
(1942) 07 PRI CK 0003

In the Privy Council

Case No : Privy Council Appeal No. 42 of 1938

Raghubir Lala and others

APPELLANT

Vs

Mohammad Said and others

RESPONDENT

Date of Decision : 20-07-1942

Acts Referred:

Citation : (1943) AIR(PC) 7

Hon'ble Judges : Madhavan Nair, George Rankin, Romer, Macmillan, Lords Thankerton, JJ.

Advocate : Nevill, Barrow Rogers, T.L. Wilson and Co., S. Hyam, C.S. Rewcastle, S. Row, Sir A.E. Wort, for the Appearing Parties.

Judgement

Sir George Rankin, J.

The appellants represent the plaintiffs in a suit brought on 19th April 1921, in the Court of the Subordinate Judge at Delhi to eject a large number of defendants from certain lands known as the Minarwala garden at or near Subzi Mandi at Delhi. The defendants were persons who claimed title directly or indirectly to divers portions of the land under transfers made in 1915 and 1916 by one Janindar Kirat. The plaintiffs' case at the trial and before the Board is that the land in suit is debutter, being property dedicated to religious uses of the Digambar sect of Jains. It is described in the plaint as dharamarth and as wakf. The plaintiffs sued as followers of the said sect and as having been appointed to recover the property by a general meeting of persons interested in a Jain temple or temples at Delhi. On 28th November 1921, an order under R. 8 of O.1 of the Code, appointed them to represent the Jain community at Delhi for the purposes of the suit. The trial Court by decree dated 29th February 1928 decided in the plaintiffs' favour, but the High Court, on 7th March 1935, reversed this decision and dismissed the suit.

The Minarwala property was the subject of a deed of sale dated 4th December 1895. It was described as a garden with certain buildings thereon which were partly intact and as measuring 6 bighas and 13 biswas. It was said to have two

wells and to carry with it the right to draw water in a certain manner from the Jamna canal. The vendor was one Jauhri Mal and the purchase price Rs. 7,000. A pandit called Jia Lal acted for the purchaser. He belongs to the town of Farrukh Nagar, which is not far from Delhi, and he gave evidence at the trial for the plaintiffs. The purchaser was magniloquently described in the deed as Digambar Acharya Maharaj Bhattarak Sri Manindar Kirat Ji, Guru of the Saraojis and gaddinashin of Kashta Sang, Delhi City. According to the translation laid before their Lordships, the deed contained the following sentence:

The said vendee has purchased and acquired with his own fund of his gaddi the aforesaid garden together with all the appurtenant rights for constructing a Jain temple and dharmasala and for a small garden.

The learned Subordinate Judge having transcribed what he takes to be words of the vernacular, translates the important words by the phrase "with the pure money of the capital of his gaddi." The learned Judges of the High Court say that the recital is that it was "the money of his gaddi" but do not profess to be clear as to the meaning. Learned counsel for the plaintiffs in the High Court appears from the judgment to have read it as meaning "from the special fund of his own gaddi."

As to the purchase money, it is not now contended that its source has been proved or that its debutter character can be established by tracing its origin. Jia Lal's evidence and the Sub-Registrar's endorsement on the sale deed show that Rs.1000 had been borrowed from Rai Bahadur Sultan Singh, who was the original plaintiff 1; that it was paid to the vendor as earnest money; and that the lender has been repaid. The same evidence proves that on the day after the deed was executed Jai Lal handed to the vendor before the Sub-Registrar a promissory note for Rs.2500 and Rs.3500 in notes and coin. Jai Lal says that the promissory note had been received from Arrah and Chapia, but that he does not know who the drawer and drawee were. Also that the currency notes and cash were obtained from the cashier or Manindar. Beyond this nothing is known of the source of the purchase money.

No case is made by the plaint as to the original source of the money, but in para. 2 it is suggested that the land was bought out of the fund of a Delhi gaddi which belonged to the Agarwal Jains of the Digambar sect and of which Manindar was the gaddinashin. The plaintiffs have not, however, succeeded in showing that any Jain temple or institution in Delhi or elsewhere had any claim to the money with which Manindar purchased the land in suit. When he came to Delhi (which was some time before 1895), there existed in Delhi a Jain temple in the Khajur Mohalla which was managed by a panchayat and is called a Panchayati temple. At first he was welcomed by the followers or shravaks, but before 1895 they had ceased to countenance him. It is not proved that he was ever given a position of authority in this temple, whether as Bhattarak or otherwise; and if he was a Bhattarak it would appear that monetary or other business transactions on its behalf would not have fallen within his sphere, which would have been confined

to that of a religious teacher and ascetic.

Again, it is not shown that Manindar, having acquired the land in suit, dedicated it to any Jain institution or religious purpose. Whether because he had quarrelled with those who frequented the existing Jain temple or because he had ambitions of his own he had a project of building a new temple. What his own position in regard to it was to be after it had been constructed does not appear, because his project was not carried out. The subscriptions which he solicited were insufficient to build more than the foundations, and there was trouble about the proximity of a mosque. The land now in suit does not include the actual site of these foundations, as the High Court is careful to notice. The remainder of the land was used by Manindar for his own purposes-on one part he lived in some sort of hutment; on another, he set up a small chattiala, apparently a room containing a wooden bench on which one or two images were placed; other parts were let out and the rents used for his maintenance. He appears to have made money by practising astrology and medicine and by lending money - occupations which he added to that of a religious teacher. There is no reliable evidence to show that the chattiala was a public temple. His life and conduct may not have been in accord with his religious professions as a Jain ascetic, but in fact he held and managed the property which he had bought and indeed litigated about it, as if it were his own without any interference or assistance by the Jain community. The plaintiffs cannot claim to succeed on the ground of dedication by Manindar. The learned Subordinate Judge proceeded not so much upon evidence of Jain witnesses as upon information derived by him from articles on Jainism in certain Encyclopaedias and other books. He notices that, the ordinary idea of a gaddi involves the existence of an institution managed by some person who becomes the head of the institution and sits on the gaddi or seat of authority of the institution as its head. The very idea of an institution involves the existence of some property or business, religious, public or private, which the gaddinashln manages. When Manindar Kirat first came to Delhi there was no other gaddi except the Panchayati temple in the Masjid Khajurwali lane.

He found that Kashta Sangh was not the Jain gaddi in the ordinary sense ; that a Jain Sadhu or Digambar Acharya would not manage any institution; that "these sanghs are merely monastic orders of Jain Sadhus or Acharyas." He enlarged on the precepts by which the Jain religion prescribes asceticism for its devotees and held that by the tenets of that religion an acharya is incompetent to acquire, hold or manage property. His conclusion is that the suit property was not the personal property of Manindar Kirat. It was the property of his gaddi known as Kashta Sangh Gaddi, though not appertaining to any special Jain shrine.

"This finding," he adds is somewhat based on the inferential reasoning as to the status of Jain acharyas and the practices which they are enjoined to follow.

The High Court observe that it is based, on a theoretic consideration of certain books appertaining to Jain doctrines on the question of the nature of a Bhattarak.

The only authoritative definition which has been produced of this word Bhattarak is that it means a head of the Digambar sect of the Jains who clothes himself in one garment which he lays aside during meals.

This may be taken to imply asceticism, but does not show that the Bhattarak has a relation to any institution like that which a mahant has to a math. Their Lordships are in agreement with the High Court in thinking that the learned Subordinate Judge's reasoning cannot be accepted. No doubt if a question arises whether particular property acquired by a given individual was acquired on his own behalf or on behalf of some other person or institution with whom or with which he was connected the circumstance that the individual so acquiring property was a professed ascetic may have importance. But it is out of the question to suppose that a man's religious opinions or professions can make him incapable in law of holding property. He may fail to act up to them or take heretical and inconsistent views without incurring any penalty or disability at law. In the present case, it is plain enough on the one hand that Manindar acted not so much like an ascetic as like a grihasta or house-holder. He did buy and manage property. He acquired and even dealt in money. He practised medicine and astrology for payment. He lived with a woman by whom apparently he had a son. In such circumstances professions of complete asceticism as a religious doctrine or philosophical position would seem to go but a little way to show that he was not acting for himself in his various transactions. On the other hand, it is reasonably clear that he was not acting for the Panchayati temple in Khajur Mohalla, and the learned trial Judge has himself shown that the Kashta Sangh, though called a gaddi, is really a "monastic order" and not an institution owning property.

In the absence of any real information as to the source of the purchase money these circumstances afford but a poor foundation for the plaintiffs' case. Can they be regarded as sufficient when reinforced by the recital in the sale deed of 4th December 1895 ? What is meant by "the money of his own gaddi ?" Does this refer to any religious institution as the owner of the money or to the money as part of any religious endowment? The learned Judges in the High Court were puzzled by the phrase, but considered that it may have been used to convey that the money was his private money and had nothing to do with the Jain community. Their Lordships cannot claim to be confident upon the point, but consider this to be a probable interpretation. The word gaddi is used very loosely and in different senses ; in one use of the word a gaddi appears to be a necessary part of the dignity of a religious ascetic in the highest class. The words here are "of his own gaddi" and the phrase is wholly insufficient to raise against him any kind of trust or to show that the money was not his own. Manindar, having died in 1914, was succeeded by Janindar Kirat, who made the alienations of which the plaintiffs complain. It is not now contended that if the property in suit was not debutter in Manindar's hands it became so by reason of Janindar Kirat's succession. Since he claimed to succeed not only as chela, but also by reason of a will and an adoption, the fact of his succession throws no light upon

any disputed issue in this case. Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellants will pay the costs of those of the respondents who appeared.