

SUPREME COURT OF INDIA

Sital Das

Vs.

Sant Ram

C.A.No.67 of 1953

(B. K. Mukherjea, Vivian Bose, Ghulam Hasan and T. L. Venkatarama Ayyar, JJ.)

08.04.1954

JUDGEMENT

B. K. MUKHERJEA, J.

1. This appeal is directed, against a judgment and decree of a Division Bench of the Punjab High Court, dated the 30th April 1952, by which the learned Judges reversed, on appeal, a decision of the Subordinate Judge, First Class, Jullundur dated the 31st May 1948, passed in Suit No. 131 of 1947.

The facts material for our present purpose may be briefly stated as follows: There is a Thakardwara or religious institution belonging to the Ram Kabir sect of Hindu Bairagis situated at Mouza Jamsheer within the district of Jullundur. One Kishore Das was admittedly the last Mahant of the Thakardwara, who died on the 4th of April 1945. On the 31st March 1945, that is to say just four days before his death, Kishore Das granted a lease in respect of 645 Kanals of land, appurtenant to the endowment, for a period of 10 years in favour of defendants respondents 1 and 2 at an annual rental of Rs.1,500 only. The suit, out of which this appeal arises, was instituted by Sital Das, who is the appellant before us, in the Court of the Subordinate Judge, First Class Jullundur on 2nd January 1946 making the two lessees, mentioned above, parties defendants, for recovery of possession of the lands comprised in the lease, on the allegation that Sital Das was the legally appointed Mahant of the Thakardwara after the death of Kishore Das and that the lease, executed by the latter, was illegal and inoperative by the latter, was illegal and inoperative on grounds, 'inter alia' that it was a colourable transaction, executed without consideration and not supported by legal necessity.

Sital Das was admittedly not a disciple of Kishore Das, the last Mahant, and he based his claim as superior of the institution solely on the ground that he was duly appointed as Mahant by the 'Bhek' of the assembly of Bairagi Mahants of the same order, to which Kishore Das belonged, along with 'Sewaks' or worshippers of the Thakardwara itself.

2. In the plaint, as it was originally framed, two other persons were joined as co-plaintiffs along with Sital Das; one of them was Mahant Hira Das who purported to be the head of a Bairagi institution at Sahri, said to be the parent institution of the Thakardwara in dispute, and the other was Sadhu Ram Das, whose disciple Sital Das is and who claimed to belong to the same spiritual fraternity as Kishore Das.

It was stated in paragraph 4 of the plaint that these two persons had obtained the consent of the Advocate-General under section 92 of the Civil Procedure Code to file a suit under that section in

respect of the properties of the Jamsher Thakardwara, alleged to be improperly alienated by Kishore Das, and the reason for joining them as co-plaintiffs along with Sital Das was that in case the court held that Sital Das was not a validly appointed Mahant, the other two plaintiffs would be able to continue the suit, as persons interested in the endowments, against the lessees.

3. On the 28th March 1946 the trial judge made an order to the effect that as plaintiff No. 1 was alleged to be the lawfully appointed Mahant, plaintiffs 2 and 3 could not claim to have simultaneously the same rights with him and the joinder of plaintiffs in this form was likely to create confusion and embarrass the trial of the suit; and the plaint therefore should be amended, and either the plaintiff No. 1 alone, or plaintiffs 2 and 3 together, should appear as claimants. In pursuance of this order, the plaint was amended and the names of plaintiffs 2 and 3 were deleted from the record. The amended plaint was filed on the 17th of April 1946.

4. The defendants 1 and 2 filed their written statement on the 28th March 1946, the same day on which the order for amendment of the plaint was passed by the Subordinate Judge, and the contentions raised by them in their written statement were substantially of a three-fold character.

It was contended, in the first place, that it was not the plaintiff but one Ishar Das who was the legal Mahant and administrator of the Thakardwara at Jamsher after the death of Kishore Das. The said Ishar Das was therefore a necessary party to the suit which was not maintainable at the instance of Sital Das at all.

The second plea raised was that the plaintiff was not appointed as Mahant by the 'Bhek', as alleged in the plaint, and that he, not being a disciple of the last Mahant, had no right to be so appointed.

The third point raised related to the validity of the lease impugned by the plaintiff and it was asserted that the lease was executed for good consideration and for legal necessity and was hence binding on the institution.

5. It appears that on the 24th July 1946 a copy of a registered will, alleged to have been executed by Kishore Das only four days before his death, was produced in court and by that will the testator purported to appoint Ishar Das and Lachman Das, described as his two disciples, joint managers of the Thakardwara after his death. Upon this, the Subordinate Judge made an order directing that Ishar Das and Lachman Das should be added as parties defendants in order that the suit may be decided in their presence.

This was done and on that very day, namely, the 24th of July 1946, the plaintiff put in an amended petition of plaint impleading Ishar Das and Lachman Das as defendants 3 and 4 to the suit. A new paragraph was added to the plaint in which it was stated that if any will or wills were at all executed by Kishore Das in favour of defendants 3 and 4 the same were fictitious and collusive. The deceased Mahant, it was said, had no right to make a testamentary disposition of his rights as Mahant and such disposition could not affect in any way the rights of the plaintiff. On the 26th October 1946, Ishar Das and Lachman Das, who were the added defendants, put in their written statement; and in substance, they pleaded that the plaintiff, not being a 'chela' of the deceased Mahant, was not eligible for appointment as mahant at all and that the 'Bhek' could not and did not appoint him as such. The will left by Kishore Das was asserted to be a valid and genuine document by which his two disciples were appointed his successors. It was alleged that Ishar Das, being the senior 'chela' of Kishore Das, the public generally and the 'Bhek' of the ascetics, acting according to the desire of the deceased Mahant, installed him as superior in the 'Gaddi' and the necessary ceremonies were

performed. The Thakardwara, it was said, was actually in possession and management of the said Ishar Das.

6. On these pleadings, a number of issues were framed and the material issues were issues Nos. 1 and 4.

The first issue related to the title of the plaintiff as a validly appointed Mahant of the institution and his competency to maintain the suit.

The fourth issue raised the question as to whether Ishar Das, the defendant No. 3 was a valid 'chela' of the deceased Mahant and was duly appointed as successor by him or the 'Bhek', or was otherwise entitled to succeed?

This issues 2 and 3 related to the validity and binding character of the lease executed by Kishore Das in favour of defendants 1 and 2 and its liability to be challenged by the plaintiff.

7. The trial judge, by his judgment dated the 31st of May 1948, decided all these issues in favour of the plaintiff. The Subordinate Judge took the view that according to the custom prevailing in the institution, the ultimate authority to appoint a Mahant rested with the 'Bhek' and the 'Sewaks', irrespective of the fact whether the claimant was a 'chela' or in any other way spiritually connected with the last incumbent.

It was found as a fact however that the plaintiff Sital Das was a spiritual collateral of the late Kishore Das and came within the description of what is called a 'Bhatija chela' The Subordinate Judge found further that the plaintiff was duly appointed Mahant by the 'Bhek' of the Bairagi ascetics as well as by the 'Sewaks' of the temple.

As regards Ishar Das, it was held that his original name was Ujagar Singh and he was never a 'Chela' of the late Mahant, nor had he renounced the world. There was also no proper evidence to show that he was appointed Mahant by the 'Bhek' or the 'Sewaks'.

Lastly, it was held that the lease was not executed for legal necessity and was not binding on the institution. The recital of payment of Rs. 5,000/- as premium for the lease was found to be fictitious and the rent reserved to be grossly inadequate.

On these findings, the learned Subordinate Judge allowed the plaintiff's claim and passed a decree in his favour as prayed for.

8. Against this decision there was an appeal taken by the defendants to the Punjab High Court and the appeal was heard by a Division Bench consisting of Khosla and Harnam Singh JJ.

The only points canvassed before the High Court were those covered by issues 1 and 4. The learned Judges held differing from the trial Court, that Sital Das was not able to prove that he was a spiritual agnate of the deceased Mahant, nor was it established that the meeting held at Jamsher on the 23rd July 1945, at which Sital Das was said to have been appointed was a proper meeting of the 'Bhek' and the 'Sewaks'. The result was that Sital Das was held to have failed in establishing his title as a validly appointed Mahant and on this ground alone the learned Judges allowed the appeal and dismissed the plaintiff's suit. It was considered unnecessary to decide the other points which were raised in the suit.

It is against this decision that the plaintiff has come up on appeal to this court on the strength of a certificate given by the High Court under Article 133 of the Constitution read with sections 109 and 110 of the Civil Procedure Code.

9. In the appeal before us the contentions raised by the parties primarily centre round the point as to whether after the death of Kishore Das, the plaintiff or the defendant No. 3 acquired the rights of mahant in regard to the Thakardwara in dispute. The law is well settled that succession to Mahant ship of a Math or religious institution is regulated by custom or usage of the particular institution except where a rule of succession is laid down by the founder himself who created the endowment. As the Judicial Committee laid down -- Vide 'Genda Puri v. Chhatar Puri'. 13 Ind App 100 at p. 105 (PC) (A), in one of the many cases on this point;

"in determining who is entitled to succeed as Mohunt, the only law to be observed is to be found in the custom and practice. which must be proved by testimony, and the claimant must show that he is entitled according to the custom to recover the office and the land and property belonging to it..... Mere infirmity of the title of the defendant, who is in possession, will not help the plaintiff.

10. The plaintiff's case as made in the plaint is, that according to the custom of the Bairagis, when a Mahant dies the person who is appointed by the 'Bhek' of the Bairagis and the 'Sevaks' or worshippers of the institution can only be regarded as a duly appointed Mahant and can function as such. It is not said in the plaint as to whether the 'Bhek' or the Sewaks are competent to appoint any and every person they like or their choice is limited to the disciples of the last Mahant or at any rate, to those who claim, like co-disciples, some sort of spiritual affinity with the latter.

Defendant No. 3, on the other hand, in his written statement rested his claim to Mahantship upon appointment by Kishore Das as his successor by his will, an appointment which, he alleged, was ratified by the 'Bhek' of the Bairagis on the seventeenth day after the demise of the last Mahant. The case set up by him seems to be that none but a 'chela' of the last Mahant can succeed to the office, that it is open to a Mahant to nominate during his lifetime his successor from amongst his 'chelas' and the 'Bhek' or assembly of Sadhus is more or less a confirming authority which ratifies the wishes expressed by the deceased Mahant.

11. On the question of custom, the plaintiff examined a number of Bairagi Mahants as his witnesses and it seems that both the courts below have placed reliance upon their evidence. Mahant Hira Das (C/P. W. 1), who is the head of the Bairagi shrine at Sahri, states in his deposition that the custom among Bairagis is that, on the death of the last Mahant, his 'chela' and failing a 'chela', his 'Bhatija chela' or 'Gurubhai' succeeds to the Mahantship and it is the 'Bhek' and the 'Sewaks' who make the appointment by applying 'Tilak' to the person elected. C/P. W. 2 Brahm Das, who is also associated with a Bairagi institution says that

"after a guru his 'chela' is appointed Mahant and if there be no 'chela', the 'Gaddi is given to 'Bhatija chela' and if there be any other able person he is given the 'Gaddi'. The 'Bhek' and the 'Sewaks' make the appointment".

To the same effect is the evidence of Balack Das, another Bairagi Mahant who deposes that on the death of a Mahant his 'chela', who is able, is appointed a Mahant. But if the 'Chela' is not able then another person namely a 'Gurubhai' or 'Bhatija chela' or 'Pota chela' is appointed. The Mahant according to this witness is always appointed from the line of the last incumbent and the 'Bhek' and the 'Sewaks' are appointing authority.

Only one of the plaintiff's witnesses, namely, Ram Charan (P. W. 3) who purports to be the Mahant of Doaba Mandal goes to the length of saying that on the demise of the last Mahant the "Bhek" and the worshippers appoint his successor and any person can be appointed whether he is a 'chela' or not. It may be noted that the plaintiff himself does not support this story and he expressly says in his deposition that the custom is that if there is an able 'Chela' of the Mahant, he is appointed the successor, if not a person is selected from the 'Bans' or the spiritual family which includes 'Gurubhai, Bhatija chela' and 'Pota chela'.

12. In our opinion the custom that is proved to exist in this Bairagi institution, in matters of succession to Mahantship, is that the Bhek of the Bairagis and the worshippers of the temple together appoint the successor, but the appointment has got to be made from the disciples of the deceased Mahant, if he has left any and failing disciples, any one of his spiritual kindred like a 'Gurubhai, Bhatija chela' or a 'Pota chela' could be appointed. The defendants' case is true to this extent that if a disciple of the Mahant exists he has the first right to be appointed, except in case of proved disability; but it would not be correct to say that none but a disciple is eligible to become a Mahant. In that case if the Mahant does not leave a 'chela' behind him no appointment could at all be made. It cannot also be disputed that the Mahantship is not hereditary in the sense that on the death of an existing Mahant his 'chela' succeeds to the office as a matter of course. He can acquire rights only by appointment and the authority to appoint is vested in the 'Bhek' and the 'Sewaks'. This has been judicially noticed in the case of --- 'Jiwan Das v. Hira Das', AIR 1937 Lah 311 (B), where the dispute was as regards succession to Mahantship of the shrine at Sahri which also is admittedly an institution of Ram Kabir Bairagis.

13. This being the nature of the custom in regard to succession to Mahantship in the Thakardwara at Jamsher the first question that requires consideration is whether Kishore Das, at the time of his death, had left any disciple of his own. If Ishar Das, is proved to be a 'chela' of Kishore Das, it is conceded that the plaintiff, who admittedly is not the 'chela' of Kishore Das, was not eligible for appointment as a Mahant and even if the 'Bhek' and the Sewak's nominated him he could not, in law, acquire the rights of a Mahant.

If, on the other hand, Ishar Das was not a 'Chela' at all, the question would then arise whether the plaintiff was a 'Bhatija chela' or a spiritual agnate of Kishore Das as alleged by him and secondly whether he was validly appointed by the 'Bhek' and the 'Sewaks'. On the question as to whether Ishar Das was a 'chela' of Kishore Das the finding of the trial judge is in favour of the plaintiff and against defendant No. 3 though the learned Judges of the High Court left it undecided. On the other two points, the High Court has differed from the views taken by the trial judge.

We will take up for consideration these three points one after another and if they are decided in favour of the plaintiff, then only the question would require determination as to whether the lease granted by Kishore Das in favour of defendants 1 and 2 was a valid lease binding on the endowment.

14. So far as the first point is concerned, the case of the plaintiff appellant is that Ishar Das was not the 'chela' of Kishore Das; in fact the plaintiff contends that Kishore Das had no 'chela' at all. The case of the defendants on the other hand is that Ishar Das as well as Lachman Das were both 'chelas' of Kishore Das at the time of his death. Lachman Das it may be mentioned has not examined himself in this case and except formally joining in the written statement filed by Ishar Das and supporting the case of the latter, did not take any part in this litigation at all.

Except the bare statement made by some of the witnesses examined by the defendants that both Ishar Das and Lachman Das were the 'chelas' of the late Mahant, we have no materials on the record to show what the antecedents of Lachman Das were and at what time, if at all, he became a 'chela' of Kishore Das. As regards Ishar Das, the Subordinate Judge came to a definite finding upon a consideration of the entire evidence on the record that he was not the 'Chela' of Kishore Das. As the High Court has not recorded any finding on this point, it is necessary for us to see whether the decision of the trial judge on this point is a proper one and is borne out by evidence.

15. Ishar Das himself state in his deposition that his original home was at Mannan and that he left his house when he was only 5 or 6 years old and after being initiated as 'chela' by Kishore Das lived with the latter in the Thakrdwara at Jamsher all along. It is a fact, spoken to by the plaintiff's witnesses and not seriously disputed on the defendant's side that Ishar Das is the same person as Ujagar Singh, whose father was one Ganga Singh, a resident of Mannan. To prove that Ishar Das never left his house, the plaintiff has produced the Khasra Girdwaris papers of village Mannan (Ex. P. 7) from Kharif 1938 up to Rabi 1946 and these papers show certain lands under the personal cultivation of Ujagar Singh and Kartar Singh as co-sharers both being described as sons of Ganga Singh.

It may be, as the defendants point out that these Khasra papers carry no presumption of correctness but they are certainly relevant evidence admissible under section 35 of the Indian Evidence Act and they do support the plaintiff's story that far from renouncing the world and embracing the life of an ascetic, Ishar Das or Ujagar Singh, as he was called, was carrying on cultivation with his brother and nephews during the years 1938 to 1946. Ishar Das stated in course of his cross-examination that he did not cultivate his lands, but in the same breath he admitted that he was joint with his nephews with regard to his paternal properties.

It is argued by Mr. Achhru Ram that even though a man has renounced the world his name might still be retained as a co-sharer of his paternal properties in the revenue papers. But this, it seems, was not probable in the present case as Ishar Das is alleged to have renounced the world some time in the year 1908 when he was only 5 or 6 years old and the revenue papers were prepared nearly 30 years after that. Whatever doubts might have existed on this point are removed, in our opinion, by the production of a ration card which was issued to Ujagar Singh in the year 1946 and which shows that he was getting cloth as the head of a family consisting of nine members.

The ration card purports to bear the thumb impression of Ujagar Singh P. W. 7 who is the owner of a cloth shop at Mannan, proves certain entries in a cash memo (Ex. P. W. 7/2) showing that Ujagar Singh, son of Ganga Singh of village Mannan, purchased cloth valued Rs. 17/1/5 pies on 7th December 1946. P. W. 12, who holds a Government Depot for kerosene oil and sugar at village Mannan, says that Ujagar Singh, son of Ganga Singh had purchased kerosene oil and sugar from his depot on several occasions. This is corroborated by certain entries in the register of sales kept by him which have been marked Exs. P. W. 12/1 and P. W. 12/2. This witness also says that Ujagar does zemindara and cultivation work at Mannan. It is well known that entry into a religious order is accompanied by certain rites and ceremonies and there is absolutely no evidence that any such ceremonies of initiation were performed when Ishar Das became a Bairagi.

16. To prove that Ishar Das was in fact a chela' of Kishore Das, considerable reliance has been placed on behalf of the defendants upon two wills alleged to have been executed by Kishore Das, one in the year 1911 and the other on the 31st of March 1945, just four days before his death. The first document, if proved, would undoubtedly support the defendants' story. It recites that Ishar Das

was taken as 'chela' by the testator in the year 1908 and provides that after the death of the testator he shall be the Mahant of the Thakardwara as his successor. We have not got however the original will, nor has any certified copy of it been produced; the document, which has been printed in the paper book prepared in this case, purports to be the translation of a copy of the registered will dated 7th of October 1911 executed by Mahant Kishore Das.

The document does not appear to have been proved by any of the witnesses and does bear any exhibit mark. It has not been referred to, even incidentally, in the judgment of either of the courts below and if as a matter of fact such a will existed and Ishar Das had already been appointed a Mahant, there seems to be no conceivable reason why Kishore Das should execute another will just before his death. We are further unable to see how this document came on the record at all.

Mr. Achhru Ram argues that the document being more than 30 years old, there is a statutory presumption available to it under section 90 of the Indian Evidence Act. But this contention is altogether unavailing. The language of section 90 of the Indian Evidence Act requires the production of the particular document in regard to which the court is invited to make the statutory presumption. If the document produced is a copy, admissible as secondary evidence under section 65 of the Evidence Act and is produced from proper custody and is over 30 years old, then only the signatures authenticating the copy may be presumed to be genuine; but production of a copy is not sufficient to raise the presumption of the due execution of the original (vide - 'Basant Singh v. Brij Raj Saran Singh', AIR 1935 PC 132 (C)). In this case no foundation was laid for reception of secondary evidence under section 65 of the Evidence Act, nor can the copy produced be regarded as secondary evidence within the meaning of section 63. In these circumstances, we must hold that the will alleged to have been executed by Kishore Das in the year 1911 has not been proved and the translation of an alleged copy of it which has been produced in this case should be excluded from consideration.

17. As regards the will executed by Kishore Das just before his death, we may agree with the trial judge that Kishore Das was not proved to have been unconscious at the time when the will purports to have been executed, but the circumstances attending the execution of this document as well as its contents do not incline us to attach any value to it. The will was executed only a few days before the death of Kishore Das and on the very same day the lease which is challenged in this suit was executed in favour of defendants 1 and 2. Sant Ram, one of the lessees, was admittedly the agent of Kishore Das and was managing the properties of the Thakardwara on his behalf. Ishar Das admitted in his deposition that Sant Ram was his agent too and in his written statement he makes common cause with the lessees and does not challenge the validity of the lease at all.

These circumstances would lead us to think that Ishar Das was really a creature of Sant Ram and as he is admittedly a nephew of Kishore Das, the latter, who was apparently under the influence of Sant Ram, might have been prevailed upon to appoint his nephew along with Lachman Das as manager after his death. It is pertinent to observe that Ishar Das has not been appointed a Mahant by this will at all. In fact the word 'Mahant' does not occur in the will. He as well as Lachman Das were only appointed joint managers of the endowed property after the death of the testator. The only thing in favour of the defendants is that in the will Ishar Das has been described as a 'chela' of Kishore Das' but in view of the circumstances mentioned above this description by itself is of very little value.

The evidence given by Ishar Das himself is not of such a character as could inspire confidence. Although he says that he has been residing continually in the Thakardwara ever since his initiation

which happened many years ago, he does not know who occupy the neighbouring houses. He says that he performed the 'Kirya karam' or the last rites of Kishore Das but he could not tell what these ceremonies were. The only thing that he remembers is that he had his head shaved and his beard and moustaches removed as part of the ceremony.

Strangely however, a photograph, which he himself produces in court and which is supposed to be a picture of the gathering of the 'Bhek' and the 'Sewaks' on the day of his appointment, shows him with long hair, beard and moustaches, although the shaving, ceremony is said to have been performed only for days before that date.

18. A number of witnesses have been examined by both sides on this point and while the plaintiffs witnesses assert that Ishar Das, who was Sikh Jat by birth, never became a Bairagi and never was adopted as a 'chela' by Kishore Das, the defendants' witnesses say that he was in fact a 'chela' and lived with Kishore Das. We cannot place much reliance upon oral evidence of such a character and basing our conclusion on the documentary evidence referred to above, we have no hesitation in holding in agreement with the Subordinate Judge, that it has not been proved in this case that Ishar Das was the 'Chela' of Kishore Das or that any 'chela' was left by Kishore Das at the time of his death. This being our conclusion it is not necessary to go in the other question as to whether Ishar Das was at all appointed a Mahant by the 'Bhek' and 'Sewaks' as alleged by him.

19. The points that now require consideration are: whether the plaintiff Sital Das was eligible for a appointment as Mahant of the Thakardwara in accordance with the custom of the institution and whether in fact he was so appointed.

20. As has been said already, although the authority to appoint the successor of a Mahant rests with the 'Bhek' and the 'Sewaks' the appointment could be made only of a person who was the disciple of the last Mahant and, failing that, was one spiritually connected with him. It is well known that entrance into a religious order generally operates as a civil death. The man who becomes an ascetic severs his connection with the members of his natural family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter. The other disciples of his Guru are regarded as his brothers, while the co-disciples of his Guru are looked upon as uncles and in this way a spiritual family is established on the analogy of a natural family.

The plaintiffs case is that he is a 'Bhatija chela' of Mahant Kishor Das he being a descendant of the fourth degree from Ram Krishna Das through whom Kishore Das also traced his spiritual lineage. Kishore Das was admittedly a disciple of one Behari Das whose Guru Chetan Das was the disciple of Ram Krishna Das. On the other hand Ram Krishna Das is said to have another disciple named Brahm Das whose disciple Mangal Das was the Guru of Sadhu Ram Das and the plaintiff Sital Das is admittedly a disciple of Sadhu Ram.

If this story is believed to be true, it is not disputed that Sital Das would rank as a 'Bhatija chela' or spiritual collateral of Kishore Das. The trial judge accepted this story as correct and in support of his decision relied upon the evidence of the plaintiff and some of the Mahant witnesses examined by him. Reliance was also placed upon a judgment (Ex. P-3) given in Civil Suit No. 24 of 1912 of the court of the Subordinate Judge, Jullundur in which Kishore Das along with one Vidya Das figured as plaintiffs and Mangal Das, who was so to say the spiritual grandfather of Sital Das, was one of the defendants. The High Court has rejected the case of the plaintiff on this point substantially on two grounds.

According to the learned Judges, the evidence adduced by the plaintiff falls short of establishing that Ram Krishna Das was the common spiritual ancestor of Kishore Das and the plaintiff. The other ground assigned is that the judgment (Ex. P-3) is not admissible in evidence under any of the provisions of the Indian Evidence Act and no reliance could consequently be placed upon it.

In our opinion neither of these grounds appears to be sound. Two of the Mahant witnesses examined by the plaintiff said in their deposition that Sital Das was the 'Bhatija Chela' of Kishore Das. They mentioned the names of some of the spiritual ascendants of both of them, though Ram Krishna Das was not specifically mentioned as the common spiritual ancestor. Mahant Hira Das says in his deposition:

"Sital Das is not a 'Chela' of Kishore Das. He is his 'Bhatija chela' Kishore Das was 'chela' of Behari Das. Behari Das was the 'chela' of Chetan Das The Guru of Chetan Das was Ram Krishna Das".

According to this witness, Ram Krishna was the spiritual ascendant of Kishore Das. He does not specifically say that Ram Krishna was a spiritual ancestor of Sital Das also and no such question seems to have been put to him. He says however definitely that Sital Das was a 'Bhatija Chela of Kishore Das. Mahant Balak Das (C/P.W. 3) also says that Sital Das is the 'Bhatija chela' of Kishore Das. He mentions the name of Sadhu Ram as the Guru of Sital Das but could not say who was the Guru of Sadhu Ram or of Kishore Das. Much fuller details have been given by the plaintiff in his deposition which runs as follows:

"I am 'Bhatija chela' of Mahant Kishore Das. Behari Das was the Guru of Kishore Das..... The name of my guru was Sadhu Ram. Sadhu Ram's Guru was Mangal Das. The Guru of Mangal Das was Brahm Das. The Guru of Behari Das was Chetan Das. The Guru of Chetan Das was Ram Krishna Das".

The plaintiff's case really was that Ram Krishna Das was the spiritual ancestor of both himself as well as of Kishore Das and the only omission in his statement was that he did not say in so many words that Ram Krishna Das was the Guru of Brahm Das. We think that this slight lacuna in the evidence upon which so much stress has been laid by the learned Judges of the High Court could very well be deemed to have been filled up by the judgment (Ex. P-3). This judgment, it is to be noted, was given in a suit instituted by two plaintiffs to wit, Kishore Das and Vidya Das to set aside the alienation of property made by Mangal Das who was the Mahant of a Thakardwara in Jullundur city. This Mangal Das was admittedly the Guru of Sadhu Ram Das whose disciple the plaintiff is. Kishore Das, the succession to whose office is the subject-matter of dispute in the present litigation was one of the plaintiffs in the suit and he as well as Vidya Das based their right to impeach the alienation of property made by Mangal Das on the ground of their being the spiritual collaterals of the latter. In his judgment the Subordinate Judge of Jullundur set out a pedigree which shows the relationship between Kishore Das and Vidya Das on the one hand and Mangal Das on the other and this relation is traced through Ram Krishna Das, the common ancestor.

We agree with the High Court that in the absence of any evidence to show as to who propounded this pedigree which the subordinate Judge acted upon, it is not possible to say that it was an admission by Kishore Das through whom Ishar Das lays his claim and consequently the pedigree would not be an admission relevant under section 21 of the Indian Evidence Act. But the judgment itself, we think can be received in evidence under section 13 of the Evidence Act as a transaction in which Kishore Das, from whom Ishar Das purports to derive his title, asserted his right as a spiritual

collateral of Mangal Das and on that footing got a decree. The decree also recognised the right of Kishore Das to institute the suit as such collateral. We think therefore that the judgment could be received in evidence and although it is not by any means conclusive and has got to be weighed and appraised for what it is worth, it can be used in support of the oral evidence adduced in the case. It is to be noted that this part of the plaintiffs story was not challenged by the defendants in their evidence at all. In our opinion therefore on the evidence on the record it is fully established that Sital Das was a spiritual collateral of Kishore Das.

21. Coming now to the question as to whether the plaintiff was appointed a Mahant by the 'Bhek' of the Bairagis and the 'Sewaks' of the Thakardwara, it seems to us that the decision arrived at by the learned Judges of the High Court proceeds upon a misappreciation of the evidence on record.

A full description of the events, that happened from the date of the death of Kishore Das which took place on 4th of April 1945 down to 23rd July 1945 when Sital Das was said to have been elected as Mahant, by the 'Bhek' and the 'Sewaks' contained in a register kept by Mahant Ram Charan Das P. W. 3 which has been proved by him and made an exhibit in this case. Ram Charan Das is a Shri Mahant and is the head of a Bairagi Thakardwara at Nakodar.

It is true that he belongs not to the Ram Kabir sect of Bairagis but to an allied order called Ram Thamman, but it is not disputed that he is a Shri Mahant of Ramanand Doaba Mandal which is a Mandal of Bairagis of Jullundur. It is admitted by Mathura Das, a witness for defendants, that in the absence of the Shri Mahant of one's own 'Sampradaya' Ram Charan was competent to give the Turban, that is to say to appoint a Mahant. The story as told by Ram Charan Das in his deposition and which is supported by the entries in the register (P. W. 3/2) is briefly as follows : Kishore Das died on the 4th of April 1945. The 'Chautha' ceremony was performed by Mahant Hira Das of Sahri Thakardwara and on the 16th of April 1945 the 'Kirya Karam' was solemnised. Hira Das then proceeded to Hardwar with the earthly remains of Kishore Das to immerse them in the Ganges. On the 17th of July 1945 Hira Das presented a petition to the Mandal praying that a Mahant might be appointed forthwith and it was not proper to keep the 'Gaddi vacant so long.

It may be stated here that Hira Das himself was a candidate for the office of the Mahant. On the 23rd July 1945 the 'Bhek' of the Bairagis and the 'Sewak's assembled at the Thakardwara at Jamsher appointed the plaintiff Sital Das as Mahant. The report shows that Sital Das was a Sadhu from his boyhood upwards and there was absolutely no complaint against him. Ten or twelve Mahants of the Bairagis of the locality were present at the gathering and so also were a large number of worshippers. After 'Havan', the ceremony in connection with the Pagri (Turban) was performed and the whole congregation touched the Pagri and Hira Das tied it on the head of Sital Das.

22. There is a complete record of these proceedings which was signed by the worshippers present there and we do not think that its genuineness can be seriously questioned. Besides Ram Charan Das, three other Bairagi Mahants, who have been examined by the plaintiff, - fully support the story. One of these is Hira Das of Sahri institution who performed the last rites of Kishore Das and took a leading part in the subsequent proceedings. The learned Subordinate Judge on a consideration of the evidence came to the conclusion that the plaintiff's story was true and that he was validly appointed a Mahant at the meeting held on the 23rd July 1945.

23. The High Court however differed from the view taken by the Subordinate Judge. In the opinion of the learned Judges of the High Court, the meeting held on 23rd July 1945 was not a proper meeting of the 'Bhek' and the 'Sewaks' entitled to appoint a Mahant of the Jamsher Thakardwara. It

is pointed out first of all that Ram Charan Das, who presided at the meeting, did not belong to Ram Kabir sect to which the Thakardwara in dispute belongs but to another sect known as Ram Thamman. The second thing said is this that no notice was given to the parent institution at Jaipur or to the Bairagis belonging to the said locality. It is said in the third place that the three Bairagi Mahants, who were examined on behalf of defendant No. 3, were certainly not invited. Lastly, it is pointed out that the assembly did not apply their minds properly to the claim put forward on behalf of Ishar Das who was appointed as successor in the last will of Kishore Das.

24. In our opinion, none of these reasons appear to be convincing. It may be stated at the outset that there is no evidence to show that the head institution of this particular sect is at Jaipur. All that Ram Charan Das Says is this that there is a 'Gaddi' of Ram Kabir Math also at Jaipur.

On the other hand there is evidence adduced by the plaintiff to show that the head institution was at Sahri of which Hira Das was the Mahant and Hira Das admittedly performed the funeral rites of Kishore Das and took a leading part in the subsequent transactions. It is true that Ram Charan Das did belong to the sect of Ram Thamman but that was also a Bairagi sect of an allied order Ram Charan Das was admittedly the Shri Mahant of the Doaba Mandal and it is clear from the evidence of the defendants' own witnesses that he was held in high esteem by all the Bairagis and was deemed quite fit to give the Pagri to a newly appointed Mahant. The three Mahants who deposed in favour of defendant No. 3 and stated that they took part in appointing him as Mahant at a meeting held on the seventeenth day after the death of Kishore Das may or may not have spoken the truth. If they really took part in appointing Ishar Das as Mahant, they were not certainly present at the gathering of the 23rd July 1945 but leaving aside these three Bairagi Mahants the evidence on behalf of the plaintiff clearly shows that 10 or 12 Bairagi Mahants of the locality as well as vast number of 'Sewaks' were present at the meeting held on the 23rd July 1945. It cannot be disputed therefore that the majority of the Bairagis took part in appointing the plaintiff.

We are not told whether there is a practice in this institution to issue formal invitations on such occasions and none of the witnesses examined on the defendants' side have spoken to the issuing of formal notices before defendant No. 3 was said to have been appointed. In our opinion, on the evidence as it stands the decision of the Subordinate Judge appears to be correct and we would prefer it to that of the learned Judges of the High Court. We hold there that Sital Das, the plaintiff, was eligible for appointment as a Mahant and in fact was so appointed by the 'Bhek' and the Sewaks' assembled at Jamsher Thakardwara on the 23rd of July 1945.

25. In view of these findings it remains for us to consider whether the lease in favour of defendants 1 and 2 which has been challenged in this suit is supported by legal necessity and is binding on the institution.

On this point the finding of the Subordinate Judge was clearly against the lessees and it appears from the judgment of the High Court that this finding of the trial judge was not challenged before the learned Judges of the High Court at all. As the lease was not a permanent one but was only for a period of 10 years, it could certainly be supported on the footing of a transaction entered into in the ordinary course of management. The Subordinate Judge found however that the document contained an untrue recital regarding the payment of consideration and as a matter of fact the sum of Rs. 5,000/- stated to be paid as premium for the lease was not paid at all. The Subordinate Judge further found that the rent reserved was grossly inadequate and it was not even one-fourth of the profits which the properties would ordinarily fetch.

The defendants 1 and 2 did not adduce any evidence in support of their case and did not make any attempt to show whether having regard to the profit which could normally be realised from the property the rent secured by the lease was a proper one. The lessees avoided the witness box and in these circumstances we are bound to hold that they failed to discharge the burden which admittedly lay upon them of showing that the transaction was prudent act of management on the part of the Mahant which it was within his competence to enter into.

The result therefore is that in our opinion the view taken by the Subordinate Judge is right. Appeal is hence allowed; the judgment and decree of the High Court are set aside and those of the trial Court restored. The plaintiff will have his costs from defendants. 1 and 2 of all the courts.

Appeal allowed.

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