*Privy Council Appeal No. 113 of 1915.*

*Bengal Appeals Nos. 43 and 44 of 1913.*

**Basudeo Roy and Others** - - - - *Appellants,*

*v.*

**Mahant Jugalkishwar Das and Another** - *Respondents.*

**Rupe Lal Raut and Others** - - - - *Appellants,*

*v.*

**Mahant Jugalkishwar Das and Another** - *Respondents.*

*Consolidated Appeals*

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST MARCH, 1918.

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*Present at the Hearing:*

VISCOUNT HALDANE.
SIR JOHN EDGE.
MR. AMEER ALI.
SIR WALTER PHILLIMORE, BART.

[*Delivered by* MR. AMEER ALI.]

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These two consolidated appeals from a judgment and two decrees of the High Court of Calcutta, bearing date the 22nd July, 1913, arise out of two suits brought by the plaintiff respondent in the Court of the Subordinate Judge of Darbhanga on the 8th July, 1907. The object of both suits was to recover possession of certain landed property alleged to have been improperly alienated during the plaintiff's minority by one Chattar Pandey, purporting to act as his guardian.

The facts on which the two actions are based are fully set forth in the judgment of the High Court. It is not necessary, therefore, to give more than a bare outline.

The plaintiff respondent is admittedly the present Mahant of the *Bairagi Asthal* of Lowthwa, in the district of Darbhanghah. His predecessor, Janki Das, died in 1894. Before his death he appears to have appointed the plaintiff (his nephew by blood relationship) his successor to the office of Mahant, and it is alleged, and not controverted, that his nomination was confirmed, in accordance with the custom governing the succession to the Mahantship, by the Mahants of the neighbouring *Asthals*. It is not disputed that at the time of Janki Das's death the plaintiff was a minor and that in consequence thereof Janki Das had, by a testamentary document executed shortly before, appointed Chattar Pandey as his guardian. Chattar obtained probate of Janki's will on the 6th February, 1894, and from that time purported to act as the guardian of the minor and manager of the *Asthal* property.

It is quite clear that for some years before his death Janki Das was heavily involved in debt. On the 29th January, 1885, he had executed a mortgage in favour of one Tej Narain Roy in respect of six annas of the village of Majhowra for 5,500 rupees. On the 31st May, 1889, he had created a mortgage in favour of one Ram Narayan Roy, in respect of four annas of Majhowra for a sum of 3,500 rupees; and a third also in favour of Ram Narayan for 2,605 rupees on the 17th May, 1892, in respect of another share of the same village. All three mortgages were outstanding at the time of his death, though on the first a sum of 9,000 rupees is said to have been repaid, leaving a balance of something like 6,000 rupees. For the realisation of this amount, the defendants to the first action, who are representatives of Tej Narain Roy, the mortgagee under the first deed, brought a suit on the 20th February, 1899, against the present plaintiff as the legal representative of Janki Das. The plaintiff (defendant to that action), being a minor at the time, was sued as such under the guardianship of Chattar Pandey. Before, however, any defence was entered, Chattar entered into a compromise with the mortgagees by which, in consideration of the remission by them of 600 rupees, he consented on behalf of the minor to a mortgage decree against the six annas share of the village of Majhowra that had been mortgaged to Tej Narain Roy. The decree of the Subordinate Judge embodying the terms of the compromise bears date the 27th April, 1899.

Three years later, on the 16th June, 1902, Ram Narayan Roy brought a suit on the second mortgage for the realisation of this debt, which ended similarly in a decree based on a compromise entered into by Chattar Pandey. This decree bears date the 21st July, 1902. Subsequently Ram Narayan Roy obtained a decree absolute for sale, and in fact initiated proceedings to have the mortgaged property sold under process of the Court.

It is stated that, although no proceedings had actually been taken to enforce the third mortgage, an action was threatened,

and in consequence thereof an agreement was arrived at between the creditors and Chattar Pandey.

In order to pay off these liabilities Chattar Pandey, on the 19th July, 1905, applied to the District Judge of Tirhoot for leave to sell an eight-anna share of the village of Majhowra to the two sets of purchasers whose sales are impugned in the present suits, one of whom was in fact the representative of the original mortgagee; and on the 12th August, 1905, obtained the sanction prayed for. On the 19th of the same month Chattar executed in favour of the appellants Basudeo Roy and his brothers a deed of sale in respect of six annas; and in favour of the appellants in the second appeal a deed in respect of two annas of the village.

The plaintiff sues to have these sales set aside on the allegation that the property forming the subject-matter of the present actions was *debottar*, or endowed property, and that neither Janki Das nor Chattar Pandey had any right or power to encumber or alienate it. He further charges that there was no valid necessity for the alienation, nor were the debts of Janki Das binding on the property of the *Asthal*. The defendants controverted both allegations, and the parties went to trial on two simple issues: *firstly*, whether the property was *debottar*, and consequently subject to rules governing religious or charitable endowments, and, *secondly*, whether there was any such justifying necessity as would render its alienation valid under the Hindu law.

Both the Courts in India found that the property was acquired with the funds of the institution, and was *debottar*, but they have differed on the question of necessity. The trial Judge was of opinion that the defendants—the purchasers under the two deeds of sale which the plaintiff seeks to set aside—had sufficiently established a legal necessity of a pressing kind "to justify the alienations made by him," and he accordingly dismissed both suits. On appeal, the learned Judges of the High Court of Calcutta, on the issue of valid and justifying necessity, came to an opposite conclusion, and in that view decreed the plaintiff's claim.

Before this Board counsel for the defendants assailed the findings of the High Court on both points. He contended that under the grant to which reference will be made presently the Mahant for the time being is absolutely entitled to the income of the property attached to the *Asthal*, and that any property bought out of such income became the personal property of the Mahant. And he argued in the alternative that, even if the property were to be regarded as part of the *Asthal* property, the facts proved in the case amply established pressing legal necessity as found by the trial Judge.

Their Lordships have therefore to examine, in the first place, the character and scope of the original grant to the founder of Lowthwa *Asthal*. The nature of these institutions and the circumstances under which they come into existence are

described in the judgment of this Board in *Ram Parkash Das* v. *Anand Das* (43 I.A., p. 73). "An *Asthal*, commonly known in Northern India as a *Math*," says Lord Shaw, who delivered the judgment of the Board—

"is an institution of a monastic nature. It is established for the service of a particular cult, the instruction in its tenets, and the observance of its rites. . . . . The Mahant is the head of the institution. He sits upon the *gaddi;* he initiates candidates into the mysteries of the cult: he superintends the worship of the idol and the accustomed spiritual rites: he manages the property of the institution: he administers its affairs: and the whole assets are vested in him as the owner thereof in trust for the institution itself."

And Lord Shaw went on to add :—

"The nature of the ownership is, as has been said, an ownership for the *Math*, or institution, in itself, and it must not be forgotten that, although large administrative powers are undoubtedly vested in the reigning Mahant, this trust does exist and must be respected."

The grant in the present case is set out *in extenso* in the judgment of the High Court. It is an ordinary *birt*, or charitable and religious grant, by a pious Hindu Raja to a Hindu *gossain* (Batran Das). The following words clearly show that, though the property was granted to an individual, it was burdened with an explicit and unambiguous trust :—

"Mouzah, with boundaries, you will, at ease of mind, make cultivation and settlement of, and, making distribution out of the proceeds that may arise among *sadhus* and *sants* (holy and religious men), you with your disciples and companions will enjoy (the remainder) without any anxiety. Knowing this to be a grant made for the love of the deity named above, no one will offer any opposition."

The subsequent confirmation of this grant in 1786 by one of the successors of the original grantorr emoves all doubt and ambiguity as to the meaning of the grant. By that time the present *Asthal* had sprung up, and the *guru* or preceptor had become the head of an institution with a seat of honour (the *gaddi*). The *Asthal* was henceforth an institution devoted to the cult of the worshippers who congregated there. Their Lordships concur with the learned Judges of the High Court and the trial Judge that the village of Lowthwa attached to the *Asthal* is endowed property subject to the trust set out in the grant, and that all acquisitions with the income thereof are subject to the same trust. This being their Lordships' view regarding the character of the village in suit, the next question is : Have the defendants discharged the onus which rests on them to establish justifying necessity? Chattar Pandey, whether acting as executor to the will of Janki Das or as guardian of the minor Mahant, cannot be said to have possessed larger powers than the actual Mahant, and the validity of his transactions in relation to the *Asthal* property must be judged by the same rules as apply to the acts of the *de jure* head of the institution.

In the absence of a necessity which would make the debts contracted by him binding on the institution the Mahant has no power to alienate its properties for the purpose of discharging those debts, and if the *Asthal* was not liable for such debts, his successor would be clearly entitled to have the sales set aside. *A fortiori*, the same considerations apply to the dealings of Chattar Pandey.

Although the defendants throughout appear to have contended that Majhowra was the personal property of Janki Das, upon the facts proved there can be no doubt they must have known that it was part of the *Asthal* property. It is contended that the mortgages for the discharge of which the sales now impugned were effected, were executed by Janki Das for the satisfaction of some older debts. There is no evidence that the defendants made any enquiry as to the character of those debts, whether they were incurred for the benefit of the *Asthal*, or for the benefit of Janki Das, in his capacity as Mahant. It is in evidence that Janki Das was a man who did not live up to the standard of the community to which he belonged, and of which he was the head. There is nothing to show that any portion of the monies borrowed in the first instance went for purposes which would make them binding on the *Asthal*. On the whole, their Lordships concur with the reasons given by the learned Judges of the High Court in holding that the defendants in these suits have wholly failed to establish any justifying necessity for the sales by Chattar Pandey; and they are of opinion that these appeals should be dismissed with costs. They will humbly advise His Majesty accordingly.

# In the Privy Council.

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BASUDEO ROY AND OTHERS

*v.*

MAHANT JUGALKISHWAR DAS AND ANOTHER.

RUPE LAL RAUT AND OTHERS

*v.*

MAHANT JUGALKISWAR DAS AND ANOTHER.

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DELIVERED BY MR. AMEER ALI.

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