

LAHORE HIGH COURT

Bawa Ishar Das

Vs

Mohan Singh

(Addison, J.)

12.01.1939

JUDGMENT

Addison, J.

1. The plaintiffs are five Udasi Sadhs who were given permission to institute the present suit under Section 92, Civil Procedure Code, with respect to an Udasi Dharamsala, known as Bawa Sidqi Das in the Gujranwala City. It was claimed that the Dharamsala was an Udasi institution, founded by Udasis, for the practice of Udasi religious rites and ceremonies and that all the mahants had from generation to generation been Udasis. The last mahant, it was stated, was Bawa Ishar Das, Chela of mahant Jai Parkash. When he died, defendants 1 to 4, and the father of defendant 5, took possession of the Dharamsala and its attached properties as trustees, defendant 5 becoming a trustee on the death of his father while defendants 1 to 4 and father of defendant 5, during the days of the Akali movement, forced Bawa Ishar Das on 28th February 1921, to sign an agreement according to which the management of the shrine was entrusted to a committee of which the members were defendants 1 to 4, the father of defendant 5, and the mahant, Ishar Das. It was claimed however that this agreement was not acted upon and that the mahant continued to manage the Dharamsala till his death. Defendants 1 to 5, it was stated, though they had later assumed control, had not been discharging the functions of the trust properly and no Udasi mahant had been appointed in place of Ishar Das but on the contrary a Sikh Granthi had been appointed. With respect to the other part of the institution called Majju Chhapri, it was stated that no arrangements had been made or the worship of the images and the smadhs therein located and that from the Dharamsala itself the murtis of Bawa Siri Chand and Hanuman and even the Guru Granth Sahib had been removed, while the income was not being spent on the objects of the Dharamsala. No regular accounts had been maintained and the property had been mismanaged. It was further stated that part of the Dharamsala property was allowed to be alienated to satisfy a private debt of the deceased mahant Ishar Das although this was illegal. It was alleged that the defendants had permitted a Sikh Granthi to reside in the premises with the result that no suitable accommodation was left for the Udasi Sadhs. Moreover, the defendants had for some time taken up the position that the Dharamsala was meant only for the mode of worship, peculiar to the Sikhs proper, and that it was not a place of worship for Udasis or Hindus. The plaintiffs stated that they were Udasis and had a right of worship in the Dharamsala and that the worship should be conducted in future according to the rites of the Bhagat Bhagwan branch of the Udasi sect. Finally it was said that plaintiff 5, Hari Das, had been nominated to be the Mahant by the Udasi

Maha Mandal, Amritsar and it was prayed that the defendants be removed from the office of trustees or managers and that a scheme should be drawn up for the management of the Dharamsala as an Udasi institution. Accounts were also claimed from the defendants.

2. Dr. Mohan Singh, defendant 1, pleaded that he had ceased to take any interest in the Dharamsala and had resigned from the committee, but that he was willing to submit accounts. On the other hand defendant 5, Badri Nath, supported the plaintiffs completely. Defendant 2, Niranjn Singh, pleaded that the Dharamsala did not belong to the Udasis who had no concern with the shrine, though it was dedicated for charitable and religious purposes, and that the last Mahant, Bawa Ishar Das, had in his lifetime formed a committee for the better management of the Dharamsala. He denied that there had been any infringement of the aims and objects of the trust. He stated that a Sikh Granthi had been employed to read the Guru Granth Sahib while in Majju Chhapri proper arrangements had been made for the worship of the idol of Hanuman, etc. He pleaded that the accounts had been properly maintained, that no property of the Dharamsala had been sold and that there was sufficient accommodation for travellers. Defendants 3 and 4 did not appear. Defendants 1 to 4 and the father of defendant 5 were the members appointed by the agreement entered into by Bawa Ishar Das on 28th February 1921.

3. Defendants 6 to 8 applied to be made plaintiffs. This was refused by the trial Court and they preferred a revision petition to this Court. Before the single Judge who heard the revision petition, defendants 6 to 8 contended that they were interested in obtaining the same reliefs for which the plaintiffs were suing. As they stated that they were willing to be joined as defendants, the single Judge permitted this to be done as he considered that they were interested in the management of the shrine. Counsel for the plaintiffs stated that he had no objection to this course, provided that the petitioners did not object to an Udasi being appointed a mahant of the shrine. An undertaking was given to this effect and the Single Judge directed that they be made defendants. Though defendants 6 to 8 had stated before the single Judge that they were interested in obtaining the same reliefs for which the plaintiffs were suing, in their pleas they supported defendant 2, Niranjn Singh, except that they indicated their agreement that accounts should be taken and that a scheme for the proper management of the shrine should be drawn up. They added however that the election of the members should be in accordance with the agreement, dated 28th February 1921, and that three of the members should be selected by the Gurdwara Prabandhak Committee of the Gujranwala District. This is not in accordance with their statement before the single Judge that they were interested in the same reliefs as the plaintiffs, for the principal part of the plaintiffs' case is that this agreement is void. Curiously enough, these defendants 6 to 8 alone have resisted the appeal now before us. The following issues were framed by the predecessor of the Judge who delivered judgment:

1. Whether the plaint is insufficiently stamped?
2. Whether plaintiffs have locus standi to bring the present suit?
3. Whether Dharamsala Sidqi Das is an Udasi institution?
4. Whether Udasis are entitled to the management of the institution to the exclusion of Sikhs?
5. Whether the document of 28th February 1921, appointing defendants as a committee of management, is valid and binding on the institution and whether defendants are entitled to management and possession of the institution and its property.

6. Whether defendants have been guilty of mismanagement, misconduct and misappropriation of the property of the institution?
7. Whether any scheme of management is required; if so, what?

4. Later, namely on 18th February and 2nd December 1937, the Judge, who delivered judgment, struck out Issues 4 and 5 for reasons which are not obvious. The first two issues were not pressed. A curious finding was given on Issue 3 to the effect that the Dharamsala was not an Udasi institution, at any rate in the sense so as to exclude Sikhs proper from being associated with the Udasi Mahant in the matter of the management. On Issue 6 it was said that it was admitted even by defendants 6 to 8 that there had been serious mismanagement and that in fact the whole management had been left to defendant 2, Niranjan Singh, the other members of the committee having been guilty of negligence.

5. It was therefore held that the present members of the committee should be removed. The Judge however went on to hold that the same scheme as was embodied in the agreement of 28th February 1921 should be followed, namely that four Sikhs proper should form part of the committee while there should be two other members including the Mahant. Of the four Sikh members, three were to be nominated by the Gurdwara Prabandhak Committee of the Gujranwala District, while the Judge himself nominated the fourth Sikh, Bawa Harkishan Singh. He further held that the Mahant was to be nominated by the Udasi Maha Mandal, Amritsar, while the Mahant thus nominated would nominate one non-Udasi member who believed in the Guru Granth Sahib. This practically means that a fifth Sikh member was to be appointed. Lastly, it was laid down that, at the Dharamsala, only the Guru Granth Sahib should be read, that is, that the Sikh form of worship should be alone maintained at the Dharamsala. At Majju Chapri however the worship of Hanuman and Shivling was allowed to continue, but all other idols and other objects of veneration of the Udasis were not to be worshipped. The new committee was directed to have the accounts audited and to take such steps as were necessary to bring to book any persons who might have misappropriated the funds.

6. Against this decision the plaintiffs have preferred this appeal.

7. While discussing Issue 3 the Judge has referred to certain Sikh works which appear to us to be not very important. The Judge himself was a Sikh. At the bottom of p. 106 of the paper-book he held that Udasis are not, strictly speaking, Sikhs and that they cannot represent the Sikh community in the matter of civic or political rights. He held that their position was that of persons who revered the Guru Granth Sahib, the scripture of the Sikhs, without taking the Sikh baptism. He further seems to have held that the Udasis never properly and completely separated from the Sikh community, though this is against many decisions of this Court and of the Privy Council. He said that if the Udas were to be grouped with any class of people, they had the closest affinity with the Sikhs in that they had the same book, the Guru Granth Sahib, as their bible. As the Guru Granth Sahib was read at the Dharamsala, he held that Sikhs should predominate in the management of the institution for that reason.

8. In spite of this very special pleading of the trial Judge, we have no hesitation in holding on the evidence that this is strictly an Udasi institution, where however Sikhs were allowed to come and hear the Guru Granth Sahib read, while Udasis and Hindus attended and performed their

religious rites. At the first settlement of the Gujranwala District in 1852, the usual enquiries were made as regards muaf is granted with respect to certain lands held by this institution. This is Exhibit P. 25, printed at pp. 129 to 143. In village Gujranwala there were 24 ghumaons of land. The tehsildar's report was that the Dharamsala or Akhara Baba Sidqi Das was situated in the town of Gujranwala, that a number of fakirs constantly resided there, about 20 fakirs being daily fed at the expense of the institution. It was added that this was a place of local note which had been in existence for the last sixty years. The tehsildar who investigated the muafi with respect to 40 ghumaons of land in village Kotli Rustam, attached to this institution, recommended that the muafi should be maintained in favour of the Dharamsala Akhara during its existence. The first report shows that this was a monastery of Udasi Sadhs or fakirs who permanently resided there, while the second report calls the institution an Akhara, which is a name applied only to Udasi institutions. In the Sikh religion there are no monasteries hut such are common amongst Udasis. The earliest revenue record thus shows that this was an Udasi institution. The then Mahant, Jai Parkash, was examined during this enquiry: see Ex. D-4, p. 220. He distinctly calls the institution a Thakardwara, which is not a Sikh term. He added that travellers and other persons stayed there and were served with food and water.

9. At the next settlement of 1890 the question of muafis was again investigated and on 14th March 1890 Santokh Das, who had succeeded Jai Parkash, stated, see Ex. D-9, p. 223, that the institution was situated in the heart of the city and was a fine building, sacred to the Hindus. He added that the sadhus, who stayed in the institution, were fed and that the institution was in a flourishing condition. Here again a monastery is indicated while the use of the word "Hindus" shows the nature of the institution, Udasis being much more akin to the Hindus than to the Sikhs. Further, even the Judge who tried the case had to admit that in a part of the institution the usual Hindu idols were worshipped while the evidence further establishes that the ball of ashes, the picture of Bawa Siri Chand and smadhs were venerated. The report of the tahsildar dated 30th June 1891 (Ex. D-10 at p. 224) is to the effect that "Bawa Santokh Das is a good man and feeds the fakhirs and sadhus who come to the Dharamsala." Here again a monastery of Udasis is indicated. In 1886 Ishar Das, one of the chelas of Bawa Jai Parkash, sued Santokh Das, another chela, to the effect that he and not Santokh Das had succeeded Jai Parkash Das as Mahant. Arbitrators were appointed who gave their award on 21st December 1886 (Ex. P-60 at p. 145). At the end of this award it is stated:

So long as the other chelas and sadhus remain present in the dharamsala and bear good moral character, they are entitled to maintenance, that is, food from langar and dera according to the practice of the fakirs.

10. Here again an Udasi monastery is clearly indicated. This award was made a rule of the Court on 10th January 1887: see Ex. P.64. The institution continued up to 1921 as an Udasi institution. The Guru Granth Sahib of course was read while the other Udasi practices were maintained. Then came in 1921 the Sikh Akali movement which was of a militant nature. It is common knowledge that during that movement the Sikhs seized hundreds of Udasi institutions without let or hindrance. It was during that period that Mahant Ishar Das was made to sign the agreement of 28th February 1921. According to this agreement, the then Mahant, Ishar Das, stated that he was the manager of the institution but that he now formed a committee, the members of which were himself, Bawa Sarmuch Singh, Pleader, Nand Lal the pleader's clerk, Niranjana Singh, Dr. Mahan

Singh and Master Bhag Singh. Undoubtedly the majority of this committee consisted of Sikhs. It was stated that the Mahant should always be a member and that two members should be elected from the zail of the said mahant while three members were to be elected by the Gurdwara Prabandhak Committee, District Gujranwala. These Gurdwara Prabandhak Committees came into being at the time of the Sikh Akali agitation. S.B. Sundar Singh (D.W. 17) admitted that there was an agitation about this Dharamsala as well as other Dharamsalas. The Mahant however very shortly afterwards, namely on 6th August 1921, brought a suit against the five other members of the newly constituted committee to have this agreement of 28th February 1921 cancelled. A copy of the plaint is Ex. P.1 at p. 152. The plaint refers to the Akali unrest, agitation and high-handedness. He alleged that he was forced to sign the agreement. He died however during the course of the suit and though his chela, Balram Das, was brought on the record as his representative, it was held on 13th October 1925 (Ex. P.20) that the suit abated as the right to sue did not survive to Ishar Das's representative. No decision was therefore given on the merits.

11. At this time the Sikh Gurdwaras Act, 8 of 1925, was passed. A petition under Section 7 of that Act was presented to the Local Government, praying to have the Gurdwara declared to be a Sikh Gurdwara. This was notified by Government on 22nd May 1929. Immediately, three petitions-were put in under Section 8, contesting the petition under Section 7. The first of these is Ex. P.3, dated 8th August 1929, and was submitted by 41 Hindus, claiming that, the institution was a dera of Udasis and had been so since the time of Bawa Sidqi Das, and that the Sikhs had no concern or connexion with the institution: see p. 169; Bawa Balaram Das also put in a petition, dated 10th August 1929 (Ex. P.58 at p. 180); to the same effect. He claimed as an office holder. He too stated that the institution was a dera of Udasis and that the Sikhs had no connexion or concern with it. Curiously enough, three members of the committee appointed on 28th February 1921, also put in a petition under Section 8, Sikh Gurdwaras Act. This is Ex. P.4 at p. 181. In para. 3 they stated that the place in dispute was not a Sikh Gurdwara, that all sorts of worshippers, both Hindus and Sikhs, visited the place and that the old Hindu Sanatanist mode of worship was observed in the temple. In para. 6 they further stated that the Dharamsala was in no way connected with any of the ten Sikh Gurus, or any Sikh saint or martyr; nor was it established for use by Sikhs for the purpose of public worship, nor was it used for such worship by Sikhs. They claimed to be entitled to put in the petition under Section 8 by virtue of the agreement written by Mahant Ishar Das dated 28th February 1921. On 4th March 1932, the Sikh Gurdwaras Tribunal held (see Ex. P-54 at p. 183) that the institution was not a Sikh Gurdwara. This finding is a judgment in rem and establishes that it is not a Sikh place of worship.

12. There is no doubt that all the evidence in this case is of a partisan nature and not very trustworthy, but it has been established that the Mahants have all along been Udasis, that the institution was an Udasi monastery, that the Guru Granth Sahib was read there by the Udasi Mahant and that Sikhs may have attended these, readings but that all other ceremonies, observed by Udasis and Hindus, were performed at the institution. It cannot be held from the mere fact that the Udasis also read the Guru Granth Sahib, a book which they do venerate, that the Sikhs should be associated in the management of this genuine Udasi institution. It was held by a Division Bench of this Court in *Arjan Singh v. Indar Das*¹ that the Udasi order constitutes a separate sect, distinct from the orthodox Sikhs and that though they have retained many Hindu beliefs and practices, yet in the wider sense of the term they may also be Sikhs. They occupy an intermediate position between strictly orthodox Sikhs and Hindus. The Udasis are in fact a monastic order in their origin and are followers of Bawa Siri Chand, son of the first Guru. Though they worship

smadhs, etc. they do reverence the Granth Sahib with out completely renouncing Hinduism. They are often in charge of the village Dharamsala or Gurdwara, which is a Sikh institution, but in other cases the Sadh and his chelas constitute a monastery or college. Owing to their intermediate position, it is possible for Udasis to be in charge of a Sikh Gurdwara, properly so called, but it does not follow that the institution is a Sikh Gurdwara and not a true Udasi institution merely because the Granth Sahib is, read. In fact, it cannot be said that the Sikh religion was founded as such until the, time of the tenth Guru, whereas Udasis separated themselves about the time of the death of the first Guru. The subject has also been discussed by their Lordships of the Privy Council: see *Hem Singh v. Basant Das*², their Lordships said:

Parallel with the growth of this movement, there seems from the time of Siri Chand, Nanak's son, to have been a sect of Udasis who while using the same sacred writings as the Sikhs kept up much more of the old Hindu practices, followed asceticism, were given to the veneration of smadha or tombs, and continued the Hindu rites concerning birth, marriage and shradh.... The Udasis, so far as the matter can be decided by beliefs and practices, are, from the point of view of Sikhs, schismatics who separated in the earliest days of the movement and never merged thereafter.

13. On these authorities, it is clearly established in the present case that this is an Udasi institution and that the Sikhs have: nothing to do with it except that they may have gone there to listen to the reading of the Sikh scriptures, which is also done by the Udasis.

14. Coming next to the agreement, executed on 28th February 1921 by Mahant Ishar

¹ A.I.R.(1934) Lah. 13

² AIR 1936 PC 93 : 1936-43-LW 443

Das, we have no hesitation in holding that this agreement is invalid in that it handed over the management of a strictly Udasi institution to a committee, the majority of which were Sikhs, belonging to a different sect. It was held in *Rajah Vurma Valia v. Ravi Varmah*³ by their Lordships of the Privy Council that there is no authority under the general principles of Hindu law for holding that trustees or managers of a Hindu temple had power to transfer their office and its duties with all the trust property to a person unconnected with the families from which trustees were to be taken. Similarly, Mahant Ishar Das had no power to transfer the management of this Udasi institution to a Sikh committee. The same view was taken by their Lordships of the Privy Council in *Gnanasambanda Pandara Sannadhi v. Velu Pandaram*⁴ There the here ditary managers of a religious foundation had purported to sell and assign the management and lands of the endowment to the representative of another institution. It was held that as there was no custom of the foundation allowing such an assignment, it was beyond their legal competence, conveying no title. It was also held by a Division Bench of the Calcutta High Court in *Govinda Ramanuj Das v. Ram Charan Ramanuj Das*⁵ that in the absence of a custom to the contrary the mahant of a math cannot ordinarily transfer the right of management vested in him, even though such transfer is coupled with an obligation to manage in conformity with the trust annexed thereto. On these authorities, we hold that the agreement of 28th February 1921 was null and void in that it transferred the management of an Udasi institution to Sikhs.

15. On our findings this appeal must be accepted. The earned Counsel appearing for the

plaintiffs-appellants stated that he was willing that there should be a committee of management appointed, all the members of which however should be Udasis, resident within the Gujranwala District. This Committee will consist of five persons and should include the mahant as president of the Committee. The four members other than the Mahant, we direct, should be appointed by the Udasi Maha Mandal, Amritsar. The Mahant himself should be appointed according to the custom of the institution, which has not been brought out in evidence in this case. Plaintiff 5, it is alleged, has been appointed Mahant by the Udasi Maha Mandal, Amritsar, and he can continue as de facto Mahant until such time as steps are taken to remove him, on the ground that his appointment in this way is not valid, if this should ever happen. We accordingly accept the appeal and pass a decree in the terms given above. The costs of this appeal will be paid by defendants 6 to 8 who alone contested it.

³(1876) 1 Mad 235

⁵(1935) 63 Cal. 326

⁴(1896) 23 Mad. 271