

Privy Council Appeal No. 126 of 1936

Mahunt Shatrugan Das, substituted for Mahunt Ram
Lakhan Das *alias* Ram Lakhman Das - - *Appellant*
v.
Bawa Sham Das and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 30TH NOVEMBER, 1937.

Present at the Hearing :

LORD ALNESS.

SIR GEORGE LOWNDES.

SIR GEORGE RANKIN.

[*Delivered by SIR GEORGE RANKIN.*]

In this case the original plaintiff was one Mahabir Das mahunt of a thakardwara at Peshawar and Chiniot. By his suit, brought on 3rd August, 1926, in the Court of the Subordinate Judge at Sheikhpura in the Punjab, he claimed to eject the first defendant Sham Das from a thakardwara situate at a village called Bhikhi and from the properties belonging thereto. On 22nd August, 1927, he succeeded before the trial Judge in obtaining a decree declaring that Sham Das was a trespasser and that he (the plaintiff) was entitled to possession of the property attached to the Bhikhi temple. Thereafter he obtained possession in execution of the decree. The High Court at Lahore, however, on 27th June, 1933, set aside this decree and dismissed the suit.

While the appeal was pending in the High Court, viz., on 10th July, 1930, Mahabir Das died and was succeeded on the gaddis of Peshawar and Chiniot by one Ram Lakhman Das. On an application made by Sham Das on 14th October, 1930, the High Court substituted Ram Lakhman Das as plaintiff-respondent to the appeal—an order which is objected to before their Lordships on the ground that the application was four days out of time, that the appeal had abated on 10th October, and that no sufficient cause was shown under Order XXII, rule 9 (2) for setting aside the abatement.

On 18th January, 1935, Ram Lakhman Das executed a deed of relinquishment whereby he relinquished his various gaddis including that of Bhikhi to the present appellant Mahunt Shatrugan Das and authorised him to prosecute this appeal to His Majesty.

The institution at Bhikhi, which is the subject of dispute, is admittedly a thakardwara of the Bairagis of Rama Nand. It goes by the name of one Bawa Prahlad Bhagat Sahib as its founder. Before Sham Das attained the gaddi in 1923, the mahunt was one Dharm Das, said by both parties to have been a descendant of Prahlad Bhagat. Dharm Das

died on 25th June, 1923, but he had been long afflicted with insanity. It seems now to be clear, though it was at one time disputed by the plaintiff, that Dharm Das had a chela called Dial Das who acted as mahunt during the absence and incapacity of Dharm Das. Dial Das, however, predeceased Dharm Das, and on the latter's death Sham Das, the first defendant, claiming to be chela of Dial Das, applied to the Revenue Court for mutation and obtained mutation on 2nd November, 1924. Sham Das is admittedly a gharisti or householder, having been married twice, though he is now apparently a widower. According to the plaintiff's case Sham Das cannot lawfully succeed to the gaddi as only an ascetic (verkati bairagi) can be mahunt of Bhikhi.

The plaintiff's case as pleaded by his amended plaint is anything but clear. The defendants number 26: of these 20 seem to be tenants of land belonging to the Bhikhi institution and five are mahunts of other bairagi thakardwaras. The suit is framed in ejectment and asks a declaration negating the right of Sham Das. One relief claimed is "(d) I may be accepted as lawful mahunt with full powers in place of defendant No. 1 and possession of moveable and immoveable property . . . may be awarded to me from him." On the footing that Mahabir, the original plaintiff, was the true and lawful mahunt of Bhikhi, the suit is simply one wherein he is claiming possession of his own property. But if this ground has to be abandoned, it is not, in their Lordships' view, possible to alter the character of the suit so as to regard it as one brought by a person interested in the institution to obtain due administration thereof and the appointment of a proper mahunt. It does not appear that the plaintiff is on this hypothesis a person interested in the Bhikhi institution. He is not one of its sewaks nor a resident of Bhikhi. Moreover according to the plaintiff's case the institution would seem to be a public charity so as to attract the provisions of section 92 of the Code.

What then is the case made by the plaintiff to show that he is entitled to possession of the Bhikhi temple? He must succeed on the strength of his own title.

According to the plaint Prahlad Bhagat was one of a number of disciples of a sadhu called Lalji, who founded a bhek (council) of ascetic bairagis, and the Bhikhi temple is governed by a system according to which a mahunt can only nominate a chela to succeed him with the permission of the bhek, and if there is no such nomination the bhek can appoint any other gaddi-nashin to the vacant gaddi. On this footing the plaintiff's claim is that Dharm Das having died without a chela, "I, being one of the distinguished gaddi-nashins of the said bhek, have the right of succession on behalf of the bhek." So far the title of the plaintiff to the office of mahunt of Bhikhi is difficult to discover. At the settlement of issues the plaintiff stated: "I have been authorised by the four big gaddis to bring this suit." The second defendant was Harnam Das, the

mahunt of Dhianpur, who filed a written statement alleging that "the thakardwara at Bhikhi is under the Dhianpur gaddi" and stating that "the plaintiff brings the claim with the permission of this gaddi." The learned trial Judge held that the Bhikhi institution was not independent, as the first defendant claimed, but was under the rule of Dhianpur and that it was for the mahunt of Dhianpur to appoint a successor to Dharm Das. The High Court have rightly been dissatisfied with this conclusion as it is not the case made by the plaintiff. Still less can the Court be asked to hold the plaintiff to have been duly installed as mahunt of Bhikhi by one Bhagwan Das as the legate of the Dhianpur mahunt. Mahabir Das, the plaintiff, refrained from giving evidence on his own behalf. He adopted instead the tactics of calling Sham Das, the first defendant, as a witness for the plaintiff, with the usual result that important features of his case are denied by his own witness. Their Lordships have on previous occasions condemned this practice and approve of the course taken by the High Court in treating the plaintiff as a person who put the first defendant forward as a witness of truth. Their conclusion upon the whole case is that the learned Judges of the High Court were right in being dissatisfied with the plaintiff's proof of the custom alleged by him to govern the Bhikhi temple and still more dissatisfied with the proof that it was controlled by the mahunt of Dhianpur. They think that the plaintiff's allegations as to custom are inconsistent and that there is no reliable evidence of the plaintiff's due appointment to the Bhikhi gaddi under any of the customs alleged. In the evidence as to custom there is a noticeable lack of specific instances as distinct from mere swearing "by the card." At the root of the case is the question of fact whether Dial Das did not make Sham Das his chela. If so the fact that Dial Das predeceased Dharm Das may put no difficulty in the way of Sham Das. On this fundamental point the High Court accepted the latter's case and the witnesses called by him from among the sewaks of the temple and from the Bairagi community are difficult to discard. Their Lordships are in agreement with the High Court that the plaintiff's title to sue in ejectment has not been made out, and they find it unnecessary to enter upon the question of the qualifications of Sham Das to occupy the office of mahunt.

It is not shown that Sham Das might and should have known of the death of Mahabir before he did or that the High Court were in error in excusing him for the four days delay in making his application for substitution. Ram Lakhman Das waited from October, 1930, to 12th June, 1933, before objecting to the substitution: the hearing of the appeal began on 8th June, 1933. There is no substance in the objection taken to the order setting aside the abatement.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. As the respondents have not appeared there will be no order as to costs.

In the Privy Council.

MAHUNT SHATRUGAN DAS,
SUBSTITUTED FOR MAHUNT RAM
LAKHAN DAS *alias* RAM LAKHMAN DAS

v.

BAWA SHAM DAS AND OTHERS

DELIVERED BY SIR GEORGE RANKIN

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