

(1914) 01 AHC CK 0007
In the Allahabad High Court

Gobind Das

APPELLANT

Vs

Baldeo Das

RESPONDENT

Date of Decision : 22-01-1914

Acts Referred:

Citation : (1914) ILR (All) 161

Hon'ble Judges : Henry Richards, C.J.; Pramada Charan Banerji, J

Bench : Division Bench

Judgement

Henry Richards, C.J. and Pramada Charan Banerji, J.—This appeal arises out of a suit in which the plaintiff claimed possession of a village called Sangrampur. The plaintiff says this village appertained to a temple in mauza Nimnipar in the Ajaigarh State; that the power to appoint a mahant of that temple is vested in the Raja of Ajaigarh, and that the Raja duly appointed him mahant. The appellant pleads that the village in question does not appertain in any way to the temple at Nimnipar; that the Raja has no power to appoint; that he himself was appointed many years ago, upon the death of the last mahant, to the gaddi, which is situate not at Nimnipar but at Sangrampur, the village itself. It was also pleaded that the plaintiff belongs to the Harabhyasi sect, while the gaddi is Charan Dasi, and that accordingly the plaintiff can in no event be appointed to be mahant of this temple.

2. The court below has come to the conclusion that the village appertains to the temple, which is situate in mauza Nimnipar in the Ajaigarh State; and that the Raja has the power to appoint, and that he duly appointed the plaintiff; and accordingly has decreed the plaintiffs suit with mesne profits to be determined in execution of the decree.

3. The defendant appeals. We have carefully considered the evidence and heard both sides, and we are quite satisfied that the village in question appertains to the temple, which is situated at Nimnipar in the Ajaigarh State. The earliest document is a document of 1801 in which Nawab Ali Bahadur and Raja Himmati Bahadur granted this village to one Mahant Bhajnanand. It is stated that the

village " should be released to be enjoyed by the naib of the said mahant and on no account should any interference be made with the income therefrom, which should be spent by the said mahant on his own maintenance with perfect peace of mind. The said mahant should devote himself to bathing and meditation at the banks of the Ganges and remain engaged in offering prayers for the prosperity of the sarkar." The defendant contends that the document clearly shows that the grant was made to Mahant Bhajnanand personally. It will be seen that this was not the original grant. It appears that the two villages named Sunrahai and Rewai had been formerly granted, and that this document of 1801 was merely the substitution of the village of Sangrampur for the two villages mentioned above. Apart from this document, all the evidence is in favour of the village being granted as an endowment for the maintenance of the temple. It is common case that as far as the history of the village goes back, it has always been used for this purpose as a matter of fact. There can be little doubt that Bhajnanand was the mahant of bids temple. Undoubtedly Mahant Ram Sanehi was mahant of the temple after him. Jugal Das, who succeeded him, was also the mahant. Bihari Das, who succeeded Jugal Das, was the next mahant. All these persons were in enjoyment of the profits of this village, and all of them admitted that the income of the village went to meet the expenses of the temple. At one time the village, which was muafi was resumed by Government, but, on the representation that it had been granted as an endowment for the temple of mauza Nimnipar the British Government remitted the revenue and the village was again muafi and it remains so to the present time. Under these circumstances we agree in the finding of the court, below that the village in question did appertain to the temple in mauza Nimnipar.

4. The next question is whether the Raja of Ajaigarh had authority and was the proper person to appoint the mahant of the temple. It is admitted that the temple is within his territory. We find that a report, made by the kotwal as far back as the year 1840, recited that the temple was built by the wife of Raja Guman Singh, who was the Raja of Ajaigarh, and that Bhajnanand had been the first mahant and that he was succeeded by Ram Sanehi who was appointed by the Raja's successor. It is said that this document is not evidence. We think that it is evidence. It is a public record of a public inquiry. The matter was referred to the kotwal for a report by the Political Agent in connection with the appointment of Jugal Das as mahant of the temple by the Raja of Ajaigarh. We find later on that the Raja purported to depose Jugal Das for misconduct and to appoint Bihari Das as his successor. The authorities in British India appear to have questioned the authority of the Raja to make the appointment and to have put one Mohan Das, a claimant, into possession. After inquiry the representatives of Government recognized the authority of the Raja to make the appointment. Later on the Raja thought fit to depose Bihari Das in turn and to re-appoint Jugal Das. Again the authority of the raj was recognized. Later on Jugal Das was once more deposed and Bihari Das re-appointed. The authority of the Raja was again recognized, There is no evidence worthy of the name on the record to show that any other

person or authority ever appointed a mahant of this temple other than the Raja of Ajaigarh for the time being. The fact that the Raja did make the appointment of mahant rather goes to support the finding of the kotwal in 1840, that the founder of the temple was the Raja, or the wife of the Raja, of Ajaigarh; and if this is so, in the absence of any other provision as to the endowment, the power to appoint a mahant would rest in the founder and his successors.

5. On the whole we see no reason to differ from the court below in the finding that the Raja had power to appoint a mahant.

6. With regard to the plea raised by the defendant that the plaintiff was not qualified for appointment by reason of the fact that he belonged to the sect known as Harabhyasi, it is true that apparently all the previous mahants belonged to the Charan Dasi sect; but the defendant did not show in the court below that the plaintiff by reason of his not belonging to that sect was incapable of performing the duties of a mahant of this particular temple, and we know of no reason why he should be so disqualified. The defendant's case in the court below was that the village had no connection with the temple at Nimnipar and that the Raja had no power or authority whatsoever. We think, however, that it may not be out of place to make some comment on the past appointments, At one time Jugal Das was appointed. He was removed from the mahantship on grounds of immorality and Bihari Das was appointed in his place. Very shortly afterwards Bihari Das was removed from his office on the very same grounds and the same Jugal Das was re-appointed as a moral and honest man, Very shortly after that Jugal Das is said again to have become immoral, and Bihari Das moral, and the latter was once more appointed to the office which he held up to the time of his death. These appointments and re-appointments were not calculated to bring credit on the Darbar, but they are comparatively speaking ancient history. But even the recent appointments cannot be regarded as satisfactory. Bihari Das died in the year 1899. The defendant, who appears to have had the approval of the other mahants and who would have been not an unnatural successor to Bihari Das, has remained de facto mahant up to the date of the institution of the suit. It is true that he was called upon in the year 1900 to appear before the Darbar and make good his claim, and that apparently he did not do so. Nevertheless he was allowed to remain in possession until the present suit was instituted on the 5th of December, 1911. We feel sure that in future when the vacancy occurs in this mahantship, the Darbar will take care to appoint a fit and proper person to exercise the functions of mahant as soon as such an appointment can reasonably be made and so avoid disputes and scandal.

6. We think that the decree of the court below ought to be varied in one particular. That court has awarded mesne profits to be ascertained in execution. We think, considering that the defendant was allowed to remain in possession in the way we have mentioned, there ought to be no profits save from the date of this judgment. We are informed by both parties that possession has already been given. This being so, the decree of the court below will be varied by dismissing

the claim for mesne profits. We affirm the remainder of the decree. The appellant must pay the costs of this appeal.