

SUPREME COURT OF INDIA

Vikrama Das Mahant

Vs.

Daulat Ram Asthana

C.A.No.149 of 1951

(Vivian Bose, B. Jagannadhadas, B. P. Sinha, S. J. Imam and N. Chandrasekhara Aiyar, JJ.)

15.02.1956

JUDGEMENT

JAGANNADHADAS J.:

1. This is an appeal by the first defendant against the affirming judgment and decree of the High Court of Allahabad dated 22-2-1949, on a certificate granted by the said Court under Article 133(1) (a) of the Constitution. The suit out of which this appeal arises relates to an ancient Thakurdwara in the village of Amaulipur containing a temple of Sri Hanumanji and Sri Thakurji, the entire institution being known as Amaulipur Asthan (hereinafter referred to as "the Asthan").

The Asthan owns large property dedicated to it and specified in Lists A, B, and C of the plaint. The entire income of these properties is spent for the Bhog of the idols and in maintaining a Sada-Bart for Sadhoos and Faqirs. There is a fairly long history of litigation relating to this Asthan since about 1926 which it is necessary to set out for a correct appreciation of the points that arise for decision in the present appeal.

2. One Ganpat Das a previous Mahant of the Asthan died in the year 1920. He was succeeded by Mahant Bharat Das, still alive, who according to the plaintiffs case, became mentally deranged Bharat Das appears to have executed on 11-5-1925, a power of attorney in favour of one Gomati Das.

About a year later, i.e. on 10-7-1926, he executed another document purporting to transfer his Mahantship in favour of the present first defendant-appellant, Vikrama Das. This led to a suit No.27 of 1927 by Gomati Das against the present first defendant for the declarations that (a) the deed of 10-7-1926, is null and void, and (b) he himself was the Mahant of the Asthan validly in possession and occupation of the Asthan and its properties.

The trial court decided that suit in favour of Gomati Das and granted him both the declarations he had asked for. On appeal, the High Court modified the decree to the extent that the declaration in favour of the plaintiff that he was in the position of the Mahant of the Asthan was set aside. But the decree of the trial court was maintained in so-far as it declared that deed of 10-7-1926, to be null and void as against the Asthan.

There was a further appeal by the first defendant, Vikrama Das, to the Privy Council. In view of the fact that the plaintiff failed in the High Court to establish his title as Mahant, the Privy Council held

that he was not entitled to get a declaration that the deed of 10-7-1926, was null and void as against the Asthan. The suit was accordingly dismissed in its entirety. The judgment of the Privy Council was given on 25-10-1935. A copy of the judgment is not on the record in these proceedings but it is to be found reported in Mahant Bikrama Das v. Gomati Das 1935 All W R 1408 (PC) (A).

3. During the pendency of the appeal in the Privy Council, three persons by name Bansi Das, Raghubir Das and Ram Sarup Das applied to the Collector of the District under S. 92 (read with S. 93) Civil P. C. for permission to file a civil suit in respect of the Asthan for the removal of Mahant Bharat Das. The permission was granted by order of the Collector dated 18-11-1933.

A suit under S. 92 Civil P. C. was accordingly filed on 27-11-1933. This was suit No.90 of 1933 in the Court of the Subordinate Judge, Basti. The plaint therein prayed for a decree (a) for the removal of the then Mahant Bharat Das and for the appointment of his alleged disciple Ram Sarup Das as Mahant, (b) for the appointment of a committee consisting of seven named persons for fulfilling the objects of the waqf, and (c) for the entrustment of the properties of the trust to the said Ram Sarup Das and Committee for management and for preparation of a scheme.

It is necessary to notice that the suit was filed by only two of the three persons to whom sanction had been granted by the Collector, i.e. , Bansi Das and Raghubir Das and that the third, viz., Ram sarup Das whose appointment as Mahant , on removal of the existing incumbent, was prayed for, was not a party to the suit. The sole defendant in the suit was Bharat Das described as ' Mahant Bharat Das insane under the guardianship of Devi Prasad Singh".

A written statement contesting the suit was filed by the said Devi Prasad Singh on behalf of Mahant Bharat Das on 30-1-1934. The suit was compromised shortly thereafter and a petition of compromise was filed on 3-4-1934. The compromise was to the effect that the various reliefs asked for by the plaintiffs should be decreed including the prayer for the appointment of Ram Sarup Das as Mahant, with the condition that the Asthan should be responsible to maintain the defendant, Mahant Bharat Das, during his life time and that Ram Sarup Das should be liable to maintain him out of the income of the trust property.

A decree in terms of the compromise was also passed on the same date. It may be noticed that this was prior to the date of the judgment of the Privy Council which was given about a year and half later on 25-10-1935. According to the plaint in the present suit, Bharat Das was removed from Mahantship by the aforesaid compromise decree and Ram Sarup Das began to manage the Asthan and its properties along with the trustees appointed under the said decree, having got his name entered by the Revenue Court in the registers in respect of all the villages connected with the Asthan.

After the present defendant, Vikrama Das, succeeded in the Privy Council in getting the suit against him by Gomati Das dismissed, he made an application in the Revenue Court for rectification of Khewats relating to the properties of the Asthan. By the date of the institution of the present plaint, the Khewat was changed in the name of the first defendant only in respect of the properties mentioned in List C but similar applications in respect of other properties were pending.

4. The present suit has been filed for a declaration that the plaintiffs and the second defendant are the trustees of the Asthan and the properties appertaining thereto in Lists A, B, and C, with which the first defendant, Vikrama Das had no concern, and also for possession in respect of the said properties in case the first defendant was considered to be in possession of the same by virtue of

mutation of name in his favour (in the revenue records).

The plaint was filed by four persons. Three out of them, viz Daulat Ram Asthana, Raja Ram Pandey and Ram Prasad Singh, were persons who had been appointed as trustees under the compromise decree in suit No.90 and 1933. The fourth plaintiff is one Baba Bansi Das. According to the plaint, he was impleaded in order that, in the alternative a decree for possession may be passed in favour of the said fourth plaintiff on the footing that he is the successor to Mahant Bharat Das.

Vikrama Das who figured as the defendant in the litigation which went up to the Privy Council is the first defendant in this suit and the third defendant is Mahant Bharat Das described as 'insane under the guardianship for Devi Prasad Singh'. The second defendant is one Pandit Chandra Sekhar Pandey who was one of the seven persons enumerated as trustees under the compromise decree in suit No.90 of 1933. The first defendant is the only contesting defendant. He raised various pleas which may be substantially summarised as follows.

1. The plaintiffs have no right to maintain the suit, the decree under which they claim to be trustee being and invalid and collusive one to which he was not a party.
2. The property in dispute is in no way waqf property. It has not been made a waqf for any Asthan or for any idol. Bharat Das was the owner of the property and not a trustee.
3. The contesting defendant is the most closely related Nihang Sanyasi from the spiritual family of Bharat Das and was duly appointed Mahanta according to the custom after the execution of the deed dated 10-7-1926.
5. Various issues were framed and a decree was granted in favour of the plaintiffs on 13-2-1943. As against this decree, the first defendant, Vikrama Das, filed an appeal to the High Court, which dismissed it by its judgment and decree dated 22-2-1949. Hence the present appeal before us by the first defendant.
6. It is desirable at this stage to notice some changes in the Course of these proceedings as regards the array of some of the original parties to the present litigation. The fourth plaintiff, Baba Bansi Das, filed an application dated 11-11-1942 , in the trial Court itself asking his name to be removed from the array of plaintiffs and this was ordered.

The second plaintiff, Raja Ram Pandey, died during the pendency of the appeal in the High Court and the appeal was continued as against the other two plaintiffs as respondents. Plaintiffs 1 and 3, Daulat Ram Asthana and Ram Prasad Singh died after leave to appeal to this Court was granted by the High Court, the former on 2-2-1951, and the latter on 19-2-1952. The appellant filed an application in the High Court (after two other futile applications) on 3-9-1953, praying that the second defendant Chandrasekhara Pandey may be treated as the trustee against whom the present appeal may be continued in the place of the deceased plaintiffs 1 to 3.

It was also stated in the application that two other persons, Ram Sarup Das and Shyam Narayan Pandey were intermeddling with the trust estate and that they should also be impleaded. A report was thereupon called for by the High Court from the lower Court. The Civil Judge submitted a report to the effect that Chandra Sekhara Pandey appeared and disclaimed any interest, that Shyam Narayan Pandey did not appear in spite of personal service and that Ram Sarup Das was an intermeddler and was intermeddling with the trust estate.

When the report came up for consideration by the High Court, it was prayed on behalf of the appellant that the names of Daulat Ram Asthna and Ram Prasad Singh may be removed from the record and that the name of Ram Sarup Das who had been found to intermeddling with the trust estate may be substituted as the respondent against whom the appeal was to be continued. This prayer was opposed on behalf of Ram Sarup Das.

But the High Court directed him to be brought on record because he claimed to be intermeddling with the trust estate. This order was affirmed by this Court by its order in Chambers dated 5-5-1955. Ram Sarup Das is accordingly the only respondent before us.

At the hearing of the appeal counsel for Ram Sarup Das raised the preliminary question that he has been wrongly brought on record as a legal representative. He is not, however, prepared to say that Ram Sarup Das has no interest in the trust estate or that he is not in possession thereof. On the other hand, he claims to be in possession and maintains his title to the Mahantship by virtue of the compromise decree.

We cannot therefore, uphold the preliminary objection. The continuance of the appeal as against Ram Sarup Das as directed by the High Court and as accepted by this Court in its order dated 5-5-1955, must stand.

7. At the trial of the suit various issues were framed of which it is sufficient to notice the more important ones and the findings thereon. The first issue was in substance whether the properties in suit - i.e., the Asthan and the properties attached thereto - are waqf property subject to a public trust for religious and charitable purposes or whether they are the personal properties of the Mahant of the Asthan.

After elaborate consideration, the finding on this issue was the Asthan and the properties which are appurtenant there to are assuredly not the personal property of the Mahant of the Asthan but that they are waqf and subject to a public trust of a religious and charitable nature. The next important issue is issue No. 6 which runs as follows :

"Is Ram Sarup Das the lawful Mahant of the Asthan? Are the plaintiffs entitled to seek a declaration to that effect without impleading him?"

The finding thereon is as follows:

"It has been alleged by the plaintiffs that Ram Sarup Das was initiated as a Chela by Bharat Das and is therefore a lawful successor. * * * But be that as it may, he is the Mahant by virtue of the decree. After the decree Ram Sarup Das entered into possession of the Asthan property and his name was recorded in the revenue papers until it was expunged in 1940 by the Board of Revenue.

The plaintiffs have every right to seek declaration of Mahantship of Ram Sarup Das, for they as trustees and he as Mahant, are knit together into a body by the common bond of management of the Asthan. It was not at all necessary to implead Ram Sarup Das for there are no differences between the trustees and the Mahant. The defendant at any rate cannot raise objection to the omission to implead Ram Sarup Das, for there is no privity between the defendant and Ram Sarup Das and neither derives title through the other."

The next important issues are Nos. 4 and 5, which run as follows :

"Issue No. 4 : is Amaulipur a subordinate branch of Hanuman Garhi? What is the rule of succession to Mahantship of the Amaulipur Asthan?"

"Issue No. 5 : Is the defendant lawful successor-in-interest of Bharat Das and is he entitled to hold the property as such?"

Before noticing the finding on these two issues, it is necessary to mention that the first defendant based his title to the Mahantship on two grounds, viz (1) the suit Asthan at Amaulipur is a subordinate branch of Hanuman Garhi and that the defendant who is said to be the Mahant of Jhundi Jamaat in Patti Ujjainiya of Hanuman Garhi by virtue of succession to his Guru Mahabir Das and the said Garhi belongs to the same spiritual family as that of Mahant Bharat Das.

Hence by custom he is entitled to succeed to the Amaulipur Garhi (presumably because Bharat Das became incompetent), and (2) the document executed by Bharat Das on 10-7-1926, transferring the Mahantship to him entitles him thereto.

8. The finding of the trial court on a consideration of both the above grounds appears from the following extracts from its judgment.

"There is no warrant for connecting the Amaulipur Asthan with Hanuman Garhi.

* * * No custom entitling a Sadhoo of Hanuman Garhi to succeed to the Amaulipur Gaddi has been established * * * The defendant is neither the Chela of Bharat Das nor of Bharat Das' Guru.

As the succession to the Mahantship of Amaulipur has always been in the line of senior Chela, Bikrama Das would by no means be the prospective Mahant Amaulipur after Bharat Das. * * * The defendant has stated in this Court that the office of Mahant is transferable only to the prospective Mahant. As I have held that Bikrama Das could not be prospective Mahant of Amaulipur, transfer of Mahantship of this Asthan to the defendant would be illegal according to his own theory".

The learned trial Judge after noticing the judgment of the Privy Council and the fact that the document of 10-7-1926, on which the first defendant, Vikrama Das, relied, appears to have been cancelled by another document by Bharat Das executed on 29-10-1926, summed up as follows :

"I therefore, hold that Mahantship did not pass on to the defendant, and he has no right or title to the Asthan and its properties. Qua these, he is a rank trespasser and he is not entitled to retain them even if he has somehow been able to grab at them. He has no right to meddle with the affairs of the Asthan."

Another important issue is No. 3 which is as follows :

"Does the decree in S. 92 suit No. 90 of 1933 entitle the plaintiff to sue?"

Is the defendant not entitled to challenge it?

Is the decree a nullity for the reasons set out in the written statement?

The reasons referred to are set out in para 12 of the written statement under six heads as follows :

"(A) The said suit was entirely collusive.

(B) Bharat Das, in no way, an insane and even if it be presumed, on the false allegations of the plaintiffs that he was an insane, no proper and impartial person was appointed as his guardian. Devi Prasad, resident of Udipur, who was nominated as his guardian, is a close member of the family of Ram Prasad Singh, resident of Udipur, one of the trustees and was in collusion with the plaintiffs, the arbitrary trustees in the suit aforesaid.

(C) The contesting defendant was not a party to suit No. 90 of 1933.

(D) The proceedings in suit No. 90 of 1933 were taken during the pendency of suit No. 27 of 1927 and (the proceedings) are, therefore, invalid and null and void according to law and justice and also under section 52 of the Transfer of Property Act.

(E) The suit aforesaid was beyond the scope of S. 92, Civil P. C. and necessary proceedings were also not taken under section 4.

(F) The compromise in the aforesaid suit was caused to be accepted by the Court by deceiving the Court and on concealing the real facts".

At the trial a further objection was taken to validity of the decree on the ground that the suit which resulted in that decree was instituted by only two out of the three persons who had obtained the Collector's sanction to institute the suit and that accordingly the institution of the suit as well as the decree thereupon were invalid. The finding of the learned Judge on this issue is as follows :

"There is no doubt that there were more than one, irregularities in the suit. * * * The decree in question was passed by a competent court which has jurisdiction to try the suit. The suit itself has been instituted with the sanction of the Collector. * * * The decree is perfectly good so long as it is not set aside by a competent court at the instance of Bharat Das. As it stands it is operative even as against Bharat Das himself." It was further found as follows :

"The decree arms the present plaintiffs with the right of possession of the Asthan and its properties and of their management. This right had been violated in respect of certain properties by an adverse order of the Revenue Courts and was in jeopardy with regard to the other properties at the date of the suit by the pendency of mutation applications of the defendant and the plaintiffs undoubtedly had, by virtue of the decree, the right to institute the present suit.

The defendant can escape from the clutches of the decree in suit No. 90 of 1933 only if succeeds in making out a legal title to the Asthan and the property, eligible to the Court's recognition and it is therefore, necessary to determine the defendant's rights qua the Asthan and its property".

There were a number of other minor issues which have mostly been answered in favour of the plaintiffs and out of which it is sufficient to notice only issues Nos. 8, 11 and 12 which are as follows :

"Issue No. 8 : Are the plaintiffs alone not competent to sue?

Issue No 11 : Is the suit time-barred?

Issue No. 12 : Is the suit barred by section 42 of the Specific Relief Act?"

As regards issue No. 8 the finding is as follows :

"There is no force in this plea. The only surviving trustees are the plaintiffs and the Chandra Sekhara (2nd defendant), the rest of those who were appointed by the decree in S. 92 suit having died since."

As regards issue No. 11 the finding is as follows :

"This plea is based upon the fact that a suit for cancellation of the deed dated 10-7-1926, has become time barred and as the subject of the present suit is supposed by the defendant to be in reality cancellation of that deed he set up bar of limitation. In the first place, I do not think it was necessary for the plaintiffs to seek cancellation of the aforesaid deed as a necessary preliminary to the enforcement of their rights as trustees and they would very well ignore the deed."

The defendant relied upon the deed and it was for him to establish its validity. The cause of action for the present suit has been furnished by the order of the Board of Revenue directing mutation in favour of Bikrama Das and the object of the present suit is no other than abrogation of the Revenue Court's order by a Civil Court's decree which is only effective remedy of mistakes in mutation committed by the Revenue Courts. The suit was instituted well within time."

As regards issue No. 12 the finding is as follows :

"The defendant has pleaded section 42 inasmuch as the plaintiffs have sought a mere declaration in respect of the properties and not possession as well. * * * The defendant was not in actual possession of the properties in suit. He has made an abortive attempt to prove his possession by examining a few unscrupulous tenants but the evidence on record is overwhelmingly in favour of plaintiffs' possession. * * *

The only properties against which the defendant's name was mutated prior to the suit are those included in list C and the plaintiffs have sought possession of these properties. It was not necessary for the plaintiffs to sue for anything more than a declaration in respect of the properties against which the name of Ramsarup Das stood recorded at the date institution of the suit. Subsequent acquisition of possession by the defendant will not entitle him to raise the plea of S. 42."

It is on these various finding that the trial Court passed the following decree in favour of the plaintiffs.

"It is ordered and decreed that the plaintiffs' claim about the declaration on the point that the plaintiffs and defendant No. 2 are the trustees of the Asthan of Amaulipur and the properties connected with it mentioned in lists A, B and C and are the managers of the properties aforesaid as of right, with which the defendants have no concern and also about the recovery of possession in favour of plaintiffs Nos. 1 to 3 as trustees and Mahant Ram Sarup Das as the Mahant of the Asthan of Amaulipur over the properties mentioned in Schedule C, be decreed."

9. The substantial contentions raised before the High Court as appears from its judgement and as summarised in the order of the High Court granting the certificate are three-fold.

1. The decree in suit No. 90 of 1933 was bad.
2. The plaintiffs was not de facto trustees.

3. There had been valid assignment from Bharat Das in appellant's favour.

We have now to see what the findings of the High Court are. As regards issues Nos. 1 and 12, the learned Judges said as follows :

"Learned counsel for the appellant has not, in his able argument, challenged the finding of the court below that the Asthan and the property in dispute constituted a trust, that they were not the personal and private property of Bharat Das and that the plaintiffs are, and the appellant is not, in actual possession thereof".

As regards the title of the defendant covered by issues Nos. 4 and 5, the learned Judges recorded their findings as follows :

"In view of the findings arrived by the learned Civil Judge and which as we have seen, have not been challenged before us, the Asthan and the property in dispute were not the personal and private property of Bharat Das and he could not make a valid assignment thereof in favour of the appellant, who according to his finding, cannot be regarded as his rightful successor. In other words, the appellant, who is also, according to the finding of the learned Civil Judge, not in possession of the property in dispute, must be regarded as mere trespasser."

The High Court appears to have given no positive finding on issue No. 6 relating to the title of Ram Sarup Das but has apparently maintained the trial court decree which may be claimed to involve such a finding. The main contest before the High Court appears to have been concentrated on the finding of the trial court relating to issue No. 3.

In agreement with the view taken by the trial court, the High Court held on this issue that notwithstanding certain irregularities, the decree was not void and that such a decree was only voidable at the instance of the persons whom it purported to bind and who were in fact parties to the decree and that the appellant in the present case, who was merely a trespasser, had no such right to avoid the decree. As regards the plea that the said previous suit and decree under S. 92 were collusive, the learned Judges recorded their opinion as follows:

"We are not satisfied that there was any collusion or dishonesty on the part of the plaintiffs in their suit under S. 92 of the Code of Civil Procedure. The circumstances had in fact made the institution of such a suit imperative and there is nothing to show that the plaintiffs were actuated by anything but the best of motives in instituting that suit and obtaining the orders of the court for the proper management of the trust property. We are, therefore, of opinion that the plaintiffs are by virtue of the decree in suit No. 90 of 1933 entitled to maintain the present suit".

On the question as to de facto trusteeship and as to the right to institute the suit on that basis, the High Court held as follows:

"But even if it be held that the decree in suit No. 90 of 1933 does not entitle the plaintiffs to institute the present suit, there can be no doubt that as de facto trustees they are entitled to maintain it. * * * It is, however, argued on behalf of the appellant that this doctrine of de facto trusteeship cannot apply to the present case because the possession of the plaintiffs cannot be regarded as clear and undisputed.

It is said that the plaintiffs obtained a decree in their favour and came into possession of the trust by stealing a march upon the appellant who was at the time prosecuting his appeal in the Privy Council

and that the possession of the plaintiffs cannot be regarded as honest. Having regard to the circumstances in which the plaintiffs instituted a suit under S. 92, Civil P.C., the contention of the learned counsel for the appellant does not appear to be justified.

There is nothing to show that the plaintiffs' possession of the trust property ever since they obtained a decree in the year 1934 has not been clear and undisputed. No doubt, after the decision of the appeal by the Privy Council in the year 1935 the appellant did start making an attempt to obtain mutation of names with respect to some of the property belonging to the trust in his favour. But that would not affect the nature of the plaintiffs possession.

As we have seen, the appellant has no title to the property and is not in actual possession of any portion of it. Even if he were, his possession would only be that of a trespasser and the plaintiffs as de facto trustees are clearly entitled to maintain the suit against him".

Thus, the learned Judges of the High Court held that the plaintiffs had the right to maintain the suit on two grounds. (1) The decree in suit No. 90 of 1933 was valid until set aside. (2) In any case the plaintiffs were de facto trustees who had clear and undisputed possession of the trust and its properties and as such they could maintain the suit.

10. It may also be mentioned at this stage that in the High Court a point appears to have been pressed that the judgment of the trial court holding that the defendant had no title under the document dated 10-7-1926, in effect amounted to cancellation of that document and that the Court was not competent, having regard to the frame of the suit, to give any such relief.

It was pointed out that the plaint had originally asked for a declaration to the effect that the appellant acquired no rights in the property in suit by virtue of the documents but that that relief was dropped by a subsequent amendment. The learned Judges of the High court point out that the plaintiffs case is that Bharat Das being a mere trustee had no right to execute the document in favour of the appellant and that the document is therefore without effect and that therefore it was unnecessary for the plaintiffs to ask for cancellation of the document. They found, therefore, this point also in favour of the plaintiffs. As a result of all the findings above mentioned, in concurrence with those of the trial court, the High Court merely dismissed the appeal.

11. The only point urged before us by the learned counsel for the appellant, Shri N. C. Chatterji, is that the view taken by both the lower courts to the effect that in spite of a number of irregularities relating to suit No. 90 of 1933 under S. 92, Civil P. C. the decree was one that cannot be said to be without jurisdiction and that therefore it was only voidable and not void and that it could be avoided only by a person having interest and title, is not correct. He urged strongly that when permission by the Collector was given to three named persons a suit filed by only two out of them was wholly incompetent having regard to the mandatory nature of the provision in S. 92 (2), Civil P.C. which enjoins that

"save as provided by * * * no suit claiming any of the reliefs specified in sub-s(1) of (S. 92) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section".

He strongly relied on the decision of the Privy Council in - Mt. 'Ali Begam v. Badra-ul-Islam Ali Khan', 1938 PC 184 (AIR V 25) at p. 186 (B) and the dictum therein as follows:

"Where the consent in writing of the Advocate-General or Collector has been given to a suit by three persons as plaintiffs the suit cannot validly be instituted by two only. The suit as instituted must conform to the consent".

He also strenuously urged that there is no proof that Mahant Bharat Das was insane or that there was any determination by the Court before which that suit was filed as to the alleged insanity of Bharat Das in order to justify the appointment of Devi Prasad Singh as the guardian for him. He also urged that the compromise was not sanctioned by the Court in the interest of the trust as apart from the interests of Mahant Bharat Das. He also contended strongly that the fact of the suit having been filed during the pendency of the Privy Council appeal and the decree having been obtained within six months from the date of the suit is extremely suspicious and that on the face of it the said decree was fraudulent and collusive. He strenuously urged further that it was for the plaintiffs to make out their title and their right to possession. He pointed out that the title of the plaintiffs was based entirely and specifically on the compromise decree as appears not only from the plaint but from their pleader's statement at the trial dated 2-12-1942, which is as follows:

"The plaintiffs' claim is not based on any custom, nor will the plaintiffs prove any custom.

The plaintiffs establish the title of Mahant Ram Sarup Das by means of the decision passed in case under S. 92 and not by means of any custom. Mahant Ram Sarup Das was not appointed as Mahant by means of any custom, nor with the help of any custom taken in proof of his appointment, nor will any custom be proved".

It was accordingly urged that before any decree could be given in favour of the plaintiffs it was necessary to establish the validity of the decree in suit No. 90 of 1933.

12. On the other side, the learned counsel, Shri K. B. Asthana, contested the proposition that a suit filed by only two out of three persons who got the sanction from the Collector is incompetent and the decree therein is void except possibly in a case where the terms of the sanction are clear that the suit is to be filed only by all the three persons acting jointly.

It may also be noticed that the omitted third person, Ram Sarup Das, was the very person in whose favour appointment as Mahant was prayed in the plaint therein. Counsel further urged that even if a suit filed by two out of the three persons is defective in its institution as being contrary to what is provided in S. 92, Civil P. C., this does not affect the jurisdiction of the Court to pass the decree when no objection in that behalf was raised, since admittedly the Court had jurisdiction in respect of the subject matter of the suit.

It was argued that an application for sanction of the compromise was made to the Court, that the Court did in fact sanction the compromise and that the sanction was sufficient to operate as against the Mahant and the institution which he, through his guardian, must be taken to represent. As regards the suggestion of fraud or collusion it was urged that the High Court has given a conclusive finding negating the same and that that finding cannot be reopened before us.

13. So far as the attack based on the ground of fraud or collusion is concerned we are of the opinion that it is no longer open to be challenged before us, in view of the finding of the High Court. As regards the order contentions raised before us relating to the validity of the compromise decree, we do not consider it necessary, notwithstanding strenuous arguments on both sides, to decide between the rival contentions in the view that we are prepared to take as to the appropriate order to be passed

by this Court in this appeal.

14. Learned counsel for the respondent, Ram Sarup Das, relied on the finding of the High Court that the plaintiffs were, at any rate, 'de facto' trustees in possession of the Asthan and its properties and that as such they were entitled to maintain the suit. It appears to us that this contention is not without force. Both the courts below have concurrently found that consequent on the compromise decree in suit No. 90 of 1933, the plaintiffs along with the other trustees and Ram Sarup Das have obtained possession of the Asthan and its properties and that (except those in list C) the properties were mutated in the name of Ram Sarup Das and that they have been in possession and management of the Asthan and its properties since then.

Both the courts have also found that the first defendant, Vikrama Das, had no possession at any time notwithstanding that he was able, after the Privy Council decree, to get some of the properties mutated in his name. They have also held that the plaintiffs with Ram Sarup Das have been continuing in possession all along or at any rate up to the date of the suit.

In these circumstances the question before us is whether a person who has been in 'de facto' possession and management of the Asthan and its properties from 1934 to 1941 (and thereafter up-to-date) claiming to be its trustee under the decree of a Court, valid or invalid has not sufficient interest to maintain proceedings for the warding off of a cloud cast by the defendant's action against the interests of the Asthan. See - 'Mahadeo Prasad Singh v. Karia Bharti', 1935 PC 44 (AIR V22) (C) and - 'Ram Charan Das v. Naurangi Lal', 1933 PC 75 (AIR V20) (D).

It is to be remembered as pointed out by the trial Court in its finding under issue No. 11, already quoted above, that the present suit is virtually a suit for abrogation of the Revenue Court's order directing mutation of the name of the 1st defendant, Vikrama Das.

Undoubtedly such a mutation would seriously jeopardise the interests of the Asthan. This particularly so in view of the fact that the first defendant has all along been claiming the properties of the Asthan to the private and personal properties of the Mahant and that he himself is claiming to be the validly appointed Mahant for the time being, a claim which has been not only continued throughout in both the courts below but has been persisted in even in this Court as appears from ground No. 10 in the application filed to the High Court for leave to appeal to this Court and also ground No. 7 in the appellant's statement of case filed in this Court.

It is with reference to the contention which has been thus raised and maintained throughout, that both the courts below have come to concurrent findings (1) that the Asthan was a public trust and that the properties attached thereto are not the private properties of the Mahant, (2) that the defendant was not entitled to the Mahantship of the Asthan either by virtue of his claim to succeed thereto or by virtue of the document dated 10-7-1926, executed by Bharat Das, and (3) that he had at no time any possession of these properties.

It is true that the plaintiffs expressly based their suit on the title which they claim under the compromise decree. But even if that title fails, the further question remains, namely whether the original plaintiffs or Ram Sarup Das could not maintain the proceedings for the protection of the Asthan in their capacity as the 'de facto' managers who have been in possession and management for a substantial number of years.

15. Now the ordinary rule that persons without title and who are mere intermeddlers cannot sue as

of right is clear. But where public trusts are concerned, courts have a duty to see that their interests and the interests of those for whose benefit they exist are safeguarded. Therefore, courts must possess the power to sustain proper proceedings by them in appropriate cases and grant relief in the interests of and for the express benefit of the trust imposing such conditions as may be called for.

16. In the present case, if Ram Sarup Das has no title and if he is an intermeddler - which is the basis on which he has been brought on record - so is the other side and obviously the Court cannot allow a public trust to be left to the mercy of unauthorised persons who are scrambling for a position of vantage in its management. But as it is right and proper that somebody should be permitted to continue the present litigation on behalf of the trust, the question is, who.

We consider that, in view of Ram Sarup Das's long management and possession as Mahant and in view of the fact that he is purporting to act on its behalf and for its interests, it is proper that he should be allowed to continue to act on behalf of the trust until his title is investigated in appropriate proceedings and that this Court should grant a decree in his favour in these proceedings for the benefit of the trust.

17. In this view, we maintain the concurrent findings of the courts below against the defendant on the three matters hereinabove specified, that is (1) that that Asthan is a public trust and that the properties attached thereto are not the private properties of the Mahant, (2) that the defendant is not entitled to the Mahantship of the Asthan either by virtue of his claim to succeed thereto or by virtue of the document dated 10-7-1926, executed by Bharat Das, and (3) that he had at no time any possession of these properties.

But we discharge the findings in favour of the original plaintiffs or Ram Sarup Das, based on the question of validity of compromise decree and leave the question open.

18. In the result, therefore, the decree of the trial Court in so far as it gives effect to the decree in suit No. 90 of 1933 will be vacated. We direct that in place thereof a declaration should be substituted that, the mutation in favour of the 1st defendant in respect of the Asthan or the properties pertaining thereto does not in any way affect the rights of the Asthan or of any duly constituted Mahant thereof, that the 1st defendant has no concern therewith and is not entitled to possession of the Asthan or its properties and that Ram Sarup Das may recover, in execution proceedings, for the benefit of the Asthan, possession of such of the properties in lists, A, B and C of which the defendant may have obtained possession by reason of such mutation. Subject to the modification of the decree as, above indicated the appeal must be dismissed with costs throughout.

19. But this is only a stop gap expedient. We cannot shut out eyes to the fact that we have before us a public trust of which, on the facts now before us, an alleged intermeddler claiming under a decree said to be void is in possession and management. It may be, when proper proceedings are instituted to determine the matter, that it will be found that he is not without legal authority or it may be proper to invest him with that authority if he has not already got it, or again it may be better to have another person or body.

But those are not matters we need decide in these proceedings. All we need do is to bring the present state of facts to the notice of the Advocate-General of Uttar Pradesh and leave him to consider whether he should not, of his own motion, institute proceedings under S. 92, Civil P. C., or take other appropriate steps. Let a copy of this judgment be sent to him.

Appeal dismissed.

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