

(1964) 07 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : First Appeal No. 138 of 1957 and Civil Miscellaneous No. 2131/C/ of 1959

Bhagwan Dass Chela Mahant Niranjn Dass and others

APPELLANT

Vs

Jairam Dass Chela Mahant Kishan Dass Udasi

RESPONDENT

Date of Decision : 22-07-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1964) 07 P&H CK 0001

Hon'ble Judges : I.D. Dua, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : K.N. Tewari and H.L. Sibal, for the Appellant; Atma Ram and I.S. Krewal, for the Respondent

Judgement

1. The plaintiffs who have preferred this appeal instituted a suit u/s 92, Civil Procedure Code, for the removal of Mahant Jai Ram Dass defendant and for appointment of Mukand Dass plaintiff as Mahant and manager in place of the defendant. A prayer for rendition of account was also included in the plaint along with the prayer for delivery of moveable and immoveable property of this Samadh to the said Mukand Dass. The leases said to have been made by the defendant were further sought to be declared as ineffective and null and void. The grounds on which the suit was based were that the defendant was the manager of the Dera Samadh Udasi Baba Sarb Viapi and the land belonging to the said Samadh stood entered in the revenue papers in the name of Baba Sarb Viapi Samadh, the defendant being only a manager without any proprietary rights therein. The Dera was known as Dera Sarab Viapi. This Dera is accordingly an institution of public, religious and charitable nature and the manager had no right to transfer the property in anyway; or even to give it on long lease; he was also disentitled to appropriate or transfer the property of the Dera for his own personal requirements.

The defendant was alleged to be proclaiming himself to be the owner with the

object of utilising the entire property of the Dera for his own personal use as an absolute owner. He was also alleged to be openly violating the tenets of the said Samadh of Udasis. The moral character of the defendant was also attacked but the counsel before us has refrained from addressing any arguments on this point. Two lease-deeds for 99 years each were recited in the plaint as evidence of transfer of the Dera property, one was by means of a deed registered on 28-1-1953 for a sum of Rs. 3,000/- and the other was evidenced by a deed registered on 16-2-1955 for a sum of Rs. 7,500/-. Further allegations were to the effect that the defendant was neither running a langar (free kitchen) nor was he serving food to the sadhus in the Dera in accordance with the tenets of Udasi sect. He was also refraining from performing Arti Puja of the Samadh or burning incense or celebrating the festivals which used to be celebrated from ancient times and indeed he was refraining from providing any facilities for the purpose of these functions.

He was further alleged to have opened a hotel in the Dera for supplying meat and liquor in direct disrespect to the Samadh, but this allegation has also not been persisted in before us. Mukand Dass plaintiff was in the end described to be the Chela of the defendant and, therefore, entitled in that capacity to be appointed a Mahant after the defendant's removal. The income of the Dera was described to be Rs. 500/- per month and the defendant was alleged to have kept no account of the income nor was he prepared to render the accounts. It goes without saying that the plaintiffs claim to belong to Bhekh Udasi, having faith in the said Samadh.

2. In the written statement, several preliminary objections were raised, the most important and glaring objection being denial of the existence of any trust property. There being no trust property, the suit was pleaded to be unmaintainable. On the merits again, the existence of Samadh Sarb Viapi Dera was denied, and it was averred that the defendant used only to receive Rs. 18/- per month from the Patiala State Government for the Samadh Sarv Viapi and there was no moveable or immoveable property belonging to the Samadh "received by way of waqf." The property and the land in dispute were claimed to be owned by the defendant himself. In paragraph 4, it was again most emphatically asserted that the allegation of there being a Dera and the disputed property being attached thereto was incorrect, on the other hand it was claimed to belong to the defendant; it was also denied that the defendant had violated any tenet of Samadh Sarv Viapi. As a matter of fact, according to his plea, "there could not be nor there were any tenets of the aforesaid Samadh."

In paragraph 7, it was pleaded that when there was no Dera, the question of running any langar or supplying of food and amenities to Sadhus did not arise. The allegation of immorality was of course described to be false and baseless, having been made with a view to defame him. The defendant claims to be an old man of 75 years. The execution and completion of the lease-deeds was admitted. Regarding accounts, it was averred that the defendant's income was not so

much that its account could be kept. Eight issues were settled on the pleadings of the parties and after recording the evidence, the learned District Judge, Patiala, dismissed the suit In April, 1957. According to the judgment of the learned District Judge, the defendant was not the owner of the property in dispute and he had no power to give the property attached to the Dera Baba Sarb Viapi, to the Chela or to any other person. As a matter of fact, the Court entertained no doubt that the premises in dispute had all along been treated by the predecessor of the defendant as well as by Patiala Government to be a religious and charitable institution and the Mahant had been drawing some amounts from the Government treasury periodically for celebrating important festivals on these premises; such amount being essentially in the nature of help given by the State to the religious institutions for the performance of religious affairs on certain occasions.

The Court has thus unequivocally found the place in dispute to be a Dera of Udisi, the land in dispute to be property of that Dera and the defendant Jai Ram Das to be a mere Mahant and manager of the Dera and the land. It has further been held that this Dera is associated with the name of its founder Baba Sarav Viapi whose samadh exists in it and it is a religious and charitable Trust for a public purpose. The land attached to this Dera has also been held to be inalienable. The plaintiffs have been found to belong to the Bekh of Udasi Sadhus with which this Dera is connected with the result that they are sufficiently interested in it so as to invoke Section 92, Civil Procedure Code. Needless to state that the Advocate General's permission has been obtained for the present suit. Mukand Dass plaintiff's assertion that he is the defendant's Chela has been negatived. Same is the position with regard to the plaintiff's assertion that the defendant has been guilty of non-observance of principles of the sect of Udasi Sadhus who have belief in the Samadh of Baba Sarv Viapi. The defendant has accordingly been held not to be liable to be removed from Mahantship of the Dera on account of such non-observance.

Indeed, according to the Court below, there is no convincing evidence led to show as to what are the principles of Udasi Bekh. In the end it has been observed that though the defendant could not grant leases for long terms, nevertheless in these proceedings the Court was helpless and it was left to the plaintiffs to take appropriate proceedings for setting aside those alienations. For the removal of a person from a religious office, in the view of the learned District Judge, something more than a mere unauthorised alienation is required to be proved and mere granting leases for long terms is, according to him, not sufficient to establish his unfitness to remain as a Mahant. The suit has for these reasons been dismissed.

3. On appeal, the short question canvassed on behalf of the appellant is that when the defendant claimed his own private ownership in the property of the Dera adversely to the Trust, had alienated the property and had omitted to keep any accounts, then the Court should in law and Justice have ordered removal of

the Mahant and its refusal to do so is liable to be reversed on appeal. The Court below has, it may be remembered, come to a positive conclusion that the Mahant was not competent to grant the lease in question; in other words, his alienations were unauthorised. It is also admitted that he has not maintained any accounts. In the written statement he has in unequivocal terms claimed title in himself so far as the property in question is concerned and indeed he has completely denied the very existence of a dera. In the witness-box he has sworn that the place in question is not a dera at all and the land attached to the Samadh of Baba Sarv Viapi, where he lives, has not been donated by any person. He has claimed in himself an absolute right to allow or not to allow any Udasi to stay at the place in question and he has categorically denied any right in any Udasi to stay there.

He has further controverted that his premises are known as dera of Sarv Viapi, though he has admitted the existence of the Samadh of Sarv Viapi which perhaps, from the very nature of things, he was unable to deny. He has also as a witness asserted on oath his absolute right to give the property to whomsoever he likes. When asked whether the premises in question are a religious place, he replied that "whatever is his religion is the religion of that place too." On his own admission, he received a sum of Rs. 7,000/- on account of lease money from Shri Prem Kumar but no part of it was at present with him. It may, however, be noted that according to the mutation Exhibit P.W. 4/B, he had received Rs. 7,500/- on account of this lease for 99 years. When asked as to whether it had been spent, he vaguely suggested that he had started the construction of eight houses for Samadh but he did not remember in which year and in which month such construction started and completed; nor could he state as to how much money had been spent on such construction and how much given in alms or spent on house-hold necessities. In the concluding portion of his statement, he again asserted that Mahants were absolute owners and were not merely managers.

4. It is indisputable and indeed is not disputed before us that a Mahant or Shebait, who has accepted this office or acknowledged himself as such, is incapable of asserting any hostile title against the trust, such disability being implicit in any person who holds fiduciary position in relation to another. It is also his duty to keep regular accounts of the income of the trust property, for he is responsible for the due application of the trust money and is bound to keep regular accounts of income and expenses. The manner of keeping accounts, of course, depends to a large extent on the custom etc. obtaining in a particular institution but the obligation to maintain accounts is certainly implicit in the very office of a Mahant or a Shebait. As observed by a Bench of this Court in *Gurdial Singh v. Harnam Singh*, 1963 PLR 94, failure to keep proper accounts of the income of the dera and assertion of hostile title of his own by the Mahant to the trust property are sufficient grounds for his removal.

This view also seems to get support from a Privy Council decision in AIR 1922 325 (Privy Council) to which indeed reference was made by the Bench in the

reported case. Reference has been made to some observations in a decision by Pandit J., and myself in *Jaggar Singh v. Kartar Singh*, 1961 PLR 117 at p. 120, where while dealing with the contention that the defendant there had admittedly not kept any accounts and that he was, therefore, liable to be removed on that ground. It was observed that it had not been shown in that case that the defendant's predecessor ever kept the accounts or that the plaintiffs or the residents of the village had ever scrutinised or examined any accounts kept by the Mahant who had held office prior to the defendant. With these observations, the Bench considered it proper to direct the defendant thenceforth to maintain regular accounts. It appears that in the reported case there were some party factions in the village and the defendant had been put to a considerable expense on account of the litigation initiated by the plaintiffs and that the income of the institution was so meagre that even the maintenance of the langar had to be discontinued. The observations relied upon in the reported case, therefore, must be construed to be confined to the facts and circumstances of that case alone.

5. On behalf of the respondent a faint attempt was made to throw an oblique suggestion that the property in question has not been proved to be of a religious or charitable trust, though the counsel did not boldly repeat, his client's assertion in the Court below, that he was the absolute owner of the property in question which was secular in character. As a matter of fact, the learned counsel at the same time conceded that the land belonged to the dera and the respondent was not its full owner. Shri Atma Ram, though declining to claim full ownership in his client, wanted to show, to reproduce his own words "absence of legal evidence proving dedication and trust character of the property." With this object in view, he cited AIR 1938 195 (Privy Council) which merely lays down that even private property acquired by a Mahant descends to his chela and that descent to chela does not necessarily warrant its character and nature as religious.

Particular emphasis has been laid on the submission that to constitute a trust the author or authors of the trust must be ascertained and the intention to create a trust must be indicated by words or acts with reasonable certainty. In view of the finding of the Court below that the property is trust property which has not been criticised or even questioned by the learned counsel for the respondent, this authority is hardly relevant for our purpose. The same view was taken in AIR 1939 201 (Privy Council) but this is similarly unavailing. The counsel has placed particular reliance on the following observations at p. 61 from the judgment of the Judicial Committee in AIR 1941 56 (Privy Council)

Ascetics and religious institutions exhibit great diversity of character and Udasis in particular conform to no single type. In any case to presume that a particular Udasi shrine followed a certain practice because on account of all religious institutions throughout the province the practice was found to obtain in a majority of the cases is a course of reasoning unwarranted by principle or authority. Their Lordship would be very slow to apply to such an institution as

this dehri a rule not collected from its own constitution or practice as proved in evidence.....there is no general law applicable to religious institutions in the Punjab and appears to recognize in the light of longstanding decisions of the Board that they are to be governed only by customs and usages which they can be shown to accept.

Assistance has been sought for the argument that unless some tenets of this very institution are proved on the record which the respondent has violated, he cannot be removed. I do not think it is necessary for us to consider this question because on admitted assertion of hostile title, unauthorised alienations and failure to maintain accounts, the respondent is liable to be removed.

6. The respondent's learned counsel has also made a passing reference to Balmakund Vs. Nanak Chand and Others, , where it was observed that if a hereditary trustee is not positively dishonest and does not lack the capacity for discharging his duties, the mere fact that he is guilty of petty neglect of duty and of not keeping proper accounts and mixing up trust account with his private accounts, is not adequate cause for removing him from his office u/s 92, Civil Procedure Code. These observations also, in my opinion, are of little assistance to the counsel because we have most serious breach and misconduct admitted by the respondent.

7. For the foregoing reasons, this appeal succeeds and holding that Jai Ram Das defendant-respondent is liable to be removed from Hahantship, we reverse the decision of the Court below on issue No. 5. The alienations being unauthorised, there is no question of any separate suit being filed by anybody for the purpose of removing defendant Jai Ram Das from the office of Mahant. It may be pointed out that the decision on issue No. 4 by the Court below was not questioned before us and this decision accordingly stands.

8. Our conclusion, however, would not completely dispose of the suit and the case will have to go back to the Court below for further proceedings u/s 92, Civil Procedure Code, in the matter of determining whether a new trustee should be appointed or the scheme should be settled and also considering the question of directing accounts and enquiries and granting such other further relief as the nature of the case may require. There would, however, be no costs of this appeal. Parties have been directed to appear in the Court below on 24-8-1964 when the Court would give another short date for further proceedings in accordance with law in the light of the observations made above.