

PRIVY COUNCIL

Ram Parkash Das

Vs.

Anand Das and others
P.C.A. No. 39 of 1914.

(Viscount Haldane, Lord Shaw, Sir John Edge and Mr. Ameer Ali. JJ)

16.3.1916

JUDGMENT

Lord Shaw J.

1. This is an appeal from a judgment and decree of the High Court of Judicature at Fort William in Bengal, dated the 26th August, 1910, reversing a judgment and decree of the Second Subordinate Judge of Mozufferpore, dated the 16th June, 1909.

2. The question in the appeal has reference to the office and rights of a *mahant* of an *asthal*, known as the *Patepore Asthal*, in the district of Mozufferpore. There are rival claimants to this office in the person of the plaintiff and of the defendant No. 2. The defendant No. 1, Anand Das, was the *mahant* of the *Patepore Asthal*. By written documents and by his acting he has, as will be afterwards found, abdicated. But in this litigation he supports the claim of defendant No. 2, in whose favour he has granted those deeds which will be hereafter referred to. The *Asthal* is one of some importance, and is stated to have revenue of 50,000 rupees a year.

3. An *asthal*, commonly known in Northern India as a *muth*, is an institution of a monastic nature. It is established for the service of a particular cult, the instruction in its tenets and the observance of its rites. The followers of the cult and disciples in the institution are known as *chelas*; the *chelas* are of two classes celibate and non-celibate. In the *asthal* now being dealt with, the religious brethren were the *bairagi* or celibate *chelas*; the lay brethren were *girhast* or householder *chelas*. The *mahant* must, by the custom of the *muth*, be a *bairagi* or religious *chela*.

4. The *mahant* is the head of the institution. He sits upon the *gaddi*; he initiates candidates into the mysteries of the cult; he superintends the worship of the idol and the accustomed spiritual rites; he manages the property of the institution; he

administers its affairs; and the whole assets are vested in him as the owner thereof in trust for the institution itself.

5. Upon his death or abdication he is succeeded by one of the *bairagi* chelas. These *bairagi* chelas are, as stated, celibates; or if they have ever been married they must, prior to their initiation as *bairagi* chelas, have renounced their wives and families and have conformed to the practice of the *muth*. This practice is ascetic : it involves a separation from all worldly wealth and ties, and a self-dedication to the services and rites of the *asthal*. (See, e.g., Wilson's Religious Sects of the Hindus, pp. 51, etc.)

"Pious persons endow the schools with property, which is vested in the preceptor for the time being, and a home for the school is erected and a *mattam* constituted :"

6. *Sammantha Pandara v. Sellappa Chetti*¹.

7. It is, however, the rule that this property is held by the *mahant* as its owner, and the succession to him in such property follows with the succession to the office. The nature of the ownership is, as has been said, an ownership in trust for the *muth* or institution itself, and it must not be forgotten that although large administrative powers are undoubtedly vested in the reigning *mahant*, this trust does exist, and that it must be respected.

8. The question as to who has the right to the office of *mahant* is one, in their Lordships' opinion, which, according to the well-known rule in India, must depend upon the custom and usage of the particular *muth* or *asthal*. Such questions in India are not settled by an appeal to general customary law; the usage of the particular *muth* stands as the law therefor.

9. It appears from *Mahant Ramanooj Doss v. Mahant Debraj Doss*² that the *muths* are

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"of three descriptions, namely, *mouroosi*, *punchaiti* and *halcimi*, that in the first the office of chief *mahant* was hereditary, and devolved upon the chief disciple of the existing *mahant* who, moreover, usually nominated him as his successor; that in the second the office was elective, the presiding *mahant* being selected by an assembly of *mahants*; and that in the third the appointment of presiding *mahant* was vested in the ruling power" (presumably the civil power), "or in the party who endowed the temple."

10. The case cited was interesting, and the report proceeds:-

"Mr. Money then directed the pundit of the Sudder Dewanny Adawlut to state what was the law of shastre in regard to the appointment of a presiding *mahant* of a *muth* or temple called 'mouroosi'; whether the principal disciple of the last *mahant* should succeed or whether the existing *mahant* was competent to appoint whom he pleased from among the body of his disciples?

"The reply of the pundit was as follows : Under the circumstances stated in the question, the principal *chela* or pupil is entitled to succeed on the death of the presiding *mahant* of a *mouroosi* or hereditary *muth*. If the principal pupil be personally unfit to succeed, or be disqualified by any of those causes which, according to the *shastre*, are sufficient for such disqualification, then in that case the presiding *mahant* should, during his lifetime, select one properly qualified from among his pupils to succeed him. The person so selected will succeed."

11. Alongside of this report should be placed the view of Sir Charles Turner in *Sammantha Pandora v. Sellappa Chetti (Supra)* to this effect -

"The preceptor, the head of the institution, selects among the affiliated disciples him whom he deems the most competent, and in his own life-time instals the disciple so selected as his successor, not uncommonly with some ceremonies. After the death of the preceptor the disciple so chosen is installed in the gaddi, and takes by succession the property which has been held by his predecessor."

12. Their Lordships are of opinion that the language last quoted cannot be taken in any sense as a statement of the general law of India. Any contention to that effect would indeed not be in accordance with Sir Charles Turner's own views, he having made this plain in the succeeding passage of his judgment :-

"We do not, of course, mean to lay down," said he, "that the property may not in some cases be held on different conditions and subject to different incidents."

13. It, in short, may rank as one of the varieties of circumstance and tenure whose adoption or rejection will fall to be determined by the usage and custom of the *muth*.

14. That this forms the controlling rule with regard to the right to the office of mahant may now be considered as having been conclusively settled by authority. In *Greedharee Doss v. Nundokissore Doss* Lord Romilly so put it, observing "that the only law of these *mahants* and their offices, functions and duties is to be found in custom and practice, which is proved by testimony." More recent authorities, such as *Rajah Muttu Ramalinga Setupati v. Perianayagum Pillai*⁴ and *Rajah Vurmah Valia v.*

*Ravi Vurmah Kunhi Kutty*⁵ confirm this proposition, with the explanation which their Lordships think it right here to repeat, given by Sir Barnes Peacock as Chief Justice of Bengal, and cited with approval in the case last mentioned to the following effect :-

"Numerous cases have been cited to show what was the usage, but the law to be laid down by this Court must be as to what is the usage of each *mahantee*. We apprehend that if a person endows a college or religious institution, the endower has a right to lay down the rule of succession; but when no such rule has been laid down, it must be proved by evidence what is the usage, in order to carry out the intention of the original endower. Each case must be governed by the usage of the particular *mahantee*."

15. As between the rival claimants to this *mahantship* the situation is as follows: The plaintiff maintains the broad proposition that according to the custom of this *muth* the succession falls to the eldest or senior (that is, earliest inducted) *bairagi chela*; that it so falls as of right; and that this right of succession cannot be defeated by any deed or deeds executed by the reigning *mahant*. If this be correct there is an end to the claim, so it is maintained, of defendant No. 2.

16. Upon the other hand defendant No. 2 maintains that there is no such absolute right of succession; that there are deeds in existence under the hand of Anand Das, the then reigning *mahant*, which transfer to and vest in him, the second defendant No. 2 is now in office under a question of succession being thus settled, defendant No. 2 is now in office under a right which is not defensible by any right in the plaintiff as alleged senior *chela*.

17. Their Lordships have considered deeds executed by predecessors of the parties in the years 1832, 1854 and 1866 respectively. As between the propositions (i) that the choice of the reigning *mahant* must prevail, and (ii) that the right of the senior *bairagi chela* must prevail, their Lordships are not prepared to affirm that either proposition is upon those deeds made out.

18. In the first place, language, apparently of selection, is used; but in the second place, the person is in each case the senior *bairagi chela* for the time being. and there is in the evidence an apparent admission of the right of the senior *chela* to the office. Lastly, there is no instance given either in the documentary or oral evidence of a senior *chela* having been superseded by virtue of the selection of another by the *mahant* for the time being. In the view taken by their Lordships, it is unnecessary to come in this case to a decision upon this issue.

19. For, in their Lordships' opinion, such an issue is superseded by issues of fact. Those issues are of undoubted difficulty. They are the subject of extreme conflict "testimony. The number and width of the topics in dispute are rare even in questions of disputed fact coming from India. These topics may, however, be conveniently ranged in two divisions.

20. The first question is whether defendant No. 2, the nominee of Anand Das under the deeds now to be mentioned, is competent to be *mahant* of this *asthal*. This competency is challenged: if the challenge be sound he cannot succeed.

21. The second question is, is the plaintiff a *bairagi chela* of this *muth*? His entire life history, vouched by himself and others, is challenged as a tissue of falsehood. If this challenge be sound the plaintiff cannot succeed.

22. What would happen if both of these challenges were sound or both were unsound their Lordships need not consider, as they have come to a definite conclusion that the one challenge succeeds and the other fails.

23. Before, however, the investigation is entered upon, it may be convenient and proper that the following general observation should be made. Their Lordships have had the duty, in view of the reversal of the judgment of the Subordinate Judge by the High Court, of considering for themselves the entire body of the evidence in the case.

24. They desire to record that in their opinion the Subordinate Judge has dealt with this complex and onerous case with much care, and that, although they differ from him in one or two particulars, his conclusions appear to the Board to be stated with clearness and with cogency : and they think it right also to say that there does not appear to be any ground for the reflection made in the judgment of the High Court that the Subordinate Judge has displayed in any portion of his judgment or has been in any particular moved by either partiality or bias.

25. Upon the first question, the objection taken to Ram Partab Singh, the second defendant, is that he is a married man, the father of a son and daughter, one at least of these children having been born since he became, or is alleged to have become, *mahant*.

26. This enquiry into the domestic relations of the second defendant is of course on an issue which is fundamental. For the proposition cannot be denied that, even upon the assumption that a right of selection did exist on the part of the *mahant* as among the *bairagi chelas*, the nomination must fall upon one who is competent to hold his

important sacred office. For instance, the person chosen may be disqualified by reason of bodily deformity, of bodily disease such as leprosy, of disease of the mind, or of the leading of a life which is immoral or is inconsistent with the religious vows of the brotherhood. In all such cases the nomination would be void.

27. Among these disqualifications stands the contracting of marriage and the begetting of children. As already mentioned, initiation of a married man must be preceded by the entire and permanent separation from his wife and by the giving up of all worldly ties. On the question of marriage, which will afterwards be considered in this case, it is no part of the respondent's case that defendant No. 2 was once married, but had relinquished those ties. The dispute of fact to be afterwards investigated is upon the broad question of whether he ever was, or, indeed, is now, a married man or the father of children.

28. If this question be answered in the affirmative, disqualification attaches to that defendant; and he can never be *mahant* and the deeds appointing him to that office or giving him any administrative rights present or prospective, with regard to the *mahantship* are void.

29. Was Ram Partab Singh a married man and the father of children?

30. No registers of marriages can be appealed to. The evidence given in the case is that of the plaintiff, who attended the marriage ceremony, which he describes, of Kishen Das, who also gave evidence to this effect; and of Sitabullah Das, the *mahant* of a neighbouring *asthal* of Chainipara, who lent elephants and horses for the marriage procession. There is also the evidence of other witnesses, one of whom, Ajodhya, speaks to the defendant No. 2 having a wife, a son, and a daughter, and swears to having seen his son some four or five years ago. There is some other evidence of a similar description. In short, if the case stood at that point, the fact of the marriage and of the existence of the wife and son and daughter would be beyond question.

31. Their Lordships think it necessary to advert to this further point, which is of wide significance in regard to more than the present issue. The case for the plaintiff on this topic, as on nearly all others, is stated in the evidence with complete particularity, a particularity achieved in many instances in the course of an extended and meticulous cross-examination. The date of the marriage, for instance, is given; the name of the family into which defendant No. 2 married, and of his father-in-law, together with his residence and the present residence of wife and children, all are frankly given. It is further mentioned that the ceremonial of marriage was the cause of expense to Anand

Das, defendant No. 1, the then reigning *mahant*. Defendant No. 2, Ram Partab, was his nephew. All expenses were entered in the books of the *asthal*, and this expense would there appear. Furthermore, in a criminal case, to which reference will afterwards be made, it is alleged that Haman Lal, who knew the circumstance, made a statement on oath that defendant No. 2 was married. The Magistrate who tried that case stated in his judgment that an admission of the marriage was made in the course of it. An offer was made in the present case to produce a copy of the statement of Haman Lal, and that was resisted.

32. Their Lordships are of opinion that the note of the admission made to the Magistrate in the criminal case was rightly rejected as by itself evidence of the fact recorded therein, and also that the objection of defendant No. 2 to the production of a copy of the evidence of Haman Lal was justified in law. But the peculiarity of the case is this : Haman Lal was in court while all this was going on; he was acting as a legal representative of the defendants; and he was not called by them to clear up the matter, or to deny that he made the statement alleged or to explain it. Their Lordships are not surprised that that circumstances should have made a deep impression upon the mind of the Subordinate Judge as to where the truth upon this issue of fact really lay.

33. The counter-case is that the whole of this story of the defendant No. 2's being a married man and the father of two children is a pure invention. The extraordinary circumstance is that, although places, events, and people have been named so openly and in such detail, and although the cross-examination on behalf of the defendants has in many instances elicited overwhelming materials for exposing the falsehoods, if they were falsehoods, none of these materials were taken advantage of, and no such exposure is attempted. No witnesses were brought from the village named to say that defendant No. 2's wife and children do not live there. Her father, who had been openly named in the plaintiff's evidence, is not cited. In short, the details elicited at great length in cross-examination of the plaintiff for the purpose of testing his evidence are left just as he has placed them, without the people whose names are put to him being brought forward to contradict in any particular the statements that he has made. To this case the answer made by defendant No. 2 is: "My father-in-law! my wife! my children! no such persons exist," and the case is left there.

34. As to the books, they have not been produced for any period which is critical in this case. It is admitted that the manager of the *asthal*, Raghunath, was responsible for their custody and accuracy. Had they been produced the absence of entries in them would, if the defendants' case be true have completely confounded the plaintiff's

allegations. The story which Raghunath gives as to the books is in their Lordships' opinion, very unsatisfactory. He says that they were destroyed or taken away by one Kamal Sahi Dewan. He assigns no possible motive for such an act; Kamal is available as a witness, and is not called.

35. Their Lordships do not go further into the evidence upon this subject, except to say that in face of the fact that conclusive evidence upon material particulars with regard to this issue having been available to the defendants and not led, their Lordships are not prepared to accept in lieu thereof general statements of belief on the part of other witnesses to the effect that, so far as they know, the defendant No. 2 is not a married man, and that his conduct in representing himself and acting as *mahant* proves that he is not disqualified.

36. Finally, upon this head their Lordships think it right to observe that upon a question of fact such as is now being investigated, the verdict given by the Subordinate Judge, who had the advantage of seeing and hearing the witnesses, cannot be lightly set aside, especially as that Judge was also presumably acquainted with the manners and customs of the people among whom such a transaction was alleged to have occurred. They must further remark that they see no sufficient grounds stated by the High Court for disturbing the verdict come to; having themselves investigated the facts, they are of opinion that the rule which applies - of attaching weight to the opinion of the Judge of first instance - cannot with safety be departed from in the present instance.

37. The result of this portion of the case is fatal to the claim of defendant No. 2. He cannot be *mahant*.

38. He was the nephew of Anand Das, the reigning *mahant*, who was apparently determined to favour him. By a will dated the 24th June, 1890, he appointed this nephew to succeed him. By a deed dated the 14th May, 1897, he resigned the office, and constituted the second respondent as his successor. and by an ekrarnama dated the 6th August, 1904, it was agreed between the uncle and nephew that the third respondent, another nephew and brother of the second respondent, should succeed the latter in the office of *mahant*. All these deeds, for the reason stated, are unavailing, and must be set aside.

39. The deeds were in themselves, it may be added, of a peculiar character. The will stated that Ram Partab Das was senior *chela* and inter alia was competent to "perform the *sheva of Takurji*." The *mahant* seven years afterwards, namely in 1897, transferred

the absolute ownership of the *asthal* and all the properties and goods thereof to Ram Partab, the nephew, as *mahant*, but with the reservation to Anand Das, the grantor, of an annuity of 12,000 rupees per annum, and with a declaration that Ram Partab should have -

"no right or power to do anything without my advice and consultation with me, and shall keep himself under my governance and power in respect to the management of every form relating to the *asthal*;" while the closing paragraph declared -

"that without my consent and sanction he shall not be competent to appoint any of his chelas as *mahant*."

40. The *ekrarnama* seven years later, namely, in 1904, went a step further. The effect of this deed was that Ram Partab was to pay Anand Das -

"any amount of money which at any time I, the first party, may require for personal expenses."

41. Then occurs a clause to this effect -

"As I, the second party, generally keep unwell, therefore I, the first party, with consent of the second party, have permitted the third party (another nephew) to perform the *sradh* of me, the first party."

42. The meaning of this is that, whereas according to law and custom the successor in the *mahantship* performs the religious rights attending the obsequies of his predecessor, an arrangement was come to by which this was avoided, and that vital rite was, so to speak, handed on past the second defendant and confided to his brother, the third defendant. Whether such a transaction with regard to a *mahantship* in India be competent and possible need not be determined, as in their Lordships' opinion the whole deeds are void, in consequence of the disability by marriage of the second defendant, Ram Partab.

43. It is not unworthy of remark, however, that the fact of the marriage of Ram Partab and of this being known to Anand Das, might afford the only reasonable explanation yet offered for passing over Ram Partab, seeing that the marriage of the latter would undoubtedly have incapacitated him from performing the obsequies of his uncle. There is no evidence that Ram Partab's state of health was such as to create any incapacity. The inference, in short, is that the second defendant was married and the father of children, and that his uncle Anand Das knew it. It may be mentioned that the third defendant, it was admitted at the Bar, is dead.

44. The second question in the case is, accordingly, whether the plaintiff answers this description and is a *Bairagi chela*. The deeds founded on by the defendants having been declared invalid, and the second defendant being incompetent to hold office, there is no dispute that the eldest or senior *chela* must succeed to the *mahantship*.

45. The plaintiff narrates the material circumstances of his life history in his own evidence. As the Subordinate Judge observes -

"He has been cross-examined very severely for several days, and he was asked questions relating to the minutest details of the *asthal* and its people and he has acquitted himself very creditably. He knows all the *bairagis* and servants of the *asthal*; he knows every creek and corner of the *asthal* building; he describes the room of the *asthal* in which he used to live. He names the *mahants* of other *asthals*, as well as their *chelas*. He mentions the *bandaras* he attended with the defendant No. 1."

46. Their Lordships agree with the Subordinate Judge that no explanation has been given of the intimacy and unquestionable accuracy of the plaintiff with people, events, and affairs of the *asthal*, except upon the footing that he was initiated as one of the *chelas* thereof. (His Lordship proceeded to consider in detail the evidence on this point). It is beyond question that after the initiation of the plaintiff, and under what influences is not known, the defendant No. 1, Anand Das, made the resolve to attempt to bring his nephew or nephews into the succession to the *mahantship*, and that he was not deterred from this scheme even after he was aware that the defendant No. 2, Ram Partab, was married. The plaintiff, however, stood in the way of this scheme, and if his signature could be obtained as witness to the *ekrarnama* this might have gone some way to the defeat of the plaintiff's rights.

47. Whether this story be on all points correct will never be ascertained; but this at least is true, that in 1904, just about the time when the *ekrarnama* founded on the present case was, in fact, executed, the plaintiff brought a criminal suit in respect of the assaults committed upon him on the occasion of his expulsion from the Patepur *asthal*, and the reason assigned by him for having been assaulted was the failure to sign an *ekrarnama* as a witness. The plaintiff succeeded before the Magistrate, and a conviction followed which was quashed on appeal.

48. Their Lordships do not think these proceedings to be relevant in this case. The one important fact is that they were taken on a ground which is referable to the execution of an *ekrarnama*, and they were taken by the plaintiff as a claimant to be a resident as

of right in the *asthal*, from which he had been expelled. It should be added that the plaintiff's account of his expulsion includes this - that he was deprived of the possession of his books and papers, including all the letters received by him from Anand Das, the *mahant*, while he, the plaintiff, was absent receiving education at Ajodhya. (His Lordship here dealt with oral and documentary evidence.) In reviewing the evidence, the learned Judges of the High Court were greatly moved by the view which they took that the story of the circumstances under which the plaintiff was induced to attach himself to Anand Das in 1884 amounted to an allegation of kidnapping, and that the date stated for the initiation of the plaintiff would have clashed with a period of mourning for a relative of Anand Das. The date - it is many years ago - may have been erroneous by two days, and there is no reason why, if the case were false, a questionable date should have been named. The Board agrees with the conclusion of the Subordinate Judge on the point.

49. The Subordinate Judge dealt lightly with the allegation of kidnapping, and in the course of his judgment made the observation that

"people of other religious denominations are now and then heard of enticing away minor children from custody of their lawful guardians for making them converts of their own faith."

50. This observation was unnecessary. But their Lordships are surprised to find that the High Court deals with it as if it were an attack upon Christian missionaries, and they go so far as to say that

"supposing them to be directed against Christian missionaries, they are not supported by a tittle of evidence, and, so far as our experience goes, they are absolutely false. In introducing them into his judgment, the Subordinate Judge does not appear to have exhibited an impartial frame of mind in treating the facts of this case."

51. Upon this their Lordships deem it right to observe that they think the supposition upon which this reflection proceeds, to be strained, and the reflection to be uncalled for. They incline to the view that the error on these subjects may have moved the High Court to discount improperly the true weight of the evidence, and to overlook important elements in the case.

52. As an instance of what their Lordships mean, it may be mentioned that the postcards are not alluded to in the judgment of the High Court, nor is the non-production of Gobind Das as a witness, nor even of Haman Lal as a witness; while

with regard to the non-production of the books, there are speculations made as to whether they would or would not have assisted in the solution of the problems arising in the case, but no due weight is attached to the serious fact that evidence, which might have concluded the case in one direction or another, and for the custody of which the defendants are responsible, has not been brought before the Court by them.

53. But the case of the defendants, which otherwise would have rested on a denial by themselves and been supported by nothing more substantial than negative evidence of *mahants*, many of whom lived at a considerable distance from the Patepur *asthal*, to the effect that they did not know that the plaintiff was a *bairagi chela*, or in residence - that case is still more seriously weakened by the positive case which the defendants put forward. That positive case is as follows, namely that the plaintiff was a *bairagi chela*, but that he did not belong to Patepur *asthal*. He belonged, so it is said, to a sub-*asthal* or sub-*muth*, consisting of a small house on a small plot of ground in the neighborhood of Patepur which was a separate *asthal* and had for its mahant one Baliram. This was an issue of fact; which fell to be proved by the defendants, and they had the materials for doing so, and at first hand. Baliram had, so the argument went, two *bairagi chelas* - one was the plaintiff and another was Manmohan *Das*. Their Lordships must decline to accept any hearsay evidence upon this subject, and it is sufficient to say that Baliram and Manmohan, both alive and available, are not produced as witnesses in support of the case alleged for the defendants. It is a somewhat striking fact that in the judgment of the High Court there is no reference made to this important incident.

54. Their Lordships think it unnecessary to investigate further the details of the evidence, being satisfied that upon it the conclusion come to by the Subordinate Judge cannot be successfully challenged, and that accordingly the plaintiff has established his position to be a *bairagi chela* of Patepur *asthal*. He is also by admission, if this be so, the senior chela, if not the only chela, who is competent to fill the office of *mahant*.

55. Only one other question remains. It is this: Anand Das is still alive. The deeds which he granted, which purported to be a transfer during his life of the *mahantship* to his nephews, defendants Nos. 2 and 3, are unavailing, defendant No. 2 being disqualified for the office, and defendant No. 3 being dead. In these circumstances, does the *mahantship* not revert to Anand Das? Anand Das is a man now nearing 80 years of age. He has for years relinquished the *mahantship*. Since at least 1897 he has retired from office, and has made over to defendant No. 2 all his duties together with the properties of the *asthal*. He has had a mutation of names effected in the Collector's

Register in respect of the villages belonging to the *muth*. He has thus abdicated all his functions, and, as he admits, his position is no more than that of any other worshipper. The *mahant*, in their Lordships' opinion, is not only a spiritual preceptor, but also a trustee in respect of the *asthal* over which he presides. His installation of defendant No. 2 on the *gaddi*, and his own retirement from the *mahantship*, would thus appear to have created a vacancy in the office.

56. But a more serious difficulty also arises from the fact that their Lordships cannot acquit defendant No. 1 of having been a party to deeds, and especially to the *ekrarnama* of 1904, which were of a nature inconsistent with his duty and position as guardian of this religious institution. To confer the *mahantship* upon a relation who was a married man and the father of children, was to consent to a violation in the person of the highest and most responsible officer, namely, the *mahant*, of those vows and practices of asceticism and celibacy which it was his duty as a trustee to maintain and protect. In these circumstances, their Lordships must accept the abdication which occurred as a governing fact in the case.

57. Further, it is not alleged that the senior *chela*, on whom even according to the defendants' case the succession would devolve in the absence of an appointment, is disqualified by any just cause from holding the office vacated by the old *mahant*. In these circumstances, their Lordships think that the plaintiff is entitled to the declaration made in his favour by the Subordinate Judge.

58. Their Lordships will humbly advise His Majesty that the appeal ought to be allowed, the decree of the High Court set aside with costs, and the decree of the Subordinate Judge restored.

59. The respondents will pay the costs of the appeal.

Appeal allowed.

Cases Referred.

1. [1878-1880] 2 Mad. 175
2. [1839] 6 S.D.A. (Beng.) 262
3. [1866-67] 11 M.I.A. 405 : 8 W.R. 25 : 2 Suther. 86 : 2 Sar. 306 (P.C.).
4. [1874] 1 I.A. 209 : 3 Sar. 844 (P.C.)
5. [1876-78] 1 Mad. 235 : 4 I.A. 76 : 3 Sar. 687 (P.C.),