

(1913) 03 PRI CK 0006

In the Privy Council

Mohan Lalji and Another

APPELLANT

Vs

Gordhan Lalji Maharaj and others

RESPONDENT

Date of Decision : 17-03-1913

Acts Referred:

Citation : (1913) 40 IndApp 97

Hon'ble Judges : Atkinson, Moulton, Johan Edge, Ameer Ali, JJ.

Judgement

Ameer Ali, J. 1. The dispute in this case relates to the sebaiship of a Hindu temple belonging to the Ballavacharya Gosains situated at a place called Jatipura in the Muttra District of the United Provinces of India. 2. The Ballavacharya cult, in reality an offshoot of Vaishnavism, was founded in the sixteenth century of the Christian era by one Ballav Acharya, who is usually designated among his followers and disciples as Maha Pirbhuji. He and his descendants, who constitute the Ballavacharya Gosain Kul, are held in great veneration by the members of the sect and regarded as the incarnation of the famous and favourite Hindu deity Krishna, whom in common with other Vaishnavas (Vishnuvites) they worship. The cult established by Ballavacharya differed in several particulars from the practices in vogue among other votaries of Krishna, the principal point of difference consisting in the fact that he repudiated the practice of celibacy and asceticism practised by the other Gosains. The Ballavacharya Gosains, in other words the descendants of Ballav, possess several principal temples, each of which is presided over by a member of his kul or family, who is styled a tikait. The defendant Gordhan Lalji is in possession of one of the most important of these temples, if not the most important, which is situated at Nathdwara in Odeypore State. 3. In order to make the contentions of the parties intelligible, it is necessary to state in this connection certain admitted facts relating to the customs and usages in vogue among the Ballavacharya Kul. In the first place the Ballavacharyas do not intermarry in their own kul, as the members belong to the same gotra. They take wives from among the Bhats, a well-known Brahmanical caste, and marry their daughters to Bhats. In the Ballavacharya Gosain temples besides the principal image, which is directly or indirectly a presentment of

Krishna, there are subsidiary images not enjoying the same worship or veneration but nevertheless regarded as representations of Krishna. They are almost invariably images of one or other of the descendants of Maha Pirbhuj. Another fact necessary to bear in mind is that the ministrations in the Ballavacharya temples are entirely in the hands of the direct descendants of the founder, and the Gosains of his kul are the preceptors of the cult taught by him.

4. The temple which forms the subject-matter of dispute in the present case is stated to have been built about the time of the Indian Mutiny, by one Muttuji, a descendant of Ballav and thus a member of his kul. The worship he set up in this new temple was of the image of Sri Madan Mohunji, which is proved to have been brought from the tikait defendant's temple at Nathdwara. This was one of the subsidiary images that were worshipped there along with the principal deity. Muttuji remained in possession of the temple built by him and of the worship performed there until his death in 1888. He left a widow, Satbinda Bahuji, and two daughters, Mussamat Ganga Betiji and Gordhana Betiji. After the death of Muttuji, his widow, Satbinda, carried on the worship until 1888, when she died, and the charge of the temple devolved on Ganga and Gordhana. Ganga died in 1896 and Gordhana in 1902. Both Ganga and Gordhana were married, according to the custom of the sect, to Bhat husbands, and their sons are accordingly called Bhats. The plaintiffs, Mohan Lalji and Gordhan Lalji, are the sons of Ganga, whilst the defendant Madhusudan Lala is the surviving son of Gordhana, and Damodar Lala is her husband.

5. On the death of Gordhana, these two, together with Anrudh Lala, another of her sons, who was alive at the time, appear to have taken possession of the temple. In 1904 a suit was instituted by the defendant Tikait Gordhan Lalji against Damodar and his two sons to establish his title to the sebaiship, and for possession of the temple. This suit was referred to arbitration, and an award was made in his favour under which he obtained possession. During the pendency of that suit, the plaintiffs, the sons of Ganga, brought the present action against Damodar and his two sons for joint possession of the temple and its appurtenances. On August 25, 1905, Tikait Gordhan Lalji was added as a defendant to the suit of Mussamat Ganga's sons.

6. The plaintiffs' claim against Gordhan Lalji is for ejectment; whilst against the other defendants it is for joint possession. They allege that Muttuji, their maternal grandfather, was the owner of the temple with all its appurtenances; that on his death his widow came into possession of the same; by right of inheritance; and that upon her death their mother and their aunt "became the owners of the temple." And they claim to be entitled on the death of Gordhana to joint possession with her husband and sons to an equal share as "owners." It will be noted that they base their right on the ordinary right of inheritance under the Hindu law. The tikait, the real contesting defendant, denied the title put forward by the plaintiffs. He urged that the temple was not the personal property of Muttuji and that the right of inheritance did not attach to it. He further alleged that according to the custom in force among the Ballavacharyas daughters' sons did not belong to their kul and were debarred from taking part in the ministrations at the temple for the benefit of the worshippers; and he claimed that as a collateral relative of

Muttuji in the male line he was entitled to succeed him as sebaith. He also alleged that the temple was built by Muttuji on land belonging to his (the defendant's) father with his permission, and that on Muttuji's death without leaving any lawful heir the right to the possession devolved on him by virtue of an agreement executed by Muttuji. 7. On these respective allegations of the parties the trial judge framed a number of issues, only four of which need attention. The second and third put in issue the incapacity alleged by the defendant of daughters' sons succeeding to their maternal grandfathers or taking part in the worship at a Ballav temple. The fourth raised the question whether the property was debottar. The fifth dealt with the claim of the defendant to succeed to the sebaithship by right of heirship to Muttuji. The Subordinate Judge, on an exhaustive review of the evidence, held on all the issues against the plaintiffs and accordingly dismissed the suit. His decision has been affirmed on appeal by the High Court of Allahabad. 8. From the decree of the High Court the plaintiffs have appealed to His Majesty in Council. They, or rather their advisers, abandoned, if not in the first Court certainly in the High Court, their contention that the temple in suit with the appurtenances formed the private property of Muttuji subject to the ordinary law of inheritance. In the High Court the case was discussed and decided on the admission of the plaintiffs' counsel that the property in suit was debottar. In fact, in their Lordships' judgment, the evidence left no room for the opposite contention, for, apart from positive testimony directly bearing on the point, the performance of the worship in accordance with the rites of the sect for whose benefit it was held may be treated as good evidence of dedication. That being so, the ordinary rule of Hindu law relating to the descent of private property is not applicable to the particular right in controversy in this case. 9. Stress, however, is laid on the principle enunciated in *Gossamee Sra: Greedhareejee v. Rumanlolljee* Gossamee L.R. 16 Ind. 13, where Lord Hobhouse, delivering the judgment of this Board, said as follows: "According to Hindu law, when the worship of a thakoor has been founded, the sebaithship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to shew a different mode of devolution." This rule must, from the very nature of the right, be subject to the condition that the devolution in the ordinary line of descent is not inconsistent with or opposed to the purpose the founder had in view in establishing the worship. This qualification is in fact covered by the words used by Lord Hobhouse. 10. Starting from this point, the first question to determine is whether the plaintiffs, suing for the joint exercise of the right of sebaithship to the temple in suit, have established their competency for the office. The duties which are imposed on the person in charge of the temple and of its worship are to be found very comprehensively set forth in Professor Hayman Wilson's "Religious Sects of the Hindoos." Both the Courts in India have found that the plaintiffs, being Bhats, and not belonging to the Gosain Kul, cannot perform the diurnal rites for the deity worshipped by the sect; they cannot wash, dress, or adorn the image or perform the arti (one of the most important rites), which seems to consist in waving the light before the image of

the deity. They cannot touch the food offerings placed before the idols, which are afterwards distributed among the Vaishnav votaries. Nor can they communicate the mantras to the disciples for purposes of initiation. It is to be noted in this connection that whilst the daughters of the Ballav Gosains married to Bhat husbands continue to live in their fathers' houses and remain within their fathers' kul, their sons do not acquire that status; as sons of Bhats they are Bhats, and not Ballavacharya Gosains who are by virtue of their descent entitled to act as ministers of the cult established by Ballav Maha Pirbhuji. 11. Another fact is equally clear on the evidence that Bhat girls married into the Gosain Kul receive the mantras and become thenceforth members of the kul. It is not surprising, therefore, that after Muttuji's death his widow and daughters remained in charge of the temple and its worship. But to allow the plaintiffs' claim to an admittedly Ballav temple, where the rites are performed according to Ballav ritual which it is clearly established they cannot perform, would, in their Lordships' judgment, defeat the purpose for which the worship was established. 12. In an action of ejectment the conclusion at which their Lordships have arrived would be sufficient for the affirmance of the decree appealed against dismissing the plaintiffs' suit. But their Lordships are of opinion that the tikait defendant has succeeded in establishing an independent title of his own to the temple in suit. He appears to be the nearest male relative of Muttuji, both being descendants of two full brothers; there can be little doubt, also, that the image installed at Jatipura was, brought from his temple at Nathdwara, and that the worship founded by Muttuji was an offshoot of the worship in Nathdwara. The temple, again, was built on land belonging to the tikait defendant, with the permission of his ancestor, who held the office of tikait at the time. 13. It seems to their Lordships that apart from the statements contained in Muttuji's letter, on which the defendant relied in his written statement, he has a clear title, according to the customs and usages of the Ballav Kul, to the sebaiship of the temple in suit. 14. Their Lordships are of opinion that the judgment and decree of the High Court are right, and that this appeal must be dismissed; and they will humbly advise His Majesty accordingly. 15. The appellants will pay the costs.