

Privy Council Appeal No. 83 of 1939

Oudh Appeal No. 4 of 1938

Ram Dularey - - - - - *Appellant*

v.

Ram Lal and others - - - - - *Respondents*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 6TH NOVEMBER, 1945

Present at the Hearing :

LORD THANKERTON
LORD GODDARD
SIR JOHN BEAUMONT

[*Delivered by LORD THANKERTON*]

In this appeal there has been no appearance for the respondents; but Mr. Khambatta, on behalf of the appellant, has presented the case with the fairness and candour which we have become accustomed to expect from him. He has confined his argument to one point only, because he, naturally, appreciates the difficulty arising from the fact that there were concurrent findings to the effect that the present trust was a trust created for public purposes of a charitable or religious nature within the meaning of section 92 of the Civil Procedure Code.

The only point made by him, as I understood, was this: that he found in the judgment of the Chief Court an inconsistency in the language, which suggested in one sentence that they were following exactly the terms of the compromise which had been entered into by the parties in a litigation five years or so before the date of the judgment, and that in fact the scheme approved by them materially departs from the terms of the compromise, particularly as regards the vesting of the property of the idol.

It is clear from the judgment of the trial judge that he, like the Chief Court, found that there was no sufficient fault or breach of trust on the part of the appellant to justify his removal, which was sought in the action; but he did give detailed findings with regard to instances of mismanagement and extravagance on the part of the appellant, which, as he said at page 99 of the Record, in his finding on issue (5), rendered it entirely necessary to draw up a new scheme, so as to avoid mismanagement and waste, and he did draw up a new scheme which in itself was designed to prevent recurrence of the extravagance and mismanagement which had taken place during the period that the compromise was ruling the matter.

It is true that there is at page 127 of the Record a passage in the judgment of the Chief Court which does suggest in one sentence, if read in one way, that they thought that it would be just and fair to tie down

the parties to the terms of the compromise for the benefit of the trust, and it is possible to read that as meaning that they were going to stick to the terms of the compromise and nothing else; but the succeeding part of the judgment and the terms of the scheme approved by them make it quite clear that it was only the terms of the compromise in so far as they were for the benefit of the trust to which they were alluding in that sentence.

Even if there were an inconsistency in that judgment, their Lordships would be very slow to disturb the safeguards which are provided in that scheme, if their Lordships found it necessary to reconsider the scheme; but in their view the scheme has been definitely approved by the Chief Court and they see no reason for interfering with the judgment. It has to be remembered that in these cases the court has a duty, once it finds that it is a trust for public purposes, to consider what is best in the interests of the public. That is made abundantly clear by the judgment of this Board, delivered by Mr. Ameer Ali, in *Mahomed Ismail Ariff and Others v. Ahmed Moolla Dawood and Another* (1916) L.R. 43 Indian Appeals, page 127.

Accordingly, it follows that their Lordships will humbly advise His Majesty that this appeal should be dismissed.



In the Privy Council

RAM DULAREY

v.

RAM LAL AND OTHERS

DELIVERED BY LORD THANKERTON