

(1931) 07 CAL CK 0009
In the Calcutta High Court

Hari Bhajan Das Sadhu Mohanto

APPELLANT

Vs

Ganapathi Das Goswami and Others

RESPONDENT

Date of Decision : 27-07-1931

Acts Referred:

Citation : AIR 1933 Cal 271

Judgement

1. These two appeals have arisen out of two Suits No. 422 of 1922 and No. 293 of 1924, instituted by one Sitaram Das and one Haribhajan Das, respectively, for succession to the Mahantship of an Akhra known as the Bara, Digambar Akhra, situate at village Debipur in the district of Murshidabad. Mahant Bhagwan Das was its last mahant. He died on 19th Baisakh 1329 (2nd March 1922). No successor to the mahantship being apparent, the police appeared on the scene and took charge of the moveables and eventually an intestacy and escheat case was started in the Court of the District Judge. One Lakshmi Narain Das, amongst others, put in a claim alleging that he was entitled to succeed to the deceased mahant and that he had lent money to him shortly before he died, and further that since his death he had been performing the sheba and puja of the idols in the Akhra and was in possession of all its properties. He also applied to the Magistrate praying that the properties might remain in his possession so long as the rights of the rival claimants were not determined by a competent Court. On 6th July 1922 Sitaram Das instituted Suit No. 422 and in that suit Lakshmi Narain Das was appointed receiver on a security of Rs. 2,500. Suit No. 293 was instituted by Haribhajan Das on 27th September 1932, the plaint being registered under Order 33, Rule 3, Civil P.O., on 22nd July 1924. The suits were tried together and were both dismissed. Haribhajan Das has preferred F.A. No. 290 of 1928 and Sitaram Das F.A. No. 343 of 1928.

2. F.A. No. 290 of 1928.-Appeal No. 290 will be dealt with first. (After discussing the evidence in this case, the appeal was dismissed on facts and the judgment proceeded.)

3. F.A. No. 343 of 1928.-The plaintiff Sitaram Das claimed to succeed to Bhagwan

Das on the allegation that he was spiritual cousin to the latter in the second degree. The following genealogy represents the case that he made:

Keshab Das | _____ | | Sriram Das
Kanbar Das | | Baldeo Das Gomoti Das | | Bhagwan Das Sitaram Das

4. He alleged that the right to succeed to the mahantship of the Akhra and the shebaitship of the dieties installed there is governed by the relationship established by initiation by mantra. He alleged that there was no other person, at any rate no other Brahmin, who had mantra relationship with Bhagwan Das excepting himself. He alleged also that he was initiated by mantra by Gomoti Das whose name appears in the table above. In his evidence he deposed that he had not seen Kanhar Das, the Guru of Gomoti Das; but had heard about him from the latter and also from Bhagwan Das, and had also heard his name pronounced at the time of the annual Sradh. He examined a number of witnesses to support this genealogy. (After mentioning the witnesses examined and their evidence the judgment proceeded). The Subordinate Judge upon the evidence before him found Ex. 4 to be a forgery and held that the witnesses examined in support of the genealogy set up on behalf of the plaintiff was not trustworthy, and that on the other hand the contents of a will which Gomoti Das made would point to the plaintiff not having been a Gurubhai of Bhagwan Das. On these findings he dismissed the plaintiff's suit. After the trial and decision of the case, the plaintiff put in an application for review, putting forward the following genealogy as having been gathered by him from some old documents as regards the genuineness of which no question could arise and which he alleged had been recently discovered by him. This application was rejected:

Damodar Das | _____ | | Keshab
Das Shanta Das | | Sriram Das Kanbar Das | | Baldeo Das Gomoti Das | |
Bhagwan Das Sitaram Das

5. In these circumstances the plaintiff as appellant in this appeal has asked for leave to amend his plaint by inserting therein the above genealogy and for an order for further trial of the suit thereafter. Before considering the question whether the plaintiff's prayer should be granted it is necessary to see whether defendant 1 has succeeded in showing that he has any title to the mahantship, for if he has done so it would be unjust to allow the plaintiff to fight him on an altered case a second time and the plaintiff's prayer must be refused on that ground alone. His case was that Keshab Das was a mantra disciple while one Mukunda Das was a pupil disciple of Swarup Das and that the two disciples agreed between themselves that they would succeed to each other generation after generation, in the absence of a mantra disciple, and in support of this agreement he produced a document Ex. D. The Subordinate Judge has found this document to be a forgery and the story of the agreement to be false. We have examined the document itself and the reasons upon which the Subordinate Judge has come to this conclusion and we are in entire agreement with his opinion. It has not been suggested that but for this agreement or but for the absence of a

mantra disciple defendant 1 who is a pupil disciple only can have any claim. The Subordinate Judge found further that defendant 1 is a Nimayat Baisnav and not a Ramyet Baisnav like Bhagwan Das and in that view observed:

The plaintiff was of the same community, and the late Bhagwan Das as a member of the same community with him could claim to succeed to him in preference to defendant 1 who was not of the same community with him.

6. With this finding and observation however we do not agree; we think the materials in support of them are not sufficient for holding that defendant 1 is not a Ramayet but a Nimayet Baisnav. Even then defendant 1 will have to establish that there is no mantra disciple of Bhagwan Das and that he himself is a pupil disciple of the same Swarup Das who was the Guru of Keshab Das. This therefore is not a case in which defendant 1 has established his own claim to the mahantship. If therefore he is to remain in possession, he will do so because anybody has not yet succeeded to prove a title thereto. The plaintiff, on the other hand, supported his claim by false evidence, oral and documentary, and this by itself should make us feel extremely unwilling to allow him an opportunity to amend his pleading. We have accordingly considered with care and not without some anxiety whether such leave should be granted. The plaintiff claimed to be a mantra disciple of Gomoti Das and this he has succeeded in proving.

7. He has also proved that Gomoti Das was a mantra disciple of Kanhar Das, which was his case. The falsity of his defence lay only in his attempt to connect Kanhar Das with Keshab Das. He alleged that Kanhar Das was a mantra disciple of Keshab Das; whereas what he wants now to show is that Keshab Das and Kanhar Das were spiritually related in a different way, namely, that Keshab Das, spiritual Guru, was one Swarup Das who himself was a mantra disciple of Damodar Das and that Swarup Das had another mantra disciple named Shanta Das, and Shanta Das' mantra disciple was Kanhar Das. The documents which he now wants to rely on are unimpeachable and they do contain these names as so related. Whether the identity of these persons will be established or not is a different matter. The adverse inference which the Subordinate Judge has drawn from the contents of the will of Gomoti Das, in our opinion, does not necessarily follow and so is not a sound one. In these circumstances it is not possible to hold that the amendment which the plaintiff asks for will materially alter the complexion of the case, or that a new cause of action will thereby be substituted or that any inconsistent title will be in issue, or that the new case will in any way be antagonistic to the old one. After all, as the Judicial Committee pointed out in the case of *Ma Shwe Mya v. Moungh Mo Anaung* AIR 1922 PC 249 :

All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised.

8. The question how far the conduct of a party, such as there has been of the

plaintiff in this case, should disentitle him to leave to amend his pleadings is one on which there is and can be but little authority. Two of the Judges who were most liberal in granting such leave were Bramwell, L.J. and Bowen, L.J., Bramwell, L.J., in *Tildesley v. Harper* (1878) 10 Ch D 393 said:

My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide or that by his blunder he has done some injury to his opponent which could not be compensated for by costs or otherwise.

9. Bowen, L.J., in *Cropper v. Smith* (1884) 26 Ch D 710 said:

It does not seem to me material to consider whether the mistake of judgment was accidental or not, if not intended to overreach. There is no rule that only steps or accidental errors are to be corrected....I reserve to myself the right to consider how a case should be dealt with where there has not been merely a mistake but an attempt to mislead. I do not see here any attempt to mislead.

10. These observations would seem to suggest that if a false defence is deliberately taken up and persisted in, leave to amend should not be granted. And that must be so, for no Court would be justified in exercising its discretion, however wide a discretion it might have, which may encourage perjury or forgery by letting the party feel assured that however unclean his conduct may be, the discretion will ultimately be used in his favour. But the present case is exceptional in its features: the falsity of the claim does not extend to the whole of the title that was set up but was only confined to one particular link in the entire chain, and defendant 1 can hardly complain of the perjury and forgery that he had to combat with for he readily met them with a forgery very cleverly contrived. Bearing in mind the object of the legislature in enacting Order 6, Rule 17 of the Co5e and considering all the facts and circumstances of the case, we think there is more in favour of the plaintiff than against him and that it would be more in furtherance of justice if we allowed the amendment than otherwise. Such leave however should be dependent on the payment by the plaintiff to defendant 1 of all costs in the litigation within four months from today.

11. The result is that we allow the appeal and the application filed by the plaintiff and direct that if within four months from today he pays to defendant 1 the entire costs as detailed in the decrees of the Court below and of this Court the decree of the Court below will be set aside and he will be allowed to amend his plaint but only to the extent of putting in the genealogy now put forward by him and of such alteration in his pleadings as may be consequential upon it. On the amendment being made notice thereof will be given to defendant 1 who will be allowed to put in a fresh defence should he consider it necessary to do so. Proper issues will thereafter be framed and the suit will be tried afresh. Defendants 2 and 3 will no longer be treated as parties to the suit. If the order as regards the payment of costs is not complied with, this appeal will stand dismissed with costs to defendant 1. The cross-objection is dismissed without costs.