

Munshi Dass

Vs

Mal Singh And Mal Dass And Others

Civil Appeal No. 2385 of 1968

(Untwalia, J)

08.08.1977.

JUDGMENT

UNTWALIA, J. –

1. There is a Dharamshala situated in village Kaddon, District Patiala in the State of Punjab. A part of the same institution was another Dera or Dharamshala situate at Jasra Tehsil near Ludhiana. The fact that one Bishan Dass, Chela of Prem Dass was the Mahant of this institution at the end of the nineteenth century is not in dispute. Bishan Dass had four Chelas : (1) Parmanand, (2) Narain Dass, (3) Atma Ram, and (4) Ram Dass. Although Narain Dass was his juniormost Chela, Bishan Dass because of his incapacity and ill-health made Narain Dass the Mahant during his lifetime. Shortly thereafter the other three Chelas died one after the other. It appears that Narain Dass also died during the lifetime of Bishan Dass. One Ganga Ram was the Chela of Narain Dass. Ganga Ram was appointed the Mahant with the approval of Bishan Dass. This fact is evidenced by the Mutation Order of the Revenue Authority passed on March 10, 1908, Ex. P-2. After the death of Ganga Ram, Sobha Ram became the Mahant. It is not clear from the records of this case as to when Ganga Ram died and when Sobha Ram became the Mahant and how. What is clear, however, is that parties are not at variance so far. Sobha Ram died on January 31, 1961 in a hospital at Ludhiana. According to the case of original defendant 1 - respondent 1, Mal Dass, Sobha Ram had executed a will in his favour on January 16, 1961, a fortnight before his death. Mal Dass claimed to have been installed as a Mahant in succession to Sobha Ram shortly after his death i.e. on February 12, 1961. A dispute, however, cropped up between Pritam Dass - a senior Chela of Mahant Sobha Ram and Mal Dass. This led to a proceeding under Section 145 of the Code of Criminal Procedure between Pritam Dass and Mal Dass concerning the properties of the institution at Kaddon as well as Jasra. In the proceeding a compromise was entered into between the said two contesting parties. Under the terms of the compromise the Dharamshala and the properties at Kaddon were allotted to Mal Dass and Pritam Dass got the Jasra Dera and its properties. The Revenue Authority eventually made a Mutation Order on February 14, 1962, Ex. D-13 in favour of Mal Dass recording his name in respect of the Kaddon properties. Munshi Dass - the appellant in this appeal claims that he was also the Chela of Mahant Sobha Ram and was duly installed as a Mahant on November 5, 1961 as evidenced by the Bahi entry. Ex. P-1. On April 16, 1962 he filed the suit giving rise to this appeal for possession of the Dharamshala and the properties appertaining to it on the basis that he was the duly installed Mahant of the said institution. Originally Mal Dass alone was impleaded as a defendant in the suit. He filed his written statement on May 17, 1962, inter alia, taking the plea of non-joinder of Pritam Dass. Thereupon, an amended plaint was filed by the appellant on May 21, 1962 adding in the original plaint a new paragraph to implied Pritam Dass as defendant 2. Pritam Dass filed his written statement on August 25, 1962.

2. Oral and documentary evidence was adduced by the parties before the trial Court which had framed several issues in the suit for trial. The trial Court decreed the suit of the appellant on March 28, 1963 holding that the appellant was the Chela of Sobha Ram and was a duly installed Mahant. Mal Dass was held not to be entitled to the properties on the basis of the alleged will or otherwise. The trial Court did not accept his case that he was the Mahant. Mal Dass filed a regular first appeal in the High Court. The High Court allowed the appeal on May 23, 1967 and defeated the appellant on the ground that he did not succeed in proving by any legal evidence that he was the Chela of Mahant Sobha Ram or that he was the duly installed Mahant according to the alleged custom, there being no adequate or satisfactory evidence to prove it. In accordance with the law as prevalent then the judgment of the High Court being one of reversal and the valuation test having been satisfied, certificated for appeal to this Court was granted as a matter of course. Thus comes this appeal.

3. Mr. P.P. Juneja appearing in support of the appeal after placing the history and the facts of the case, the relevant and the necessary portion of which has been extracted above, urged the following points :

(1) That the view of the High Court that the appellant did not succeed in providing that he was the Chela of Sobha Ram by any legal or sufficient evidence is erroneous.

(2) That the High Court has mis-directed itself on the question of the custom governing the succession to the Dharamshala in question. The plaintiff had pleaded the custom and had adduced good evidence in support of it. Original respondent 1 Mal Dass (he died during the pendency of the appeal in this Court and his legal representative was substituted. For the sake of convenience, however, hereinafter in this judgment Mal Dass will be referred to either by his name or as the respondent), did not in his written statement specifically deny the custom pleaded by the plaintiff nor did he plead a different one. He did not adduce any evidence in support of a different custom.

(3) The High Court was also wrong in deciding the issue of Mahantship against the appellant whereas it ought to have held that the finding of the trial Court that he was the duly installed Mahant was correct.

4. Mr. S.K. Mehta, learned Counsel for the respondent combated the argument of the appellant's Counsel.

5. In our opinion the finding of the High Court apropos the appellant's claim of being the Chela of Sobha Ram is unassailable. Relying upon the decision of this Court in *Dolgobinda Paricha v. Nimai Charan Misra* [AIR 1959 SC 914 : (1960) 1 SCA 39; 26 Cut LT 130] the High Court has rightly held that the evidence of PWs 1, 2, 3, 4, 5, 6 and 8 does not fulfil the test of Section 50 of the Evidence Act. Their evidence was placed before us and we also found it to be so. The evidence as adduced from the testimony of the witnesses aforesaid was legally worthless and did not satisfy the tests of the opinion evidence. The evidence of PW 7, however, purported to be a direct evidence in that the said witness claimed to be present when the appellant was initiated as a Chela of Sobha Ram. But the evidence of the solitary witness was neither trustworthy nor sufficient to prove that Munshi Dass had been taken as the Chela of Sobha Ram. One of the factors of substratum of the custom to claim Mahantship thus became absent. Unless he was proved to be the Chela, he could not claim that according to the custom governing the succession to the office of management of the Dharamshala, he could be installed as a Mahant.

6. Coming to the question of custom, we find that the appellant had pleaded the alleged custom in

paragraphs 10 and 12 of his plaint as originally instituted on April 16, 1962. The respondent in paragraphs 10 and 12 of his written statement had denied the allegations made in those two paragraphs. None of the facts pleaded in paras 10 and 12 of the plaint was specifically and separately dealt with by the respondent in his written statement. In the circumstances the denial in the written statement was sufficient and put the plaintiff to prove the fact of custom by cogent and reliable evidence. The decisions of this Court in *Badat and Co. v. East India Trading Co.* [(1964) 4 SCR 19 : AIR 1964 SC 538.] and *Surendra Nath Bibra v. Stephen Court Ltd.* [AIR 1966 SC 1361 : (1966) 2 SCWR 215.] are clearly distinguishable and do not help the appellant in this regard as was sought to be argued on his behalf. An elaborate discussion to point out the distinction is not called for. On the question of the pleadings of the parties the case seems to have proceeded on a wrong assumption that paragraphs 10 and 12 of the plaint incorporating the pleading of custom were added in the amended plaint filed after the filing of the written statement by the respondent. It is not so. On careful scrutiny we found the correct facts to be as narrated by us above.

7. To prove the factum of custom, no oral evidence was adduced. Learned Counsel for the appellant placed reliance upon the Mutation Order, Ex. P-2 of the year 1908. The High Court has rightly pointed out that there are recitals of two successions in that order - one of Narain Dass succeeding Bishan Dass and the other of Ganga Ram succeeding Narain Dass. Both are not identical. No facts are stated in Ex. P-2 to show that Narain Dass was made Mahant in accordance with the alleged custom. The only instance is the installation of Ganga Ram in succession to Narain Dass. But the one instance given in Ex. P-2 and the other, an earlier instance given therein not falling in line with it, could not prove the custom. There was no other evidence either oral or documentary given by the plaintiff. It was not shown how Bishan Dass succeeded Prem Dass or how Sobha Ram was installed as the Mahant after the death of Ganga Ram.

8. For the reasons given in the judgment of the High Court, with which we respectfully agree, no reliance could be placed upon Ex. P-1 - the entry in the Bahi in support of the appellant's claim of having been installed as the Mahant on November 5, 1961. Even the trial Court did not feel confident to place much reliance upon the said entry. In disagreement with the finding and the view of the trial Court and for cogent reasons the High Court did not accept the oral evidence adduced by the plaintiff on the point of his having been installed as a Mahant by the bhekh or by the consent of Zamindars or the villagers of village Kaddon. We find ourselves in agreement with the views of the High Court in this regard and do not consider it necessary to repeat all that has been said in its judgment.

9. We also think that the High Court was justified in attaching some importance to the fact that shortly after the death of Mahant Sobha Ram, a dispute cropped up between Pritam Dass and Mal Dass leading to a proceeding under Section 145, Cr. P.C. and eventually a Mutation Order in his favour in February, 1962 on the basis of a compromise entered into in the criminal proceeding. It does not stand to reason that Munshi Dass would not be aware of the said dispute and could smoothly get himself installed as a Mahant in November, 1961. He did not succeed in getting possession of either the office of the Mahant or the properties of the institution even for a day. He straightaway filed the suit in April, 1962 to establish his claim and to recover possession of the property. In such a situation the High Court is right in saying that even if it be assumed that the respondent did not establish his right and title to the office or the properties of the institution, no decree for possession could be made against him when the appellant singularly failed to establish various factors which were the basis of his claim.

10. In the result we find that the judgment of the High Court is correct and cannot be interfered with

in this appeal. The appeal is accordingly dismissed with costs.

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