

ALLAHABAD HIGH COURT

Goswami Sri Gopal Lalji Maharaj

Vs

Goswami Sri Girdhar Lalji

(H Richards and P Banerji, JJ.)

25.02.1915

JUDGMENT

H Richards and P Banerji, JJ.

1. The suit out of which this appeal arises relates to certain disputes between Ballavacharya Goshains. A case relating to the customs of this sect lately came before their Lordships of the Privy Council in the case of *Mohan Lalji v. Gordhan Lalji Maharaj*¹ The principal defendant in the present suit was the respondent in that case their Lordships in referring to the history of the sect made the following observations: The Ballavacharya cult, in reality an offshoot of Vaishnavism, was founded in the sixteenth century of the Christian era by one Ballavacharya, who is usually designated among his followers and disciples as Maha Pirbhujji. He and his descendants, who constitute the Ballavacharya Goshain Kul, are held in great veneration by the members of the sect and regarded as the incarnation of the famous and favourite Hindu deity, Krishna, whom in common with other Vaishnavs (Vishnuvites) they worship. The cult established by Ballavacharya differed in several particulars from the practices in vogue among other votaries of Krishna, the principal point of difference consisting in the fact that he repudiated the practice of celibacy and asceticism practised by the other gossains. The Ballavacharya Goshains, in other words, the descendants of Ballav, possess several principal temples, each of which is presided over by a member of his kul or family, who is styled a tikait. The defendant Gordhan Lalji is in possession of one of the most important of these temples, if not the most important, which is situated at Nathdwara in the Odeypore State.

2. The sect possesses a number of temples in different parts in India; including a considerable amount of immoveable property. Large offerings are made from time to time by the votaries of the sect. In the present case it would seem that there are or were offerings coming even from Zanzibar.

3. The immediate cause of the present suit was a deed of gift, dated the 2nd of April 1910. The document is in the form of an indenture and is made between Goswami Shri Girdhari Lalji

Maharaj (the first defendant) of the one part and "Goswami Tikayet Sri 108 Sri Goverdhan Lalji Girdharji Maharaj of Sri Nathdwara" of the other part. This document, after reciting the title of the grantor to "one-fourth part or share in all the hereditaments and premises in the schedule hereto more particularly described" and mentioned, granted, conveyed and assured in absolute gift to the grantee and his successors in office to the gaddi of Sri Nathji all that one fourth undivided equal share and interest of the grantor in all these pieces or parcels of lands et cetera more particularly described in Schedule A thereunder written, to hold the said lands, hereditaments and premises and all and singular the other premises thereby granted and assured, or intended so to be, with their and every, of their members and appurtenances into the use of the grantee and his successor to the gaddi of Sri Nathji to the only proper use and benefit of the grantee and his successors in office for ever. The first item in the schedule is "one temple building of Shri Naunit Priyaji Maharaj alias Raja Thakur, with all the images including Shri Raja Thakur installed therein." the second item is one temple building of Shri Dauji Maharaj." The third and fourth items; are baithaks. The fifth item is "the zamindari and muafi rights of the whole village of Gokul consisting of two mahals, that is, old and new Gokul and all the abadi rights to tanks, grounds, habitation, ghats, the river, et cetera, and all sorts of income from Mandi Bazar Tolai Sewai, and all other rights whatsoever relating to the Sri Raja Thakur". There are two items of property in all in the schedule the twentieth and last item being images in the temple of Shri Naunit Priyaji Maharaj.

4. The present suit has been instituted for the purpose of obtaining a declaration from the Court that this deed of gift is ineffectual, null and void. In the plaint the plaintiff alleged that he was the sole manager and gallinashin of the temple and as such solely entitled to the property, one-fourth of which purported to be granted by the deed in question. The contention in this Court was that the plaintiff, the defendant No. 1 and the defendant No. 2 constituted a corporate body of trustees of the temple and its property and that accordingly the defendant Girdhar Lalji had no specific interest in the temple or the property, and no right to make the deed of gift.

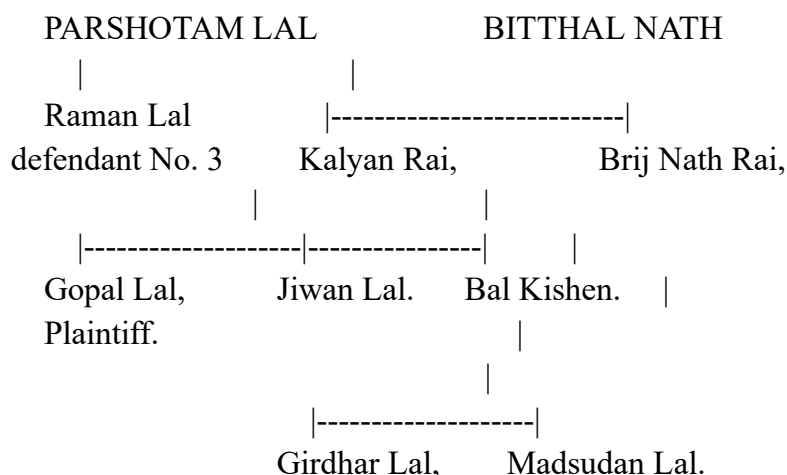
5. There can be no doubt that if we must regard the property as "trust" property in the strict sense, dedicated for a charitable or religious purpose in the hands of duly constituted trustees of the charitable or religious object, one or more of such trustee would have no power to alienate the trust property or delegate their powers and duties contrary to the trust. In the present case the plaintiff has endeavoured to show that such a trust existed and that Goswami Sri Girdhar Lalji occupied the position of one of three joint trustee on whom, according to custom and Hindu Law, the trust had devolved. He contents that even if numerous transfers and alienations are proved to have taken place in the past, such alienation are transfer were breaches of trust. The defendants on the other hand contends that the transfer complained of could legally be made, that there was nothing in it contrary to law or to the usages and the customs of the sect. They have adduced a large amount of evidence showing how this properly and other property of a similar nature (as they allege) have been dealt within the past by members of the sect including the plaintiff himself. They say that these dealings were not and have never been considered by the sect as

contrary to law or to their customs and usages. In considering the evidence and the inference to be drawn from such evidence, We think that we should bear in mind that the cult hold the theory that they are incarnations of the deify and the fact that the transfer complained of was made in favour of a member of the cult, holding a very exalted position therein.

6. The first transactions dealing with the property is a deed executed in the year 1852 by a lady named Janki Bahuji Maharaj, widow of Goswami Sri Govinoji Maharaj. The opening clause is as follows: "I now having become old have made Goswami Bitthal Nathji and parshotamji, who are my sister's son's sons, the proprietors of my house, that is of the following." Then follows a description of the property commencing with Sri Thakurji Sri Naunit Lal Priyaji with temple". The property includes zemindari and muafi laga in Zanzibar, income from Jodhpore, etc., etc. It is evident from this document that the lady had no sons. She had a daughter's son for whom she made some provision, but the idol, temple, etc., were given to Goswamis Bitthal Nathji and Parshotam Lalji. The explanation of the exclusion of the daughter's son was probably the custom of the sect. The daughter's son would be a bhat and incapable of performing puja (See the decision of their Lordships in the case already referred to). The important part of the deed is that the lady treats the property as her own and makes the donees "proprietors".

7. The validity of this document was challenged first by Ranchhore Lal (the donor's daughter's son) and after words by persons alleging themselves to be reversioners of Goswami Sri Govindji, the husband of the donor. The deed was upheld and the property or at least the temple from that time remained in the hands of Bitthal Nathji and parshotamji and their decendants up to the time of the transfer complained of in the present suit.

8. We here give a short pedigree of the family:



9. The next transaction of importance took place in March 1888. Sri Kalyanji, Sri Brij Nathji, (the sons of Bitthalji) and Raman Lalji (the son of Parshotam Lal) partitioned certain property

between them. The partition was carried out by means of a submission to arbitration and an award. The property partitioned included 16 temples. Clause 2 of the award says: "the property, a detail of which has been ascertained up to this time, has been divided. The parties will be owners by halves of any other property which may be found to exist in addition to the said property." Clause 3: "besides the property divided mentioned above, the parties are owners by halves of (1) the temple of Thakur Sri Dauji Maharaj, (2) the temple of Madan Mohanji Maharaj situate in the city of Muttra, and (3) the temple of Thakur Sri Naunit Lalji Maharaj, known as Raja Thakur, situate in Kasba Gokul. The parties will be the owners of and responsible for the expenses connected with the money dealings carried on at the temples of Thakur Dauji, Madan Mohanji Maharaj and Sri Naunit Lalji Maharaj by halves." This partition seems to indicate that the parties to it (influential members of the cult) considered that there was nothing wrong or contrary to the usages of the sect in partitioning their temples and property held in connection with the temples. It is contended on behalf of the plaintiff that the temple of (1) Thakur Sri Danji (2) Madan Mohanji and (3) Naunit Lalji (the temple now in dispute) were not partitioned. This is not quite correct, because Clause (3) provides that the parties should be owners of these three temples by halves; besides there is no thing to show that these temples and the property connected therewith differed in any way in their nature and origin from the rest of the property which was more completely partitioned. The probabilities are that all the property including the property in dispute was acquired in the same way. In May 1888 Kalian and Birj Nath mortgaged to an outsider some of the property allotted to them under the award. By deed, dated the 18th of October 1894, Madhsdan (the son of Raman, son of parshotam) after inciting the arbitration award and that he had acquired a gaddi and properties in Ahmedabad, relinquished his 1/4th share in favour of his brother, Sri Girdhar Lalji (the interest in the temple of Naunit Lalji is included in this relinquishment).

10. On March 23rd 1895, Sri Raman Lal made a gift of four bighas odd to his Pandit, one Damodarji. It is not quite clear whether this plot was or was not part of the property granted by Janki Bahu in 1852. In January 1899 the plaintiff (Sri Gopal Lalji) sued Girdhar Lalji for contribution to the expenses of the temples. In the plaint he set forth the deed of relinquishment, ahead mentioned, by Madhsudan in favour of Girdhar Lalji, thereby recognizing the right of Madhsudan to make the relinquishment and the title of Girdhar Lalji to a specified share. Girdhar confessed judgment and the plaintiff got his decree. In March 1899 an outsider sued Girdhar Lalji and obtained a decree; his property was attached and the plaintiff purchased it.

11. By a sale-deed, dated 2nd July 1902, after reciting the arbitration award and reciting the deed of relinquishment and reciting the purchase at auction-sale of the interest of Girdhar Lalji, the plaintiff, Gopal Lalji, sold to a person, who was not a member of the sect, part of the property partitioned in 1888. Another somewhat similar sale was made by the plaintiff in March 1903. There were other similar sales. On the 16th of September 1906 the plaintiff executed a sanad. This sanad recited the arbitration award of 1888 and the titles of the plaintiff and Girdhar Lalji to specified shares in the temples at Muttra and Cokul are therein fully recognised. By this sanad the

plaintiff agreed to the partition of the temple in dispute (inter alia). The plaintiff corresponded with the defendant, Tikait Gobardhan Lalji, with regard to this proposed partition. No one suggested that there was anything wrong in partitioning the property. The letters will be found at pages 91 and 92 of the respondents' book. This was long before the transfer now complained of, and it is significant that the plaintiff communicated to a person holding the position of Tikait Gobardhan the proposed partition. In 1904 Raman Lalji, Brij Pal Lalji (a son of Raman Lalji) and Ghansham Lalji (another son of Raman Lalji) made a partition between them. This partition was also carried out in the shape of an arbitration award, dated the 20th of January 1904, a copy of which will be found at page 2 of the supplementary book of evidence of the respondents. The award sets forth that the party to whom a particular temple has been awarded shall be the owner in possession of that temple and also of every kind of property appurtenant thereto as a proprietor, competent to make all sorts of transfers. In this award the temples were partitioned, including even the idols, that is to say, some idols were allotted to one party and some to another.

12. In 1908 another partition of much the same nature, also carried into effect by an arbitration award, was made. The award is dated the 27th of March 1908. The parties to the partition were Raman Lalji and the plaintiff, Gopal Lalji.

13. A suit was brought by Ghanashiam Lalji to set aside this last-mentioned award. Gopal Lalji was made a defendant to that suit and he filed a written statement on the 19th of May 1912, in which he pleaded that the temples and property were not a public waqf, that according to the practice of the Ballab cult the awards were valid and enforceable, He further pleaded that the temples of Madan Mohanji and Dauji were the devater of a peculiar kind.

14. The plaintiff's own evidence given in the present suit seems to indicate that even now he recognizes and considers that particular temples and idols are the private property of individual gossains. He was asked the following question: "Do the temples of Dauji and Madan Mohanji at Muttra and the property appertaining thereto which are in your and your family's possession form endowed property?" An objection was taken by the plaintiff's Pleader to this question, on the ground that it was not relevant. The plaintiff answered the question in the following way: They do not form endowed property. They are my private property." He was asked what he meant by "private property" and the answer he gave was: "A property is said to be endowed when it is entirely recorded in the name of the Thakurji and is not brought to private use, nor is it given or sold or transferred in any way. A property is said to be private when it is used by the owner in any way he likes." He was asked if any of the five gaddis were endowed and he said "none of them".

14. The plaintiff relies on certain evidence which goes to show that part of the property was revenue-free at a very early date and further, that some of the property was released from attachment in execution of decrees on the ground that it was "trust" property. We can attach very little importance to the fact that some of the property has been revenue free. The sect is no doubt

a religious sect and it is not surprising that part of the property was allowed to remain free of revenue, nor can we attach much importance to the release of the property from attachment in the face of the evidence to which we have already referred which shows that property, which we think was exactly of the same nature, was attached and sold in execution of decrees, purchased by the plaintiff himself and subsequently sold to strangers. The evidence which the plaintiff's learned Advocate relied upon more than any other was a judgment of the High Court, dated the 15th of April 1897. That was a suit by Raman Lalji against Gopal Lalji and his side of the family. The claim was that the Court should decree that one side should perform worship in the temples for a fixed period and that then the other side should have a like fixed period. The Court dismissed the suit. In the judgment of this Court the learned Judges made the following observations: "The parties here are the joint managing trustees of the temples whose duty it is as such to manage the affairs to the best of their united abilities, a duty which they undertook to perform when they accepted the trust. They have no rights of property or any personal pecuniary interest in the subject-matter of the trust. Is one of such trustees entitled to ask a Court to partition the duties of the trust between himself and his co-trustees, and, for example, to give him the exclusive management of and possession of the trust property for say six months in each year, putting the other trustees entirely aside during his period of management"? Before this case came before the High Court there had been a statement made by the Pleaders as to the goshains having no pecuniary interest in the temples, and this no doubt led largely if not entirely to the remarks of the learned Judges quoted above. If we regard these statements merely as admissions as to how the property was held, they do not seem of much importance having regard to the large volume of evidence to which we have already referred, proving that the sect recognized that the property and temples were capable of being partitioned, though perhaps not in the particular way the then plaintiffs sought to partition them. The statements were apparently made by the Pleaders for the purpose of the particular case before the Court.

15. It is said that the decision operates as *res, judicata*. Having regard to the nature of the claim in that litigation and the claim in the present litigation, we certainly cannot regard the decision as *res judicata*. The plaintiff in the present suit and Girdhar Lalji, the donor, in the deed of gift complained of were arrayed as parties on the same side. No issue was decided between them which would decide the present case. After considering the evidence we think there can be no doubt that this sect always regarded themselves as having specific interests capable of being partitioned in the property hold by them including even the temple and idol. It is unnecessary for us in the present case to decide how far the whole or any particular part of the property could be validly alienated to strangers. All that we have to decide in the present case is whether or not the alienation complained of, made as it was in favour of a very exalted member of the cult and his successors in office, is unlawful or contrary to the customs and usages of the cult. In our opinion the plaintiff has wholly failed to establish this. We think that the decree of the Court below is correct and ought to be affirmed. We accordingly dismiss the appeal with costs including in this Court fees on the higher scale.

Cases Referred.

1 19 Ind. Cas. 337 : 35 A. 283 : 17 C.W.N. 741 : 11 A.L.J. 648 : 17 C.L.J. 612 : 15 Bom. L.R. 606 : (1913) M.W.N. 536 : 14 M.L.T. 27 : 40 I.A. 97