

## PRIVY COUNCIL

Mahant Satnam Singh

Vs.

Bawan Bhagwan Singh

P.C.A.No.119 of 1936

(Lords Thankerton, Roche Romer, Sir ShadiLal and Sir George Rankin)

27.05.1938

### JUDGMENT

#### LORD THANKERTONJ.

1. The appellant seeks reversal of both the judgment and decree of the Court of the First Additional Subordinate Judge at Benares dated 3rd July 1931, and the judgment and decree of the High Court of Judicature at Allahabad dated 18th September 1934, which affirmed it. The appeal was heard *ex parte* as the respondent did not appear. The dispute relates to the office of Mahant of the Chaitanya Math, founded in Benares according to the rules and practice of Sadhus of a Sikh community known as the *NanakshahiNirmaliSampradaya*, according to the custom and usage of the Math. For the purposes of this appeal, the facts are much clarified by concurrent findings by the Courts below, and the matters in dispute are narrowed so that the main point left in dispute is whether the respondent, who is plaintiff in the suit, was validly installed as Mahant on 13th April 1928.

2. The last *Mahant, Ratan Singh*, died on 23rd June 1928, leaving a will dated 5th June 1928, under which he nominated the appellant as his successor and made him owner in possession of the Math property. The appellant claims that his nomination was subsequently accepted by the Bhek, or fraternity, and that he was duly installed on the gaddi by them on 9th July 1928, in accordance with custom. The appellant has since, in fact, continued in possession of the Math and the Math property.

3. While the validity of the appellant's installation has been disputed by the respondent on other grounds, the main ground is that the respondent had already been validly installed, and that accordingly there was no vacancy at the time of the appellant's installation. Mr. Dunne, on behalf of the appellant, admitted that this contention must

succeed, if the respondent's installation was a valid one. If the respondents' installation was invalid, the suit must fail, as it is framed solely on the basis that the respondent is Mahant, and in this view, it would be equally unnecessary to consider the validity of the appellant's installation. It may, however, be mentioned that the respondent's attack on the validity of MahantRatan Singh's will has failed, by reason of concurrent findings of the Courts below, and the only question is whether it was inoperative, on the ground that prior to its date Ratan Singh had already effectively divested himself in favour of the respondent. The decision of this appeal, therefore, turns solely on the validity of the respondent's installation.

4. There can be no doubt that succession to the office of Mahant, and the ownership of the Math property, limited by the period of tenure of the office, is to be regulated by the custom of the particular Math, and the respondent, as plaintiff in the suit, is bound to allege and prove what the custom of the particular Math is and that his acquisition of the Mahantship was in accordance with such custom. In the present case the pleadings disclosed material divergences between the appellant and the respondent as to the custom of this particular Math, but with the possible exception of one point, these differences have been disposed of by concurrent findings of the Courts below.

5. There is no dispute now that MahantRatan was entitled to resign his office during his lifetime, and the question is (1) whether he was entitled to appoint and install his successor at his own hand, without the approval and confirmation of the Bhek, and (2) if such approval and confirmation was necessary whether the respondent was in fact installed by MahantRatan with such approval and confirmation.

6. On the first of these two questions, the respondent pleaded and went to trial on the allegation that that approval or confirmation by the Bhek was unnecessary, but after he had closed his evidence and after the appellant had been examined, his vakil made an important admission, which was recorded, viz. MunshiBahadurLal, the plaintiff's vakil, stated that his case is this, that the plaintiff alone was installed to the gaddi and for the period of his minority his father, Hardeo Singh, superintended over him.

7. According to custom two Mahants cannot be installed at one and the same time.

8. Confirmation is necessary at the time of installation to gaddi of Mahantship, and the members of the NirmalaSanghat and Sewaks and raises are invited. Whether any of these attend or not, confirmation is completed, unless there is some objection as to the gaddinashini.

9. But it is not necessary that that person alone who has been nominated by the Guru should be made the gaddinashin.

10. The Subordinate Judge stated:

Both the parties agree that it is necessary that the fraternity should give a sort of approval at the time of the installation of a particular person as the Mahant of the Math in question. There is a definite allegation on this point on behalf of defendant 1 in the written statement, while the learned advocate for the plaintiff has also accepted it in his statement recorded on paper No. 330-C.

11. In reference to this statement, the learned Judges of the High Court stated :

The natural interpretation of the admission appears to us to be that although a presiding Mahant may nominate his successor during his lifetime, it is necessary for the successor to be confirmed in the office by the members of the NirmalaSanghat at the time of the installation; and also that it is necessary at the time of the installation of a new Mahant to invite the members of the Sanghat, who have the right on the occasion of the ceremony of either confirming or rejecting the candidate nominated. As there was some doubt in our minds as to the proper interpretation of the admission, however, we asked Mr. BahadurLal, who was present in Court, what he had intended to convey, and he stated that he was only referring to a case where a Mahant had nominated his successor, but not installed him during his lifetime.

12. The learned Judges were inclined to accept this qualification of the admission, but found it unnecessary to decide the question:

Because we have on the facts agreed with the finding of the trial Court, that the members of the Bhek did by their acts or omissions confirm the installation.

13. In the opinion of their Lordships the admission of the plaintiff's vakil, as recorded, is quite unambiguous and clearly covers the installation of the respondent, his client, which is directly referred to in the first two sentences of the statement, and the appellant was thereafter entitled to proceed with the trial on that footing; the respondent's vakil should not have been permitted to qualify his clear admission.

14. As to the meaning of confirmation by the Bhek the Subordinate Judge states:

It means that at the time of the installation a sufficient number of persons of the fraternity or the Bhek should be present so as to signify their general approval of the appointment of that particular chela as the Mahant of the Math. The

learned Judge, after reviewing the evidence, stated that the documentary evidence conclusively and beyond any doubt established that the respondent was installed on the gaddi by the late MahantRatan Singh, and that all the facts went to prove that the installation of the respondent on the gaddi on the Baisakhi day (13th April) of 1928 was followed by confirmation of the Bhek people. He referred to the evidence of four of the appellant's witnesses who stated that they were present, but thought that it was a matter of entrusting the kitchen arrangements to the respondent and his father, and added, but one fact becomes quite apparent that on the Baisakhi day of 1928 some function did take place in Chaitanya Math, that people had been duly informed about it and consequently they did attend it. I hold that the plaintiff has established that his installation was followed by confirmation of the Bhek or fraternity.

15. As already stated, the High Court concurred in this last finding, and they also held that the decision of the trial Court that the respondent was installed on 13th April 1928 was correct. In accordance with their usual practice, their Lordships would not interfere with such concurrent findings, unless there was no sufficient evidence to support them.

16. In the normal case of the death of a Mahant, the members of the fraternity will be fully aware of the vacancy in the office, and the usual practice will be for the installation of his successor, usually nominated by him, to take place on the seventeenth day after the death. On the other hand, when the Mahant resigns during his life and installs his successor on the gaddi it is obvious that the fraternity should be made aware of the proposed vacancy in the office and should be given the opportunity of confirming or refusing to confirm the nominee. As regards notice of the Mahant's intentions, this is not a matter of strict formalities, and the practice of sending a runner round with a verbal intimation, which was adopted in the present case, appears to their Lordships to meet the situation. Further in the present case, the evidence places it beyond doubt that the fraternity were fully aware of the Mahant's intentions, and the day chosen was a most important and auspicious one, being the birthday of Sikhism, which is observed as the New Year's Day in the Punjab, festivities and religious ceremonies being held in all the Gurdwaras and Sanghats.

17. Again, as regards confirmation by the Bhek, it does not, in their Lordships' opinion, involve anything in the nature of an election or the passing of a resolution; it is important to remember that the members of the Bhek present actually take part in the ceremony; the application of "tilak" to the forehead and the money presents made

by them are a part of the ceremonies, and may well be held to establish confirmation of the person installed. In the opinion of their Lordships there was ample evidence to justify these concurrent findings, and the appeal must fail.

18. Their Lordships will accordingly humbly advise His Majesty that the appeal should be dismissed with costs, and the decree of the High Court should be affirmed.

Appeal dismissed.