

(1895) 02 PRI CK 0003

In the Privy Council

Mohunt Rhagaban Ramanuj Das

APPELLANT

Vs

Mohunt Roghunundun Ramanuj Das

RESPONDENT

Date of Decision : 02-02-1895

Acts Referred:

Citation : (1895) 22 IndApp 94

Hon'ble Judges : Watson, Hobhouse, Macnaghten, Shand, Richard Couch, JJ.

Judgement

Richard Couch, J. 1. The question in this appeal relates to the right to succeed as mohunt of a muth or Hindu religious institution called Dakhinparsa, situated in Puri, near the temple of Juggernath, of which in 1850, and for some years before, Chaturbhuj Das Gossain was the mohunt. On the 15th of February, 1850, the Collector of the southern division of zillah Cuttack, with a view to putting an end to the frequent disputes which arose as to the right of succession to the muths at Puri, of which there was a very great number, called on the mohunts who claimed the right of nominating their successors to make their selections and report them to him, and to inform him also whether they were of opinion that so doing was contrary to the Shastras, and he invited a detailed representation on the matter and their opinion thereon. On the 18th of April, 1850, a report was submitted to the Collector by a great number of the mohunts, Chaturbhuj being one of them, and from this and the oral evidence in the case it has been found by the Subordinate Judge and the High Court e that the mohunt has a power of appointment from among his chelas or disciples if more than one; that in the absence of appointment a chela succeeds---if there are more than one the eldest succeeds---and in the absence of a chela a gurubhai (a co-chela of the mohunt) succeeds. 2. On the 6th of May, 1861, Chaturbhuj presented a petition to the Civil Court of Cuttack, within whose jurisdiction the Dakhin-parsa Muth was, in which he said: " I have kept in my muth a Brahmin lad whose name is Hanuman Das and who belongs to the North West the place of my birth and whom I brought here when he was only five years old. I have invested him with the sacred thread in accordance with the Shastra and having duly made him my chela and having caused him to read the Shastras in Sanscrit & c. I have

instructed and brought him up in a variety of accomplishments. I have given him the custody of the key and lock of the building of the muth and have through him been managing all sorts of business. Besides him I have nobody else. . . . The said Hanuman Das better known as Hoygrib Ramanuj Das will after my death become the mohunt and occupier of the guddi of the muth and manage all affairs and expenses of the amrita-manohi of Jagannath Mahaprobhu, If anybody objects to this on the allegation that he is my chela then his objection will not be fit to be accepted nor will it be accepted. So with the object of avoiding any dispute regarding my muth I file this petition and pray that it be ordered that this petition may be kept in the public office." The petition appears from an official entry to have been presented by Chaturbhuj in person, and it was ordered to be filed in the office. On the 21st of August, 1862, Chaturbhuj executed a deed in which he declared as follows:

I am the mohunt and occupier of the gaddi of the muth, I have a chela Hoygrib Ramanuj Das who is very expert in serving me. His conduct is also good and worthy of an occupier of a mohunt's guddi. I have no other chela or heir besides him. With this view I have already filed in the Civil Courts and in the Collectorate petitions making known that the said Hoygrib Ramanuj Das will be the successor to my office after my death and will be the occupier of the mohuntai guddi and owner and possessor of the muth and all movable and immovable properties j belonging to it. . . . Therefore, inasmuch as at present I have become old and intend to prevent all future obstruction to the succession to my mohuntai guddi I transfer with the exception of the right of occupying the mohuntai guddi all the aforesaid movable and immovable properties to the said Hoygrib Ramanuj Das of my own will and make him the owner as of right and in possession of the same. He will get his name registered in accordance with law. . . . After my death he will get the mohuntai guddi. 3. On the 27th of March, 1867, Chaturbhuj presented another petition, referring to the former one, and stating that he had put Hoygrib in possession of the muth with all its properties, and praying that in accordance with the prayer of his chela Hoygrib Ramanuj Das it might be ordered that his name might be recorded. In this petition Chaturbhuj says: "I have no other chela or heir besides the said Hoygrib Das" Chaturbhuj died on the 20th of March, 1868. On the 12th of June, 1873, Roghunundun, the original Respondent, who has died during the appeal, presented a petition in opposition to a petition of Hoygrib for a certificate of heirship to Chaturbhuj, in which he is described as "Mohunt Roghunundun Ramanuj Das eldest chela and heir of Mohunt Chaturbhuj Ramanuj Das deceased." That petition contains the following statements: Hoygrib Ramanuj Das alleging himself to be the chela and heir of Mohunt Chaturbhuj Das deceased has applied for a certificate of heirship and notification to that effect has been issued. The petitioner is by no means the chela and heir of my deceased guru and cannot obtain a certificate on that basis. . . . The deceased Mohunt Chaturbhuj Das knowing that I am the son of a good Brahmin and fit to be the mohunt of the muth in accordance with the custom of muth-holders took me as chela in proper form and brought me up by educating me in

several branches of learning and the Baishnab religion. . . . The petitioner is by birth the son of the uterine brother of my deceased guru. The petitioner being afflicted with leprosy from childhood and not being fit in after-life to perform the duties of a householder was left by his father to pass his days in the muth. My guru the deceased mohunt being led by affection used to shew favor to the petitioner as his nephew and as one who had fallen into bad circumstances. For this reason the petitioner was called by J people generally the younger chela of my guru. Under these circumstances even if the petitioner is the younger chela I being the elder am the proper person to be the heir. . . . For a mohunt has frequently to perform the sheba of Jagannathji and has to manage the amrita-manohi duties of the deity. A man afflicted with leprosy is unfit to perform such duties as deb sheba & c. and people cannot come in contact with (touch) him. Therefore the petitioner being afflicted with leprosy is not fit to be mohunt in accordance with the Shastra and custom and cannot obtain the certificate of heirship. 4. In a deposition made on the 28th of July, 1873, in support of his petition Roghunundun said: "After the death of Chaturbhuj Hoygrib became the mohunt with my permission. Before the death of Chaturbhuj I used to do the duties of pujari in the muth. I lived in the muth up to the death of Chaturbhuj." In a petition in answer to this, presented by Hoygrib on the 28th of July, 1873, Hoygrib said, "The objector is by no means the chela of my deceased guru. . . . My guru had no other chela besides myself." No order for a certificate of heirship was made. Hoygrib continued in possession of the muth and to be the mohunt until his death on the 10th of May, 1880. After July, 1873, Roghunundun took no steps during Hoygrib's lifetime to assert his right to be mohunt or to have it declared that he was a chela of Chaturbhuj. He continued to perform the duties of pujari. On the 25th of November, 1887, the Appellant brought a suit against Roghunundun alleging that on the 20th of February, 1875, Hoygrib duly made the Appellant his chela, and that being the chela and heir of Hoygrib he was entitled to possession of the muth and the properties appertaining thereto, and praying that on its being established that he was the chela and heir a decree might be passed giving him possession. His case is that being Hoygrib's uterine brother's son Hoygrib caused him to be brought to Puri from his birth-place and changed his former name Bhagabat Dobey according to the custom observed by previous mohunts, and gave him the name of Bhagaban Ramanuj Das and duly made him his chela; that he remained in the Dakhinparsi Muth for about four years after he became chela and then went to Benares; that he studied for eight or nine months and then went on pilgrimage; he then travelled as a pilgrim for two years and some months and then returned to Benares, where he remained for about two or three months; after that he came to Puri, where he learned that his guru had died; that he wanted to enter the muth and was not allowed to enter it. 5. The case of Roghunundun in his written statement is that the Appellant never became the chela of Hoygrib; that Hoygrib long before his death had been suffering from leprosy and was therefore according to the Shastras and custom incompetent to adopt anybody as his chela, and if he adopted a chela the adoption was invalid; that when Roghunundun was twelve years old Chaturbhuj

adopted him as his chela and Hoygrib was the younger chela; that Hoygrib knowing Roghunundun was his gurubhai and that he was in every respect competent to be mohunt, consulted the principal mohunts and adhikaris (superintendents) of the muths of his sect and the gentlemen of the town of Puri and the old servants of the muth, and before his death a will was duly executed in Roghunundun's favour stating therein the above facts, and after Hoygrib's death the santhas and mohunts and gentlemen of the town of Puri assembled, gave him the mohunta kanthi, and made him gaddinashin. 6. The first and main question in the case is, Was the Appellant validly adopted by Hoygrib? In addition to the Appellant's own evidence, seven witnesses were called who said they were present when the adoption took place and spoke of the ceremonies then performed. Of these, three were mohunts and two were adhikaris of neighbouring muths, and it did not appear that they had any connection with the Appellant. On the part of Roghunundun there was the evidence on this question of five witnesses. The first was a mohurrir of the Puri Collectorate, who spoke to a conversation with Hoygrib ten, or twelve years before his death in which he told him he had taken no chela. No other person appears to have been present. Such evidence is of no value. The next witness was one of Roghunundun's pleaders. His evidence was that Hoygrib about five or seven months before his death brought him a draft of a will, and, having read it and afterwards conversed with Hoygrib, he came to know that up to that time he had taken no chela. He also said that Hoygrib told him that Roghunundun was his gurubhai. Another witness (No. 5) was Roghunundun's mokhtar. He said Hoygrib did not adopt any chela, but he could not when asked explain his reasons for making that statement. Witness No. 6 said that if the Appellant was made a chela he must have known it (his reason for it apparently being his having gone to the muth frequently in Hoygrib's time). Several other witnesses gave similar evidence that the Appellant was not made a chela; if Hoygrib had made a chela they must have known it. Witness No. 8 said that he had heard from Hoygrib that Roghunundun was his gurubhai. 7. The Appellant's evidence of his going to Benares to be educated was supported by two witnesses who were examined there under a commission. One was the son of Isri, the pundit to whose house the Appellant went, who was dead. He said the Appellant used to send letters to Hoygrib in which he addressed him as his guru, and he also received letters from Hoygrib in which the latter styled him as his chela. The other witness said he saw the Appellant at Benares with Isri Pundit. Nothing was elicited from either of these witnesses which affected his credit. The High Court said that the story about the absence of the Appellant at Benares and the pilgrimage was a very doubtful one, and if it was to be believed it might have been much more fully proved. This does not appear to their Lordships to be a satisfactory way of dealing with this evidence. 8. The next question is the adoption of Roghunundun by Chaturbhuj. This is important, because if he was not adopted he was not a gurubhai of Hoygrib, and according to the custom was not entitled to succeed him if the Appellant had not been adopted. The evidence afforded by the so-called will applies to the adoption principally of Roghunundun, but also of the Appellant.

The Subordinate Judge says in his judgment: "The only document filed on behalf of the defence to rebut the evidence as to Plaintiff's chelaship and to prove that Defendant was Hoygrib's gurubhai is a will purporting to be the will of Hoygrib Das deceased dated j the 9th of May, 1880. Defendant does not claim the property under this will but tendered it to prove certain admissions of Hoygrib as he did not take any probate." The learned Judges I of the High Court seem to treat the will as conclusive. They say: " If Hoygrib made the will in dispute, it is impossible to believe that the Plaintiff was ever appointed chela, for the expressions used in the will negative any such idea. If the Plaintiff was appointed chela, it is difficult to see why Hoygrib should have made this will." Their Lordships do not accept this view of the will. They think it is necessary to consider whether, having regard to the other evidence in the case, the statements in the will should be accepted as true. The statements are as follows: That my venerable guru had two chelas i.e. the elder Roghunundun Ramanuj Das and the younger myself. That during the last days of my guru the said Roghunundun having gone on pilgrimage and I having remained in my own muth and rendered help to the best of my ability in the matter of seba and other services to my guru the said mohunt and to Jagannath Mahaprobhu my guru the said mohunt became satisfied and gave me the mohuntai kanthi in the presence of all the santhas and mohunts of Puri in accordance with the custom prevailing from before and gave me permission to become guddi-nashin (to succeed him as the mohunt) after his death. Some time after my guru having died I became the guddi-nashin and have been duly managing all affairs. In the meantime my elder gurubhai the said Roghunundun Ramanuj Das having returned from pilgrimage wanted to have from me some position of authority. Thereupon I appointed him as the principal pujari to perform the puja services of Sri Roghunathjiu Thakoor the presiding deity in that muth and also as my representative in many matters to be done by me. ... He has up to this time been satisfactorily discharging all those duties and he is virtuous and is one of the heirs of my guru. His character has given satisfaction to me, to other santhas and mohunts and to all persons young and old living in the muth. I had intended to bring a Brahmin boy from the North-Western Provinces and adopt him as my chela but my body having been diseased from before and of late there having been an aggravation of the disease my life is in danger. So in the presence of Mohun Das, Mohunt of Sri Muth, Mohunt J Narain Das, Mohunt Anirudha Das, Mohunt Baroda Ramanuj Das and Adhikari Komul Narain Ramanuj Das all belonging to our sect and with their advice I have made this arrangement that after my death my gurubhai the said Roghunundun Ramanuj Das shall be my successor and heir and shall be the occupant of the guddi of this muth. He will also be the owner. ... And the Brahmin boy from the North-West whom I intended to adopt as my chela is one Bhagahan Dobey the son of Sanman Dohey resident of mouzah Tewaripore, pergunnah Kanda, zillah Ghazipore in the North-Western Provinces. If hereafter he comes and agrees to become a chela then my gurubhai the said Mohunt Roghunundun Ramanuj Das will duly adopt that Bhagahan as his chela and if after being adopted as chela he the said Bhagahan proves to be of good

character then after the death of Roghunundun he will be Roghunundun's heir and the mohunt of the muth. 9. The statement in this document that Chaturbhuj had two chelas and that Roghunundun was Hoygrib's gurubhai is directly opposed to the statements of Chaturbhuj in his petition of the 6th of May, 1861, his deed of the 21st of August, 1862, and his petition of the 27th of March, 1867, and to the petition of Hoygrib of the 28th of July, 1873, in which Hoygrib says, "My guru had no other chela besides myself." The statement "that during the last days of my guru the said Roghunundun having gone on pilgrimage" is contrary to Roghunundun's deposition in the certificate case on the 28th of July, 1873, in which he says, "Before the death of Chaturbhuj I used to do the duties of pujari in the muth. I lived in the muth up to the death of Chaturbhuj." Apparently it was thought necessary to state the pilgrimage to account for Hoygrib becoming mohunt. Then the statement of the intention to bring Bhagahan Dohey from the North-Western Provinces and adopt him as his chela cannot be true if the evidence of the Appellant's witnesses who say they were present at his adoption is true. As to these witnesses the Subordinate Judge says: "It has not been shewn that Plaintiff's mohunt and adhikari witnesses have connections with Plaintiff or with mohunt Utturparsa muth; and knowing the jealousy with which Baishnabs regard men who do not belong to their sect, it does not appear why these men should swear to a daring falsehood and accept one as a member of their class who did never go through any of the rites necessary to make a Baishnab, and not only so accept him but invest him with a character by a series of false and perjured statements which will make him not merely a Baishnab, but give him the highest position which men of their sect can attain." Their Lordships think this observation has great weight. The document is not a will; it has no testamentary effect; it is simply a statement by Hoygrib, and when compared with the other evidence is not in their Lordships' opinion entitled to credit. The evidence of Roghunundun's witnesses as to his adoption by Chaturbhuj does not appear to be of any value. 10. The Subordinate Judge was of opinion that the will was not the will of Hoygrib, The High Court appears to have thought that the only question with regard to the will was whether it had been satisfactorily proved. They found "as a fact that the will was the will of Hoygrib." And if their Lordships rightly understand their judgment, they thought this would be an answer to the Appellant's case, and that it was unnecessary to consider whether the statements in it were true. 11. It remains to consider the question of leprosy. Upon this the Subordinate Judge and the High Court also differed. The remark of the Subordinate Judge as to the Appellant's mohunt and adhikari witnesses, before quoted, is applicable to this question. It is improbable that the mohunts and adhikaris would have taken part in the ceremonies of adoption---religious ceremonies---if it were known or there were reason for thinking that Hoygrib was afflicted with leprosy, which disqualified him from performing those ceremonies. In order to disqualify from making an adoption the leprosy must be of a virulent form. In this case there is no medical evidence, and there is evidence that Hoygrib till a few days before his death performed ceremonies which if he was suffering from leprosy he was incapable of performing. It was

argued that no one would like to interfere; but it may reasonably be thought that there would have been some remonstrance or attempt to persuade him not to perform the ceremonies by some of the persons around him, or by mohunts or adhikaris of other muths. The conclusion of their Lordships from the evidence is, that Hoygrib was not disqualified by leprosy from making an adoption, that the Appellant was validly adopted as his chela by Hoygrib, and that Roghunundun was not a chela of Chaturbhuj. What was done after Hoygrib's death could not deprive the Appellant of his right to succeed as mohunt, or give a title to Roghunundun. There was no custom to authorize the choice of a mohunt in that way. In the view which their Lordships take of the will they do not feel called upon to decide whether or not it was made by Hoygrib, upon which question the High Court and the Subordinate Judge have differed. 12. Their Lordships will therefore humbly advise Her Majesty to reverse the decree of the High Court, to dismiss the appeal to the High Court with costs, and to affirm the decree of the Subordinate Judge. The Respondent will pay the costs of this appeal.