

PETITIONER:
MAHANT AMAR PARKASH & ORS.

Vs.

RESPONDENT:
PARKASHA NAND & ORS.

DATE OF JUDGMENT 19/01/1979

BENCH:
REDDY, O. CHINNAPPA (J)
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REDDY, O. CHINNAPPA (J)
SARKARIA, RANJIT SINGH

CITATION:
1979 AIR 845 1979 SCR (2)1012
1979 SCC (3) 221

ACT:

Hindu Law-Succession to Mahant of a Dera-Mahant resigning during his life time and installing his successor- Notice of Mahants' intentions to the general assembly of Mahants and confirmation by it-Successor treated as 'Sadaq Chela'-Validity of appointment.

HEADNOTE:

In his suit for declaration that he was the Mahant of a Ders, the plaintiff (respondent) claimed that the late Mahant who had previously executed the power of attorney in favour of the defendant (appellant) cancelled it and summoned the General Assembly of the Udasi Bhekh which was attended by other Mahants of the Udasi Bhekh and tendered his resignation on the ground of old age and ill health, that the late Mahant treated him as Sadaq Chela and that he made him a Mahant by applying Tilak and performing the Pagri ceremony at the Udasi Bhekh. The defendant on the other hand claimed that it was he who was the chela of the late Mahant who, before his passing away executed two wills appointing him as the successor to the gaddi and that the proceedings making the plaintiff as Mahant were the result of fraud and undue influence exercised by the plaintiff over the late Mahant.

Decreeing the suit the Subordinate Judge held that neither party referred to any particular usage or custom of appointing a Mahant, that upto 1948 the practice was for the Ruler of the erstwhile State of Nabha to appoint a Mahant, but that in this case the plaintiff was duly and validly installed as the Mahant in the presence of and with the approval of the Udasi Bhekh and that no fraud or undue influence alleged by the defendant was established.

The High Court confirmed all the findings of the trial court.

On further appeal to this Court the defendant (appellant) contended that (1) the late Mahant was coerced into appointing the plaintiff as his successor and (2) the appointment of plaintiff was invalid in that he was not a chela of the late Mahant.

Dismissing the appeal,

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HELD: 1 (a) On the question whether the late Mahant was

subjected to any pressure to appoint the plaintiff as Mahant, both the courts have concurrently found that he was subjected to no such pressure. There is no reason for interference with a concurrent finding of fact by the two courts below. [1017 A-B]

(b) The submission that the High Court did not consider the complaint said to have been made by the late Mahant that he had been coerced into appointing the plaintiff as Mahant is without basis. The High Court did refer to the complaint. It confirmed the finding of the trial court that the late Mahant who was previously under the influence of the appellant had again come under his influence when he made the complaint. The presence

1013

of the police at the installation ceremony far from advancing the appellant's case, destroys the case that the Mahant acted under coercion. [1017 C-D]

2(a) In the matter of succession to the office of Mahant the custom prevalent in various institutions is that in order to entitle a chela to succeed, he must be appointed or nominated by the reigning Mahant during his life time or shortly before his death and this may be done either by a written declaration or some sort of testamentary document. Even where a 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 late Mahant belonged. When a Mahant resigns during his life time and installs his successor, on the gaddi the fraternity is made aware of the proposed vacancy in the office and is given an opportunity of confirming or refusing to confirm the nominee. [1016 D, E, G]

In the instant case the document executed by the late Mahant on the date of the installation of the plaintiff as Mahant was attested by all the visiting Mahants of the Udasi Bhekh who assembled at the Dera. The plaintiff was described as Sedaq Chela of the late Mahant. This document showed that the late Mahant accepted the plaintiff as chela and appointed him as his successor. [1017 E-1018 A]

(b) The Subordinate Judge found that none of the three earlier Mahants of the Dera who succeeded to the gaddi was a chela of each of his predecessors. [1018 B]

Mahant Satnam Singh v. Bawan Bhagwan Singh, AIR 1938 PC 216; referred to.

Mukherjea's Hindu Law of Religious & Charitable Trusts (Third Edition) referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2153 of 1969.

Appeal by Special Leave from the Judgment and Decree dated 12-8-69 of the Punjab and Haryana High Court in R.F.A. No. 357 of 1963.

Hardayal Hardy, P. H. Parekh, C. B. Singh and M. Mudgal for the Appellants.

M. N. Phadke, Mohan Behari Lal for Respondent No. 1.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J.-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

1014

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 Udasi Bhekh and held a meeting, with the help of the Deputy Commissioner, Patiala and the Police, on 23rd July 1961. The meeting was attended by other Mahants of Udasi Bhekh. In the general assembly of the Udasi Bhekh, Mahant Krishan Das tendered resignation of 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 Udasi 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 of 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 plea that he was the chela of Mahant Krishan Das and that Mahant Krishan Das who died on 30th December, 1961, had executed two Wills on 17th July, 1955 and 24th September, 1961, appointing him as the Mahant to succeed him. It was alleged that the proceedings which took place on 23rd July 1961 were the result of fraud and undue influence exercised over Mahant Krishan Das.

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 custom ?"

The learned Subordinate Judge noticed that neither party pleaded or referred to any particular usage or custom for appointing a Mahant

1015

for the disputed Dera. He also noticed that the documentary evidence showed that the final appointment of Mahants for Deras 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 Udasi 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 upto 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.

In the first instance Shri Hardayal 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 23rd July 1961, the plaintiff was entitled to succeed. He argued that late Mahant Krishan Das was covered into appointing and installing the plaintiff

1016

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.

As pointed out in Mukherjea's Hindu Law of Religious and 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 Mohunt is hereditary and devolves upon the chief disciple of the existing Mohunt who moreover usually nominates him as his successor; in the second, the office is elective, the presiding Mohunt being selected by an assembly of Mohunts. In the third, the appointment of the presiding Mohunt 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 Mohunt during his life time 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 Mohunt 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(1), 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 a 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". 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.

1017

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 basis since we find that the High Court did refer to the complaint. The High 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 appellant's case, destroys the case that Mahant Krishan Das acted under coercion.

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 Exhibit P-7 dated 23rd July 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 23rd July 1961 was described by Parkasha Nand in the following words:

"The congregation sat 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 Dass 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. Exhibits P6 to P8

were written at that time and the people who

1018

were present had affixed their signatures and thumbimpressions 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 Sunder Das and that Mahant Krishan Das himself was not a Chela of his predecessor Mahant Bhagtanand.

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

N.V.K.

Appeal dismissed.

1019

JUDIS