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it is necessary that there should be at least two plaintiffs, i. e., two persons interested in the trust and holding the sanction of the Advocate-General or, in these provinces, of the Legal Remembrancer, in order to enable them to carry on the litigation. It is clear that if one representative dies it is open to another member of the public interested in the trust to come forward to take his place and thus to prevent the suit abating. It is also necessary that this other member of the public thus interested should obtain the sanction of the Advocate-General or the Legal Remembrancer. The suit being one which had been brought with sanction and it being a matter of a public trust, the lower court ought, in our opinion, to have given Kanhaiya Lal an opportunity, first, of obtaining sanction from the Legal Remembrancer and, secondly, of showing that he was a person interested in the trust, and on proof of these two qualifications the court ought in the interest of the public to have made Kanhaiya Lal a co-plaintiff in order to enable the suit to be carried on provided no good cause was shown by the other side against his being allowed to represent the public interest in the trust. The rulings quoted by the court below, viz., I. L. R., 26 All., page 162, and I. L. R., 36 Bom., page 168, are totally beyond the question and have no weight in the decision of the matter. We accordingly allow the appeal. We set aside the decree of the court below and we remand the case to the court below with direction to re-admit it on its original number and to proceed to hear and determine the same in view of the directions given above. The costs of this appeal will be costs in the cause and will abide the result.

Appeal decreed.

*PRIVY COUNCIL.

LAHAR PURI (PLAINTIFF) *v.* PURAN NATH (DEFENDANT).

[On appeal from the High Court of Judicature at Allahabad.]

Hindu law—Endowment—Election of mahant of temple—Sadhak or disciple of deceased mahant—Election by a majority of the dasnam bhik (the ten classes of mendicants) assembled for purpose of such election—Separate election by faction of dasnam bhik.

An election of a mahant of a temple by the *dasnam bhik* (the ten classes of mendicants), in order to be a valid and effectual election must be made by a

* *Present* :—Lord DUNEDIN, Sir GEORGE FARWELL, Sir JOHN EDGE, and Mr. AMEER ALI.

majority of the *dasnam bhik* assembled for that purpose. A separate election by a faction of the *dasnam bhik* is not a valid and effectual election.

In this case which related to the election of a mahant to a temple at Hardwar, called Akhara Baba Sarwan Nath, both the appellant (plaintiff) and respondent (defendant in possession of the math property) claimed to have been duly elected on the same day, the 24th of February, 1905, (being the *terwin*, the 13th day ceremony after the death of the late mahant) their Lordships of the Judicial Committee (affirming the decision of the High Court, which had reversed that of the Subordinate Judge), *held* that on the evidence, and under the circumstances of the case, the appellant, who claimed to be the *sadhak* (disciple) of the deceased mahant, had failed to prove that he had been duly elected mahant of the temple. On the other hand there was large body of evidence in support of the respondent (the *sadhak* of a former mahant) whose election and also the bhandara or feast usual on the occasion had taken place within the temple which was customary, whereas the election of, and the feast given by, the appellant took place outside the temple; that a majority of the persons present at the election of the respondent who were qualified to elect a mahant voted in favour of the respondent; that in point of numbers and influence the respondent received more support than the appellant; that the election of the respondent must have taken place before that of the appellant; and that there was no attempt on the part of the respondent to conceal (as the appellant alleged he had done) the arrangements he had made for the occasion. As it had not been shown that these points had been wrongly decided by the High Court, their Lordships dismissed the appeal

APPEAL No. 25 of 1914 from a judgement and decree (11th of March, 1912,) of the High Court at Allahabad, which reversed the judgement and decree (29th of November, 1909,) of the court of the Subordinate Judge of Saharanpur.

The questions for determination in this appeal were (1) what is the custom relating to the appointment of the mahant of a temple at Hardwar known as the Akhara of Baba Sarwan Nath, and (2) whether the appellant was appointed to be the mahant of the temple in accordance with that custom.

The suit out of which the appeal arose was brought by the appellant for a declaration that he was the duly appointed successor of one Jhandu Nath, the mahant of a math at Hardwar, who died on the 12th of February, 1905, and for possession of the property of the math.

The plaintiff's case was that he was the duly appointed and only *sadhak* of Jhandu Nath. He alleged that, according to the custom and practice of the math, when a vacancy occurs in the office of mahant, representatives of the ten well-known classes of fakirs (Gir, Sagar, Sarsuti, Aran, Ashram, Parbat, Ban, Tirath,

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Bharti and Puri, the "*dasnam bhik*" as they are called) belonging to Hardwar and its vicinity, assemble on the 13th day after the death of the mahant, and elect and instal a *sadhak* of the deceased as his successor, provided that there is a *sadhak* fit for the office. The plaintiff further stated that the fakirs assembled in the temple on the 24th of February in order to elect and instal him as mahant, but when as a preliminary to being installed he went to bathe in the Ganges accompanied by the fakirs, the respondent (defendant) took advantage of his absence and shut the door of the temple; and that the fakirs, finding themselves unable to re-enter the temple, proceeded to conduct the necessary ceremonies in a building belonging to the Rani of Landaura, and duly elected the plaintiff as mahant of the math.

The case of the defendant, who claimed to be a *sadhak* of Tej Nath, the predecessor of Jhandu Nath in the mahantship, was that it was not necessary that a *sadhak* of the last mahant should be elected to succeed him; that a *sadhak* of any previous mahant of the math was eligible for election; that if none of the *sadhaks* was fit for the office, the fakirs of the "*dasnam bhik*" could appoint an outsider to be mahant; and that the power of electing a mahant was not confined to the fakirs of Hardwar and its vicinity. The defendant alleged that he was duly elected mahant by the fakirs in the temple on the 24th of February, 1905. He denied the story of the trick which the plaintiff alleged had been played upon him, and denied also that the plaintiff was a *sadhak* of Jhandu Nath or was duly elected to be mahant of the math.

The Subordinate Judge found that the plaintiff was duly appointed a *sadhak* by Jhandu Nath; that a *sadhak* of the deceased mahant had the first claim to succeed him, and could not be passed over unless he was found unfit for the office; that the plaintiff was duly appointed mahant in succession to Jhandu Nath; and that there was no real election of the defendant who had used his position and influence for the purpose of producing a number of false witnesses to say that he was elected in due form, and bringing into existence a "*mahantnama*" (a deed evidencing his appointment as mahant) in order to meet the "*mahantnama*" produced by the plaintiff which in the opinion of the Subordinate Judge evidenced a genuine and valid election.

From that decision the defendant appealed to the High Court, and his appeal was heard by SIR H. D. GRIFFIN and E. M. D. CHAMIER, JJ., who reversed the decree of the Subordinate Judge and dismissed the suit with costs. The High Court held that the evidence that the plaintiff had been duly appointed to be a *sadhak* of Jhandu Nath was unsatisfactory, and that he had not proved that *sadhaks* of the last mahant had any right "to be elected in preference to other *sadhaks* unless declared by the electors to be unfit." The High Court, on the evidence, came to the conclusion that "it is clear that both in point of numbers and of influence, the defendant received more support than the plaintiff did. It is also proved that the election of the defendant must have taken place before that of the plaintiff. In our opinion it has been proved that the defendant was elected by a large gathering of qualified persons, and that there was no attempt on the part of the defendant to conceal the plans which he made for the day on which the election took place. The election of the plaintiff was a hole-and-corner affair in comparison with that of the defendant, and seems to have been carried out hurriedly by a discontented minority."

On this appeal—

Sir H. Erle Richards K.C. and *J. M. Parikh* for the appellant contended that the custom alleged by him was established by the evidence, namely, that a disciple of the last mahant was the proper person to be appointed to be his successor, unless he was found to be unfit; that the appellant was shown to be the only disciple of Jhandu Nath, the deceased mahant; and that so far from being found unfit, he had in fact been elected as was held by both Courts. The question was whether his election was valid. The succession, it was submitted, was governed by the custom of the math: *Genda Puri* v. *Chhatar Puri* (1); and the custom set up by the appellant was in accordance with the general law of India in such cases as the present: *Gossain Dowlut Gir* v. *Bissessur Gir* (2); and *Ramji Das* v. *Lachhu Das* (3). The respondent, however, denied the existence, and the proof of any such custom as alleged by the appellant, and claimed that a majority of the

(1) (1886) I. L. R., 9 All., 1: L. R., 13 I. A., 100.

(2) (1873) 19 W. R., 215.

(3) (1902) 7 C. W. N., 145 (147).

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dasnam bhik had elected him, and that they had power to elect any one they desired; but such a custom would be entirely contrary to the principles of succession of one mahant to another in cases like the present; such principles being "based entirely upon fellowship and personal association with each other, and a stranger, though of the same order is excluded;" see *Khugginder Narain Chowdhry* v. *Sharupgir Oghorenath* (1). The case of *Sheo Prasad* v. *Arja Ram* (2) was also referred to, and it was submitted that the appellant had the preferential right to succeed to the mahantship, and the decision of the Subordinate Judge that the appellant had been duly, and in accordance with custom, elected mahant should not have been reversed by the High Court.

De Gruyther K.C. and *B. Dube* for the respondent contended that the appellant had not proved that the custom he set up was that which governed the succession to this particular math, which it was necessary for him to establish. *Greedharee Doss* v. *Nundkishore Doss* (3); *Multu Ramalinga Setupati* v. *Periana-yagam Pillai* (4); *Varma Valia* v. *Ravi Varmah Muthia* (5); and *Genda Puri* v. *Chhatar Puri* (6). As the appellant had not proved the custom of the math, he had made out no title to the mahantship: *Janoki Debi* v. *Gopal Acharjia* (7). Being a panchaiti math, the appointment of a mahant must be by election; *Ramanooj Doss* v. *Delraj Doss* (8); that is, however, not denied. The question is, was the appellant validly elected. An election must be a bona fide one. *Ramalingam Pillai* v. *Vaithialingam Pillai* (9). Can that be said of an election which was not held in the temple, the proper place for it, and was not made by a majority of the *dasnam bhik* there assembled on the 24th of February, 1905, but only by a small faction of those qualified to vote who alone supported the appellant's election. It was submitted that the election was not a valid one, and that the suit had been rightly dismissed by the High Court. The cases of

(1) (1878) I. L. R., 4 Calc., 543.

(2) (1907) I. L. R., 29 All., 663.

(3) (1867) 11 Moo. I. A., 405 (428).

(4) (1874) L. R., 1 I. A., 209.

(5) (1876) I. L. R., 1 Mad., 235 (251); L. R., 4 I. A., 76 (84).

(6) (1886) I. L. R., 9 All., 1: L. R., 13 I. A., 100.

(7) (1882) I. L. R., 9 Calc., 766: L. R., 10 I. A., 32.

(8) (1839) 6 Sel. Rep. (Ben.) 262 (268).

(9) (1893) I. L. R., 16 Mad., 490: L. R., 20 I. A., 150.

Gossami Sri Gridhariji v. *Ramanlalji Gossami* (1); and *Ramji Das* v. *Lachhu Das* (2) were also referred to.

Sir H. Erle Richards, K. C., replied.

1915 March 15th:—The judgement of their Lordships was delivered by Sir JOHN EDGE.

This is an appeal from a decree of the High Court of Judicature at Allahabad, dated the 11th of March, 1912, which reversed a decree of the Subordinate Judge of Saharanpur, dated the 29th of November, 1909, and dismissed the suit with costs. The suit was brought on the 12th of January, 1909, by Lahar Puri, who is the appellant, against Puran Nath who is the respondent. The dispute between the parties to this appeal relates to the title to the mahantship of a Hindu math, or temple, at Hardwar, known as the Akhara Baba Sarwan Nath, and to the property appertaining to the math.

The math was founded by one Baba Sarwan Nath, who was a Sunniyasi Rukhar Fakir and died in 1849. Since his death there have been several mahants of the math in succession. It does not appear that Baba Sarwan Nath, in founding the math, prescribed any rules or practice to be followed in the selection and appointment of the future mahants. Consequently, the selection and appointment of a person to be the mahant of the math on a vacancy occurring in the mahantship must depend on the custom or usage and the practices which have prevailed in the appointment of mahants of this math, and on that principle this suit has been fought in the First Court, in the High Court, and before this Board.

The dispute as to the title to the mahantship arose in February, 1905, on the death in that month of Jhandu Nath, who was the mahant of the math, and had succeeded Tej Nath in the mahantship in 1897. In this suit the plaintiff alleges that he was the only *sadhak* (disciple) of the deceased Mahant Jhandu Nath, and being the only *sadhak* of Mahant Jhandu Nath, he was the only one of the mendicant fraternity of the temple who was qualified for election to the mahantship; that he was duly elected mahant by the ten classes of mendicants (*dasnam bhik*) on the 24th of

(1) (1889) I. L. R., 17 Calc., 3; L. R., 16 I. A., 137. (2) (1902) 7 C. W. N., 145 (147).

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February 1905; and that he was appointed with the usual ceremonies. On the other side the defendant denies that the plaintiff had ever been the *sadhak* of Mahant Jhandu Nath, or was qualified for election to the mahantship, or was elected mahant. The defendant's case is that it is not necessary that the *sadhak* of the last mahant should be elected as the mahant. He alleges in his written statement that:—

"The *sadhak* or a co-disciple, or the *sadhak* of a co-disciple of the deceased mahant is appointed a mahant, and failing these or in the event of none of these being a fit person, the mendicants of all the ten classes (*dasnam bhik*) have the power to make any fit person the *sadhak* of the *gaddi* and appoint him a mahant."

The defendant further alleges that he was a *sadhak* of Mahant Tej Nath, who preceded Mahant Jhandu Nath on the *gaddi* of the temple, and as such *sadhak* was qualified for election to the mahantship, and that he was duly elected and with the usual ceremonies was appointed mahant by all the ten classes of mendicants (*dasnam bhik*) on the 24th of February, 1905. It is not disputed that the defendant was a *sadhak* of Mahant Tej Nath. It is common ground that the time for the election of a successor in the mahantship of this temple is the *terhwin*, the thirteenth day ceremony, after the death of the deceased mahant, which in this case fell on the 24th of February, 1905. It is also common ground that on the death of a mahant of this temple the election of his successor takes place at Hardwar, and that the election and appointment of the new mahant is by the ten classes of mendicants (*dasnam bhik*) assembled at Hardwar for that purpose. From the evidence their Lordships infer that the usual place at which the *dasnam bhik* assemble for the purpose of electing a mahant of this temple, and at which they elect a mahant, is at the temple. Another common ground is that on the election and appointment of a mahant of this temple a *mahantinama* is drawn up and is witnessed by those who were present at the election, and is registered.

The defendant, who was the general attorney and storekeeper of the deceased mahant, is in possession of the temple and of the property appertaining to it. Consequently it is for the plaintiff to prove his right to the mahantship, which, if proved, would in the case of this temple, carry with it the right to the possession of the temple and of the property appertaining thereto. If the

plaintiff has failed to prove that he is the duly elected mahant of the math his suit must fail, and in that event it would be immaterial to consider whether the defendant is or is not the mahant of the math, or whether he has or has not any better title to the temple and the property which appertains to it than a title of mere possession.

Much evidence has been led by each side. The documentary evidence is not, in their Lordships' opinion, conclusive in favour of either side. The oral evidence is, as the High Court observed, extraordinarily conflicting, even for a case of this kind. Some of the material witnesses, who, if their evidence was true, must have been in a position to contradict or explain much of the evidence of the other side as to the events of the 24th of February, 1905, were examined and were cross-examined at great length, but were allowed to leave the witness box without their attention having been directed to the case of the other side. As the case was treated in the court of the trial judge it was an important question whether there were on the 24th of February, 1905, two elections of a mahant by the *dasnam bhik*, or one election only, or no real election at all. As the learned Judges of the High Court observed in their judgement in the defendant's appeal before them :—

> " The witnesses for the respondent (the plaintiff) say nothing about the election of the appellant (the defendant), and the witnesses for the appellant, with one or two exceptions, say nothing about the election of the respondent."

and yet it is alleged that there were two elections on the morning of the 24th of February, 1905, by the *dasnam bhik* then assembled at the temple.

The Subordinate Judge found as a fact that the plaintiff was the *sadhak* of Mahant Jhandu Nath. The learned Judges of the High Court, after reviewing the evidence bearing on that question, and not overlooking the fact that it was a strong point in favour of the view which the Subordinate Judge had taken that a number of fakirs who were unlikely to choose a complete outsider had joined in the so-called election of the plaintiff as mahant, were on the whole unable to say that the evidence that the plaintiff had been duly appointed a *sadhak* was satisfactory. As the plaintiff had failed to satisfy the Judges of the High Court that he had been a *sadhak* of Mahant Jhandu Nath, and as he had

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neither alleged nor proved that he was in any other way qualified for election as mahant of the math, they might have allowed the appeal and have dismissed the suit without going into the question as to whether he was or was not elected. However, they did not dispose of the appeal before them on that point; they decided the appeal on the question as to whether the plaintiff had or had not been duly elected the mahant. In the view which their Lordships take of this case it is not necessary for them to decide whether or not the plaintiff had been a *sadhak* of Mahant Jhandu Nath.

The evidence as to the so-called elections on the 24th of February, 1905, is most conflicting. Each party claims to have been elected mahant by the *dasnam bhik* on that day. That there were, in fact, two factions amongst the *dasnam bhik*—one faction desirous of electing the plaintiff as mahant, the other faction desirous of electing the defendant as mahant is on the evidence obvious. The Subordinate Judge found that it was satisfactorily proved that the plaintiff was duly elected mahant by the *dasnam bhik* on that day, and that the alleged election of the defendant as mahant was a fictitious transaction. The High Court found it proved that the defendant was elected on the 24th of February, 1905, by a large gathering of qualified persons and that the election of the plaintiff was :—

> "A hole-and-corner affair in comparison with that of the appellant (the defendant), and seems to have been carried out hurriedly by a discontented minority."

of the *dasnam bhik* which had assembled at the temple on the morning of the 24th of February, 1905.

There is evidence to support each of these contradictory findings. If their Lordships were to confine their attention to the evidence as to what took place on the 24th of February, 1905, it might be difficult to come to a conclusion as to the side on which the truth is to be found. The plaintiff's case is that he was elected at the temple that morning by the *dasnam bhik*, and that, having gone with his supporters to the Ganges to bathe before the completion of the ceremonies, they found on their return from bathing that the doors of the temple were closed, and they were obliged to complete the ceremonies at the *haweli* of the Rani of Landhaura, where he was installed, and that the *bhandhara*, the

customary feast on such occasions, took place at the Rani's *haweli*.

The plaintiff represented that he had been deceived by the defendant, and had believed until he returned from bathing that the defendant was favourable to his election. He represented that before he went to bathe the defendant had at the temple handed to him the ceremonial robes to be used at his installation, and given him the *mahantinama* of Mahant Jhandu Nath as a precedent upon which his own *mahantinama* should be drawn up. The defendant's case was that he and he alone had been elected by the *dasnam bhik* at the temple on the morning of the 24th of February, 1905, and that the ceremonies for the completion of his appointment as mahant had taken place at the temple.

Mahant Jhandu Nath, being ill, went to Lahore and died there on the 12th of February, 1905. There is some evidence, which their Lordships see no reason to doubt, that when at Lahore Mahant Jhandu Nath nominated the defendant as a fit person to succeed him in the mahantship. It is not suggested that Mahant Jhandu Nath had any power to appoint anyone as his successor, but his nomination would probably have weight with the *dasnam bhik*. The plaintiff, even assuming for the moment that he was a *sadhak* of Mahant Jhandu Nath, had no experience in the management of the affairs of the math or of the property appertaining to the temple. On the other hand the defendant, who undoubtedly had been a *sadhak* of Mahant Tej Nath and a co-disciple of Mahant Jhandu Nath, had been for years the general attorney of Mahant Jhandu Nath and the storekeeper of the temple. On the death of Mahant Jhandu Nath the defendant was early in the field preparing to secure his own election as mahant in succession to Mahant Jhandu Nath. The defendant and some supporters of his executed an agreement on the 18th of February, 1905, by which they settled between them that the defendant should be the mahant and should be installed on the *gaddi* of Baba Sarwan Nath. The defendant before the 24th of February, 1905, took a step which must have been notorious as indicating that he claimed to succeed Mahant Jhandu Nath; he filed an application in the Revenue Court in which he prayed that his name should be entered in the revenue papers in respect

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of the property of the temple in place of that of the late Mahant Jhandu Nath. When the defendant was examined in this suit as to his application to the Revenue Court for mutation of names he, in answer to the pertinent question :—

"How did you file an application for mutation of names when you had not been elected a mahant?"

replied—

"We had settled the matter amongst ourselves."

In reply to the interrogative observation on that answer :—

'The *dasnam bhik* had not settled the question up to that time?"

the defendant said

"When Jhandu Nath was elected to the *gaddi* the *dasnam bhik* said that Puran Puri (the defendant) would be appointed mahant after Jhandu Nath; and on the *tija* day also the panches settled that Puran Puri would be appointed mahant."

It was the defendant who sent out the invitations to the mahants and other people to attend on the *terhwin*, thirteenth day ceremony, when a mahant should be elected. None of the invitations have been produced, but from some of the replies which have been put in evidence it may be inferred that the invitations were to attend for the election of the defendant as mahant. It was the defendent who made the preparations for the *bhandara*, the customary feast, which was to take place at the temple on the day of the election of the mahant. That *bhandara* was held at the temple, and it is not pretended that the plaintiff and his supporters took part in it. The *bhandara* in which the plaintiff and his supporters took part was held at the *haweli* of the Rani of Landhaura. The plaintiff had then no money, but after he had been placed on the *gaddi* at the Rani's *haweli* he borrowed some money from the Swami Shimboo Gir and sent two brahmans into the bazaar, who bought the things which were required for his *bhandara*.

According to some of the plaintiff's witnesses the defendant was present at the temple when it was settled by the *dasnam bhik* that the plaintiff had a right to the mahantship and should be appointed mahant, and did not object or claim that he, and not the plaintiff, should be elected mahant. Having regard to the facts to which their Lordships have referred, it is impossible to believe that the defendant was assenting to the election of the plaintiff. There is a large body of evidence in support of the

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defendant's case that he was elected mahant on the morning of the 24th of February, 1905.

The High Court has found that the majority of the persons present on the morning of the 24th of February who were qualified to elect a mahant of this temple were in favour of the defendant; that in point of numbers and of influence the defendant received more support than the plaintiff did; that the election of the defendant must have taken place before that of the plaintiff; and that there was no attempt on the part of the defendant to conceal the arrangements which he had made for the 24th of February, 1905. It has not been shown to their Lordships that the High Court came to a wrong conclusion on any one of these points. An election by *dasnam bhik* of a mahant to be a valid and effectual election must be by a majority of the *dasnam bhik* assembled for that purpose. A separate election by a faction of the *dasnam bhik* is not a valid and effectual election. Their Lordships have come to the conclusion that the plaintiff has failed to prove that he was elected a mahant.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the costs of this appeal.

Appeal dismissed.

Solicitor for the appellant:—*Edw. Delgado.*

Solicitors for the respondent:—*Barrow, Rogers & Nevill.*

J. V. W.

APPELLATE CIVIL.

Before Mr. Justice Chamier and Mr. Justice Piggott.

BADAN (JUDGEMENT-DEBTOR) *v.* MURARI LAL AND ANOTHER (DECREE-HOLDERS)*

1915 *March*, 8.

Mortgage—Two mortgages executed by the same mortgagor—Mortgagor becoming by inheritance owner of decree for sale on prior mortgage—Effect of, on rights of puisne mortgagees.

Held that a mortgagor who had become by inheritance the owner of a decree against himself on a prior mortgage was not entitled to hold up such prior mortgage as a shield against the decree of a subsequent mortgagee

*Second Appeal No. 493 of 1914 from a decree of L. Johnston, District Judge of Meerut, dated the 11th of February, 1914, reversing a decree of Kalika Singh, Additional Subordinate Judge of Meerut, dated the 10th of May, 1913.