

## PRIVY COUNCIL

(Mahant) Lahar Puri.

Vs.

(Mahant) Puran Nath.

Privy Council Appeal No. 25 of 1914

(Lord Dunedin, CJ, Sir George Farwell, Sir John Edge, and Mr. Ameer Ali. J)

15.3.1915

### JUDGMENT

**Sir John Edge CJ.**

1. This is an appeal from a decree of the High Court of Judicature at Allahabad, dated the 11th of March, 1912, which reversed a decree of the Subordinate Judge of Saharanpur, dated the 29th of November, 1909, and dismissed the suit with costs. The suit was brought on the 12th of January, 1909, by Lahar Puri, who is the appellant, against Puran Nath who is the respondent. The dispute between the parties to this appeal relates to the title to the mahantship of the Hindu math, or temple, at Hardwar, known as the Akhara Baba Sarwan Nath, and to the property appertaining to the math.
2. The math was founded by one Baba Sarwan Nath, who was a Sunniasy Rukhar Fakir and died in 1849. Since his death there have been several mahants of the math in succession. It does not appear that Baba Sarwan Nath, in founding the math, prescribed any rules or practice to be followed in the selection and appointment of the future *mahants*. Consequently, the selection and appointment of a person to be the *mahant* of the math on a vacancy occurring in the *mahantship* must depend on the custom or usage and the practices which have prevailed in the appointment of *mahants* of this math, and on that principle this suit has been fought in the First Court, in the High Court, and before this Board.
3. The dispute as to the title to the *mahantship* arose in February, 1905, on the death in that month of Jhandu Nath, who was the *mahant* of the math, and had succeeded Tej Nath in the *mahantship* in 1897. In this suit the plaintiff alleges that he was the only

*sadhak* (disciple) of the deceased Mahant Jhandu Nath, and being the only *sadhak* of Mahant Jhandu Nath, he was the only one of the mendicant fraternity of the temple who was qualified for election to the *mahantship*; that he was duly elected *mahant* by the ten classes of mendicants (*dasnam bhik*) on the 24th of February 1905; and that he was appointed with the usual ceremonies. On the other side the defendant denies that the plaintiff had ever been the *sadhak* of Mahant Jhandu Nath, or was qualified for election to the *mahantship*, or was elected *mahant*. The defendant's case is that it is not necessary that the *sadhak* of the last *mahant* should be elected as the *mahant*. He alleges in his written statement that:-

"The *sadhak* or a co-disciple, or the *sadhak* of a co-disciple of the deceased *mahant* is appointed a *mahant*, and failing these or in the event of none of these being a fit person, the mendicants of all the ten classes (*dasnam, bhik*) have the power to make any fit person the *sadhak* of the *gaddi* and appoint him a *mahant*."

4. The defendant further alleges that he was a *sadhak* of *mahant* Tej Nath, who preceded Mahant Jhandu Nath on the *gaddi* of the temple, and as such *sadhak* was qualified for election to the *mahantship*, and that he was duly elected and with the usual ceremonies was appointed *mahant* by all the ten classes of mendicants (*dasnam bhik*) on the 24th of February, 1905. It is not disputed that the defendant was a *sadhak* of Mahant *Tej Nath*. It is common ground that the time for the election of a successor in the *mahantship* of this temple is the *terhwin*, the thirteenth day ceremony, after the death of the deceased *mahant*, which in this case fell on the 24th of February 1905. It is also common ground that on the death of a *mahant* of this temple the election of his successor takes place at Hardwar, and that the election and appointment of the new *mahant* is by the ten classes of mendicants (*dasnam bhik*) assembled at Hardwar for that purpose. From the evidence their Lordships infer that the usual place at which the *dasnam bhik* assemble for the purpose of electing a *mahant* of this temple, and at which they elect a *mahant*, is at the temple. Another common ground is that on the election and appointment of a *mahant* of this temple a *mahantinama* is drawn up and is witnessed by those who were present at the election, and is registered.

5. The defendant, who was the general attorney and storekeeper of the deceased *mahant*, is in possession of the temple and of the property appertaining to it. Consequently it is for the plaintiff to prove his right to the *mahantship*, which if proved, would in the case of this temple, carry with it the right to the possession of the temple and of the property appertaining thereto. If the plaintiff has failed to prove that

he is the duly elected *mahant* of the math his suit must fail, and in the event it would be immaterial to consider whether the defendant is or is not the mahant of the math, or whether he has or has not any better title to the temple and the property which appertains to it than a title of mere possession.

6. Much evidence has been led by each side. The documentary evidence is not, in their Lordships' opinion, conclusive in favor of either side. The oral evidence is, as the High Court observed, extraordinarily conflicting, even for a case of this kind. Some of the material witnesses, who, if their evidence was true, must have been in a position to contradict or explain much of the evidence of the other side as to the events of the 24th of February 1905, were examined and were cross-examined at great length, but were allowed to leave the witness box without their attention having been directed to the case of the other side. As the case was treated in the court of the trial judge, it was an important question whether there were, on the 24th of February 1905, two elections of a *mahant* by the *dasnam bhik*, or one election only, or no real election at all. As the learned Judges of the High Court observed in their judgment in the defendant's appeal before them :-

"The witnesses for the respondent (the plaintiff) say nothing about the election of the appellant (the defendant), and the witnesses for the appellant, with one or two exceptions, say nothing about the election of the respondent." and yet it is alleged that there were two elections on the morning of the 24th of February, 1905, by the *dasnam bhik* then assembled at the temple.

7. The Subordinate Judge found as a fact that the plaintiff was the *sadhak* of Mahant Jhandu Nath. The learned Judges of the High Court, after reviewing the evidence bearing on that question, and not overlooking the fact that it was a strong point in favor of the view which the Subordinate Judge had taken that a number of fakirs who were unlikely to choose a complete outsider had joined in the so-called election of the plaintiff as *mahant*, were on the whole unable to say that the evidence that the plaintiff had been duly appointed a *sadhak* was satisfactory. As the plaintiff had failed to satisfy the Judges of the High Court that he had been a *sadhak* of Mahant Jhandu Nath, and as he had neither alleged nor proved that he was in any other way qualified for election as mahant of the math, they might have allowed the appeal and have dismissed the suit without going into the question as to whether he was or was not elected. However, they did not dispose of the appeal before them on that point; they decided the appeal on the question as to whether the plaintiff had or had not been duly elected the mahant. In the view which their Lordships take of this case it is not

necessary for them to decide whether or not the plaintiff had been a sadhak of Mahant Jhandu Nath.

8. The evidence as to the so-called elections on the 24th of February 1905, is most conflicting. Each party claims to have been elected *mahant* by the *dasnam bhik* on that day. That there were, in fact, two factions amongst the *dasnam bhik* - one faction desirous of electing the plaintiff as *mahant*, the other faction desirous of electing the defendant as *mahant* - is on the evidence obvious. The Subordinate Judge found that it was satisfactorily proved that the plaintiff was duly elected *mahant* by the *dasnam bhik* on that day, and that the alleged election of the defendant as *mahant* was a fictitious transaction. The High Court found it proved that the defendant was elected on the 24th of February, 1905, by a large gathering of qualified persons and that the election of the plaintiff was:-

"A hole-and-corner affair in comparison with that of the appellant (the defendant), and seems to have been carried out hurriedly by a discontented minority." of the *dasnam bhik* which had assembled at the temple on the morning of the 24th of February, 1905.

9. There is evidence to support each of these contradictory findings. (The judgment then discussed the evidence and proceeded). The High Court has found that the majority of the persons present on the morning of the 24th of February who were qualified to elect a *mahant* of this temple were in favour of the defendant; that in point of numbers and of influence the defendant received more support than the plaintiff did; that the election of the defendant must have taken place before that of the plaintiff; and that there was no attempt on the part of the defendant to conceal the arrangements which he had made for the 24th of February, 1905. It has not been shown to their Lordships that the High Court came to a wrong conclusion on any one of these points. An election by *dasnam bhik* of a *mahant* to be a valid and effectual election must be by a majority of the *dasnam bhik* assembled for that purpose. A separate election by a faction of the *dasnam bhik* is not a valid and effectual election. Their Lordships have come to the conclusion that the plaintiff has failed to prove that he was elected a *mahant*.

10. Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the costs of this appeal.

Appeal dismissed.