this remand.

The respondent Satgur Prasad must pay the appellant's costs of this consolidated appeal.

(46770—3A) Wt. 8151—17 190 1/38 P. St. G. 338

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