

Privy Council Appeal No. 71 of 1919.
Oudh Appeal No. 9 of 1915.

Musammat Kamla Lachhmi - - - - - *Appellant*

v.

Mahant Basdeo Prasad and another - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 15TH JUNE, 1920.

Present at the Hearing :

LORD BUCKMASTER.

LORD DUNEDIN.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by MR. AMEER ALI.*]

The suit which has given rise to this appeal was brought by the plaintiff on the 29th August, 1912, in the Court of the Subordinate Judge of Gonda, as the head of a Hindu religious foundation, to set aside an alienation by his predecessor, and to recover possession of the property. The plaintiff was at the time of the suit a minor and sued under the guardianship of one, Kesho Pershad. The allegation on which the claim is based is that the village of Benipur to which the suit relates is a part of the endowment, and that the former head of the institution was not entitled to convey the property to his wife, Jairaj, and that in so doing he exceeded his powers under the Hindu law. The defendants in the suit are the lady to whom the property was conveyed, and her stepdaughter to whom she subsequently made a gift of the same. The defence is that the village in question did not form part of the foundation and was the personal property of the donor.

The foundation to which the property is alleged to appertain, was created in the early part of the nineteenth century by a Hindu reformer, a native of Upper India, who established, in the Bombay Presidency, a new Vaishnavite sect. His name was

Sahajanand Swami, and he appears to have been held in great respect by his followers who on his death deified him and erected a shrine in his honour in his native village of Chapia, in the District of Gonda in Upper India. Long before his death the foundation appears to have acquired great importance; he divided his religious jurisdiction into two sections, over one of which he installed his nephew, Ajodhya Prasad, who died somewhere in the 'sixties. Ajodhya Prasad, upon his installation, became the religious head of the Ahmedabad foundation, to which appertain 11 temples including the one at Chapia.

In 1857 Ajodhya Prasad is said to have purchased the village in question. The plaintiff alleges that the purchase was made with the funds of the foundation and that the income accruing from the village has been applied in the discharge of the revenue thereon and in defraying the religious expenses appertaining to the institution, as prescribed by the founder. On Ajodhya Prasad's death, Keshav Prasad, his son, succeeded to the headship of the foundation. Keshav Prasad died in 1883, leaving a will dated 30th August in that year, by which he nominated his son, Purshotam Prasad, as his successor to the Gaddi, and Purshotam Prasad on Keshav Prasad's death came into the charge of the foundation.

On the 29th March, 1901, Purshotam Prasad made the gift already mentioned to his second wife, Jairaj. A few months later she purported to make a reconveyance of the property to the temple, but the defendants contend that the document was executed without due comprehension. That point becomes, however, immaterial in view of the other facts of the case. Jairaj, on the 30th October, 1911, executed a deed of gift in favour of the defendant No. 2, Kamla Lachhmi, a daughter of Purshotam. It is this transaction which has given rise to the present action.

It should be noted here that neither in this particular institution nor among the sect Sahajanand established, is celibacy the rule applicable to the religious head or to the disciples; excepting the founder, his successors were all what is called *ghirist* that is, family men. So apparently are the bulk of the followers. This circumstance undoubtedly differentiates the present foundation from other endowments in Southern India which appertain to celibate mohants or constitute celibate institutions. The Subordinate Judge dismissed the suit on two grounds, first that the village was not proved to be endowed property, and secondly that the suit was barred under the Statute of Limitation. On appeal by the plaintiff to the Court of the Judicial Commissioner of Oudh, the Trial Judge's decision has been set aside and the claim for possession of the village decreed.

The defendant No. 2, Musammat Kamla Lachhmi has appealed to His Majesty in Council and the main contention on her behalf is that the Judges in the Court below are wrong in holding that the village of Benipur is a part of the endowed property belonging to the foundation. Reliance has been placed chiefly on the wills of Keshav Prasad and Purshotam, in which

they both described themselves as the owners and proprietors of the properties of the endowment.

Their Lordships do not, however, consider that the mere fact of their calling themselves the owners of the foundation is evidence that any particular property was the personal property or acquisition of the Acharjya. Both Keshav Prasad and Purshotam purport to treat the temples and the properties on one and the same footing. So far as the temples are concerned, the position of private ownership is *prima facie* improbable. In their Lordships' opinion such inference from statements in the will, in respect of the properties, would be equally erroneous.

By his will dated the 1st April, 1901, Purshotam nominated the Plaintiff as his successor. Purshotam died, according to the plaintiff, in December, 1901, according to the defendant's case, his death took place a month earlier; the difference in date is immaterial for the purposes of this judgment. Immediately after his death a suit was brought by a large body of people belonging to the sect under 539 of the Civil Procedure Code (Act XIV of 1882) against, amongst others, the plaintiff, the principal devisee under the will, for a declaration that neither the temples nor the properties attached to the temples were the personal property of the Acharjya, nor had he had any power of disposition over them *dehors* the conditions imposed by the Hindu law. The village of Benipur formed part of the properties to which that suit related.

The Subordinate Judge of Ahmedabad, who tried the case in the first instance, decided that the temple and the villages appertaining thereto were endowed property in which the followers of Sahajanand were interested, and that Purshotam had no right to alienate any portion thereof. He, however, upheld the nomination of the plaintiff, and retained the foundation in his charge as its religious head.

On appeal the High Court held that the decree of the Subordinate Judge had proceeded further than what the evidence in the case warranted, and they accordingly varied the Lower Court's decree. The declaration they made is in the following terms :—

“ Having regard to the fact that the Acharjya is a layman and not an ascetic, we see no reason to disbelieve the evidence of the witnesses above referred to that the Namvero and Bhets are intended for the personal maintenance and benefit of the Acharjya, and not for the support of the institution : and as it is clear that the accounts of the Namvero and Bhets are kept in one or other of the Kothars, we cannot hold that the whole of the property in suit is without exception public religious property. We therefore amend the finding of the Lower Court upon the second issue by declaring that the property in suit is public religious property except in so far as it consists of accumulations of Namvero and Bhets or investments thereof. In other respects we confirm the decree of the Lower Court.”

The position, therefore, is that any person contending that a particular property is not a part of the endowment might show that it was acquired by the Acharjya with funds which belonged

exclusively to him or which might be regarded as his official perquisites. Benipur was undoubtedly included in the claim under the former suit, but the defendant was no party to the action. She is entitled, therefore, in the present suit to prove that the village in question was so acquired. No attempt has been made to point to any specific evidence in this direction. On the other hand the settlement decree in 1869 relating to the village of Benipur shows that the Acharjya called therein "Mahant" was holding the property as a part of the endowment. The decree is in the following terms :—

" Proprietary rights of Mauza Benipur with exception of the ' *patti* ' belonging to Raja Kishan Dutt Pandey Taluqdar, decreed to Mahant Kesho Pershad and his successors on the ' *gaddi* . ' "

The plaintiff has also produced account books of Chapia, which the Judicial Commissioners point out show that the income arising from the village was devoted to the purposes of the endowment. It is urged that there were two sets of accounts kept in connection with this foundation, one at the Upper Treasury, which was in the direct charge of the Acharjya and contained a record of offerings, &c., made personally to him; the other at the Lower Treasury, which referred *simpliciter* to the endowed properties; and it is contended that had the account books of the Upper Treasury been produced by the plaintiff they would have shown that Benipur had been purchased with funds exclusively belonging to the Acharjya. The contention proceeds evidently upon a misapprehension; for their Lordships find that books alleged to belong to the Upper Treasury were in fact produced by the witness, Kesho Prasad, who was called by the defendant; he is the guardian of the plaintiff and he states that he has produced all the books from Sambat 1914 to Sambat 1935. So far as their Lordships can see, these are the very books on the non-production of which the appellant bases her complaint. No effort seems to have been made to examine them and they were afterwards returned to the plaintiff.

There is one significant fact in connection with this village: In all the accounts Benipur is mentioned with the prefix "Shri," an expression which denotes its sacred or endowed character. This circumstance has not been referred to in the judgments of the Lower Courts, but it is one which appears on the record and cannot be overlooked.

On the whole their Lordships are of opinion that the judgment and decree of the Lower Court are right and ought to be affirmed, and this appeal dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

MUSAMMAT KAMILA LACHHMI

v.

MAHANT BASDEO PRASAD AND ANOTHER.

DELIVERED BY MR. AMBER ALI.

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