

(1928) 12 PRI CK 0004

In the Privy Council

Case No : Privy Council Appeal No. 134 of 1927

Ram Charan Ramanuj Das Mohant

APPELLANT

Vs

Gobinda Ramanuj Das Mohant and others

RESPONDENT

Date of Decision : 17-12-1928

Acts Referred:

Citation : (1929) AIR(PC) 65

Hon'ble Judges : Lancelot Sanderson, Salvesen, Atkin, Phillimore, JJ.

Advocate : Watkins and Hunter, Barrow Rogers and Nevil, W. Wallach, L.De Gruyther, S. Hyam, A.M. Dunne, for the Appearing Parties.

Judgement

Lord Phillimore

In the District of Midnapur there is a Mutt or charitable endowment of ancient foundation, and this appeal concerns a dispute as to the title to the office and emoluments of the Mohunt of this Mutt.

Nothing is known of its earlier history. There is a deed of gift in the year 1841 to one Lachhman being then Mohunt. And he on 11th September 1878, appointed Bharat Das, his disciple, to be his successor in the office. The document is in the form of a letter attested by various witnesses and addressed to the appointee, and the appointment is per verba de proesenti; but the document is described as a will and was registered as such, and the appointment was only to operate upon the death of the appointer. In this document Lachhman describes himself as the Gaddinashin Mohunt of the well-known Akhra named Bara Asthal, wherein two known idols, Raghunathjiu and Gopinathjiu and other idols have been installed from the time of his predecessors and to which certain other asthals described in the schedule, and also in his possession, are said to be subordinate, of all of which he is owner and manager. Five asthals or houses are mentioned in the schedule.

Lachhman died and was succeeded by Bharat, and Bharat in turn died on 27th August 1918. He had on 24th February 1908, executed an appointment of his

successor. The document is in the same form as that by which he himself was appointed, and must be deemed to be a will. In it he describes himself as Gaddinashin Chela of the Mohunt Lachhman, and recites his own appointment, and makes Gobinda Ramanuj, the plaintiff in the present suit and a respondent in this appeal, chief chela and malik and Gaddinashin Mohunt, like himself. To this document a schedule is appended in the same form as the schedule to the previous document containing the names and descriptions of the five minor asthals.

Ten years later, in 1918, Bharat executed two new wills. Both are dated as at the same day, but internal evidence shows that they were not intended to be deemed simultaneous, and enables their Lordships to fix their sequence. The first was addressed to Ramanuj. It recites that Ramanuj is the object of his affection and his chela, but states that the appointer has also another disciple named Gobinda Das Rasuya, and that in the apprehension that in future there may not be good feeling between the two chelas after the appointer's death, he is making a will, according to the terms which follow. The will then proceeds to name Ramanuj Shebait Paricharak Mohunt with the income of all the properties dedicated for the Shebas of one of the minor asthals, and in addition with two bighas of land taken from one of the other asthals, and gives to him the ornaments of the idols of the bequeathed asthal and its other possessions, to be enjoyed after the appointer's death by Ramanuj, his Chelas and par-Chelas in succession.

The will then proceeds to speak of the Bora (or greater) asthal as being the original Gaddi of the former Mohunts and to require the appointee and his successor to pay one hundred rupees per year to this principal Gaddi.

The will does not in terms say who is to be the Mohunt of the principal Mutt, but it obviously contemplates the appointment of Rasuya because it goes on to provide that if either of the two die before appointing a successor, the surviving Mohunt should take his place and become Mohunt of the whole.

The second will is, in a similar form and is addressed to Rasuya. It recites that the appointer has the two chelas, and that he has executed a will to the effect that out of the properties which he owns and possesses as shebait he has made over the two bighas of land and the properties appertaining to the particular minor asthal to Ramanuj, and proceeds to bequeath all the rest of the property of which he is possessed to Rasuya, appointing him Gaddinashin Mohunt like himself, nominating him Malik of the asthal and providing that he should continue in possession down to his chelas and par-chelas in succession. The will further provides that Rasuya shall for the benefit of the shebait of the principal idols receive the sum of one hundred rupees a year from the other Mohunt, who is described as he is described in the other will as the Paricharak Mohunt of the particular idols appertaining to the minor asthal. The will concludes with a clause similar to that in the other will providing that in case either Mohunt dies without appointing a successor, the other Mohunt shall succeed.

Shortly after executing these wills Bharat died, and disputes then arose between the two nominees.

An arrangement, however, was effected and embodied in two ekrarnamas executed on 29th January 1919, whereby the provisions of Bharat's two wills were recognized and each of the parties entered into possession of their respective offices as conferred by the wills. Rasuya did not live long after this arrangement, and died on 18th February 1920, having by will of that date appointed the defendant, Ramacharan Das Rasuya, the present appellant, his successor.

Thereupon the plaintiff launched the present suit, making a claim to be the sole Mohunt and supporting his claim by various allegations. First he said that as senior chela of Bharat he was entitled as of right to be his successor and could not be ousted by a will. Then he said that the two wills of 1918 were brought into existence by fraud and undue influence, and that Bharat had not at the time of their execution a sound disposing mind. Further, he contended that the will of 1908 was irrevocable. Next he said that the two appointments were ultra vires and illegal, and that the mutt consisting of the various asthals could not be divided, and that if these two wills were set aside the earlier will by which he had been appointed sole Mohunt prevailed or that if there was an intestacy his title as senior chela prevailed; and finally he attacked the appointment of Rasuya on the ground that his alleged testator had died without making a will and, therefore, even if the wills of 1918 stood, he, the plaintiff, was entitled to succeed under the clause of the will, which provided that in the event of either of the two Mohunts dying without appointing a successor, the other Mohunt should succeed. As to the compromise effected by the ekrarnamas, he said in substance that no compromise could affect the title to an office.

The Subordinate Judge decided all these points against the plaintiff and dismissed the suit. On appeal the learned Judges agreed with the Subordinate Judge that the plaintiff could not claim the appointment as of right by reason of his being chief chela, and that the document of 1908 was a will and was revocable. The allegation that the wills of 1918 were obtained by undue influence, and that Rasuya had died without making a will do not appear to have been pressed before the High Court.

The High Court, however, decided in favour of the plaintiff on the following grounds : The Court held that the appointments in 1918 were ultra vires and illegal, and must be set aside. The Judges treated the wills of 1918 as having revoked the will of 1908, but they treated it as a case of dependent, relative revocation, and thought that in accordance with this doctrine the will of 1908 prevailed. The Judges were inclined also to think that if no will stood the plaintiff had a title to the succession as chief chela, and it is right to add that one of the learned Judges, Page, J., attached considerable importance to this title, and only agreed with some hesitation to the view held by his colleague and by the Subordinate Judge that this title could be displaced by a will. As to the

compromise as expressed in the ekrarnamas, they held that no estopped was effected thereby.

With regard to the defence, which is founded upon the ekrarnamas, the reasoning of the learned Judges in the High Court is not easy to follow. When two parties enter into an agreement, whether it be of compromise or in some other respect, each procures the advantage of the agreement from the other, and no further advantage need be looked for to support the agreement. As far as the two parties to the agreement are concerned, each obtained for himself the benefit of an unquestioned title, and prevented himself from questioning the other's title to his respective office ; and the present defendant as privy in estate with Bara Gobinda would appear to be equally entitled to take advantage of the agreement.

It might be, however, that owing to the form of this particular suit the agreement would not constitute a defence, because in form the suit is not brought by Gobinda Ramanuj, but by the two idols acting through him as their alleged shebait - an idol being a juridical entity in Indian law : see *Vidya Varuthi Thirtha v. Balusami Ayyar* AIR 1922 P. C. 123 : 44 Mad. 831 : 48 I.A. 302 (P.C). If it were necessary to pursue this matter, it would be proper to enquire whether Ramanuj could by claiming to use the name of the idols as plaintiffs prejudice and preclude any issue which would bear upon the question of his title to be Gaddinashin Mohunt. But in their Lordships' opinion the defendant can succeed upon other grounds.

If the wills of 1918 were inoperative the Lordships would agree with the learned Judges in the High Court that the will of 1908 would stand. It would not be necessary in their Lordships' view to invoke the doctrine of dependent, relative revocation, because there is no revoking clause in the wills of 1918, and the will of 1908 would be only revoked by reason of, and to the extent of, its inconsistency with the later wills, and if the later wills effect nothing the older will must stand.

It becomes, therefore, a question whether the later wills were ultra vires and therefore ineffectual. The Judges in the High Court treated the two wills as being equivalent to one document, and as purporting to divide a mutt which they stated would be illegal. They relied upon the authority of this Board in the case of *Sethuramaswamiar v. Meruswamiar* AIR 1917 P. C. 190 : 41 Mad. 296 : 45 I. A. 1 (P.C.). But neither this case nor the earlier one of *Jaafar Mohiudin Sahib v. Aji Mohiudin Sahib* 2 M. H. C. R. 19, to which their Lordships have referred, touch the present case. They were cases where the office of Mohunt or a similar office was hereditary, but the Mohunt being a member of an undivided Hindu family, the other members of the family claimed to share in the endowments and if necessary to have a partition ; and what was determined was that the endowment went with the office and were to be enjoyed by the office-holder without partition between him and the members of his family. There is no direct authority as to the power of a Mohunt who has a number of separate asthals,

which by usage have all been held by one man, to provide for their division between his successors, or to saddle the property of one or more of the component asthals with a reservation in favour of the others, All that can be safely said is that as the essence of the law governing these mutts lies in the following of custom or usage: see the case in *Vidya Varuthi Thirtha v. Balusami Ayyar* AIR 1922 P. C. 123 : 44 Mad. 831 : 48 I.A. 302 (P.C), already cited, prima facie such a separation would be improper, unless there were special circumstances justifying it. But their Lordships desire to be understood as expressing no determination upon this point, as in their view it is unnecessary. They look at the two wills as separate documents, and they find in one of them an effectual appointment of the defendant-appellant to be Gaddinashin Mohunt, with some reservations added which may or may not be valid. The existence of these reservations and their appearance as a positive bequest in the other will does not detract from the definite appointment, which, in their Lordships' view was effectually made. The defendant-appellant was lawfully created Gaddinashin Mohunt. He puts forward no claim to the minor mohuntship, which was bequeathed to the plaintiff-respondent.

In their Lordships' opinion, the Subordinate Judge was right in his decision, and they will humbly advise His Majesty that this appeal should be allowed and that the suit should be dismissed with costs here and below.