

PRIVY COUNCIL

Maharaj Bahadur Singh

Vs.

Balchand

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

10.12.1920

JUDGMENT

Lord Buckmaster CJ.

1. Their Lordships do not desire to hear counsel for the respondents in this case for having given full regard to the facts stated and advanced on behalf of the appellants, they find themselves unable to advise His Majesty that the appeal should be allowed.

2. The case is interesting. It arises out of a claim by a religious body known as the Sitambari Jains to use for their worship a hill known as the Parasnath Hill, which appears to have been consecrated by use extending over many years for their rites and ceremonies. No question, however, arises in this appeal as to any title acquired by this long user for this dispute had already arisen and was settled by an agreement made on May 16, 1872; it is only on the terms of this agreement that the present appeal depends. The agreement was in two parts - signed, in the one case by Raja Sri Parasnath Singh, and in the other by the honorary manager of the Sitambari Jain Society.

3. The general effect of these documents is that the Raja for good consideration agreed that the Sitambari Jains should in no way be hindered in the conduct of their ceremonies, and that a joint arrangement should be made by which the various offerings from people who took part in those religious ceremonies should be collected and preserved and disposed of in the manner that the agreements provide, and in order further to secure the Jains there was a special provision inserted in those agreements, which causes the present dispute. In the document that was signed by the Raja the agreement took this form:

"that if the Sitambari Jain Society shall require any place on Parasnath hill and below thereof at Madhuban for erecting mandir and dharamsala, and for doing

repairs and making bricks for the said purpose, in that case I and my heirs shall give for making mandir, dharamsala and bricks, land, stones from the hill and timber, free of costs, and if I and my heirs refuse to give, in that case the Sitambari Jain Society shall take the same of its own power."

4. In the counterpart this provision took this form: that the Raja agrees to allow the Jains Sitambari Society "to build and repair temples and dharamsala on the hill and to give us, i.e.," the Sitambari Jains, lands free of charge, which will be required for making bricks.

5. The Jains have attempted to enter under those provisions, and to erect a temple but they were confronted with certain people who claim that they have a right to the spot on which the temple was to be erected which arises in this manner: after the date of the compromise the Raja granted a lease on April 14, 1902, to the Rani and she in turn granted, on June 7, 1910, a further lease to the defendants the respondents in these proceedings.

6. For the appellants, therefore, to succeed it is essential to show that this agreement created in them some present estate or interest which would prevent the Raja from having made the grant. That could only be effected by reading the compromise as creating the Jains Society a grant in perpetuity of the Parasnath hill. This cannot, however, be supported because, subject to the provisions of the agreement, the Raja is left in control of the hill and the Raja has power from time to time to dispose of such portions as he thinks fit, and it would be impossible to challenge the right of any parson who took under him unless it could be shown that the covenant upon which the appellants rely was a covenant which was in the circumstances enforceable not merely against the Raja but against his assignees. Such a covenant as this does not, and cannot, run with the land, and could not be so enforced. Further if the case be regarded in another light - namely an agreement to grant in the Future whatever land might be selected as a site for a temple - as the only interest created would be one to take effect by entry at a later date, and as this date is uncertain, the provision is obviously bad as offending the rule against perpetuities, for the interest would not then vest in present, but would vest at the expiration an indefinite time which might extend beyond the expiration of the proper period.

7. For these reasons in their Lordships' opinion this appeal fails, and they will humbly advise His Majesty that it should be dismissed with costs.

Appeal dismissed.

