

(1960) 10 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 37 (P) of 1955

Sarju Dass, Chela Bhagwan Dass

APPELLANT

Vs

Bhag Das, Chela Bawa Jamna Dass

RESPONDENT

Date of Decision : 12-10-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1961 P&H 364

Hon'ble Judges : D.K. Mahajan, J;A.N. Grover, J

Bench : Division Bench

Advocate : J.N. Kaushal, for the Appellant; D.C. Gupta and J.V. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Mahajan, J.—The dispute in this appeal relates to a religious institution known as Dera Kalan Mandar Thakar Ji, Dhanaula, in the erstwhile State of Nabha. In July, 1942, its last mahant Jamna Dass died. On his death, plaintiff Bhag Dass laid a claim to be appointed as the mahant of this dera. He backed his claim by a resolution from the majority of the proprietary body of the village and later on at the instance of the Government by a resolution from the bhekh. However, in view of his past conduct, namely, that at one stage he was disowned as a chela by Mahant Jamna Das for his immoral conduct, Raghbar Das and not Bhag Das was appointed as mahant for a period of two years by the Home Minister of Nabha State.

Before the two years could run out, Raghbar Dass was hauled up for an offence u/s 363, Indian Penal Code. This led to another application on behalf of the plaintiff to the authorities concerned duly backed by the proprietors of the village, that he be appointed as mahant of the dera and that Raghbar Dass be not allowed to continue as such. The authorities did not finally decide about the selection of the successor to Raghbar Das, but removed Raghbar Das and in his place appointed the defendant as a manager. Later on, in the year 1948, the defendant was

appointed as a mahant for one year.

It seems that the tussel for the appointment between the plaintiff and the defendant continued and ultimately the authorities passed an order directing the parties to get their dispute settled by a civil Court u/s 92 of the Code of Civil Procedure. This led to the present suit by the plaintiff Bhag Dass on the 8th of June, 1954. The suit has not been filed u/s 92 of the Code; on the other hand, the suit is based on the sole ground that the plaintiff is entitled to the gaddi as the chela and heir of Jamna Das. (2) The suit was contested by Sarju Das and the defence raised was that the plaintiff was not the chela of Jamna Das and was not entitled to the gaddi. The other pleas raised by him were that the present suit was not maintainable in view of the provisions of Section 92 of the Code of Civil Procedure, that it was barred by time and that, the Government and the Dera were necessary parties. The trial Court framed the following issues:-

1. Is the plaintiff, Bhag Dass, a chela and hence an heir of Jamna Das Mahant Dera Kalan Mandar Thakar Ji at Dhanaula?
2. Is the State of Patiala and East Punjab States Union a necessary or a proper party and if so, what is the effect of this non-joinder?
3. Are the provisions of Section 92 of the CPC attracted to the facts of the case, and, if so, what is its effect?
4. Is the suit within limitation?
5. Is Dera Kalan Mandar Thakar Ji a necessary or a proper party, if so, what is the effect of its non-joinder? It found in favour of the plaintiff on issues 1 and 4, and against the defendant on issues 2, 3, and 5, and, therefore decreed the plaintiffs suit. Dissatisfied with this decision, the defendant has come up in appeal to the Court.

3. Before dealing with the respective contentions of the learned counsel for the parties, it will be proper to examine the true legal position as to the rule of succession governing such religious institutions. While dealing with the devolution of an office of a Mohunt, Mulla on Principles of Hindu Law, 12th Edition, in para 418 observes as under:-

"418 (1) The succession to the office of mohunt depends on the usage of each particular math. As observed by their Lordships of the Privy Council, "the only law as to mahants and their office, functions and duties, is to be found in custom and practice, which is to be proved by testimony." The custom that prevails in the majority of cases is that the mohunt nominates his successor by appointment during the lifetime or by will. Where there is no such custom, or where no nomination has been made, the usage of some institutions is to have a successor appointed by a system of election by all the mohunts of the sect in the neighbourhood. In some cases, the succession depends upon election by the disciples and followers of the math. But the appointment as a general rule is to be made from among the disciples of the deceased mahant and failing disciples

from among his spiritual kindred. Where a mahant has the power to appoint his own successor he cannot delegate or transfer that power to a mahant of a neighbouring math or to any other person.

(2) It is now well established that religious offices Can be hereditary and that the right to such an office is in the nature of property. In commissioner, The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., the Supreme Court reiterated and extended the rule to the office of a Mohunt." In Ram Parkash Das v. Anand Das, AIR 1916 PC 259 which is a leading authority on the subject and has held the field all this time, it was observed by their Lordships of the Privy Council at page 257 that:-

"The question as to who has the right to the office of mahant is one, in their Lordships" opinion, which, according to the well-known rule in India, must depend upon the custom and usage of the particular muth or asthal. Such questions in India are not settled by an appeal to general customary law; the usage of the particular muth stands as the law, therefor."

Similarly in Sital Das Vs. Sant Ram and Others, their Lordships of the Supreme Court observed:-

"The law is well settled that succession to Mahantship of a Math or religious institution is regulated by Custom or usage of a particular institution except where a rule of succession is laid down by the founder himself who created die endowment. As the Judicial Committee laid down -- "Vide Genda Puri v. Chhatar Puri, 13 IndApp 100 PC 105 in one of the many cases on this point:-

"in determining who is entitled to succeed as Mahant, the only law to be observed is to be found in the custom and practice which must be proved by testimony, and the claimant must show that he is entitled according to the Custom to recover the office and the land and property belonging to it. * * * Mere infirmity of the title of the defendant, who is in possession, will not help the plaintiff". ""

It is not the plaintiff's case that the office of the mahant is hereditary. Nor does he allege or set up any custom governing the rule of succession to the office of the mahant. All that is stated is that he being the chela of the last mahant is his heir and is thus entitled to succeed to the gaddi.

4. The learned Counsel for the defendant-appellant contends that even if all the findings of fact given by the trial Court in plaintiff's favour be accepted as correct, even then the plaintiff must fail. It is urged that the plaintiff's suit should have been dismissed on the short ground that he has failed to prove that he is entitled to succeed merely because he is the chela of the last mahant inasmuch as there is no proof on this record that the office of mahant of this institution is hereditary or that there is any custom justifying or warranting such a succession, particularly when in the present case no such custom was ever alleged.

5. It is fundamental that in order to prove a custom, it must be alleged. It is true and admitted that in this case, none is alleged. Confronted with this difficulty, the learned counsel for the plaintiff urges that as evidence as to custom has been led without objection, therefore, the fact that custom is not specifically pleaded will not be, in this situation, a matter of any consequence. Assuming that this contention is correct it has to be seen if any custom of succession to the office of mahant of this institution has been proved. We were taken through the evidence by the learned counsel for the plain tiff.

The evidence discloses that in some cases the claimant was the chela of the previous mahant and he was so, appointed by the paramount authority, i.e., the Nabha Darbar. In other cases the persons appointed as mahants were not even the chelas of the previous mahant. There is yet another category of cases where on the recommendation of the bhekh the appointments were made. In all these cases the final authority to appoint rested with the Nabha Government. Therefore, it must be held oh the present record that no settled custom relating to the appointment of a mahant of this institution has been established. The power of appointment always remained with the Nabha Government. Reference in this connection may usefully be made to Exhibits DK, PJ and PC and also to the testimony of the witnesses, Maghar Das, P. W. 6, Bhag Das, P. W. 10, Ruther Puri, P. W. 8 and Charan Das, P. W. 7.

6. In the present case, the Government has refused to or did not at all appoint the plaintiff as the mahant at any stage though he was clamouring for this appointment for quite a while. As an interim arrangement, Government did appoint the defendant, in the first instance, as the manager and thereafter, as a mahant in 1948 for a period of one year and from that time onwards the defendant has continued in possession of the institution. When the plaintiff pressed the Government for being appointed as a mahant after the expiry of that interim period, the Government gave the clear direction that he should get his rights established u/s 92 of the Code of Civil Procedure.

This order indicates that the successor Government refused to exercise the power which its predecessor Government -- the erstwhile State of Nabha -- had always exercised in the matter of appointment of mahants to the religious institutions, probably, on the ground that it had not been left with such a power in view of Article 26 of the Constitution of India. Therefore, in this situation, the plaintiff must fail because he could only succeed if he Could prove a custom whereby being the chela of Jamna Das he could succeed as the next mahant. I have already held that no such custom has been proved. He cannot oust the defendant merely because the defendant has no title to the mahantship. His remedy, if any, was to proceed u/s 92 of the Code of Civil Procedure.

Thus we are unable to agree with the decision of the Court below that the plaintiff, who proved himself to be the chela of Jamna Das and possibly may have been recommended by the bhekh for appointment as a mahant, could be said to be the duly appointed mahant of the dera. The onus of this issue was on the

plaintiff and in the circumstances of this case he has failed to discharge the same. On this short ground his suit must fail. In this view of the matter, it is not necessary to examine the other contentions raised in this appeal. We accordingly allow this appeal, set aside the judgment and decree of the Court below and dismiss the plaintiff's suit. In the circumstances of this case, however, there will be no order as to costs.

Grover, J.

7. I agree.