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RAM CHARAN v. MIHIN LAL.

An argument was addressed to us to the effect that the property must be deemed to have been the joint property of Parbhu Lal and Hoti Lal. The lower court has found that it has not been proved that Parbhu Lal was interested in the property. We are not prepared to dissent from that conclusion. But even if it was joint property in which Parbhu Lal had an interest, since the sale was for valid purposes, it would attach to the interests of Parbhu Lal which came to Gopal Das and his brothers by right of survivorship.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

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January, 22.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

BALDEO DAS (DEFENDANT) *v.* GOBIND DAS (PLAINTIFF).*

Act No. I *of* 1872 *(Indian Evidence Act), section* 35—*Evidence—Public document—Report made by kotwal in* 1840, *on reference by the Political Agent.*

Held that, on the question of the ownership of a certain temple said to be the property of the Ajaigarh state, the report of a kotwal who in 1840 had made an inquiry into the ownership of the temple at the instance of the Political Agent was relevant evidence as being a public record of a public inquiry.

THE facts of this case were as follows :—

The plaintiff alleged that the Ajaigarh State owned a temple of Sri Thakurji Shiam Sundar, and that the whole of the village, Sangrampur, which is a revenue-free village, in the district of Banda, was dedicated to this temple. The State was competent to appoint the *mahant*, and the last *mahant*, Bihari Das, was also appointed by the State. He died in 1890, and the *mahantship* remained vacant up to the 15th of March, 1910, when the plaintiff was appointed to fill up the vacancy. The plaintiff on these facts asked for possession of the village dedicated to the temple, of which, according to him, the defendant had wrongfully taken possession. The defendant defended the suit on the ground that the temple did not belong to the Ajaigarh State, which had no power to appoint the *mahant*; that the *gaddi* was meant for a *bairagi* of the *Charan Dasi* sect, whereas the plaintiff was a *Harabhyasi*, and was not a fit person to be appointed, and that the defendant was according to the custom duly elected a

* First Appeal No. 255 of 1912 from a decree of Achal Behari, Subordinate Judge of Banda, dated the 13th of May, 1912.

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mahant by the *mahants* of the adjoining places, who had power to elect him. To prove the right of the State to the temple the plaintiff filed in evidence the report of the *kotwal* of Banda, dated 1840, who had been ordered to make an inquiry about the ownership and possession of the temple in dispute, and who had come to the conclusion that the temple was built by the Rani of Raja Guman Singh, and that it was the property of the State. The Subordinate Judge admitted this document in evidence and, deciding the facts in favour of the plaintiff, decreed the suit. The defendant appealed to the High Court.

The Hon'ble Dr. *Sundar Lal* (with him Babu *Mangal Prasad Bhargava*), for the appellant :—

The plaintiff had to prove his title. If the temple was the property of the *Raj*, no doubt the Raja would be entitled to appoint the *mahant*, but the evidence was not sufficient to prove the ownership of the *Raj*. The copy of the *kotwal's* report was not admissible in evidence. His conclusions were based on hearsay evidence. The plaintiff was a *Harabhyasi* and could not be appointed to the *gaddi*, which was a *Charan Dasi gaddi* and had been held by *Charan Dasis* for over a hundred years. He referred to the evidence in detail.

The Hon'ble Dr. *Tej Bahadur Sapru* (with him Babu *Purso-tam Das Tandan* and Pandit *Krishna Rao Laghate*), for the respondents :—

The temple was not meant for any particular class of Hindus. It was built by the *Raj* and was the property of the Raja. The Raja was competent to appoint a *mahant* and he had always done so. He referred to oral and documentary evidence among which was the report of the *kotwal* mentioned above. Both the plaintiff and the defendant were *Vaishnavites*, and it was immaterial whether the *mahant* was a *Charan Dasi* or a *Harabhyasi*; *Genda Puri* v. *Chatar Puri* (1) and *Chandranath Chakrabarti* v. *Jadabendra Chakrabarti* (2). The fact that for a hundred years it was held by *Charan Dasis* was immaterial; *Sheo Prasad* v. *Aya Ram* (3); *Gossami Sri Gridhariji* v. *Romanlalji Gossami* (4). The founder has a right to appoint the

(1) (1886) I. L. R., 9 All., 1.
(2) (1906) I. L. R., 28 All., 689.
(3) (1907) I. L. R., 29 All., 663.
(4) (1889) I. L. R., 17 Calc., 3.

mahant. The Raja being the founder is competent to appoint and the plaintiff has thus a right to sue. He referred to the evidence in detail and also referred to *Imperial Gazetteer of India*, Vol. V—Account of the Ajaigarh State.

The Hon'ble Dr. *Sundar Lal* replied.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit in which the plaintiff claimed possession of a village called Sangrampur. The plaintiff says this village appertained to a temple in mauza Nimnipar in the Ajaigarh State; that the power to appoint a *mahant* of that temple is vested in the Raja of Ajaigarh, and that the Raja duly appointed him *mahant*. The appellant pleads that the village in question does not appertain in any way to the temple at Nimnipar; that the Raja has no power to appoint; that he himself was appointed many years ago, upon the death of the last *mahant*, to the *gaddi*, which is situate not at Nimnipar but at Sangrampur, the village itself. It was also pleaded that the plaintiff belongs to the *Harabhyasi* sect, while the *gaddi* is *Charan Dasi*, and that accordingly the plaintiff can in no event be appointed to be *mahant* of this temple.

The court below has come to the conclusion that the village appertains to the temple, which is situate in mauza Nimnipar in the Ajaigarh State; and that the Raja has the power to appoint, and that he duly appointed the plaintiff; and accordingly has decreed the plaintiff's suit with mesne profits to be determined in execution of the decree.

The defendant appeals. We have carefully considered the evidence and heard both sides, and we are quite satisfied that the village in question appertains to the temple, which is situated at Nimnipar in the Ajaigarh State. The earliest document is a document of 1801 in which Nawab Ali Bahadur and Raja Himmat Bahadur granted this village to one Mahant Bhajnanand. It is stated that the village "should be released to be enjoyed by the *naib* of the said *mahant* and on no account should any interference be made with the income therefrom, which should be spent by the said *mahant* on his own maintenance with perfect peace of mind. The said *mahant* should devote himself to bathing and meditation at the banks of the Ganges and remain engaged in offering prayers for the prosperity of the *sarkar*." The

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defendant contends that the document clearly shows that the grant was made to Mahant Bhajnanand personally. It will be seen that this was not the original grant. It appears that the two villages named Sunrahai and Rewai had been formerly granted, and that this document of 1801 was merely the substitution of the village of Sangrampur for the two villages mentioned above. Apart from this document, all the evidence is in favour of the village being granted as an endowment for the maintenance of the temple. It is common case that as far as the history of the village goes back, it has always been used for this purpose as a matter of fact. There can be little doubt that Bhajnanand was the *mahant* of this temple. Undoubtedly Mahant Ram Sanehi was *mahant* of the temple after him. Jugal Das, who succeeded him, was also the *mahant*. Bihari Das, who succeeded Jugal Das, was the next *mahant*. All these persons were in enjoyment of the profits of this village, and all of them admitted that the income of the village went to meet the expenses of the temple. At one time the village, which was *muafi*, was resumed by Government, but, on the representation that it had been granted as an endowment for the temple of mauza Nimnipar the British Government remitted the revenue and the village was again *muafi* and it remains so to the present time. Under these circumstances we agree in the finding of the court below that the village in question did appertain to the temple in mauza Nimnipar.

The next question is whether the Raja of Ajaigarh had authority and was the proper person to appoint the *mahant* of the temple. It is admitted that the temple is within his territory. We find that a report, made by the *kotwal* as far back as the year 1840, recited that the temple was built by the wife of Raja Guman Singh, who was the Raja of Ajaigarh, and that Bhajnanand had been the first *mahant* and that he was succeeded by Ram Sanehi who was appointed by the Raja's successor. It is said that this document is not evidence. We think that it is evidence. It is a public record of a public inquiry. The matter was referred to the *kotwal* for a report by the Political Agent in connection with the appointment of Jugal Das as *mahant* of the temple by the Raja of Ajaigarh. We find later on that the Raja purported to depose Jugal Das for misconduct and to appoint

Bihari Das as his successor. The authorities in British India appear to have questioned the authority of the Raja to make the appointment and to have put one Mohan Das, a claimant, into possession. After inquiry the representatives of Government recognized the authority of the Raja to make the appointment. Later on the Raja thought fit to depose Bihari Das in turn and to re-appoint Jugal Das. Again the authority of the *raj* was recognized. Later on Jugal Das was once more deposed and Bihari Das re-appointed. The authority of the Raja was again recognized. There is no evidence worthy of the name on the record to show that any other person or authority ever appointed a *mahant* of this temple other than the Raja of Ajaigarh for the time being. The fact that the Raja did make the appointment of *mahant* rather goes to support the finding of the *kotwal* in 1840, that the founder of the temple was the Raja, or the wife of the Raja, of Ajaigarh; and if this is so, in the absence of any other provision as to the endowment, the power to appoint a *mahant* would rest in the founder and his successors.

On the whole we see no reason to differ from the court below in the finding that the Raja had power to appoint a *mahant*.

With regard to the plea raised by the defendant that the plaintiff was not qualified for appointment by reason of the fact that he belonged to the sect known as *Harabhyasi*, it is true that apparently all the previous *mahants* belonged to the *Charan Dasi* sect; but the defendant did not show in the court below that the plaintiff by reason of his not belonging to that sect was incapable of performing the duties of a *mahant* of this particular temple, and we know of no reason why he should be so disqualified. The defendant's case in the court below was that the village had no connection with the temple at Nimnipar and that the Raja had no power or authority whatsoever. We think, however, that it may not be out of place to make some comment on the past appointments. At one time Jugal Das was appointed. He was removed from the *mahantship* on grounds of immorality and Bihari Das was appointed in his place. Very shortly afterwards Bihari Das was removed from his office on the very same grounds and the same Jugal Das was re-appointed as a moral and honest man. Very shortly after that Jugal Das is said again to have

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become immoral, and Bihari Das moral, and the latter was once more appointed to the office which he held up to the time of his death. These appointments and re-appointments were not calculated to bring credit on the Darbar, but they are comparatively speaking ancient history. But even the recent appointments cannot be regarded as satisfactory. Bihari Das died in the year 1899. The defendant, who appears to have had the approval of the other *mahants* and who would have been not an unnatural successor to Bihari Das, has remained *de facto mahant* up to the date of the institution of the suit. It is true that he was called upon in the year 1900 to appear before the Darbar and make good his claim, and that apparently he did not do so. Nevertheless he was allowed to remain in possession until the present suit was instituted on the 5th of December, 1911. We feel sure that in future when the vacancy occurs in this *mahantship*, the Darbar will take care to appoint a fit and proper person to exercise the functions of *mahant* as soon as such an appointment can reasonably be made and so avoid disputes and scandal.

We think that the decree of the court below ought to be varied in one particular. That court has awarded mesne profits to be ascertained in execution. We think, considering that the defendant was allowed to remain in possession in the way we have mentioned, there ought to be no profits save from the date of this judgement. We are informed by both parties that possession has already been given. This being so, the decree of the court below will be varied by dismissing the claim for mesne profits. We affirm the remainder of the decree. The appellant must pay the costs of this appeal.

Decree modified.

REVISIONAL CRIMINAL.

1913

December, 22.

Before Justice Sir George Knox and Mr. Justice Tudball.

BASHIR HUSAIN *v.* ALI HUSAIN AND OTHERS. *

Criminal Procedure Code, section 192—*Transfer—Case transferred by District Magistrate to the Court of a Sub-Divisional Magistrate—Further transfer by Sub-Divisional Magistrate* ultra vires.

Held that when a District Magistrate has referred a case for trial to a Sub-Divisional Magistrate the latter has no power to transfer it to any other Magistrate subordinate to him.

* Criminal Revision No. 671 of 1913.