Privy Council Appeal No. 75 of 1937

Allahabad Appeal No. 24 of 1934

Baba Kartar Singh Bedi ... ... *Appellant*

v.

Dayal Das 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 15TH JUNE, 1939

Present at the Hearing:

LORD RUSSELL OF KILLOWEN
LORD ROMER
SIR LANCELOT SANDERSON
SIR GEORGE RANKIN
MR. M. R. JAYAKAR

[*Delivered by* MR. M. R. JAYAKAR]

This is an appeal from a decree of the High Court at Allahabad, dated the 30th April, 1934, which varied a decree of the Court of the Subordinate Judge at Saharanpur dated 29th April, 1929.

The appeal arises out of a suit by the first respondent suing as the *Chela* and successor under the terms of a will, for a declaration of his title and for possession and mesne profits of a certain immovable property, being a building situated in the Hindu Shrine of Hardwar, called, *Haveli Buriawali* and certain rooms or outhouses appertaining to it. It appears that there was a gift of this property at some ancient time to one Atma Ram who apparently held it as his own property. After his death, it went to his *Chela,* Ashtabakar (it is not clear whether by will or by operation of law). After him it descended to his *Gurubhai* or brother disciple Dhian Das and after his death it again went to the latter's *Chela* Kishen Das. During his lifetime, Kishen Das held and enjoyed the property as his private and personal property. He took one Saheb Das, an infant of about 2½ years, as a *Chela.* Kishen Das died in 1904, leaving Atar Kunwar (defendant No. 1) as his widow. It is not clear from the proceedings what the exact relations of this lady were with Kishen Das, whether she was his lawfully wedded wife, or only a mistress, but in the view that their Lordships take of this case, this question is not material.

Kishen Das left a will dated 19th February, 1904, and as the main question in this case relates to the construction of its terms, it is necessary to set them out in detail.

> " I, *Mahant* Kishen Das, *Chela* of *Mahant* Dhian Das, Caste *Sadhu Udasi,* resident of *qasba* Hardwar, *thana* Jwalapur, district Saharanpur, declare as follows:—I am about 35 years of age and I often remain ill, being subject to several diseases and life is borrowed and now Saheb Das, minor, aged about two years and a half, is my *Chela*. Therefore, I, while in a sound state of mind and body, have given the whole of my property movable and immovable of which I am myself the owner in possession to Saheb Das aforesaid my *Chela* and have made him *Mahant* and successor in my place and have made my wife Musammat Atar Kunwar, guardian and heir of the said *Mahant*. God forbid, if *Mahant* Saheb Das should die, then *Musammat* Atar Kunwar shall, in consultation with *Mahant* Prem Singh, *Mahant* Kan Das, Lala Ram Prasad, Chaudhri Sarjun Singh and Dr. Lena Singh, the *raises* of the *Kasba* of Hardwar, have power to appoint another person as a *Chela*. As this property is my personal property and as I have complete power in respect of it, I make a will by this writing that *Mahant* Saheb Das and the said *Musammat,* guardian of *Mahant* Saheb Das, shall at no time have power to sell or mortgage my property and the *Bhek* also shall have no concern with my property. If after my death the *Bhek* should bring any claim whatever against my property, then it would be considered invalid in face of this writing. I have therefore executed these few presents by way of a will, in order that they may serve as evidence when needed."

After Kishen Das's death, Atar Kunwar managed the property, apparently on behalf of the infant Saheb Das, who died in the year 1907. Thereafter she continued to hold and enjoy the property as before.

On 17th October, 1923, Atar Kunwar nominated the plaintiff, Dayal Das (respondent No. 1) as a *Chela* to Kishen Das, according to the terms of the will, but it appears that in spite of this nomination, she remained, as before, in possession and enjoyment of the said property. Thereafter disputes began to arise between the plaintiff Dayal Das and Atar Kunwar and it is sufficient to mention, without wading through the details of their quarrels, that Atar Kunwar eventually repudiated the appointment of the plaintiff as *Chela* and on 5th May, 1927, executed a deed of trust of the said property, by which she dedicated it to certain charitable uses, *inter alia* the opening and maintenance of a hospital, orphanage and for making provision for the residence and education of widows. She appointed defendants 2-10 trustees of the said deed and an advisory committee, consisting of defendants 11-16, giving the latter the power of making suggestions from time to time regarding the improvement of the objects and purposes of the said trust. The appellant before their Lordships is a member of this advisory committee.

Notwithstanding the appointment of the said trustees, however, Atar Kunwar kept possession of the said property in her own hands, apparently under a clause in the said deed, empowering her to realise the income of the said property during her lifetime and appropriating thereout certain

sums every year for her maintenance, medical treatment and for giving alms. The balance of the income was to be handed over to the trustees.

Aggrieved by this deed of trust, the plaintiff, Dayal Das, filed this suit *in formâ pauperis* on 21st June, 1927, in the Court of the Subordinate Judge at Saharanpur. He joined as defendants Atar Kunwar (defendant 1), the trustees of the said deed of trust (defendants 2-10) and the members of the said advisory committee (defendants 11-16). The reliefs he claimed were:—

> " (*a*) A declaration that the said Deed of Trust was null and void and that no Trust had been created under the document relating thereto.
>
> (*b*) A declaration that the Plaintiff was the *Mahant* and Successor of Kishen Das."

He also claimed possession of the property in the suit by dispossession of the defendants and mesne profits from the commencement of the suit up to the date of possession.

In his plaint he rested his claim for the declaration of his title on the following allegations:—

> " The last *Mahant* of the said *Haveli* was *Mahant* Kishen Das, who died in 1904. After him his *Chela* Saheb Das became his Successor and *Mahant*, but as Saheb Das was a minor, Kishen Das, aforesaid, had, under a Will dated 19th February, 1904, appointed defendant No. 1, *Musammat* Atar Kunwar his guardian. Under the said Will, he also authorised defendant No. 1, that if Saheb Das aforesaid should die, she should appoint another *Chela* as *Mahant* and Successor of Kishen Das deceased.
>
> Saheb Das aforesaid died in 1907. *Musammat* Atar Kunwar, defendant No. 1, appointed the Plaintiff *Mahant* and Successor and *Chela* of *Mahant* Kishen Das deceased, on 17th October, 1923, in presence of the *Panchait* and the ceremonies relating to the appointment of a *Mahant* were performed on the same day before the *Panchait* and the Plaintiff became, from that very day, *Mahant* and Successor of Mahant Kishen Das deceased, in respect of the said *Haveli* and obtained, as a *Mahant* and Successor, possession of the property claimed."

The plaintiff's claim was denied by Atar Kunwar (defendant 1) who was alive at the date of the suit but subsequently died on the 10th of January, 1929. The other defendants supported Atar Kunwar.

The Subordinate Judge raised the following issues:—

> (i) " Was the plaintiff made a *Chela* to *Mahant* Kishen Das by *Musammat* Atar Kunwar and was she competent to do so and as such, could he succeed to the property of Kishen Das in dispute?"
>
> (ii) " Has the plaintiff any cause of action against the present defendants and is he entitled to the property as against them?"
>
> (iii) " Could a claim of mesne profits be added at this stage and if so, to what mesne profits is the plaintiff entitled?"

On the first issue, the Subordinate Judge found as a fact that Atar Kunwar appointed the plaintiff as a *Chela* and nominated him as successor to the property and that the ceremonies requisite for such an appointment were performed, but she was not legally competent to make him a

Chela, because, as a woman, she could not give him the *Guru Mantra* and that the plaintiff's witnesses could not give a single instance in which a woman had appointed a *Chela* and no such instance was proved or alleged: that Atar Kunwar never gave any *Mantras* which were accepted by anybody and that the relationship between a *Guru* and a *Chela* was a spiritual relationship and could not exist if a woman were to appoint a *Chela* to her deceased husband or paramour. He further held that though the property was the personal property of the *Mahants,* as it came down from *Gura* to *Chela* or from one disciple to another, ever since it had come into the hands of the first *Mahant* Atma Ram, it could be transferred only for the benefit of the *Gaddi.* Therefore, Kishen Das could not appoint Atar Kunwar as heir of Saheb Das and her appointment of the plaintiff as a *Chela* to Kishen Das was legally invalid.

Having found this against the plaintiff, the Subordinate Judge proceeded to hold that as the defendants themselves were relying on the will of Kishen Das for the trust in their favour, they could not challenge the said will and that the plaintiff, having been made a *Chela* and having had to change his family and give up his avocation in life, Atar Kunwar and the defendants claiming under her were estopped from challenging the title of the plaintiff and the plaintiff could succeed to the property of Kishen Das in dispute.

Accordingly, he decided issues (ii) and (iii) and passed a decree in the plaintiff's favour on 29th April, 1929, for declaration and possession of the property, with costs, and for mesne profits from the commencement of the suit until possession.

From this decree an appeal was preferred to the High Court of Allahabad by some of the trustee defendants and some of the members of the advisory committee, including the appellant before their Lordships.

In the course of the argument before the High Court, a new plea was raised on behalf of the first respondent, that he was entitled to succeed to the property under the bequest made in his favour by Kishen Das's will, whether he was or was not a *Chela* in the eye of the law to Kishen Das.

On the question of estoppel, the High Court held that there was none and that no question of estoppel could arise, as Atar Kunwar, according to the evidence, made a representation that the plaintiff had become a *Chela* and successor in accordance with the will, that the will was a written document and its terms were known to the plaintiff as well as to Atar Kunwar and that if Atar Kunwar put a wrong interpretation on the will and if the will did not give a title to the plaintiff and Atar Kunwar said that it did give him a title, that statement of Atar Kunwar would be a statement of law, being an interpretation of the will, and such a statement could not operate as an estoppel.

This view of the High Court has not been seriously challenged before their Lordships and it is unnecessary to consider it in detail. Their Lordships agree with the High Court that there could be no estoppel on a point of law relating to the validity of the nomination of the plaintiff as a *Chela*.

On the question whether Atar Kunwar, as a woman, could make the plaintiff a valid *Chela* to Kishen Das, the High Court expressed no opinion. Its view was that no doubt a *Chela* is made by a person whose *Chela* one is, but that it would assume that the Subordinate Judge was right.

The main question to which the High Court addressed itself was " does the plaintiff derive his title from his position as a *Chela,* or does he take under the will ?" The learned Judges took the view that though in the plaint the plaintiff had stated that he had become a *Mahant* and successor in title to Kishen Das, he had also relied on the will.

Proceeding to a consideration of the language of the will, the learned Judges observed that reading the document as a whole, they had not the slightest doubt that Kishen Das meant that in case Saheb Das died and Atar Kunwar initiated a *Chela,* that *Chela* would be the owner of Kishen Das's property; that the object of having a *Chela* was that he should hold the property and there was no other object; that it was clear from the language of the will that Atar Kunwar was to have the property only in case she failed to initiate a *Chela,* but she was to be divested of the property and the *Chela* initiated by her was to get it, in the event of such a *Chela* coming into existence, that under the will, the plaintiff became entitled to the property as soon as he was initiated as a *Chela* by Atar Kunwar, subject to certain conditions imposed by Hindu law.

In this view of the case, the learned Judges did not think it material to consider whether the plaintiff had become in the eye of the law a *Chela* to Kishen Das, or not; Kishen Das meant to give the property to that person who would be initiated a *Chela* by Atar Kunwar and as the plaintiff was a person answering clearly to that description, he took the property under the will. They further held that the case was distinguishable from that class of cases where a gift was made to a donee, as for instance, an adopted son, under two descriptions and one description happened to be incorrect. They thought that there was only one description in this case and the gift was to the person who was to be initiated a *Chela*. They agreed with the Subordinate Judge that the formalities about securing the consent of certain persons mentioned in the will had been fulfilled and held that the plaintiff took under the will as a *persona designata*.

In this view of the case, the learned Judges thought it necessary to ascertain whether the plaintiff Dayal Das was in existence when Kishen Das died and as no issue about his age had been raised in the lower Court, they remitted the case for a finding on that issue. It was eventually tried by

the Subordinate Judge, who found on the evidence adduced before him, that the plaintiff was born before the death of Kishen Das. The High Court accepted this finding, and affirmed the decree for possession and made a slight variation as regards mesne profits, which were decreed from the date of Atar Kunwar's death against some of the defendant trustees.

From this decree there was an appeal to His Majesty in Council. A preliminary point was raised by the first respondent's counsel, which he subsequently abandoned, and, in their Lordships' opinion, rightly, whether the present appellant had any right to prefer the appeal, as he had no interest in the property in the suit and could not be said to be aggrieved by the decree. As the point was abandoned, it is not necessary to make more comments on it than to say that the plaintiff himself joined the present appellant as a defendant in the suit, claimed relief against him and obtained a decree for possession and costs. He is therefore aggrieved by the decree and is besides interested in supporting the trust, which the plaintiff seeks to impugn. The trust is a public charitable trust, which it is the interest of the appellant to see maintained. In their Lordships' opinion, therefore, the point was too technical to prevail and they would have found no difficulty, if necessary, in allowing some of the trustees to be brought on the record in order to rectify this defect.

The main point argued before their Lordships is: Whether there are in Kishen Das's will any words of gift in favour of the plaintiff, either as a *Chela* or *persona designata*.

Before their Lordships deal with this question, it is necessary to clear out of the way a few considerations which arise on the evidence in this case.

The property in this suit, though there is some evidence to indicate that it descended from *Guru* to *Chela*, has been treated throughout the proceedings as the private and personal property of Kishen Das. If this is once assumed, then the question is a simple one, namely, how the will of Kishen Das as a private individual, dealing with his personal property is to be construed. No questions arise in this case relating to the succession of a *Chela* to a *Mahant's* or *Sannyasin's* property, under the ordinary Hindu law, or any custom relating to a religious endowment or institution managed by him. That a *Chela* or disciple can in certain events succeed to the property of his preceptor is undoubted in Hindu law (see Mitakshara, Chapter 2, section 7, placitum 1—Stokes Hindu Law Books, p. 449). But such is not the plaintiff's case, nor the result of the evidence adduced in this suit. Their Lordships accept the finding of both the Courts below and there is enough evidence to support it, that the property was, in the hands of Kishen Das, his private property. In his will, he clearly stated that it was his personal property and he had complete power in respect of it, that the *Bhek* had no concern with it, that if after his death, the *Bhek* should bring any claim whatsoever against

his property, then it should be considered invalid in the face of his will, which he had executed in order that it might serve as evidence when needed.

As the plaintiff claims under this will, he cannot repudiate these statements of the testator. There is further evidence in the case, which shows, as the trial Court observes, that Kishen Das was neither a *Mahant* nor a regular *Udasi Faqir*, that there was no *Muth* or institution of which Kishen Das was a *Mahant*, and that there could be, therefore, no question in this case as to the nature of the property.

In the statement of his case before their Lordships, the plaintiff says, " the last owner of the property in dispute was one Kishen Das. He called himself a *Mahant*, but he was neither an ascetic, nor was he a member of any religious or charitable institution. He pretended, however, to be an ascetic and adopted one Saheb Das, a child of about 2½ years of age, whom he called his *Chela*."

It is therefore clear to their Lordships that they are not here dealing with property belonging to a *Sannyasin* or a *Faqir* as such, or to a religious institution, nor with property passing under the customary laws relating to the succession of such individuals or institutions. Although words like "*Mahant*", "*Chela*" and other expressions properly appropriate to the order of "*Sannyasins*" or "*Mahants*" have been used, as both Courts below have observed, these words were mere pretentions. If the property was held by Atma Ram as his private property, the mere circumstance that it had subsequently descended from *Guru* to *Chela* would not warrant the presumption that it was religious property. It was so held by this Board in the case of *Parmanand* v. *Nihalchand*, L.R. 65 I.A. 252, 258-9.

The question, therefore, in this case is shorn of all such complexities and is a simple one, namely whether there are any words of gift in Kishen Das's will in favour of the plaintiff. On a proper construction of the terms of that will their Lordships are of opinion that there are no words giving the property to the plaintiff, either as a *Chela* or *persona designata*.

The testator begins his will by mentioning that he has adopted Saheb Das, an infant of 2½ years, as his *Chela* and he then uses clear words, " giving the whole of his property, movable and immovable, to Saheb Das ". He also makes him a *Mahant* and successor in his place. He then proceeds to appoint his wife, Atar Kunwar, guardian and heir of the said *Mahant*, gives power to her to appoint another person as a *Chela* in the event of Saheb Das's death and then he stops there. He uses no dispositive words, as in the case of Saheb Das, giving the property to the *Chela*, who was to be appointed by Atar Kunwar. This omission is, in their Lordships' opinion, in striking contrast with the previous words of absolute gift used in connection with his first *Chela* Saheb Das.

The argument which found favour with the High Court was that the will showed an intention on the part of Kishen Das to give his property to the *Chela* appointed to him by Atar Kunwar. Their Lordships can detect no such intention from the language of the will, and they have no power to give effect to a hypothetical intention by supplying *lacunae* in the will, and thereby making practically a new will for the testator.

The gift to Saheb Das is *eo nomine* and cannot be construed as a gift to the subsequent *Chela* appointed by Atar Kunwar. The reference to Saheb Das in the early part of the will is personal, the gift is also personal, and the plaintiff, as the second *Chela*, assuming that he was validly appointed, cannot invoke the words of that gift for his own benefit. The words in this context are not capable of being interpreted as meaning a gift in favour of any subsequent *Chela,* who may be appointed by Atar Kunwar. Further, with reference to the subsequent *Chela,* there are no words, as in the case of Saheb Das, that he was to be made a *Mahant* and successor in the testator's place and there is likewise no appointment of Atar Kunwar as guardian of the subsequent *Chela,* as in the case of Saheb Das. It is therefore clear to their Lordships that the gift to Saheb Das stands on a footing of its own, and the plaintiff cannot claim its benefits by reason of the circumstance that he was appointed a second *Chela* to Kishen Das.

Their Lordships therefore do not agree with the view of the High Court. They hold that the plaintiff takes no interest under the will of Kishen Das, either as a *Chela* or *persona designata.*

What precisely were the powers of Atar Kunwar under this will, as owner of the property and whether she had a right to make a trust of the property, are questions which it is not necessary to consider, for it is clear from the evidence that the plaintiff was out of possession at the date of the suit and had been so for many years previously. He was suing persons who were in possession of the property. The plaintiff, therefore, could succeed only on the strength of his own title and not on the weakness of his opponent's.

In this view of the case, it is not necessary to consider the questions agitated before the trial Court, whether Atar Kunwar, as a woman, had the power to make the plaintiff a valid *Chela* by imparting to him the mystic formula called *Guru Mantra,* or whether the plaintiff could take any interest under the will, if in law he was not a validly appointed *Chela* of Kishen Das. In another view of the case, these questions would perhaps have assumed considerable importance, but as in their Lordships' opinion the will contains no dispositive words in favour of the plaintiff, either as a *Chela* or *persona designata,* these questions do not call for any decision.

An attempt was made in the argument of the respondent to rest his claim on the customary rules of succession governing the order of *Mahants* and *Sannyasins*. In their Lordships' opinion, this contention cannot be allowed to be raised at this stage. It is contradicted by the allegations in the plaint set out above, from which it is clear that the plaintiff did not claim under the customary rules of succession relating to the order of *Mahants*. This is apart from the fact that, as assumed in both the Courts below, there is in this case, no religious institution or endowment, nor any order of religious dignitaries administering it. There is therefore no occasion to invoke the customary law governing such individuals or institutions. No custom relating either to the class, family or institution of Kishen Das was pleaded. No issue was raised. No evidence was led on it and in their Lordships' opinion this claim cannot be allowed.

It was also argued by the respondent's counsel that the word "*Chela*" in the will meant an adopted son. This contention too, in their Lordships' view, is totally without foundation. A *Chela,* as is well known in India, means a disciple. He is different from an adopted son, both in the process of his initiation and in the purpose of his existence. A *Chela* is generally nominated by the ruling *Mahant* during his lifetime, to conduct the affairs of a religious institution, or if he fails to do so, the *Chela* is nominated by his principal followers after his death, who are connected with the institution. There could be no analogy between him and an adopted son, as known to Hindu law. In the case of the latter, it is imperative that one of his genitive parents must give, and one of his adoptive parents must receive him in adoption. Without such a gift and taking, no adoption can be valid. There are, in addition, rituals such as the sacrificial fire, called "*Homa*" to complete ceremonially the transaction of adoption and lastly it may be mentioned that the principal function of an adopted son is to perform periodically *Shraddhas,* or obsequial rites to his parents and other ancestors for the salvation of their souls, according to Hindu sentiment.

None of these incidents are to be found in the case of a *Chela,* whose affiliation, if it may be so described, is mainly for the purpose of continuing the traditional obligations of the institution and holding and managing its property for purposes incidental thereto. His main function is not to perform obsequial rites for the benefit of his ancestors, for, in most cases, a *Sannyasin* or a *Mahant,* when he enters that order, abrogates the rights and obligations of a *Grihastha* (householder), whose future felicity in a *post mortem* existence is the object of solicitude on the part of his male descendants.

Their Lordships' attention was called to the details of the ceremonies performed on the occasion of the appointment of the plaintiff as *Chela* by Atar Kunwar. In their Lordships' view, there is nothing in these ceremonies to lend support

to the view that the affiliation of the plaintiff was in the nature of an adoption.

Their Lordships' conclusion, therefore, is that this appeal should be allowed, that the decree of the High Court and of the trial Court should be set aside and that the plaintiff's suit should be dismissed. The appellant will have his costs here as well as in the Courts below from respondent 1, who will also pay to the Government on account of Court fees, under the provisions of Order 33, rule 11, of the Civil Procedure Code, the sum ascertained by the trial Court.

Their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council

BABA KARTAR SINGH BEDI

v.

DAYAL DAS AND OTHERS

DELIVERED BY MR. M. R. JAYAKAR

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