

## SUPREME COURT OF INDIA

Prithi Nath

Vs.

Birkha Nath

C.A.No.178 of 1954

(N. H. Bhagwati, T. L. Venkatarama Ayyar and B. P. Sinha, JJ.)

04.10.1955

### JUDGEMENT

#### **BHAGWATI J.:**

1. The Appeal is directed against a judgment of the High Court of Judicature for the State of Punjab at Simla in Letters Patent Appeal No. 108 of 1951 reversing the judgment of a single Judge of the High Court in Regular Second Appeal No. 942 of 1949 and dismissing the appellant's suit with costs throughout.

2. The suit out of which the present Appeal arises was instituted by the Appellant in the Court of the Subordinate Judge, first Class, Delhi, against the Respondent 1 and 2 for a declaration that he was the Mahant of the Temple of Bhaironji and as such entitled to the properties and the perquisites attached there to including the right to worship the Temple of Sri Kalkaji and to recover the income from rents etc., as also from offerings and for other reliefs.

3. The case of the Appellant was that one Baba Balak Nath was the Mahant of Temple of Bhaironji and he left him surviving his three Chelas Sehaj Nath, Maya Nath and Sahib Nath. The pedigree showing the representation of these three lines of descent from Balak Nath is given below:

It shows that Bhola Nath was the last representative of the line of Sehaj Nath. He died on 10-4-1918, without leaving him surviving any Chala or Gurbahi (co-disciple) with the result that the line of Sehaj Nath became extinct. Pancham Nath was then the representative of the line of Sahib Nath and Sandhiya Nath was the representative of the line of Maya Nath.

On the extinction of the line of Sehaj Nath, the estate and the right, title and interest of the last representative of that line devolved upon the surviving lines, viz., the lines of Sahib Nath and Maya Nath and Pancham Nath and Sandhiya Nath inherited the same in equal shares. Pancham Nath was succeeded by his Chela Mam Chand Nath and after the death of Mam Chand Nath the Appellant, the other Chela of Pancham Nath and Gurbhai of the deceased succeeded to the estate of Pancham Nath. Sandhiya Nath was succeeded by his Chela Shanker Nath.

Shanker Nath, however, was removed by the Bhekh Bara Panth on account of his immorality and Hardwari Nath another Chela Sandhiya Nath was appointed the Mahant in his place. Hardwari Nath filed a suit in December 1941 against Shanker Nath which ended in a compromise decree, and, when Hardwari Nath tried to take possession of the property in pursuance of the decree, Shanker

Nath murdered him and was, in his turn, sentenced to death on 18th April, 1943.

Badlu Nath, another Chela of Sandhiya Nath and Gurbhai of Shaker Nath then succeeded to the estate of Sandiya Nath. There was, however, a dispute in regard to the mutation of names between Badlu Nath and respondent 1 who claimed to be the Chela of Phul Nath who was a Chela of Naina Nath, an earlier representative of the line of Maya Nath.

While this dispute was going on, Badlu Nath died on 23-9-1945 without leaving any Chela with the result that the line of Maya Nath also became extinct and the estate and the right, title and interest of Badlu Nath, the last representative of that line, devolved upon the Appellant who was the representative of the surviving line of Sahib Nath.

The Appellant contended that respondent 1 was not entitled to succeed Badlu Nath and had no right, title or interest in the estate left by him. The rule of succession propounded by the Appellant was formulated by him paragraphs in 4 and 6 of the plaint as under.

"Para 4. Balak Nath, aforesaid, was Abdhut Jogi. Abdhut Jogis do not marry and according to law and custom, succession devolves from 'Guru to Chela' and if one Chela does not survive, then it devolves upon the next one. In the same way, if a line becomes extinct and no Chela is left in that line then, the Chelas of the remaining line inherit its share.

Para 6. The rule of succession to the property left by Balak Nath is clear from the pedigree-table given hereof. Among all the three aforesaid lines according to custom and law, succession devolved from a 'Guru' to a 'Chela' after the death of one Chela to the other Chela. But in case of extinction of a line and no Chela having been left therein succession devolved upon the remaining lines".

After setting out the custom as above, the Appellant gave in para 7 of the plaint an illustration of the extinction of line, no Chela having been left therein and the consequent devolution of succession upon the remaining lines:-

"Para 7'. Bhol Nath, Chela of Shiv Nath co-sharer, died sonless that is without leaving a Chela. Accordingly Baba Sandhiya Nath and Baba Pancham Nath, proprietors of the other two lines, succeeded to one third of the estate left by the deceased as his heirs according to law and custom. Moreover vide order dated 19-4-1918, mutation in respect of succession to the deceased was sanctioned in favour of Baba Sandhiya Nath and Baba Pancham Nath in equal shares".

4. The respondent 1 disputed this claim of the Appellant. The rule of succession was propounded by him in paragraph 4 of his written statement as under:-

"The Avdhut Jogis do not marry. Only the Chela who is nominated by Guru as his successor in his lifetime, or in whose favour a will is made by the Guruj and whose nomination is subsequently approved by the Bhek, becomes the Gaddi Nashin. If a Guru does not nominate his Chela as his successor, Bhekh Bara Panth appoints the successor of the deceased according to the custom prevailing in the Bhek.

The person so selected by the Bhek becomes the lawful heir and successor. A Chela has got no right to succeed merely on the ground of his being Chela. It is necessary according to the custom, that he should be nominated by Guru and then his nomination be approved by the Bhek. Moreover a Guru Bhai (Co-disciple) has no right to succeed simply on the ground of his being Guru Bhai.

5. The parties went to trial on the basis of these pleadings and the main contest between them turned on what was the rule of succession in regard to this institution. The trial Court held that the custom set up by the Appellant was proved. Viz., that the Gaddi of Bhaironji and the rights to Puja and to offerings in Mandir Kalkaji as well as the property attached to that institution, and the land in the village Bahapur devolved from 'Guru' to 'Chela', in case there was no Chela, the Gurbhai of the last Mahant succeeded and if none of them was available and the line became extinct, the above rights devolved upon the surviving line.

The Appellant was accordingly found to be the rightful claimant to the Gaddi and rights and interests of Sandhiya Nath in both the above religious institutions and to lands in village Bahapur. The suit was, therefore, decreed in favour of the Appellant with costs.

6. The respondent 1 took an appeal to the Court of the District Judge, Delhi, and the District Judge, Delhi accepted the conclusion of the trial Court in regard to the rule of succession, dismissed the appeal and confirmed the decree passed by the trial Court in favour of the Appellant though it varied the order of costs ordering both the parties to bear their own costs in both the Courts.

A second appeal was filed by Respondent 1 against this decision of the District Judge, Delhi in the High Court of Judicature for the State of Punjab at Simla. This appeal was heard by a single Judge who was also confirmed the decision of the trial Court and dismissed the appeal with costs throughout. The Respondent 1 filed a Letters Patent appeal against this decision of the single Judge.

The Division Bench, hearing the Letters Patent appeal, came to a contrary conclusion, held that the Appellant had not proved the custom set up by him and allowed the appeal dismissing the Appellant's suit with costs throughout. This Appeal was filed by the Appellant against that decision of the Division Bench of the High Court of Judicature for the State of Punjab at Simla on a certificate granted by the High Court under Art. 133 of the Constitution.

7. The only point which arises for consideration before us is whether the Appellant has succeeded in proving the rule of succession propounded by him in the plaint.

8. It may be observed at the outset that Respondent 1 failed to prove the rule of succession which he set out in para 4 of his written statement and the finding reached by the trial Court, in this behalf that there has never been any election to the office of Mahant in these institutions was not challenged in the Court of the District Judge, Delhi, nor before the High Court.

Mr. Achhru Ram appearing before us for Respondent 1 also did not challenge that finding with the result that contention must be taken as negatived. The Appellant has, however, got to succeed on the strength of his own title and not on the infirmity of that of Respondent 1 and he has, therefore, got to establish the rule of succession, propounded by him in paras 4 and 6 of the plaint.

The elective principle having been negatived, it can be safely assumed that the succession to the estate in these lines of descent from Balak Nath was hereditary and it devolved from 'Guru' to 'Chela'. As a matter of fact, the findings reached by the District Judge, Delhi, in regard to the succession in these three lines go to establish that the rule of succession was from 'Guru' to 'Chela'. The facts found by him were as under:-

"The really important evidence is of the actual facts of succession in these three lines. From the evidence that has been available, it appears that in 1898 Agdi Nath who was in the line of Sahib Nath was succeeded by his Chela Ram Rikh Nath who in his turn was succeeded by his Chela

Pancham Nath. In 1930 Pancham Nath surrendered the estate to his Chela Mam Chand Nath who died in 1943 and was succeeded by his Gurbhai Prithi Nath plaintiff.

In the line of Sehaj Nath the evidence shows that Sanwat Nath died in 1892 and was succeeded by his Chela Shiv Nath who died in 1910 and was succeeded by his Chela Bhola Nath. In 1918 Bhola Nath died without leaving a Chela. There was no Gurbhai of the previous Mahant either, nor any Chela of such Gurbhai and the line was taken to be extinct.

In the line of Maya Nath the evidence shows that Naina Nath died in 1866 and was succeeded by his Chela Roop Nath. He, however, absconded in 1897 and was succeeded by Misri Nath a Chela of his Gurbhai. Tulsi Nath who claimed to be Chela of Naina Nath disputed the succession and the matter went to Court but was settled in favour of Misri Nath. He later died and was succeeded by his Chela Sandhiya Nath.

It would thus appear that in these lines either the Chela of the last Mahant or his Gurbhai or the Chela of the Gurbhai succeeded and no one more remotely connected with the last Mahant has ever succeeded". These findings are sufficient to establish the first part of the rule of succession propounded by the Appellant, viz, that succession devolves from 'Guru' to 'Chela' and if one 'Chela' does not survive then it devolves upon the other 'Chela', meaning thereby the other Chela of the last Mahant who would thus be the 'Gurbhai of the Chela' who died.

The succession would thus be in the line of descent from the last Mahant who was the representative of the particular line 'qua' whom it would be determined whether his Chela or Chelas succeed to his property. This position is supported by what happened in the case of succession to the property of Pancham Nath in the line of Sahib Nath.

It is also supported, apart from the alleged elective principle set up by Respondent 1, by what happened in regard to the succession to the property of Sandhiya Nath. Shankar Nath succeeded Sandhiya Nath but when he was removed from the Gaddi on account of his immorality, Hardwari Nath the other Chela succeeded to Sandhiya Nath and when Hardwari Nath was murdered, Badlu Nath still another Chela of Sandhiya Nath succeeded to these properties.

9. What happens when a particular line becomes extinct has, however, been the subject-matter of divergent opinions between the two lower Courts and the High Court in Second Appeal on the one hand and the Letters Patent Bench on the other. All the three Courts who came to the conclusion in favour of the Appellant in this behalf were of the opinion that the extinction of the line of Sehaj Nath on the death of Bhola Nath afforded an instance of the second part of the rule of succession propounded by the Appellant, viz., that on the extinction of line, no Chela having been left therein, succession devolved upon the remaining lines.

The extinction of a line could take place only once and such occurrences would be very rare. Under these circumstances, even one instance of that type would be enough to establish the rule of succession as propounded. The only thing which weighed with the Letters Patent Bench in arriving at a contrary conclusion was the alleged admission made by the Advocate of Appellant that

"as regards this part of the custom which he was propagating in respect of his client' there was not a single instance and that in the course of the last 100 or more years since this temple came into existence there was no such occasion for such a custom which he was propounding to be in operation".

There appears to have been some serious misapprehension in regard to this alleged admission. When the case of the Appellant in para 7 of his plaint was that on his death of Bhola Nath the line of Sehaj Nath became extinct, no Advocate could ever have admitted that there was no instance of any such extinction of the line and the devolution of succession of the remaining lines ever to be found during the last 100 years.

The only line which became extinct was the line of Sehaj Nath, Maya Nath's line had continued right up to Sandhiya Nath and Badlu Nath, and one cannot understand this alleged admission unless on the assumption that there must have been some real misapprehension in regard to the same.

The Letters Patent Bench's finding against the Appellant rested mainly on the construction which it put on the wording of para 6 of the plaint and the Court was impressed by the fact that there was some confusion in the drafting of this paragraph and it did not accept the contention urged by the Advocate of the Appellant that that confusion was clarified in the other paragraphs of the plaint.

The Advocate for the Appellant explained that what was intended to be conveyed in that paragraph was that the extinction of the line meant that extinction only of a particular Chela to the last Mahant and it did not mean the extinction of all the Chelas in that line. The whole stress was laid on the words "if there be no Chela in that line".

Having regard to the finding reached by the trial Court which finding was not challenged by the Appellant before the District Judge, Delhi or before the High Court that Respondent 1 was the Chela of Phul Nath who belonged to the line of Maya Nath, it came to the conclusion that there was a Chela in that line and, therefore, the line could not be extinct.

10. We are, however, unable to accept this reasoning of the Letters Patent Bench. If the succession was from 'Guru' to 'Chela' and the question was whether a Chela or Chelas were in a position to succeed to the Guru, that question could be determined with reference to the position as it obtained at the time when the succession to the property of that Guru opened out and the only Chela or Chelas who could succeed to the property could be the Chelas of that Guru whose property was to devolve upon them.

The Chelas of any earlier Guru, whatever their spiritual affinity may, could never be thought of in this connection. We are fortified in this conclusion by the events that happened in 1918. When Bhola Nath, the last representative of the line of Sehaj Nath died on 10th April, 1918, the only two persons who claimed to inherit his estate as on the extinction of his line and the devolution of succession to the surviving lines were Pancham Nath and Sandhiya Nath.

Phul Nath, the Guru of Respondent 1 was then alive and if propinquity of relationship in this spiritual descent which we are concerned with was the criterion of the right to inheritance. Phul Nath was certainly nearer in relationship than Sandhiya Nath and he could have claimed to inherit the property of Bhola Nath to the extent of the 1/2 share therein along with Pancham Nath.

No such claim was, however, made by Phul Nath and Sandhiya Nath, as the representative of the line of Maya Nath was the only person who made such claim for inheritance and was recognised as the heir of Bhola Nath along with Pancham Nath when mutation came to be made.

This goes to show that the succession from 'Guru' to 'Chela' only means the devolution of property from the last representative of the line to his Chela and when one talks of the succession from one Chela, on his death, to another Chela, it is also to another Chela of the Guru who is the last

representative of the line. When one talks similarly of the extinction of the line, it only means that when the last representative of that particular line dies without leaving a Chela or Chelas or a Gurbhai who could succeed to his estate that line becomes extinct and one has not got to go backwards in order to ascertain whether there is any Chela of any Guru in that line at all surviving.

We are therefore of the opinion that on the death of Sandhiya Nath, his Chelas Shanker Nath, Hardwari Nath and Badlu Nath succeed to the properties left by him one after the other and that when Badlu Nath died, there was neither his Chela or any Gurbhai of his who could succeed to the properties with the result that there was no succession possible in that line from 'Guru' to 'Chela' and the line became extinct.

11. It was, however, urged by Mr. Achhru Ram that unless the Appellant proved that when Bhola Nath died on 10th April, 1918, there were Chelas existing in the line of Sehaj Nath and yet the line of Sehaj Nath was treated as extinct and the succession devolved upon Pancham Nath and Sandhiya Nath who represented the two surviving lines of Sahib Nath and Maya Nath, the second part of the rule of succession propounded by the Appellant could not be held proved.

The answer to this contention was furnished by the District Judge, Delhi in his judgment when he observed that it was admitted that Sehaj Nath had three Chelas and it was improbable that the other two Chelas who did not succeed had no Chela of their own; nor was it very probable that Sanwat Nath and Shiv Nath in turn had no other Chelas apart from their own who actually succeeded.

The evidence was that these Jogis had the habit of initiating several Chelas. Respondent 1 himself admitted that Naina Nath had as many as twenty Chelas and there was evidence of another witness also. It was, therefore, probable that the line of Sehaj Nath was taken to be extinct not because there was no Chela but because the last Mahant i.e. Bhola Nath had no Chela of his own nor was any Gurbhai of his nor a Chela of a Gurbhai.

Another circumstance relied upon by the learned Dist. Judge in support of this position was that in the disputed line there were other Chelas actually living and one of them, Har Nath had given evidence as the witness of Respondent 1. He was the Chela of Misri Nath and thus nearer in spiritual relationship to the last Mahant than Respondent 1: yet Har Nath had never made any claim to the Gaddi that was now in dispute although if the case of Respondent 1 was well founded Har Nath was entitled to the Gaddi in preference to him.

The reason could only have been that Har Nath knew that not being the Chela of the last Mahant nor the Chela of the Gurbhai he had no claim.

12. We are in accord with this reasoning adopted by the learned District Judge and we endorse the conclusion to which he reached after taking all these factors into consideration that the rule of succession propounded on behalf of the Appellant was the rule of succession governing these institutions, i. e., a Mahant is succeeded by his Chela or his Gurbhai or the Chela of that Gurbhai and failing such claimants the line is deemed extinct and succession goes to the representative of the other line.

13. This is sufficient to dispose of the Appeal and we need not discuss the other points which were adverted to in the judgment of the Letters Patent Bench. On a consideration of all the circumstances of the case we have come to the conclusion that there was no vagueness or indefiniteness in the rule of succession propounded by the Appellant in paras 4 and 6 of the plaint, that the custom

propounded therein has been established by the Appellant and the conclusion which was reached by the Letters Patent Bench to the contrary was incorrect.

We accordingly allow the Appeal, set aside the judgement of the Letters Patent Bench and restore the decree passed by the trial Court in favour of the Appellant with costs payable by Respondent 1 throughout.

Appeal allowed.

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