

Mahant Amar Parkash and Others

Vs

Parkasha Nand and Others

Civil Appeal No. 2153 of 1969

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

19.01.1979

JUDGMENT

CHINNAPPA REDDY, J. -

1. This appeal is directed against the judgment of the High Court of Punjab and Haryana confirming that of the Subordinate Judge 1st Class, Nabha. The respondent-plaintiff filed a suit for a declaration that he was the Mahant of Dera Baba Khiali Das, Khansura, Tehsil Nabha, District Patiala, that he was entitled to manage the properties of the Dera and that the alienations made by Mahant Krishan Das and Amar Parkash were not binding on him. It was alleged by the plaintiff that Amar Parkash who held power of attorney from Mahant Krishan Das, the previous Mahant of the Dera, had mismanaged the properties and had granted leases of lands belonging to the Dera to his mistress and his brother-in-law. Mahant Krishan Das came to know about the mismanagement by Amar Parkash and cancelled the power of attorney which he had previously executed in favour of Amar Parkash. Mahant Krishan Das summoned the general assembly of the Udesi Bhekh and held a meeting, with the help of the Deputy Commissioner, Patiala and the police, on July 23, 1961. The meeting was attended by other Mahants of Udesi Bhekh. In the general assembly of the Udesi Bhekh, Mahant Krishan Das tendered resignation of the office of Mahant on the ground of old age and ill-health and appointed the plaintiff as his successor Mahant. This was accepted by all the Mahants of Udesi Bhekh. Mahant Krishan Das, treating the plaintiff as his Sadaq Chela, applied Tilak, performed Pagri ceremony with his own hand and duly installed the plaintiff as the Mahant. The visiting Mahants also performed the Pagri ceremony. Despite the installation in the plaintiff as Mahant of the Dera, Amar Parkash continued his activities and started obstructing the plaintiff from discharging his obligations as Mahant. The plaintiff, therefore, filed the suit for a declaration that he was the Mahant of the Dera and for other reliefs. The defendant Amar Parkash raised the pleas that he was the Chela of Mahant Krishan Das and that Mahant Krishan Das who died on December 30, 1961, had executed two Wills on July 17, 1955 and September 24, 1961, appointing him as the Mahant to succeed him. It was alleged that the proceedings which took place on July 23, 1961 were the result of fraud and undue influence exercised over Mahant Krishan Das.

2. On the pleadings of the parties the primary question which arose for consideration was whether the plaintiff was validly appointed as Mahant of Dera Baba Khiali Das. The learned subordinate Judge, Nabha, framed two principal issues. Issue No. 1 was :

What was the particular custom or usage prevailing in the Dera in dispute for the appointment of a Mahant on the relevant date ?

Issue No. 1-A was :

Whether the plaintiff was validly appointed the Mahant of the Dera in accordance with the prevalent customs ?

The learned Subordinate Judge noticed that neither party pleaded or referred to any particular usage or custom for appointing a Mahant for the disputed Dera. He also noticed that the documentary evidence showed that the final appointment of Mahants for Dera in the Nabha State was required to be approved by the Ruler of the State. Leaving the matter there, the learned subordinate Judge found that the plaintiff was duly and validly installed as Mahant of the Dera by Mahant Krishan Das in the presence of and with the approval of Udesi Bhekh. He held that the plea of fraud and undue influence raised by the defendant was not established. On those findings the suit was decreed. The first defendant Amar Parkash preferred an appeal to the High Court of Punjab and Haryana. During the pendency of the appeal the plaintiff sought an amendment of the plaint in order to enable him to expressly plead the particular custom relating to succession to the office of the Mahant of Dera Baba Khiali Das. The amendment was allowed and the High Court directed the subordinate Judge to record additional evidence and submit a report giving his finding on the question whether the custom pleaded by the plaintiff was established and if so, whether the plaintiff was appointed in accordance with such custom. After recording additional evidence the learned subordinate Judge submitted a report to the effect that the custom alleged by the plaintiff was not established and that up to 1948 the practice was for the Ruler of Nabha State to appoint the Mahant. After receiving the report of the learned subordinate Judge, the High Court heard the appeal. It was conceded by the learned Counsel for the appellant before the High Court that in view of the report of the learned subordinate Judge, the appeal should be decided on the basis of the evidence adduced before the trial Court prior to the order of the High Court calling for a report from the trial Court. On that basis the learned Counsel for the appellant attacked the finding on issue No. 1-A only and did not assail the findings on the other issues. The High Court confirmed the finding of the trial Court that there was no undue influence exercised over Mahant Krishan Das and that the plaintiff was validly appointed and installed as Mahant of the Dera.

3. In the first instance Shri Hardyal Hardy, learned Counsel for the appellant invited us to explore the evidence and the case law to find out the custom relating to succession to the office of Mahant of Deras in Nabha State in general and Dera Baba Khiali Das in particular. Ultimately, however, he conceded that if the plaintiff was shown to have been validly appointed and installed as Mahant by late Mahant Krishan Das at the ceremony held on July 23, 1961, the plaintiff was entitled to succeed. He argued that late Mahant Krishan Das was coerced into appointing and installing the plaintiff as Mahant and therefore, the appointment of the plaintiff as Mahant of the Dera was invalid. He also argued that the plaintiff was not a Chela of Mahant Krishan Das and, therefore, he could not have been validly appointed as Mahant of the Dera in question.

4. As pointed out in Mukherjea's Hindu Law of Religious & Charitable Trusts (third edition)), succession to the office of Mahant is a matter of some complexity and the custom varies greatly from institution to institution. Generally speaking, it is pointed out, Mutts may be divided into three classes : Mourasi, Panchayati and Hakimi.

In the first, the office of the Mahant is hereditary and devolves upon the chief disciple of the existing Mahant who moreover usually nominates him as his successor; in the second, the office is elective, the presiding Mahant being selected by an assembly of Mahants. In the third, the appointment of the presiding Mahant is vested in the ruling power or in the party who has endowed the temple.

It is also said

In various institutions the custom is that in order to entitle a chela to succeed, he must be appointed or nominated by the reigning Mahant during his lifetime or shortly before his death and this may be done either by a written declaration or some sort of testamentary document.

It is further said

Even where the Mahant has the power to appoint his successor, it is customary in various Mutts that such appointment should be confirmed or recognised by the members of the religious fraternity to which the deceased belonged.

In *Mahant Satnam Singh v. Bawan Bhagwan Singh* (AIR 1938 PC 216 : 1938 ALJ 795), the Privy Council while noticing that succession to the office of Mahant was to be regulated by the particular custom of the Math, observed as follows :

In the normal case of the death of Mahant, the members of the fraternity will be fully aware of the vacancy in the office, and the usual practice will be for the installation of his successor, usually nominated by him, to take place on the seventeenth day after the death. On the other hand, when the Mahant resigns during his life and installs his successor on the gaddi, it is obvious that the fraternity should be made aware of the proposed vacancy in the office and should be given the opportunity of confirming or refusing to confirm the nominee.

4A. It is unnecessary for us to make any further investigation into the custom relating to the appointment of Mahant since, in the light of the submissions made before us, two questions alone arise for consideration namely whether Mahant Krishan Das was coerced into appointing the plaintiff as his successor Mahant and whether the appointment of the plaintiff was invalid on the ground of his not being a Chela of Mahant Krishan Das.

5. On the question whether late Mahant Krishan Das was subjected to any pressure to appoint the plaintiff as Mahant, both the courts below have concurrently found that he was subjected to no such pressure. The finding is one of fact and we are unable to see any ground justifying our interference with a concurrent finding of fact. Shri Hardyal Hardy submitted that the High Court failed to consider the complaint said to have been made by late Mahant Krishan Das a few days after the installation of the plaintiff as Mahant in which he stated that he had been coerced into appointing the plaintiff as Mahant. Shri Hardyal Hardy also submitted that the evidence showed that the services of the police had been requisitioned to pressurise late Mahant Krishan Das. The submission that the High Court did not consider the complaint said to have been made by late Mahant Krishan Das is without Court confirmed the finding of the trial court that late Mahant Krishan Das who was previously under the influence of Amar Parkash had again come under the influence of Amar Parkash when he made the complaint. With regard to the presence of the police, at the installation ceremony we are of the view that the presence of the police, at the ceremony, far from advancing the appellants' case, destroys the case that Mahant Krishan Das acted under coercion.

6. The question that remains for consideration is whether the plaintiff was the Chela of Mahant Krishan Das and whether he could be validly appointed, if he was not the Chela. In Ex. P7 dated July 23, 1961 which was executed by Mahant Krishan Das and attested by all visiting Mahants the plaintiff Parkasha Nand was described as 'Sadaq Chela' of Mahant Krishan Das. The ceremony

which took place on July 23, 1961 was described by Parkasha Nand in the following words :

The congregation set on the durries on the first floor of the Dera. About 25 Mahants and about 30 villagers sat on those durries. Mahant Krishan Das offered a Tilak on my forehead. Mahant Bikram Das collected turbans from the Mahants who were present there and tied five turbans on my head. Mahant Som Parkash offered me a Doshala and sugar-cakes were distributed. All these proceedings were gone through with the free and voluntary consent of late Mahant Krishan Das and no pressure was brought to bear on him. Mahant Krishan Das was not confined. Exs. P6 to P8 were written at that time and the people who were present had affixed their signatures and thumb impressions thereon.

We are satisfied that late Mahant Krishan Das accepted the plaintiff as his Chela and appointed him as his successor Mahant. We may also mention here that the learned subordinate Judge in his report mentioned that Pandit Bhagtanand who was previously a Mahant of the Dera was not a Chela of his predecessor Mahant Sundar Das and that Mahant Krishan Das himself was not a Chela of his predecessor Mahant Bhagtanand.

7. We are unable to see any ground for interference and the appeal is accordingly dismissed with costs.

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