Privy Council Appeal No. 12 *of* 1937

Pandit Parma Nand - - - - - - *Appellant*

v.

Nihal Chand and Another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD MAY, 1938.

Present at the Hearing :

LORD WRIGHT.

LORD ROMER.

SIR LANCELOT SANDERSON.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL].

In the town of Gujranwala there is a building variously described as Baghichi Thakaran or Gurdwara Baghichi, and the main issue, which their Lordships have to determine in this appeal, is whether that building, together with the shops and other property attached to it, is the subject matter of a trust for a public purpose of a charitable or religious nature. The issue was raised by the defendants who, claiming to be the representatives of the Hindu public, made an application to the District Judge under section 3 of the Charitable and Religious Trusts Act (No. XIV of 1920), alleging that the Baghichi Thakaran was a public endowment for religious and charitable purposes, and called upon Mahant Narain Das, who was described by them as the trustee of the endowment, to furnish details of the nature and purposes of the trust, and of the value of the property belonging to the trust, and also to render an account of the income and expenditure of the trust property. Their allegations were contested by Narain Das, and the controversy between the parties led to the present action, brought by Narain Das for the purpose of obtaining an authoritative pronouncement upon the nature of the trust and of the property attached to it.

The Trial Judge found against the public character of the alleged trust; but his judgment has been reversed by the High Court of Judicature at Lahore. From the judgment pronounced by the High Court and the decree which

followed upon it, this appeal has been brought to His Majesty in Council by Pandit Parma Nand who, on the death of Narain Das, was impleaded as his legal representative.

The learned Judges of the High Court, after a careful consideration of the question of onus, have endorsed the conclusion of the Trial Judge that it was for the defendants to prove that the plaintiff, who was admittedly in possession of the property, held it on a trust created for public purposes of charitable and religious nature.

The history of the Baghichi Thakaran or Gurdwara Baghichi may be briefly stated. The Baghichi was founded by one Baba Kulla or Kuljas who died about 1800 A.D. He was a Khatri by caste, and migrated from a place called Saidnagar to Gujranwala, where he took up a plot of land and built a house thereon. He also planted a garden, which was the origin of the name Baghichi (orchard) usually applied to this institution. Baba Kulla was succeeded by his chela, Thakar Ram Das who was an Arora by caste. It is stated that Ram Das practised as a physician, and that while he was in charge of the Baghichi Thakaran he made improvements to the building. It was, however, Ram Das's successor, Sant Das, who made considerable extensions and also acquired house and shop property at Gujranwala. The prosperity of the institution was mainly due to Narain Das who succeeded Sant Das on his death in 1879. Narain Das acquired properties at Nankana Sahib, and also built shops at Gujranwala. The annual income of the various properties during the time of Narain Das rose from Rs.1,394 in 1905 to Rs.7,664 in 1923. It was probably this abnormal rise in the income which attracted the attention of the respondents who made the application under the Charitable and Religious Trusts Act, which led to this litigation.

It appears that the person, who happened to be in charge of the Baghichi, was called Mahant; and that the Baghichi itself was known as Gurdwara. But the main property, which is the subject-matter of the dispute, was acquired by the person or persons who occupied the office of Mahant.

The principal ground, upon which the judgment of the High Court proceeds, is that the Baghichi and other properties have descended from guru (religious preceptor) to chela (religious disciple); but this circumstance does not necessarily lead to the conclusion that a property, when acquired by a Mahant, loses its secular character and partakes of religious character. It is common ground that the Mahants of this institution belonged to an ascetic order called Udasi. The Udasis rarely marry; and, if they do so, generally lose all influence; for the dharmsala or Gurdwara soon becomes a private residence closed to strangers; Maclagan's Census Report for the Punjab, Part I, Chapter IV, page 152. When a person enters the Udasi Order, he severs his connection with the members of his natural family. It follows that neither he nor his natural relative can succeed to the property held by the other.

There is, however, no reason for holding that an Udasi cannot acquire private property with his own money or by his own exertions. If he does acquire private property, it cannot be inherited by his natural relatives, but passes on his death to his spiritual heir including his chela who is recognised as his spiritual son. The descent of the property from a guru to his chela does not warrant the presumption that it is religious property.

Assuming, however, that the property acquired by a Mahant is to be treated as a religious property, the question arises whether it was dedicated for the use or benefit of the public. In the case of a public trust, the beneficiaries are either the public at large or a considerable portion of it answering a particular description. Now, there is no documentary or oral evidence to show that the property was expressly dedicated for the use or the benefit of the public. Are there any circumstances from which the dedication of the property to a public trust can be implied?

It appears that in 1869 four persons applied to the Municipal Committee, Gujranwala, that a plot of land lying in front of the building of the Baghichi Thakaran might be included in the courtyard of the building, and that, though they were themselves interested in the land as muafidars, they would not demand any compensation for surrendering their rights to the property. The Municipal Committee recommended the grant of land, and the Deputy Commissioner considered the land to be an unsightly plot adjoining the public road, and was induced to remit the share of the price of the land which was due to the Government "in the interest of the city." It is true that the building was then described as a holy place and the Mahant occupying it was stated to be a "very good man"; but as pointed out by the High Court—"The transaction itself seems to have had a town planning motive rather than to have been prompted by a desire to endow the Gurdwara." This assignment of land does not prove that the building was dedicated to a public trust.

It is, however, argued that income tax was sought to be imposed upon Narain Das for the year 1905-06 in respect of the income derived by him from the property of the Gurdwara, and that the income tax was then remitted on the ground that the property constituted a public trust. There is no document to show the nature of the objection on which the order of remission was based. The oral evidence is to the effect that the tax was remitted because the property was stated to be waqf; but the expression "waqf" is vague and may include a private trust. It cannot, therefore, be said that the Mahant at that time declared the property to be dedicated to a religious trust of a public nature. It is, however, significant that, as deposed by him, Narain Das did not succeed in securing an exemption from income tax on a subsequent occasion, and had to pay Rs.250 or Rs.300 per annum as income tax.

Their Lordships' attention has been invited to a will made by Mahant Sant Das on the 14th October, 1875. In

this will the testator describes the property in dispute as his private property, and states that he is entitled to alienate it. There can be no doubt that Sant Das regarded the property to be his property, but the respondents contend that he himself declared the property to be a public trust to take effect after his death, and appointed a managing committee to administer the alleged trust. The original will is not available, but it is common ground that the will was not acted upon after the death of the testator. There is some evidence to show that the testator revoked it by destroying it. The revocation would make the declaration of trust infructuous. Be that as it may, there can be no doubt that neither Narain Das, who succeeded Sant Das, nor any managing committee administered the property as trust property. The will, whether revoked or not, cannot be relied upon to prove that a public trust came into operation after Sant Das's death. It, however, shows that he regarded himself to be the owner of the property and claimed the right to alienate it. This claim negatives the suggestion that it came into his hands as property dedicated to public trust. Indeed, there is ample documentary evidence to show that alienations of several properties were made by various Mahants in exercise of their right of ownership.

The plaintiff Narain Das himself made a will on the 9th July, 1922, and gifted the property to the appellant, Parma Nand, as his successor; and described himself to be the absolute owner of the Baghichi and all other property. But this declaration cannot be used for determining the point in controversy between the parties.

It appears that holy scriptures were recited in the Gurdwara on various occasions, and that presents were made by the audience to the person or persons who made the recitations. But it is clear that recitations were suspended for several months. The recitations of holy books are, in no way, incompatible with the hypothesis that the trust, if any, was of a private nature. There can be no doubt that even in a private shrine, the public may worship, but the question is whether they do so without any permission, leave or license and as of right. This test has not been satisfied in the present case.

Their Lordships do not think that any user or treatment of the property has been proved, such as would justify the conclusion that it was a public, and not a private, trust. It cannot be disputed that the plaintiff can be defeated only if the defendants establish affirmatively that a trust of a public character was imposed upon the property.

To constitute a trust " created or existing for a public purpose of a charitable or religious nature " within the meaning of Act XIV of 1920, the author or authors of the trust must be ascertained, and the intention to create a trust must be indicated by words or acts with reasonable certainty. Moreover, the purpose of the trust, the trust property, and the beneficiaries must be indicated so as to enable the Court

to administer the trust if required; *Chhotabhai* v. *Jiban Chandra Basak*, L.R. 62, I.A. 146. These conditions have not been fulfilled.

Their Lordships are of the opinion that the onus, which rested upon the defendants, has not been discharged. They will, therefore, humbly advise His Majesty that the appeal be allowed, that the decree of the High Court be discharged, and that the decree of the Court of first instance be restored. The appellant must have his costs here, as well as in the Courts below.

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DELIVERED BY SIR SHADI LAL

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