

**(1921) 07 PAT CK 0013**

**In the Patna High Court**

Rampadarath Sinha and Another

APPELLANT

Vs

Basdeo Das and Chokhi Sahu <BR> Chokhi Sahu Vs Mahant  
Basudeo Das and Jaikant Jha minor by his Mother Samarjan  
Ojhain

RESPONDENT

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**Date of Decision :** 04-07-1921

**Acts Referred:**

Land Registration Act, 1876 — Section 55

**Citation :** 63 Ind. Cas. 231

**Hon'ble Judges :** Jwala Prasad, Acting C.J.; Das, J

**Bench :** Division Bench

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## Judgement

Jwala Prasad, Acting C.J.

1. Appeal No. 902 is by defendants Nos. 1 and 3. Appeal No. 1161 is by the defendant No. 2, Defendant No. 1 is the son of one Mahant Ram Banwari Das, Defendant No. 2 is the purchaser of 1 anna of the property in dispute, namely, a 3-annas share of a village tailed Chaktola, Tauzi No. 1315, from defendant No. 1 under a sale-deed, dated the 7th May 1912, Defendant No. 3 is the purchaser of 10 gandas of the said share in an auction-sale in execution of a decree obtained against defendant No. 1 on the basis of a bond executed by Ram Banwari Das. Defendant No. 1 is in possession of the remaining 1-anna gandas. The defendants are thus in possession of the said 3-annas share of the village. The entire village was granted by Maharaja Mahendra Singh of Darbhanga to one Prasad Das by a sanad (Exhibit 2), dated the 2nd Magh Badi 1157 F. (1750). The land granted was described in the sanad as sri priti land. The object of the grant was to maintain the donee and for the purpose of making gifts to Sadhus and Sants. The property was held in possession of the successive Mahants of the Asthal of Bharagis of the Chhaterbhuj sect situate in Rarhi of which Prasadi Das was the Mahant at the time of the grant. Ram Banwari Das was the sixth Mahant in descent from Prasadi Das. He was a married man and by his married wife had one son, defendant No. 1, He had also two Chelas, Ram Das and Basdeo Das, the plaintiff. Ram Banwari Das died in the year 1907 leaving his son, the defendant

No. 1, and the aforesaid two Chelas, In 1880 Ram Banwari Das sold 16 annas of the village to his brother Dukhran Jha. In 1887 Dukhran Jha sold bank 15 annas of the village to Ram Banwari Das retaining 1 anna to himself. In 1903 Banwari Das sold 12 annas to defendant No. 3 and retained the remaining 3 annas to himself. There is no dispute as to the 12 annas share. We are concerned in this litigation only with the 3-annas share. After the death of Ram Banwari Das there was a dispute between the defendant No. 1, his son, and Ram Das, his Chela, in the Land Registration Department. The dispute was referred to the Civil Court u/s 55 of the Land Registration Act and was decided in favour of defendant No. 1. Ram Das then instituted a civil suit against the defendant No. 1 for a declaration that the property was an endowed property belonging to the Math and for recovery of possession. That case was settled by a compromise between the parties, which was incorporated in the decree dated the 22nd September 1909. By the compromise Ram Das declared the defendant No. 1 to be the owner of the property, stating that it was not an endowed property and had nothing to do with the As that or Math. Ram Das was given 1 bigha 15 cottahs of land out of the village by this compromise. He died in Bhado 1318 F. (1911) and was succeeded by his spiritual brother Basdeo Das, plaintiff in this case.

2. Basdeo commenced this action on the 11th April 1917 for a declaration that the property in dispute was a debutter property appertaining to the Asthal of Rarhi and that defendant No. 1, the son of Ram Banwari Das, had no right in or concern with it. Upon these declarations he prayed for recovery of possession of the property by ejecting the defendants.

3. All the defendants resisted the claim of the plaintiff and filed separate written statements. Their defense gave rise to, among others, the following principal issues:

(1) Is the suit barred by limitation?

(2) Is the compromise effected by Ram Das and defendant No. 1 on 22nd September 1909 genuine or fraudulent and binding on the plaintiff?

(4) Is the disputed property debutter?

4. All these issues were decided in favour of the plaintiff, with the result that the suit was decreed.

5. The defendants have, therefore, come to us in second appeal. Mr. Kulwant Sahai on their behalf has strenuously urged that the property in dispute was not an endowed property attached to the Asthal of Rarhi but that it was the personal property of Ram Banwari Das and consequently the plaintiff as Mahant of the Asthal is not entitled to it. The lower Court has construed the sanad (Exhibit 2) of 1157 F. as endowing the property for religious and charitable purposes. This interpretation has been challenged by Mr. Kulwant Sahai and we have been referred to the terms of the document in detail. The land covered by the grant has been described as sri priti land, which literally means land endowed to the

goddess Sri. The purpose of the grant as observed above was that the grantee would appropriate the produce to maintain himself and to feed Fakirs and mendicants. The denomination of the document with the purpose indicated therein leaves no manner of doubt that the donor created a trust for charitable and religious purposes. The subsequent document of 1160, Exhibit Ah no doubt\* does not refer in express terms to the charitable purposes of feeding mendicants and Sadhus and refers only to the personal object of maintaining the donee himself, but this document does not in any way purport to destroy or affect the terms of the original grant. On the other hand it purports to have been granted in terms of the original grant, as it expressly states by way of help to support himself in the terms of the sanad." This document is only a confirmatory one and the omission of the charitable purposes expressly detailed and described in the first document does not in any way show that the grant was for earthly and not for religious purposes. In the year 1838 (1245 F.) the village was held to be assessable to Government Revenue under Regulations II of 1819 and III of 1828. That was a case decided in the presence of Mahant Bali Ram Das. The robkari refers to the terms of the two tan ids and to the sanads of enjoyment by the successive Mahants. It, however, does not declare the land to be exempted from Government revenue upon the ground, not that there was no valid creation of a trust for religious and charitable purposes, but on the express ground that under Schedule II, Section 3, of Regulation IV of 1825, "the Amlas of Zemindars are not at all competent to grant release from the payments of Government revenue." None of these documents, therefore, in any way affect the clear terms of the original sanad whereby an express trust for charitable and religious purposes was created.

6. The next contention of Mr. Kulwant Sahai was that assuming that the property in question was debutter property, yet by the terms of the compromise of the 22nd September 1909 the said property was declared to be the personal property of Ram Banwari Das and to have been inherited by his son, the defendant No. 1, and the plaintiff is not entitled to succeed in the present suit. In short it is contended that the compromise in question settled a bona fide dispute between the predecessor in interest of the plaintiff and the defendant No. 1 and is, therefore, binding upon the plaintiff. The rights of the Mahants to deal with an endowed property have been fully discussed by the two very eminent Judges of the Madras High Court, Subrahmaina Ayyar, O.C.J., and Bhasbyam Ayyangar, J., in the notable case of Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami 27 M. 435 : 14 M.L.J. 105. It was held in that case that the head of a Math is not a mere trustee but a "corporation sole" having an estate for life in the permanent endowments of the Math and an absolute property in the income derived from offering, subject only to the burden of maintaining the institution. His power to alienate or charge the corpus of the endowment is limited to purposes necessary for the maintenance of the Math, and alienations or charges will not be binding on the Math or on his successors merely because they have been made for general religious and charitable purposes appropriate to the head of a Math. It is

needless to enter into any discussion to show how the (aforesaid) force of the proposition was established, for we entirely agree with the view taken by those learned Judges. The natural deduction from the aforesaid principle is that a Mahant is not competent to alienate the endowed property except for the benefit of the endowment. The Hindu Law on endowments was fully reviewed and the aforesaid proposition was established in the case of *Girijanund Datta Jha v. Sailajanund Datta Jha* 23 C. 645 : 12 Ind. Dec. 429. Whether the position of a Mahant is that of a limited owner or analogous to a guardian of an infant son, it appears to me that he cannot enter into a transaction the effect of which is to destroy the trust property altogether. His interest in the property is that of a life-tenant. The real owner of the property is the deity or the charitable purpose for which the endowment was created. He can justify his alienations only as being in the interest of the endowment itself. Looked at from this point of view, the compromise in the present case does not appear to have been in the interest of the endowment. As held by the Trial Court, the entire debutter land or trust property was abandoned in favour of defendant No. 1 for the sake of only 1 bigha odd. The Trial Court characterizes the compromise as being "dishonest and fraudulent." The lower Appellate Court has used an equally strong expression when it said that the compromise was "a monstrously unfair arrangement, extremely injurious to the trust and Ram Das had no power to enter into it." Upon the findings of the Court below and upon a consideration of the terms of the compromise and also upon the history of the previous litigation between the parties, it cannot be urged that the compromise was with a view to settle a bona fide dispute between the parties. The plaintiff as the present occupant of the Asthal is not at all bound by such a compromise entered into by his predecessor in-interest Ram Das and is entitled to avoid it, provided his claim is not barred by limitation.

7. This leads us to the consideration of the last argument of Mr. Kulwant Sahai that the suit of the plaintiff is barred by limitation. This contention is based upon the sale deed executed by Ram Banwari Das in the year 1880 in favour of his brother Dakharan Jha. It is said that Ram Banwari Das then asserted his own personal right as against his right as a trustee of the property and as the Mahant of the Asthal to which the property was endowed. Such an assertion on behalf of Ram Banwari Das is said to create in him an adverse title in his personal capacity as against his position as a Mahant of the Asthal. The property in this case was an express trust, and Mr. Saroshi Charan Mitter has succeeded in shewing that no question of limitation can arise in a case of this kind and that a trustee cannot claim a right by adverse possession in himself. In this view he is supported by the authority quoted by him in the cases of *Sreenath Bose v. Radha Nath Bose* 12 C.L.R. 370 , and *Bhurabhai Jamnadas v. Bai Ruxmani* 32 B. 394 : 10 Bom. L.R. 540. Apart from this the effect of the transaction of 1880 was qualified by the subsequent transaction in 1887, whereby Ram Banwari Das got back 15 annas of the property including the 3 annas in dispute. Since then Banwari Das was in possession of the disputed 3 annas up to the time of his death in 1907.

Again he being a limited owner, limitation for a suit for possession would really run from the date of his death, namely, 1907. Therefore, the suit of the plaintiff is not in any way barred by limitation, the view taken by the Court below appears to be correct and these appeals are dismissed with costs.

Das, J.

8. I agree that these appeals should be dismissed with costs. I am not quite certain whether the Mahant of an endowment should be described as a trustee. In the celebrated one of *Fidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami* 27 M. 435 : 14 M.L.J. 105 the distinction between the head of an institution and the shebait of an idol was pointed out, The shebait of an idol has no sort of an estate in the properties endowed, whereas the head of an institution has a life estate in the properties which are the subject matter of the endowment. On the question of limitation I prefer to rest my decision on the ground that the Mahant had a life estate in the properties and that time did not begin to run until his death.