

(1916) 07 CAL CK 0025
In the Calcutta High Court

Lochan Bhinmali and Others

APPELLANT

Vs

Adhar Chandra Mahanta

RESPONDENT

Date of Decision : 04-07-1916

Acts Referred:

Citation : 35 Ind. Cas. 630

Hon'ble Judges : Newbould, J;D. Chatterjee, J

Bench : Division Bench

Judgement

1. The plaintiff, Adhar Das Mahant, says he is the chela and heir of Guru Das Mahant deceased and as such brings a suit on a mortgage-bond executed by the defendants in favour of the said Guru Das Mahant.

2. The main question fought out is whether the plaintiff is the heir of Guru Das. The first Court held he is not and the Court of First Appeal has held he is: the question before us is which is the correct view. Guru Das was a Barui by caste and admittedly a Sudra. He could not, therefore, become a yati or sanyasi according to the Smritis. He could not and did not become a yati or sanyasi but he became a byragee. The learned Judge finds: From the evidence we find that Guru Das entered the order of the byragees and was cut off once for all from his family and society and till his death acquired properties and left them at his death. He initiated the plaintiff as his principal disciple called chela and nominated him as his successor", and further on, the evidence adduced by the plaintiff about usage or custom establishes the fact that their chelas inherit the properties left by byragees"

3. These findings are in favour of the plaintiff. It is contended, however, that the question of custom could not arise unless it were shown that there was a complete renunciation of the world. In the case of Teeluck Chunder v. Shama Churn Prokash 1 W.R. 209 the respondents who had become byragees were held not to have lost their right of succession as they had not given up all worldly cares and transactions. No question of special custom was raised in that case. In the case of Juggunnath Paul v. Bidianund Dutt 10 W.R. 172 : 1 B.L.R. A.C. 114

the plaintiff became a byragee and went out on pilgrimage leaving his properties with his nephew who was to take them if he did not return but to return them if he did. The learned Judges said: "it appears to us indisputable that a Hindu becoming a byragee, if he chooses to retain possession of, or to assert his right to, property to which he is entitled, does an act which may be morally wrong, but in which he will not be restrained by the Courts." The suit was decreed and the property recovered from a purchaser from the nephew. Then in the case of *Khodeeram Chatterjee v. Rookhinee Boistobee* 15 W.R. 197 it was held that a Hindu by becoming a byragee does not divest himself of all title in his family estate, which on his death devolves on his heirs and not on his seba-dasi or kept mistress who performed his sradh. In the case of *Harish Chandra Roy v. Sheikh Atir Mahmud* 18 Ind. Cas. 474 : 40 C. 545 : 17 C.W.N. 517 it was held that a Sudra who becomes an ascetic is not excluded from inheritance unless some usage is proved to the contrary. In none of these cases was any custom or usage in this connection proved.

4. In the present case, however, the lower Appellate Court has found the existence of a custom or usage by which a chela succeeds to a byragee mahant of the type of Guru Das, and in second appeal we cannot say that the evidence is not sufficient.

5. It is not alleged or proved that Guru Das did not, when he entered the byragee order, give up his paternal properties or that he retained anything. If he once renounced the world and adopted a religious order like that of a byragee mahant, he would not by reverting to worldly affairs in his new life cease to be a byragee mahant and if a well-defined usage or custom governs the succession in the new order, there is nothing in Hindu Law to prevent the said usage or custom binding him and his property.

6. In this view of the case, I think that the plaintiff is entitled to succeed. The appeal is dismissed with costs.