

## PRIVY COUNCIL

Raja Anand Rao

Vs.

Ramdas Daduram and others

(Lords Dunedin Phillimore, CJ Mr. Ameer Ali and Sir Lawrence Jenkins. JJ)

12.11.1920

### JUDGMENT

#### Lord Dunedin CJ.

1. In this case there was a *sansthan* known as the Sansthan of Shree Balaji at Peth Deolgaon in a *taluk* of the Buldana District. The Rajahs of the family, who are at present represented by the appellant Rajah Baji Rao, were the hereditary keepers of this shrine. Certain mismanagement had taken place in the lifetime of the father of the present Rajah, and a suit was then instituted by certain of the worshippers at the temple, their application being for the appointment of new trustees, and the removal of the Rajah as trustee. In order to prosecute such a suit, a sanction is necessary, and the sanction was given by the Deputy Commissioner, in his capacity of Advocate-General, on the 18th January, 1904. That sanction was in these terms: "As the applicants have filed an affidavit to show that they pay *kangi*, and therefore they have an interest in the temple; as for the purposes of this application, applicants do not insist on the removal of the trustee, I grant them permission to institute a suit under section 539."

2. A suit was then instituted in the Court of the District Judge by two of the applicants. In that suit it was set forth that the *sansthan* was a public, charitable or religious trust, and that there had been mismanagement in the defendant's family, and the prayer prayed for a removal, and also that the Court might settle a proper scheme of management. During the progress of the proceedings the old Rajah had died, and therefore there was no more question of removing him. The Court, after enquiry before the District Judge, held that as a matter of fact the *sansthan* was a public, charitable or religious trust, and rejected the contention that it was private property of the Rajah's family. It also removed the Rajah from the trusteeship, and said it would proceed to settle a scheme. That judgment was taken by appeal to the Court of the

Judicial Commissioner, and they came to the conclusion that the hereditary trusteeship was in the Rajah's family, and that therefore, as the present Rajah had not himself been guilty of mismanagement, his right to manage the affairs of the shrine on his attainment of the age of the 21 years was conditionally safeguarded, and as to the other points they upheld the judgment. Appeal has now been taken to this Board. The first point that is pleaded is that the permission to institute a suit under section 539 does not square with the application, which was an application conceived merely for the appointment of new trustees, but it really had to be conceded, and their Lordships think it quite clear that, although the application as framed may have been for the appointment of new trustees, yet when they came before the Deputy Commissioner and explained the matter it was quite within his power to grant the sanction as he has granted it.

3. The next point that is put is that when the sanction says : "I grant them permission to institute a suit under section 539," that does not mean any suit which may be raised under section 539, but is confined merely to one of the species of suits that could be so raised, namely, the appointment of new trustees. Their Lordships do not think that any such narrow reading can be put upon the sanction as given. There was also a point that the persons who originally raised the suit and got the sanction having died the suit could not go on, but there does not seem any force in that point either, it being a suit which is not prosecuted by individuals for their own interests, but as representatives of the general public. Their Lordships are also of opinion that for the purpose of determining on a scheme the suit was properly revived against the present Rajah.

4. Then when their Lordships come to the merits of the question the appellant is unfortunately faced with the fact that there are concurrent findings on what in the circumstances of this case is a question of fact and nothing more, namely, whether there was a public trust or whether it was a private matter of the Rajah's family.

5. For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed.

Appeal dismissed.