Privy Council Appeal No. 134 *of* 1927.

Bengal Appeal No. 30 *of* 1925.

Ram Charan Ramanuj Das Mohant - - - - - *Appellant*

v.

Gobinda Ramanuj Das Mohant and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 17TH DECEMBER, 1928.

Present at the Hearing:

LORD PHILLIMORE.
LORD ATKIN.
LORD SALVESEN.
SIR LANCELOT SANDERSON.

[*Delivered by* 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 the 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 præsenti*; 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 appointor. In this document Lachhman describes himself as the *Guddinashin 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 appointor 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 appointor'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 appointor'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 successors 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 appointor 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 *shebaits* 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 recognised 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, Ramcharanan 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 estoppel 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*, 48 I.A. at p. 311). 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 prejudge 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 their 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. *Meraswamiar* (L.R., 45 I.A., p. 1). But neither this case nor the earlier one of *Jaafar Mohiudin Sahib* v. *Aji Mohiudin Sahib* (2, Madras High Court Reports, p. 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 endowments 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 48 I.A., 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.

In the Privy Council.

RAM CHARAN RAMANUJ DAS MOHANT

v.

GOBINDA RAMANUJ DAS MOHANT AND OTHERS.

DELIVERED BY LORD PHILLIMORE.

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