

Privy Council Appeal No. 60 of 1941

Patna Appeal No. 35 of 1940

Mahanth Rambhusan Das - - - - - *Appellant*

v.

Anand Das - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

REASONS FOR REPORT OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 6TH DECEMBER, 1944

Present at the Hearing :

LORD RUSSELL OF KILLOWEN.

LORD WRIGHT.

LORD GODDARD.

SIR MADHAVAN NAIR.

SIR JOHN BEAUMONT.

[*Delivered by* SIR MADHAVAN NAIR]

This is an appeal from a decree of the High Court of Judicature at Patna, dated 4th October, 1940, which reversed a decree of the Subordinate Judge of Darbhanga, dated 20th May, 1936, and dismissed the plaintiff's suit.

During the pendency of the appeal in the Privy Council, Anand Das the defendant respondent died and after contest between two rival claimants, Madan Mohan Das and Jadu Nandan Das, the High Court of Patna decided on 26th February, 1943, that for the purposes of this appeal, and without prejudice to the right of Jadu Nandan Das to establish his claim by regular suit to be instituted hereafter, the name of Madan Mohan should be substituted in the place of the deceased respondent. Accordingly, Mohan Das, a minor, with his natural father Juggernath Roy as his guardian *ad litem*, has been substituted as respondent in this appeal. In this judgment the deceased respondent will be referred to as the respondent.

The suit out of which this appeal arises was instituted by the plaintiff appellant for a declaration that he and not the defendant respondent was the rightful Mahant of the Asthal known as the Mirzapur Asthal, and for recovery of possession of the suit properties appertaining to the Asthal.

Two questions arise for determination in this appeal:—

(1) whether the appellant has any right to maintain the suit;

(2) whether the respondent is disqualified from remaining as the Mahant by reason of his marriage, in accordance with the custom and usage which regulated the succession to the Asthal.

An Asthal is a Hindu religious institution of a monastic nature. Its head is called a Mahant and the disciples are known as chelas. The Mirzapur Asthal hereafter referred to as "the Asthal," is situated in village Mirzapur in the district of Darbhanga. It is an asthal of importance with an annual income of Rs. 80,000. It belongs, as has been found by the Courts in India to the Lashkari Ramanandi sect of Vaishnava Bairagis (mendicants). The Asthal was founded by Lachhmi Ram the chela of one Goshain Ramlalla, at some date between the years 1732 and 1750 A.D. Four other chelas of Ramlalla founded four other Asthals in the neighbourhood, namely, the Asthals of Narghoghi, Rampatti, and Raipur, in the Darbhanga district, and Chorauth in the Mozaffarpur district. The Asthal

is now admitted to be a maurasi (hereditary) Asthal where the succession is from guru (a spiritual teacher) to chela. In each case of succession the successor was the chela of the preceding Mahant except in the case of Ajodhia Das, the fifth Mahant who was appointed as his successor by his "gurubhai" (the co-disciple of a religious teacher) Ramprasad, both having been disciples of Mahant Bhagwan Das. The respondent was the 10th Mahant.

The first seven Mahants of the Asthal were all celibates. The eighth Mahant, Ramcharan, had married after he became Mahant. This gave rise to litigation started by his chela Deva Das which was afterwards compromised. Ramcharan remained a Mahant for the remainder of his life and was succeeded by Deva Das who nominated the respondent his chela to succeed him. He succeeded to the Mahantship on the death of his guru in 1919. He married in 1929, and this gave rise to the present suit.

Paragraph 4, clauses I to V of the plaint sets out the rules and custom regulating succession to the Mahantship of the Asthal. According to these, only a celibate Vairagi Vishnava of Lashkary Ramanandi sect can become a Mahant, and the reigning Mahant usually appoints one of his celibate Bairagi chelas, if he is of good moral character, to succeed him (clauses I and II). If for any reason he fails to appoint anyone as his successor during his lifetime, then the senior-most chela succeeds, provided he is celibate and fit, but, if he is unfit, then any one of the celibate chelas who is fit succeeds him, and the Mahants and others mentioned in clause III assemble together and invest him with the insignia of his office, chadar and pagri (shawl and turban); in case, however, the Mahant leaves no celibate chela or that the chela is not fit, then one celibate Bairagi Baishnava Sadhu (a mendicant, an ascetic) of the particular sect is elected by the Mahants and others as mentioned in clause IV. Clause V deals with the case of a Mahant who marries after succeeding to the Mahantship. According to this clause such a Mahant "forfeits his Mahantship and (gets) removed from the seat, and his chela who should have succeeded him after his death becomes entitled to succeed as Mahant and also to get chadar and pagri and other things respecting Mahantee according to paragraph 4, clause III and he gets all the properties of the Asthal. If the Mahant has no chela then his successor is appointed according to the rules mentioned in paragraph 4, clause IV above."

The appellant's case, shortly stated, is that according to the rules and customs of the sect to which the Asthal belongs a man who is a celibate of the Bairagi sect above mentioned alone can become Mahant of the Asthal and that if he ceases to be a celibate Bairagi and adopts the life of a householder and gets married he cannot continue to remain as Mahant. The appellant stated in his plaint that he was appointed the first celibate chela by the respondent in 1925, that according to custom he went on a pilgrimage in 1928, and when he returned he found to his surprise that the respondent had married and entered Grahastha Ashram (life of a householder); and that thereupon he consulted the other Mahants and had a meeting convened of the Mahants of the neighbouring Asthals and disciples of the Asthal and others on 20th March, 1932, where it was unanimously decided by a resolution passed by the meeting that the respondent had forfeited his Mahantship, that he was consequently removed from his office and the appellant was acknowledged as the Mahant in his place. It is not now disputed that the meeting referred to was held and that the following resolution was passed at the meeting. This resolution consists of three paragraphs:—

"(1) Anand Dasji, the last Mahant of the said Mirzapur Asthal, in violation of the rules, customs and usage observed by the Virakt Vaishnava Vairagis of the Ramanandi Lashkari sect as also in violation of the custom and usage prevailing at the said Mirzapur Asthal, has married and adopted the life of a householder. He dines with the members of his girhast family in violation of the customs and rules of the sect and those prevailing at the Mirzapur Asthal. Hence he is unfit to continue as Mahant of the said Asthal and we have removed him from the Mahantship. The post of Mahant of the said Asthal thus became vacant.

" (2) Sri Ram Bhushan Das Ji, the disciple of Anand Das aforesaid, has become the Mahanth of the said Mirzapur Asthal in the place of his guru, in accordance with the custom and usage of the Asthal. After careful consideration of the matter in all its aspects, we have selected him for the office of Mahanth of the said Asthal, as we found him fit for it and we have recognised him as such.

" (3) In consultation with the Pandits we have fixed 5th Sudi Chait, corresponding to 11th April, 1932, between noon and evening for offering pagri and chadar to Sri Ram Bhushan Das Ji at Simri Mirzapur."

The defence of the respondent in so far as it is relevant for the appeal is that there is no custom that the Mahant of the Asthal must necessarily be celibate and that, notwithstanding his admitted marriage, he has not forfeited his right to remain as the Mahant. The respondent also challenged the right of the appellant to institute the suit on the ground that he was never a chela of the respondent, and that his election by the Subha (Assembly) even if found as a fact, gave him no title in law to become the Mahant of the Asthal.

Voluminous evidence, oral and documentary, was adduced by the parties regarding the rules and custom regulating succession to the Mahantship of the Asthal and the other relevant matters raised in the various issues framed in the case. On the points necessary for the disposal of this appeal, the Subordinate Judge held that the appellant was not a chela of the respondent, that according to the custom of the Asthal the respondent had forfeited his right to remain as Mahant by reason of his marriage, that as the respondent had appointed no non-grahasta (ascetic) chela, the appellant notwithstanding the fact that he was no chela of the respondent had the right to claim the Mahantship as the neighbouring Mahants and others, "elected the plaintiff (appellant) as Mahant not because he was thought a fit chela of the defendant only, but also because he was considered fit in every way" at the meeting held in March, 1932. The Subordinate Judge repelled the plea of the respondent that as he validly succeeded to the office of the Mahant in 1919, any subsequent disability by way of marriage cannot work a forfeiture of his office.

On appeal to the High Court, the learned Judges agreed with the Subordinate Judge that the appellant was not a chela of the respondent. In regard to the election of the appellant, they held that what the assembly of the neighbouring Mahants did was to acknowledge him as Mahant as the chela of the respondent, in the place of his guru who was removed from the Mahantship, that he was not elected as Mahant irrespective of whether he was chela of the respondent or not, that even if he was so elected as Mahant the election was not valid as he failed to establish the custom of an outsider being elected as Mahant by the assembly of neighbouring Mahants and other people. They therefore held that the appellant has no right to maintain the suit as he had no title to the Mahantship. On the question whether the respondent had incurred a forfeiture of his Mahantship by reason of his marriage, the learned Judges held that though in order to become a Mahant of the Asthal the person must be a celibate Bairagi chela of his Mahant, the appellant failed to show that the marriage of the Mahant necessarily entailed the forfeiture of his office. In the result, the appeal was allowed and the suit was dismissed.

As stated at the outset, the first question for decision relates to the maintainability of the suit. It is not disputed that the appellant's title to maintain the suit depends wholly on the Mahantship declared in his favour by the resolution passed by the assembly of the Mahants on 20.3.1932. In this connection, attention may be drawn specifically to paragraph 2 of the resolution and of the interpretation put upon it by the Courts in India. It will be remembered that the Subordinate Judge found from the evidence that the appellant was not a chela of the defendant and the High Court accepted that finding. In considering issue 9 in the case which was: "Has the plaintiff succeeded or is he entitled to succeed to the Mahantship of Mirzapur Asthal by reason of the unfitness of the defendant to continue as Mahant?" it became necessary for the Subordinate Judge to consider whether, not being a chela, the appellant could claim the Mahantship. This depended on the answer to the question on what ground

was he made Mahant by the assembly. Referring to paragraph 2 of the resolution which bore on that matter, the Subordinate Judge held, after a detailed consideration of all the circumstances, that "from a careful study of paragraph 2 of the resolution, exhibit 2, it clearly appears to me that the neighbouring Mahants and others elected the plaintiff as Mahant not because he was thought a fit chela of the defendant only, but also because he was considered fit in every respect. From the above I am satisfied that the neighbouring Mahants and others elected the plaintiff as Mahant not only because he was chela of the defendant, but also because he was found on enquiry to be a fit person to be elected as Mahant, whether he was chela or not of the defendant." This conclusion was preceded by the following observation: "They (the Mahants) must have known that the plaintiff was not a chela of the defendant but, in spite of this, they elected him as he was found fit in every way." He closed the discussion of the question as follows: "If, in addition to considering the plaintiff to be a fit person the Meeting supposed him to be a chela of the defendant that can only be considered a defect in form and not in substance." In the end he found the issue in the affirmative.

The learned Judges of the High Court held that the resolution, exhibit 2, shows that "it proceeds on the footing that the plaintiff is the chela of the defendant," and that this was in conformity with the case of the appellant as set forth in the plaint. In dealing with the case of the appellant that he was elected as Mahant irrespective of the question whether he was chela or not of the respondent they observed as follows: ". . . but paragraph 2 read as a whole indicates that the plaintiff as a chela of the defendant became the Mahant and he was also acknowledged as such by a resolution as he was found fit for the office of the Mahant. The resolution does not at all show that the plaintiff was selected as Mahant quite irrespective of whether he was chela of the defendant or not." Then they went on to consider the question that, assuming that the plaintiff was actually elected and not merely acknowledged Mahant by the resolution, can it be held that the election is valid? which question they answered in the negative.

It will be observed that according to the Subordinate Judge the appointment of the appellant as Mahant by the assembly was a case of election based on two grounds namely, that he was a chela of the respondent, if not, he was a fit and proper person to be elected whether he was a chela or not; whereas, according to the view of the High Court based on paragraph 2 of the resolution, the appellant was merely acknowledged as Mahant because he was a chela of the defendant, from which it would follow that if the ground for his acknowledgment as Mahant, namely, his being a chela, is found not to have been established, then the appellant has failed in proving that he is a Mahant and consequently he has no title to maintain the suit.

Their Lordships have now to decide (1) whether under paragraph 2 of the resolution the appellant was merely acknowledged as Mahant by the assembly as being the chela of the respondent, or (2) whether he was elected to the Mahantship irrespective of whether he was chela or not, and (3) if he was so elected, was his election valid? The first two questions depend on the construction to be put on paragraph 2 of the resolution, but the third has to be decided on the evidence adduced in the case as to custom.

In considering these questions their Lordships think it will be advantageous to refer to the exact case of the appellant as set forth in the plaint. In paragraph 8 of the plaint after referring to the meeting of 20.3.32, the appellant states as follows: ". . . It was unanimously decided that the defendant by his own acts had forfeited his Mahantship of Mirzapur Asthal and its Jhopras (dependent monasteries) and also his right over the properties of the Asthal consequently he was removed from his position and this plaintiff was acknowledged as Mahant in his place. Afterwards on 11.4.32 the plaintiff got pagri and chadar of Mahantship of the Asthal and its Jhopras and also the properties of the Asthal according to the rules and customs mentioned above." It appears from this paragraph that the appellant's case is that he (as chela of the respondent) was acknowledged as

Mahant at the meeting held on 20th March, 1932. In paragraph 12 of the plaint the appellant states the various dates when his cause of action arose. One of such dates is 20.3.32, the date of the meeting of the Mahants. Referring to it he says “. . . and also on 20.3.32 when the defendant was removed from Mahantship by other Mahants and members of the sect and others and plaintiff was acknowledged Mahant in his place. . . .” From these statements it is clear that the appellant’s case as stated in the plaint was that the assembly of the Mahants was called upon to declare that the Mahantship became vacant on account of the marriage of the respondent—which it did by paragraph 1 of the resolution—and to acknowledge or recognise him as the successor to the place, and this, it did, as may be seen from paragraph 2 of the resolution. Acknowledgment of the appellant as Mahant in a case like the present, necessarily connotes that according to the rules he is the chela of the respondent. As the appellant’s case was definitely not based on his election to Mahantship it is clear to their Lordships that it did not fall within the scope of the enquiry by the assembly. Much emphasis was laid on the statement “We have selected him” appearing in the second sentence of paragraph 2, “After a careful consideration of the matter in all its aspects we have selected him for the office of the Mahant of the said Asthal as we find him fit for it and we have recognised him as such Mahant” and the argument that the appellant was selected as Mahant whether a chela or not was built upon it. But it must be remembered in this connection that it is the appellant’s case that no one, even a chela, can be appointed as Mahant unless he is a fit person to be so appointed, for he says in enumerating the rules of succession in paragraph 4 of the plaint that “a senior-most chela succeeds provided he is fit, that is to say, if he is celibate and of good character.” It is the fitness of the appellant in this respect which was required for his recognition as a Mahant besides the qualification as chela, that was declared by the Assembly in the second paragraph of the resolution, and not his fitness to hold the place irrespective of whether he was a chela or not. To state the meaning of paragraph 2 of the resolution shortly, the assembly of the Mahants recognised the appellant as Mahant because he was a chela of the respondent and he was a fit and proper person to succeed him. The paragraph is not very happily worded, but their Lordships find no difficulty in understanding its meaning. That the meaning of paragraph 2 of the resolution is that the appellant was recognised as Mahant as he was the chela of the respondent, and not on any other ground appears to be the view of the appellant also, for their Lordships find in the Memorandum of Objections filed by his Counsel on his behalf under Order XLI rule 22 C.P.C. ground No. 15 stated as follows: “For that the learned Subordinate Judge failed to appreciate the fact that the plaintiff was elected to Mahant as the other Mahants were satisfied that he was the chela of the defendant.” This appears to be a just criticism of the Subordinate Judge’s position, and coming, as it does, from the appellant himself, its value in this connection is very great indeed. After this statement which is quite explicit, further comment on the meaning of paragraph 2 of the Assembly’s resolution is needless. As the appellant is found not to be a chela of the respondent it follows he is not entitled to claim the Mahantship of the Asthal.

As their Lordships have held that the appellant was not elected as Mahant, irrespective of whether he was a chela or not of the respondent, the question, whether his election was valid, assuming he was so elected, considered and decided against him by the High Court, does not arise for consideration, and their Lordships do not decide it. As they have held that the appellant has not proved the title set up by him to maintain the suit, the question whether the respondent has forfeited his Mahantship by reason of his marriage, also does not arise for consideration.

For the foregoing reasons their Lordships have humbly advised His Majesty that this appeal fails and should be dismissed with costs.

In the Privy Council

MAHANTH RAMBHUSAN DAS

2.

ANAND DAS

DELIVERED BY SIR MADHAVAN NAIR

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