
(1952) 04 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 80 of 1948

Sant Ram and Others

APPELLANT

Vs

Sital Das
 Sital Das Vs Sant Ram and Others

RESPONDENT

Date of Decision : 30-04-1952

Acts Referred:

Evidence Act, 1872 — Section 35

Citation : AIR 1952 P&H 301

Hon'ble Judges : Khosla, J;Harnam Singh, J

Bench : Division Bench

Advocate : Badri Das, A.M. Suri, Shamair Chand and K.L. Gosain, for the Appellant;

Final Decision : Allowed

Judgement

Harnam Singh, J.—Sant Ram, Mehnga Singh, Ishar Das and Lachhman Das defendants in Civil Suit No. 131 of 1947 appeal from the decree passed in that suit on the 31st of May 1948.

2. To appreciate the contentions that have been raised in this appeal, it would be necessary to give a short narrative of the material facts in their chronological order. Kishore Das, who died on the 4th of April, 1945, was the Mahant of the Thakardwara at Jamsher belonging to the Ram Kabir sect of the Bairagi Sampardai. The Thakardwara at Jamsher is connected with the institution known as "Baba Ram Kabir Ka Dwara", the "Gaddi" of which is at Jaipur. On the 19th of July, 1943 Mahant Sadhu Ram and "Shri" Hira Das instituted Civil Suit No. 966/816 of 1943 "inter alia" for the removal of Kishore Das from the Gaddi of the institution.

In that suit, the parties compromised the dispute between them and in accordance with that compromise Shri Harbans Rai Nayar, Subordinate Judge 3rd class, Jullundur, passed the decree on the 26th of October, 1944, Kishore Das, however, appealed from the order recording the compromise in the Court of the

District Judge at Jullundur. During the pendency of that appeal, Kishore Das died on the 4th of April, 1945, and Ishar Das defendant was brought on the record as the legal representative of Kishore Das on the 18th of May, 1945. Kishore Das and Ishar Das were, by blood relationship, uncle and nephew and in the registered will, Exhibit D. 4, made by Kishore Das on the 31st of March, 1945, Ishar Das is stated to be one of the two Chelas of Kishore Das, nominated by the testator to be the Mahant of the institution on his death.

3. On the 31st of March, 1945, Kishore Das made a lease in respect of the land in suit for a period of ten years in favour of Sant Ram and Mehnga Singh defendants. On the death of Kishore Das, proceedings were initiated under Chapter IV of the Punjab Land Revenue Act, 1887, for mutation of names. In those proceedings, Ishar Das defendant No. 3 claimed to be the Mahant of the institution. In those proceedings Sital Das plaintiff intervened on the 2nd of August 1945, and claimed to be the Mahant. No decision was given by the Naib Tehsildar as to the rival claims of Ishar Das and Sital Das and proceedings were consigned to the record room to be put up after the decision in the Muafi "file."

4. On the 2nd of January, 1946, Sital Das, Mahant Hira Das and Mahant Sadhu Ram instituted the suit put of which this appeal has arisen for possession of the land in suit against Sant Ram and Mehnga Singh for the reasons stated in paragraph No. 3 of the plaint. In paragraph No. 4 of the plaint, it was stated that Sital Das had a right to sue for he had been appointed Mahant of the institution according to "custom and the procedure of Bairagis." In paragraph No. 4 of the plaint, it was then stated that in case it was found that Sital Das was not the Mahant of the institution, plaintiffs Nos. 2 and 3 had obtained permission u/s 92 of the CPC for the institution of the suit and that plaintiff No. 2 had otherwise a right to bring the suit, being the Mahant of the Bairagi institution at Sahri.

5. Sant Ram and Mehnga Singh defendants resisted the suit "inter alia" on the ground that Ishar Das was the Mahant of the institution and that the plaintiffs had no "locus standi" to bring the suit.

6. On the 28th of March, 1946, the Court of first instance ordered-- "It is alleged in the plaint that plaintiff No. 1 is a lawfully appointed Mahant, that he has a right to manage the Thakardwara concerned and that he has a right to have the improper alienations in respect of the property of the Thakardwara cancelled. Besides plaintiff No. 2 is alleged to have a right as Mahant Head Bairagis only when plaintiff No. 1 be not a lawful Mahant. Since plaintiffs Nos. 1 and 2 both cannot have any right in the presence of each other, the present plaint be amended showing plaintiff No. 1 as claimant or plaintiff's Nos. 2 and 3."

7. Pursuant to the order set out in the preceding paragraph Sital Das put in an amended plaint on the 17th of April, 1946. Paragraph No. 4 of the amended plaint reads-

"The plaintiff has a right to sue as he has been duly appointed as Mahant according to the custom and the rules of the Bairagis. The names of other

plaintiffs have been penned through by way of amendment under the orders of the Court, dated the 28th March, 1946."

8. On the pleadings of the parties, the Court of first instance fixed the following issues:--

"1. Whether the plaintiff is a properly appointed incumbent of the Gaddi in question and as such competent to sue?

2. Whether the lease in question is such an alienation as could be challenged by the plaintiff?

3. If so, whether the said lease is binding on the institution?

4. Whether defendant Ishar Das was a valid Chela of Mahant Kishore Das and was duly appointed as the successor by him or by the Bhekh and whether otherwise he was entitled to succeed?

5. Whether defendants are entitled to special costs?

6. Relief.

9. In deciding the suit, the Court of first instance has found Sital Das plaintiff to be the Mahant of the institution, that the lease in question could be challenged by the plaintiff, that the lease was not binding on the institution, that Ishar Das defendant was neither the Chela of Mahant Kishore Das nor was he appointed to be the Mahant of the institution by the Bhekh and that the defendants were not entitled to special costs. In the result, the Court of first instance has decreed the plaintiff's suit with costs.

10. From the decree passed in Civil Suit No. 131 of 1947 defendants appeal as stated above.

11. In the suit many matters were discussed and adjudicated upon but in these proceedings the appellants challenge the correctness of the decisions of the Court of first instance on issues Nos. 1 and 4.

12. Now, there is no general law applicable to religious institutions in the matter of succession to the office of Mahant. In most cases the office of Mahant is elective and not hereditary and a Mahant may nominate a successor subject to confirmation by his fraternity. In paragraph No. 2 of the plaint Sital Das plaintiff pleads:

"The deceased Mahant was appointed by the Bhekh of Bairagis of the Thakardwara. After the demise of Mahant Kishore Das, the Bhekh of Bairagis, the "Mahan Mandal" and the "Majlis" of "Sewaks" in a public assembly duly appointed Mahant Sital Das disciple of Mahant Sadhu Ram Mahant Bairagi as Mahant of Thakardwara Jamsher, on the 23rd July, 1945, at Jamsher, Tahsil Jullundur. Accordingly, after his appointment he has been discharging the duties of a Mahant and looking after and safeguarding the Thakardwara in every way. According to custom of the Bairagis after the death of a Mahant only a person,

who is appointed by the Bhekh of Bairagis and Sewaks, can be appointed as Mahant. According to the custom of Bairagis Sital Das has been duly appointed as Mahant."

13. Clearly, the case of Sital Das plaintiff is that on the death of a Mahant of the institution the Bhekh of Bairagis of the Thakardwara and the Sewaks have a right to appoint a Mahant of the institution.

14. On the question of custom covered by issue No. 1, Sital Das plaintiff examined Mahant Ram Charan Das P. W. 3, Mahant Hira Das C/P. W. 1, Shri Brahm Das C/P.W. 2, Mahant Balak Dass C/P. W. 3 and gave evidence in his own cause. Other witnesses examined by the plaintiff gave evidence on the custom but it is common ground that no decision can be given on the evidence given by them.

15. Mahant Hira Das C/P. W. 1 gave evidence that the Gaddi of the institution in suit has so far descended from Guru to Chela and that the custom of the institution was that in the absence of a Chela the Gaddi descends to a Bhatija, Chela or Gurbhai.

16. Shri Brahm Dass C/P. W. 2 stated that the custom of the institution was that the Bhekh and the Sewaks have a right to appoint a Mahant of the institution. Shri Brahm Dass then stated that in case of a dispute between the Bhekh and the Sewaks the appointment is postponed and later on when the Bhekh and the Sewaks concur with each other the appointment is made. Shri Brahm Dass further stated that after the death of a Mahant, the Chela is appointed Mahant but if there is no Chela the Gaddi is given to a Bhatija Chela.

17. Mahant Balak Dass C/P. W. 3 maintained that on the death of a Mahant his Chela, who is able, is appointed Mahant, but if the Chela is not able, a Gurbhai or Bhatija Chela or Pota Chela is appointed as Mahant. Mahant Balak Dass then maintained that if the Bhekh and the Sewaks do not concur with each other in the appointment of any person as a Mahant consultation is held again.

18. Sital Das plaintiff gave evidence that if there is an able Chela of - the deceased Mahant he is appointed Mahant, otherwise a person from the Bans of the Mahant is appointed Mahant.

19. From what I have said above, it is plain that the custom of the institution on which the claim of Sital Das plaintiff proceeds is that on the death of the Mahant of the institution the Chela of the deceased Mahant has a right to succeed and that Bhatija Chela, Gurbhai or Pota Chela, are eligible for appointment if the Chela is found to be unfit for appointment. That being the situation of matters, Sital Das plaintiff had to establish the points specified hereunder under issue No. 1:--

(a) that Ishar Das and Lachhman Das defendants were not the Chelas of Kishore Das and that in any case neither Ishar Das nor Lachhman Das were fit to be appointed Mahant of the institution;

(b) that he was the Bhatija Chela of Kishore Das; and

(c) that he was duly appointed by the Bhekh and the Sewaks.

Indisputably, the well-recognised custom among all the shrines of this nature is that the appointment ultimately rests with the Bhekh and the Sewaks and strong evidence is required to establish a custom to the contrary. See in this connection "Jiwan Das v. Hira Das AIR 1937 Lah 311

20. In order to establish point No. 2 arising under issue No. 1 Sital Das plaintiff propounded the pedigree specified hereunder:

RAM KISHAN | ----- | | | Ohetan Das
Ram Dhan Brham Das Budh Ram | | | Behari Das Mangal Das Bidya Das | |
Kishore Das Sadhu Das (Deceased Mahant) | Sital Das (plaintiff)

21. At the trial Sital Das stated:

"I am "Bhatija Chela" of "Mahant" Kishore Das. Bihari Das was the Guru of Kishore Das. I do not know how many chelas he had. The name of my Guru was Sadhu Ram. Sadhu Ram's Guru was Mangal Das. The Guru of Mangal Das was Brahm Das. The Guru of Bihari Das was Chetan Das. (Volunteered) the Guru of Chetan Das was Ram Kishan Das."

Sital Das, however, did not state that Brahm Das was "chela" of Ram Kishan or that Chetan Das, Ram Dhan, Brahm Das and Budh Ram were "Gur Bhais". Clearly, the evidence of Sital Das does not show that Brahm Das was the "chela" of Ram Kishan. Sital Das stated that during the lifetime of Kishore Das he went to visit the shrine two or four times and that he did not go to Jamsheer during the illness of Kishore Das.

22. Mahant Balak Das C/P. W. 3 stated: "The plaintiff is the "chela" of Sadhu Ram. I do not know the name of the Guru of Sadhu Ram and Kishore Das."

23. Clearly, the evidence given by Mahant Balak Das is of no assistance to the plaintiff on point No. 2.

24. Shri Brahm Das C/P. W. 2 has not given any evidence connecting Sital Das with Kishore Das. C/P. W. 1 Mahant Hira Das stated:

"Sital Das is not a "chela" of Kishore Das. He is his "Bhatija chela". Kishore Das was the "chela" of Bihari Das. Bihari Das was the "chela" of Chetan Das."

In no part of the evidence given by Mahant Hira Das is there any attempt to establish that Ram Kishan was the common ancestor of Sital Das and Kishore Das.

25. Shri Ram Charan Das P. W. 3 who is stated to be the Shri Mahant of Shri Panch Rama Nand Doaba Mandal, a Mandal of the Bairagis, has given no evidence on the point under consideration.

26. From the evidence summarized above, it is plain that the oral evidence

examined by Sital Das plaintiff does not connect Sital Das with Kishore Das. In other words the oral evidence does not establish that Kishore Das and Sital Das had a common ancestor. Reliance is, however, placed upon a copy of the judgment. Exhibit P. 3, given in Civil Suit No. 24 of 1912. In that case Thakardwara Bairagian situate in Kot Pashka in Jullundur City sued Mangal Das "chela" of Brahm Das and three others for possession of the land of the institution by cancellation of the sale deed. In that case the issues that arose between the parties were:

1. Is the land in suit attached to the Thakardwara or was it the exclusive property of Mangal Das?
2. If it was attached to the Thakardwara was the sale for consideration and necessity?
3. Have plaintiffs a "locus standi" for a suit for possession?

27. From the copy of the judgment, Exhibit P. 3, it appears that Thakardwara Bairagian sued Mangal Das through Bawa Bidya Das "chela" of Brahm Das of Jullundur City and Kishore Das, "Chela" of Mahant Bihari Das Bairagi of Jamsheer. In that judgment, the pedigree connecting Kishore Das and Bidya Das plaintiffs with Mangal Das defendant is given. From the judgment it is not clear whether the plaintiffs or Mangal Das defendant gave that pedigree or the pedigree was constructed by the Court from the evidence given by some witness. In deciding issue No. 3 the Court said:

"The plaintiffs have obtained permission for the suit u/s 92 of the C. P. Code and have a "locus standi" for a suit to save endowed property. The question is whether they can sue for possession of the property. "The suit is in the name of the shrine and the plaintiffs do not claim possession personally". It appears that Bidya Das plaintiff has always lived in the Thakardwara and has helped in the management of the property. He once acted as Mukhtar of Mangal Das in a suit, once he joined Mangal Das in objecting to the attachment of certain endowed property. At the time of mutation with regard to the land in suit in favour of Mangal Das, when he purchased it, Mangal Das did not appear at all. It was Bidya Das, who had the mutation sanctioned. There seems to be no doubt with regard to the "bona fides" of Bidya Das. The suit does not seem to have been brought by Bidya Das and Kishore Das for any personal gain."

28. Clearly, the decision on issue No. 3 did not proceed on any spiritual relationship between Kishore Das and Bidya Das plaintiffs and Mangal Das defendant.

29. Basing himself on AIR 1934 157 (Privy Council) Mr. Kundan Lal Gosain urges that the pedigree given in the judgment, Exhibit P. 3, is relevant under Sections 13, 21 and 35 read with Section 43 of the Evidence Act, 1872, hereinafter referred to as the Act. I do not accede to the argument raised for the reasons appearing hereinafter.

30. Section 13 of the Act provides "inter alia" that where the existence of a right is in question, it is permissible for the parties relying on its existence to prove any transaction by which it was created, claimed, modified, recognised, asserted or denied, and particular instances in which the right was claimed, recognized or exercised. On the other hand, the party denying the existence of the right may give evidence of any transaction by which it was denied or which was inconsistent with its existence and particular instances in which its existence was disputed or departed from. Now, we do not know who propounded the pedigree given in the judgment, Exhibit P. 3, and the judgment does not proceed on the pedigree. That being so, copy of the judgment, Exhibit P. 3, is not relevant u/s 13 of the Act.

31. Section 21 of the Act deals with the relevancy of admissions. In no part of the judgment is there any statement showing that Ishar Das or the person through whom Ishar Das claims in the present suit gave the pedigree in that suit. In these circumstances, the judgment is not relevant u/s 21 of the Act. Section 21 of the Act provides that admissions are relevant and may be proved against the person who makes them or his representative in interest but they cannot be proved by or on behalf of the person who makes them or his representative in interest except in the three cases mentioned in the Section. Sant Ram, Mehnga Singh are not connected with the institution or with the parties in the civil suit in which the judgment, copy whereof is Exhibit P. 3, was given. That being so, the conditions precedent for the relevancy of admissions are not satisfied.

32. Section 35 of the Act provides that statements in public documents are receivable to prove the facts stated. The section is based upon the circumstance that, in the case of official documents entries are made in the discharge of public duty by an officer who is authorized and is an accredited agent appointed for the purpose. From the copy of the judgment, Exhibit P. 3, it is plain that no decision was given on any of the issues that arose in that case upon the pedigree. The pedigree was relevant under issue No. 3 but the decision on issue No. 3 does not proceed upon the pedigree.

The principle underlying Section 35 of the Act is that the person making the entry should be a person vested with authority to record a decision, which so far as the matter before him is concerned, will be final. In other words, Section 35 of the Act excludes all views expressed before the final state is reached and makes relevant only those decisions which constitute the final word in the matter. Clearly, the judgment, Exhibit P. 3, is not relevant u/s 35 of the Act to prove the pedigree mentioned therein.

33. For the foregoing reasons, in deciding issue No. 1 I have excluded from consideration copy of the judgment, Exhibit P. 3.

34. Finding as I do that the plaintiff has not established his spiritual connection with Mahant Kishore Das it follows that the plaintiff has failed to prove his eligibility for appointment as Mahant of the institution according to the custom

stated above.

35. But it is said that the appointment ultimately rests with the "Sewaks" and the "Bhekh", and the "Sewaks" and the "Bhekh" appointed Sital Das to be the Mahant of the institution on the 23rd of July, 1945. As stated above, the institution belongs to the Ram Kabir sect of the "Bairagi Sampardai" and it is admitted that the main institution of this sect is at Jaipur. Shri Ram Charan Das P. W. 3 who presided over the function held at Jamsher on the 23rd of July 1945, belongs to the Ram Thaman sect of the "Bairagi Sampardai". Shri Ram Charan Das is "Mahant" of Thakardwara Bairagian in Nakodar town and Sital Das plaintiff has given evidence that a Bairagi of the "Gaddi" at Nakodar cannot become "Mahant" of the "Gaddi" at Jamsher since the Nakodar institution belongs to a separate "Bhekh". No notice was given to the parent institution at Jaipur or to the Bairagis who belong to the "Bhekh".

Shri Ram Charan Das stated: "On the 8th Sawan Sambat 2002 (23-7-1945) we came to Jamsher in the said Doaba Mandal in connection with the application of Sital Das, plaintiff and collected people there. Ten or twelve Mahants of the said Mandal came to Jamsher and the Bairagis of Jamsher, the "Sewaks" of the "Dera" collected there. The photo, Exhibit P. W. 2/1, is correct according to the state of things existing at that spot and we as "Bhekh" Bairagain, Panchayat Bairagain and Hindu Sewaks appointed Mahant Sital Das as Mahant of the Gaddi." In cross-examination Shri Ram Charan Das admitted:

"The "Gaddi" of "Mahant" Mathra Das in Phillaur is of Bairagis. He got himself married 20 years ago; but he is still in possession of the "Gaddi". "Mahant" Hira Das is a resident of Phambian and occupies a "Bairagi Gaddi". Tapaswi Ram, a Bairagi Mahant, is resident of Chiman. No Jiwan Lal is Mahant. Jiwan Das Bairagi in fact lived in a jungle near "Mauza" Kari. He is "Gurbhai" of the Mahant of Sahri."

36. Now, Hira Das of Phambian C/D. W. 1, Jiwan Das of Kari C/p.W. 2 & Mahant Mathra Das C/D. W. 3 have given evidence for Ishar Das defendant. None of them was invited to the function which was held at Jamsher on the 23rd of July 1945. Indeed, no notice was given to the members of the "Bhekh" and those who participated in the function had accompanied Shri Ram Charan Das from Jullundur. Jiwan Das C/D. W. 2 is a "Gurbhai" of the Mahant of Sahri and belongs to the Ram Kabir sect of the "Bairagi Sampardai". In these circumstances it is not possible to hold that the meeting of the Bairagis which was held on the 23rd of July, 1945, was a meeting of the "Bhekh" of Bairagis. The "Bhekh" and the "Sewaks" have an authority to appoint a "Mahant" but this right, I think, cannot be exercised by a few members of the "Sampardai" without giving notice to the other members of that "Sampardai", particularly to the parent institution.

In the present case it is in evidence that by agreement, Exhibit P. W. 3/3, Mahant Hira Das and "Mahant" Sadhu Ram referred the question of succession to the "Gaddi" of Jamsher to the arbitration of Shri Panch Rama Nand Maha Mandal

Doaba on the 21st of July, 1945. Thereupon the "Panchas" met at Garhdiwala and decided that the "Gaddi" should be given to Sital Das. This decision must have been taken between the 21st of July and the 23rd of July, 1945. On this record there is no evidence showing the Bairagis who attended the meeting at Garhdiwala. In any case the evidence given does not prove that the "Bhekh" of "Bairagis" applied their mind to the question of the appointment of the Mahant and decided that Sital Das should be appointed the "Mahant" of the institution. No representative of the main shrine at Jaipur participated in the deliberations at Garhdiwala or at Jamsher and it is not the case of the plaintiff that any notice was given to the Bairagis at Jaipur or the Bairagis of other institutions in the "Doaba". This alone vitiates the appointment of "Mahant" Sital Das.

37. On the 23rd of July, 1945, the right of the persons assembled to appoint a "Mahant" appears to have been challenged. Indeed, the police put up a challan prosecuting "inter alia"

Shri Ram Charan Das P. W. 2, Chamba Mal P.W. 3, Brahm Dutt P.W. 5 and Bhagat Ram P. W. 6. As stated above, Ishar Das claimed to be the "Mahant" of the institution in the appeal arising from Civil Suit No. 966/316 of 1943 and in the mutation proceedings that were taken on the death of Kishore Das, the case of Ishar Das is that he being the "Chela" of Kishore Das was appointed "Mahant" of the institution on the 17th day after the death of Kishore Das. In the meeting held at Jamsher no one considered the claim put up by Ishar Das defendant though the claim was supported by the will, Exhibit D. 4. From the evidence of Chamba Mal P. W. 3 and "Mahant" Hira Das C/P. W. 1 it appears that those assembled in the meeting had knowledge of the existence of the will, Exhibit D. 4.

38. From what I have said above it follows that Sital Das plaintiff has failed to establish his relationship with Kishore Das, that the meeting held at Jamsher could not be regarded to be a meeting of the "Bhekh" and the "Sewaks" and that no one in that meeting considered on merits the rival claims of Ishar Das and Sital Das. Clearly, Sital Das plaintiff has failed to discharge the onus of issue No. 1 which lay heavily upon him. Sital Das plaintiff maintained that he had a right to sue for he was the "Mahant" of the institution appointed by the "Bhekh" and the "Sewaks". Sital Das did not claim "locus standi" to sue on any other ground.

39. In these circumstances, it is unnecessary to examine the correctness of the findings given by the Court of first instance on other issues that arose in the suit out of which this appeal has arisen.

40. For the reasons given above, I find against the plaintiff on issue No. 1, allow the appeal and dismiss the suit with costs throughout.

Khosla, J.

41. I agree.