

Privy Council Appeal No. 70 of 1932.

Allahabad Appeal No. 36 of 1929.

Patel Chhotabhai, since deceased, and others - - - *Appellants*

v.

Jnan Chandra Basak and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 5TH MARCH, 1935.

Present at the Hearing :

LORD THANKERTON.

SIR LANCELOT SANDERSON.

SIR SHADI LAL.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal against a decree of the High Court of Allahabad dated the 12th June 1929 which affirmed a decree of the Additional Subordinate Judge at Benares dated the 30th November, 1926.

The litigation relates to a dispute between the plaintiffs and the added defendants on the one hand and the first three defendants on the other, with regard to certain property mentioned in the schedule to the plaint. All the parties are followers of the Radha Swami religion and the questions relating to the said property involve the consideration of the doctrines tenets and principles of that religion, which are of vital importance to them and are of great interest to any student of theology.

The suit was brought by the plaintiffs (one of whom, viz., Patel Chota Bhai has died since the initiation of the suit) who alleged that they were followers of the true faith of the said religion against Jnan Chandra Basak, Anand Sarup and the Radha Swami Satsang Sabha, a registered body through its

secretary, Mr. Nihal Chand, for a declaratory decree to the following effect :—

(1)—“ (a) That the so-called Radha Swami Trust administering the properties shown in the schedule marked A is not, in law, a legal and valid trust, nor of the kind or nature alleged by the defendants.

(b) That the said trust, if any, is not a trust created or existing for public purpose of a charitable or religious nature or one to which the provisions of Act XIV of 1920 apply.

(c) That the defendant No. 1 or No. 2 or any follower or followers of defendant No. 2 represented by defendant No. 3, individually or collectively possess no interest in the alleged trust or in the properties administered by it or in the affairs of the Satsang and its branches attached to the Radha Swami Central Administrative Council.

(II) To grant such further relief as the Court may deem fit and proper.”

These defendants were alleged by the plaintiffs to be dissentients from the true faith, and that the 2nd defendant, Anand Sarup Sahib, had been set up as the “ Sant Sat Guru ” by these defendants and other persons acting with them. Subsequently, certain other persons were added as defendants to the suit, one of whom, viz., Gurmouj Saran *alias* Moti Ram, afterwards became a plaintiff, and the added defendants are now respondents 4 to 9.

One of the added defendants, viz., Sahib Madho Prasad, is alleged by the plaintiffs to be the recognised Sant Sat Guru of the true faith of the said religion. As already stated, the added defendants supported the case of the plaintiffs.

The Subordinate Judge dismissed the suit with costs.

The plaintiffs appealed to the High Court which, on the 12th June, 1929, dismissed the appeal with costs, hence this appeal by the plaintiffs to His Majesty in Council.

The defendant respondents did not file any case in reply to the plaintiffs' appeal ; consequently their Lordships have not had the advantage of hearing any argument on their behalf, but the learned Counsel who appeared for the plaintiff appellants, have drawn their Lordships' attention very carefully and fully to the material documents and evidence in the suit, and to the contentions set up by the defendants in the Courts in India.

The suit was instituted in consequence of the following matters.

In September, 1923, Jnan Chandra Basak the first defendant presented an application in the Court of the District Judge of Agra against Gurmouj Saran, described as the Trustee and Secretary, Radha Swami Trust, Allahabad and Madhav Prasad Sinha Sahib, described as Trustee of the Radha Swami Trust.

The application purported to be made under section 3 of the Charitable and Religious Trusts Act, 1920 (Act XIV of 1920), which provides as follows :—

“ Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the

Court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate to obtain an order embodying all or any of the following directions, namely :—

- (1) directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as to any of these matters ; and
- (2) directing that the accounts of the trust shall be examined and audited :

Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition."

The material parts of the petition are as follows :—

" 1. That there is in existence a charitable and Religious Trust, known as the ' Radha Swami Trust,' which was formed in 1904 by the Radha Swami Central Administrative Council, a body elected in 1902 by the votes of the members of the Radha Swami Faith, for the collection, preservation and administration of properties, movable and immovable, that had till then been dedicated or might thereafter be dedicated to Radha Swami Dayal or that might be acquired for a present to Radha Swami Satsang.

2. That the immovable properties vested in the said Trust include the Holy Samadhs of the past Sant Sat Gurus, *i.e.*, the Leaders of the Radha Swami Faith and other places of worship held sacred by the Radha Swami community and properties dedicated to, or acquired with monies presented to, Radha Swami Dayal in the form of ' bhents ' and other contributions by the members of the Radha Swami community.

4. That the applicant is a person having an interest in the said Trust in the following ways :—

- (a) That he is a follower of the Radha Swami Faith for over thirty-three years and that for a long time, both before and after the creation of the said Trust, he has contributed his humble mite towards the properties and funds made over to, and administered by, the said Trust and that he has all along been in the enjoyment of his right of access for religious purposes to all the Holy Samadhs and other places held sacred by the members of the Radha Swami community and administered by the said Trust as part of the Trust property.
- (b) That the applicant made a ' bhent ' (present) of Rs. 2,000 about the year 1903 and in lieu thereof was granted a life allowance of Rs. 5 per mensem which the applicant has since then been receiving from the said Trust."

The applicant prayed that the Court should order that the said persons mentioned in the petition should furnish the information therein asked for as to immovable properties, cash balances, value of the alleged trust property and many other matters.

It was alleged that this application gave great offence to the followers of the true faith and thereupon three of such followers (two of whom were subsequently plaintiffs in the suit), submitted to the Court that there was no legal and valid trust, that the provisions of Act XIV of 1920 did not apply and that the

petitioners had no interest in the matters referred to and they undertook to file a suit in accordance with the provisions of section 5 (3) of the said Act.

The District Judge accordingly, by his order on the 20th December, 1922, stayed the proceedings, and the suit was filed on the 17th March, 1924.

The main question in the appeal is whether there is a valid legal trust in respect of the properties mentioned in the schedule attached to the plaint, known as the "Radha Swami Trust" as alleged by the contesting defendants. They alleged that there was a trust for a public purpose of a charitable and religious nature. Both the Courts in India decided the question in favour of the contesting defendants.

In order to appreciate the contentions which have been urged by the respective parties during the litigation with regard to this question, it is necessary in their Lordships' opinion to refer shortly to the foundation and nature of the religion, its tenets and doctrines, the position of the Sant Sat Guru, and the manner in which the properties which are said to be the subject of the alleged trust, were acquired.

It is common ground that the faith or religion was founded in the year 1861 by Swami Shiv Dayal; he departed from this world, to use the expression of his followers, in 1878. All persons, whether Hindus, Mohammadans, Parsis or Christians can be initiated into this religion provided they are found to be fit and suitable by the spiritual head or "Guru," and when initiated, they are called "Sat Sangis."

The object of the religion is to attain true and perfect salvation by the liberation of the spirit from the bondage of mind and matter, which can only be achieved by following the practices prescribed by the religion.

The founder was the first "Sant Sat Guru." After his departure from this world one called "Huzur" was the second "Sant Sat Guru"; he acted from 1878 until 1898, when he, too, departed from this world. Then one called "Maharaj Sahib" became "Sant Sat Guru" until 1907. Both parties recognise the above-named three persons as "Sant Sat Gurus."

The doctrines and tenets of the religion depend upon the writings and teachings of these three persons, and there is no dispute between the parties as to them. Both parties regard them as authoritative and binding upon the Sat Sangis: they do not, however, agree as to the position of the "Sant Sat Guru" in relation to the Radha Swami Faith.

As regards this last-mentioned matter, the plaintiffs hold that the spiritual leader of their religion for the time being, known as the "Sant Sat Guru" is the incarnation of the Supreme Being in human form.

On the other hand, the contesting defendants say that the "Sant Sat Guru" is the representative of and is in communion

with the Supreme Being, but they do not accept the plaintiffs' contention that the Supreme Being is incarnate in the "Sant Sat Guru."

The learned Subordinate Judge, after hearing the evidence, came to the conclusion that the "Sant Sat Guru" may be described as "a person who has risen to such height spiritually that the Supreme Being sends a ray or current from his own to him that he may accomplish His mission under His impulse."

The learned Judge said that as an issue had been raised upon this matter he had to deal with it, otherwise he would have refrained from saying anything on this point.

Fortunately, their Lordships do not find it necessary to express any opinion in respect of this issue, inasmuch as the appeal falls to be decided upon grounds which are independent of the above-mentioned issue and are sufficient for the disposal of the appeal whichever view of the above-mentioned question is taken.

The following passages illustrate the teachings and doctrines as to the relations between the "Sant Sat Guru" and the initiated; they have been accepted by both parties as Supreme and uncontrollable mandates—

"Serve the Sat Guru with your heart, body and riches and consider him as Sat Purush."

The service performed by means of money is that "it may be utilised in the services of the Spiritual Guide."

"Worship the Guru every moment, no other deity is equal to him."

"Those who slavishly follow the Shariyat (creed of law) always remain tied to the world. They will never find access to Durbar of the Supreme Being. But those who serve the Sat Guru of the time with body, and mind and wealth, will secure entrance to the presence of the Supreme Being. The Sat Guru Himself is the Supreme Being; to serve him is to serve the Supreme Being. Those who seek the Supreme Being ignoring the Sant Sat Guru will never find the Supreme Being. Those who are engaged in service of the Sat Guru have actually met with the Supreme Being. When their eyes open, they will see it (i.e., that the Sant Sat Guru is the Supreme Being Himself) and until their eyes open fully they should, relying on the word of Sant Sat Guru, continue in His service, go on attending Satsang and continue increasing their Faith in and love for the 'charans' of Sant Sat Guru. One day the whole secret will be revealed to them."

"Any one desirous of reaching the Supreme Being must search for a Sant Sat Guru (incarnation of the Supreme Being) or a Sadh Guru (one who has reached the top of the second grand division) and invoke His help, and receive instructions from one of these Supreme Guides, as to the manner of his devotion and procedure.

A Sant Sat Guru is He who has either descended directly from the Highest Division or reached that quarter by practice of Surat Shabd Yoga under the immediate direction of the former.

The first personage or the Supreme Father and sole master is a vast and boundless Ocean of Spirit and Love and Joy from whom the Original Spirit or word current emanated. The second personage or the Supreme Mother is the Original Spirit and Sound Current, the prime mover, creator, nourisher and supporter of the whole creation. It is the connecting link between the

Supreme Father and the son or disciple, and leads the way and helps the son in returning to the Father's Highest Mansion.

The third the Supreme Son or Sant Sat Guru is the Representative of the Supreme Father in human form on this earth. This incarnation of the Supreme Father or His Special and Beloved son Sant Sat Guru appears now and then in this world for the purpose of saving spirits from going down to the lower regions and raising them to the higher spheres, and finally to the Mansion of the Supreme Father. The fourth, the disciple, the son or human being is a ray or drop descended from the Supreme Sun or Boundless Ocean of Spirit, Love and Joy, but his attention having been diverted by mind and matter towards the material creation down below, he has lost all knowledge of the Supreme Father and His Highest Mansion, and cannot now return to His Holy Abode without the help externally of Supreme Father or His Special and Beloved Son assuming human form of a Sant Sat Guru, and internally, of the Supreme Mother or the connecting Spirit and Sound Current between the Supreme Father and the disciple or son who illumines the heart of a sincere lover and devotee and sheds grace and mercy upon him."

There are many other extracts to which their Lordships' attention was directed ; they are to much the same effect and it is not necessary to refer to them in detail.

The properties, which are the subject-matter of the suit, were acquired with monies presented to the " Sant Sat Guru " in the form of " bhents " or other contributions by the followers of the Radha Swami Faith, and one of the points strongly relied upon by the plaintiff appellants is that, having regard to the spiritual position of the " Sant Sat Guru," whether he is regarded as the incarnation of the Supreme Being in human form, or as one of such spiritual height as to be in communion with the Supreme Being and to be his Representative on earth, it is almost inconceivable that the followers of the Faith when making their gifts to the " Sant Sat Guru," intended to create a " trust " within the meaning of Act XIV of 1920, of which they, the donors and worshippers should be the beneficiaries.

It is necessary now to refer to certain material facts.

In 1902, while Maharaj was the " Sant Sat Guru," a council was formed, called the Central Council Radha Swami Satsang. In the notice issued to the followers of the Faith calling a meeting to form the Council, it was stated that—

" We have repeatedly received the news which show that some of the Satsangis take such proceedings and are of such character as cause interference with the proceedings of Radha Swami Satsang and it is apprehended that by formation of different parties, the real object of Radha Swami Mat that all the persons should make and render service to Radha Swami Dayal may be lost.

The object of establishing the Sabha is not to offer any kind of obstruction to the devotion, Sewa (service) and Supremacy of the Sant Sat Guru whenever in future He manifests Himself. At that time this Sahba will only help Him in the management of the Satsang and His orders will have priority in respect of all the matters and He will be treated a Nijputra or successor of Radha Swami. In every matter He shall have full and unquestionable power."

The document declaring the constitutional powers of the Central Council appears to have come into being in June, 1904, and the material passages are as follows :—

“ 1. The constitutional powers of the Central Council Radha Swami Satsang which was established in the year 1902 by a majority of votes of the members of the Radha Swami Faith are as below :—

- (a) To regulate the conduct of business pertaining to the Radha Swami Satsang and its branches and of the followers of the Radha Swami religion.
- (b) To collect, preserve and administer the properties, movable and immovable that have been or may hereafter be dedicated to Radha Swami Dayal or that may be acquired for or presented to the Radha Swami Satsang for the furtherance of the objects of the Satsang.
- (c) To do the above and all such other things as are incidental or conducive to the attainment of the above objects in accordance with the directions of the Sant Sat Guru for the time being, if any, who is recognised as the representative of the Supreme Creator, Radha Swami Dayal, and whose mandates shall be paramount and absolute in all the matters referred to above.

9. All property of Radha Swami Satsang and its branches both movable and immovable which exists at present or may hereafter be presented to Radha Swami Dayal or be otherwise acquired, will, for the maintenance and advancement of the objects of the Satsang, be vested in a body of trustees designated the ‘ Radha Swami Trust.’

22. The Radha Swami Trust shall prescribe rules for the proper care and custody of the movable and immovable property belonging to the Satsang and its branches and for the proper maintenance of accounts.

25. The Trust shall be revocable at the discretion of the Council and the Trustees shall hold their office at its pleasure.

27. All immovable property as soon as acquired by Satsang, either as a present or offering, shall be conveyed in the name of the Radha Swami Trust.”

In October, 1904, what was called a “ Trust Deed ” was executed by certain members of the Central Council. The executants included the then “ Sant Sat Guru,” “ Maharaj,” who used his own name, viz., Brahm Shankar Misra, Madho Prasad, the “ Sant Sat Guru ” recognised by the plaintiffs and their party after the death of “ Maharaj,” and Kamta Prasad Sinha, who was the first “ Guru ” adopted by the alleged dissenters, namely the party, to which the contesting defendants belong.

The objects of the “ Trust ” as stated in the deed were as follows :—

OBJECTS OF THE TRUST.

“ The Trustees named above or those that may be appointed hereafter to succeed them, all of whom will hereafter be called ‘ trustees,’ shall collect, preserve, administer, and if necessary, alienate the properties, movable or immovable, that have been or may hereafter be dedicated to the Supreme Being, Radha Swami Dayal, or that may be acquired for or presented to the Radha Swami Satsang and its branches, in accordance with such directions as may, from time to time, be issued in this behalf by the said

Council or the Sant Sat Guru for the time being, if any, who is recognised as the representative of the Supreme Being Radha Swami Dayal, and as such is the sole master of all movable and immovable properties of the aforesaid Satsang, provided that Samadhs and places of public worship of the Radha Swami Satsang shall at no time be alienated."

A similar clause appears in a later deed, viz., the 2nd January, 1920.

By a clause relating to Byelaws, it was provided that—

BYE-LAWS OF THE TRUST.

"1. Irrespective of what is prescribed by the following rules, all mandates of the Sant Sat Guru of the time regarding the disposal of the movable and immovable properties of the Satsang and its branches or other matters connected with the Trust, shall be carried out by the trustees.

2. The Trust shall be revocable at the discretion of the Council and the trustees shall hold their office at its pleasure.

4. All immovable properties, as soon as acquired by the aforesaid Satsang either as present or offerings or by purchase, or otherwise, shall be forthwith conveyed in the name of the trustees."

There was attached to the deed a specification of the properties alleged to be held in trust

In April, 1907, certain "loan rules" were issued by the Central Council; it was stated that in order to obviate the serious difficulties, hardships and loss which Sat Sangis have often to undergo in obtaining loans, and to afford them all reasonable facilities, the rules were sanctioned for the grant of loans to them.

These rules provided for the carrying on a sort of banking business, whereby loans were to be made at interest either on security or guarantee: an object which is hardly consistent with the alleged trust being of a religious or charitable nature.

In 1907, "Maharaj" the third "Sant Sat Guru" died. It was alleged by the plaintiff appellants that before he died he had indicated, as to his successor, that the divine current was in female form in his own sister, who was known as Buaji Sahiba; but he declared that she would not publicly hold or preside at Satsang, as she was a pardanashin lady, and that, during her lifetime, the Satsang would be conducted in accordance with her directions and orders under the presidency of Rai Sahib Madho Prasad Sinha Sahib, known as Bapuji Maharaj (respondent No. 4), who would succeed her, and that the followers of the true faith, in accordance with the tenets thereof, acted upon this declaration and accepted the lady as the next Sant Sat Guru accordingly.

In 1910, some Sat Sangis followed the lead of Kamta Prasad Sinha and he became the "Sant Sat Guru" of the so-called dissentient party, who formed themselves into a body called the Radha Swami Satsang Sabha at Agra, which body was the third defendant in the suit; subsequently, Anand Sarup, the second defendant became the "Guru" of that party.

In 1913, Buaji Sahiba died and Madho Prasad was accepted by the plaintiff appellants' party as the true and only "Sant Sat Guru."

Both the Courts in India held that the deed of October, 1904, cannot be treated as a title deed creating a legal trust, and their Lordships agree with them in this respect.

The High Court, however, considered that it was to be regarded as a document containing admissions in unmistakable terms as to the character and nature of the properties therein referred to, and the High Court's conclusion was as follows :—

"We think that the statements contained in this deed coupled with those contained in the notices and the circulars as well as the subsequent conduct of the Gurus themselves, can leave no doubt in our minds that these properties were not treated as the private properties of the Gurus, but were set apart as the properties belonging to the Sat Sang and its branches and held in trust by the trustees for the furtherance of the object of the Sat Sang."

With great respect to the learned Judges, their Lordships are not able to agree with their decision.

It may be that the offerings to the Sant Sat Guru, by means of which the properties were acquired, were not only for the personal use of the Sant Sat Guru, but also for the advancement of the faith, but in order that such a trust, as is relied upon by the contesting defendants in this case, may be valid and enforceable according to law, certain material matters must be ascertainable. In the first place it is material to ascertain the author or authors of the alleged trust. Next the intention to create a trust must be indicated by words or acts with reasonable certainty. The purpose of the trust, the trust property, and the beneficiaries must be indicated and in such a way that the trust could be administered by the Court if the occasion arose.

It is necessary, therefore, to consider who was the author or who were the authors of the trust which is alleged by the contesting defendants, to have been for a public purpose of a charitable or religious nature. Their Lordships agree with the contention of the plaintiff appellants that the followers of the true faith when making their gifts to the "Sant Sat Guru," whom they regarded as their spiritual head (whether he was the incarnation of the Supreme Being or only his representative) in accordance with the mandates of their religion, cannot be supposed to have intended to create any trust. In this connection, it is material to notice that the High Court accepted the same view in that they said that "when the members of this faith make gifts to Radha Swami Dayal in the person of the Guru, they do not concern themselves with the manner in which the gifts will be used."

This seems to their Lordships an eminently reasonable conclusion when the position and authority of the "Sant Sat Guru," the complete and absolute submission of his followers to him, and the above-mentioned teachings and doctrines are taken

into consideration. It cannot therefore be said that the donors of the gifts were the authors of the alleged public trust.

But it is to be remembered that the properties, which are alleged to be the subject of the trust, were acquired by means of the said gifts made to the Sant Sat Guru in the form of "bhents" and other contributions. Can it then be said that any of the three "Sant Sat Gurus" to whom the gifts were made created such a trust as is relied upon by the contesting defendants?

Their Lordships can find no trace of the creation of any trust prior to the time when the above-mentioned Council was formed. When the constitutional powers of the Central Council were declared, it was at the very outset provided that the Council was to do the things mentioned in the declaration and other matters incidental thereto, in accordance with the directions of the Sant Sat Guru for the time being, if any, who is recognised as the representative of the Supreme Creator Radha Swami Dayal and whose mandates shall be paramount and absolute in all the matters referred to therein.

In the alleged trust deed itself the "Sant Sat Guru" for the time being is recognised as the representative of the Supreme Being and as such, is *the sole master of all movable and immovable properties of the Satsanj*. Further, the deed is stated to be revocable at the discretion of the Council.

These provisions, in their Lordships' opinion, are wholly inconsistent with any intention on the part of the "Sant Sat Guru" for the time being, to alter his position as "Sant Sat Guru" or to divest himself of the control of the property and to create a trust for a public purpose of a charitable or religious nature, such as is contemplated by Act XIV of 1920.

On the other hand, the regulations relating to the Central Council and the provisions of the so-called "Trust" deed are, in their Lordships' opinion, consistent with a desire on the part of the Sant Sat Guru to obtain the assistance of some of his followers in the management of the property, which, no doubt, was increasing as the years passed.

The arrangement thereby made would no doubt facilitate the dealing with the property during the lifetime of the "Sant Sat Guru," and would obviate difficulties which might arise as to succession on the death of the "Sant Sat Guru," but in view of the essential and unalterable doctrines of the faith with respect to the "Sant Sat Guru," his supremacy and his control over the offerings, by which the properties were acquired, it is difficult to arrive at the conclusion that it was ever intended that such a trust as is contemplated by Act XIV of 1920, should be created. This is confirmed by the express provisions which have already been referred to, *e.g.*, that the Council were to act in accordance with the direction of the "Sant Sat Guru" for the time being, who is recognised as the representative of the Supreme Creator, whose mandates were to be paramount and that the trustees

were to follow the directions of the "Sant Sat Guru," who was the sole master of all movable and immovable property.

This conclusion is, in their Lordships' opinion, fatal to the contention of the contesting defendants, but there are other considerations which would render it difficult to hold that the alleged trust was of a religious or charitable nature only.

Reference has already been made to the carrying on of a sort of banking business. In this connection it may be noted that Jnan Chandra Basak who presented the above-mentioned petition, alleged that he had made a gift of Rs. 2,000 in 1903 to the alleged trust and he was granted a life allowance of Rs. 5 per mensem; in other words, he bought an annuity of Rs. 60 for the sum of Rs. 2,000. In 1905, it was proposed to start a factory in which only Sat Sangis and their relations should take part. It was stated that five lakhas of rupees would be required and that the shares would be Rs. 50 each and Sat Sangis were invited to invest their money. Whether this proposal was carried out their Lordships do not know, but the above-mentioned matters go to show that even if the alleged trust could be taken as having been created, it would be difficult to hold it was for a public purpose of a religious or charitable nature within the meaning of Act XIV of 1920. For these reasons their Lordships are of opinion that the appeal must be allowed, and the decrees of the Courts in India set aside and that a declaration should be made in accordance with paragraph one, sub-paragraphs (a) and (b) of the prayer in the plaint, and they will humbly advise His Majesty accordingly.

The defendants one to three must pay the costs of the plaintiff-appellants in both Courts in India, and of this appeal.

In the Privy Council.

PATEL CHHOTABHAI, since deceased,
AND OTHERS

v.

JNAN CHANDRA BASAK AND OTHERS

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