APPELLATE CIVIL.

Before Mr. Justice Sulaiman and Mr. Justice Kendall.

GOSHAIN SHEO GHULAM PURI (PLAINTIFF) *v.* SHIAM LAL BHAGAT (DEFENDANT).* 1927 *November.* 29.

Math—Dasnami Goshains—Succession—Custom of the order —Alienations made by a mahant*—No presumption of property being trust property.*

According to the custom of the order of ascetics known as *Dasnami Goshains*, when once a person has been received into the order, no tie of relationship remains between him and his natural relations, and neither can succeed to the private property of the other. *Ramdhan Puri* v. *Dalmir Puri* (1), followed.

The rules of succession and devolution prevailing in a particular *math* are governed by the particular customs which apply to it.

Properties belonging to a *math* of the order of *Dasnami Goshains* had descended from *guru* to *chela* for several generations, but from 1874 to 1922 the *mahants* of the *math* had been exercising rights of private ownership over some of them by making usufructuary mortgages. There was no reliable evidence that the properties so alienated were trust properties. *Held*, that there was no legal presumption that these properties were trust properties, and such alienations could not be contested by a *chela* of the *guru* who had made them. *Indar Singh* v. *Fateh Singh* (2), distinguished.

THESE were two first appeals, Nos. 489 of 1924 and 141 of 1925, arising out of two distinct suits which were tried together. The plaintiff in both the suits claimed to be the disciple and the spiritual successor of the late Goshain Rup Puri, who was the *mahant* of the *math* of Sawdhari Puri. His case was that the deceased under two sale-deeds, dated the 21st of October, 1919, and the 13th of January, 1922, transferred the property in dis-

*First Appeal No. 489 of 1924, from a decree of Iftikhar Husain, Additional Subordinate Judge of Ballia, dated the 26th of September, 1924.

(1) (1909) 2 Indian Cases, 385. (2) (1920) I.L.R., 1 Lah., 540.

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pute in these cases to the contesting defendant and his wife in order to pay off certain amounts due to previous mortgagees; that these properties were part of the *math* property, and there was no legal necessity for their transfer. The defendant contested the claim by denying that the plaintiff was the *chela* of the deceased and denying that the property was trust property. There was also a plea that there was legal necessity for the alienation.

The court of first instance found most of the issues in favour of the plaintiff. It held that it was proved that the plaintiff was the lawful *chela* of deceased Goshain, that the sale was for consideration and without any legal necessity and that there was no force in the defendant's plea that the suit was barred by section 42 of the Specific Relief Act. It, however, held that it was not shown that the property belonged to the *math* or appertained to it and that it was trust property which the deceased could not transfer. On these findings it dismissed both the suits. The plaintiff appealed.

Dr. *Surendra Nath Sen*, Mr. *B. Malik* and Munshi *Ajudhia Nath*, for the appellant.

Pandit *A. P. Pande*, for the respondent.

THE judgement of the Court (SULAIMAN and KENDALL, JJ.), after reciting the facts as above, thus continued :—The main point before us is whether the properties covered by the sale-deeds were part of the trust property belonging to the *math*. There was some oral evidence led in the court below, consisting of statements of witnesses based mainly on hearsay to the effect that these properties belonged to the *math*.

[The evidence was discussed and found not sufficient to support the conclusion that the properties in question were in fact trust properties.]

The learned advocate for the appellant has next contended that having regard to the fact that these properties have descended from *guru* to *chela* for several generations and that it is found that there is some nucleus of trust property, it should be presumed that the succession in the spiritual line took place because these properties were trust properties.

The *mahants* of this *math* are Puris and belong to one of the *Dasnami Goshains*, an order founded by the famous Shankaracharya. As pointed out in the case of *Ramdhan Puri* v. *Dalmir Puri* (1), before a person is taken into this order finally a number of ceremonies are performed, e.g. the taking off of *janeo*, the cutting off of his *chotia* (tuft of hair) and his performing his own *sradh*. All these indicate that his connection with his natural family and the secular life is altogether severed, and he belongs completely to this order. This would suggest that after he has been taken into the order finally no tie of relationship remains between him and his natural relations, and neither can succeed to the private property of the other. No authority has been cited before us to show that the private property which a *mahant* of this order might acquire can descend to his natural relations in preference to his spiritual *chelas*. *Primâ facie* one would imagine that the devolution of both the trust property and the private property would be in the spiritual line. It cannot be doubted that the rules of succession and devolution prevailing in a particular *math* are governed by particular customs applicable to it. It cannot be denied that a *mahant* might acquire private property with his own money, but such property also could not be inherited by the members of his natural family. In view of this matter there is no significance attached to the mere circumstance that the devolution of these properties has for several generations

(1) (1909) 2 Indian Cases, 885.

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been in the spiritual line. Great reliance has been placed by Dr. *Sen* on the case of *Indar Singh* v. *Fatch Singh* (1). But it was assumed in that case that there could be devolution on the natural heirs and it was then held that when it was shown that property had descended from one *mahant* to another *to the exclusion of the natural heirs* there was a presumption that the property was trust property. In this particular case we are unable to hold either on the evidence or on any authority that even the private property of any *mahant* could have been inherited by his natural heirs.

On the one hand we have the circumstance that these properties were in the possession of persons who were the *mahants* of this *math*, on the other we have the undoubted fact that between the years 1874 and 1922 there had been various transfers in the form of usufructuary mortgages made by the spiritual great-grandfather, grandfather and the father of the present plaintiff. These *mahants* had been treating these properties as their own properties, as if they had full disposing power over them. In the sale-deeds which are disputed in this case, Rup Puri asserted that these properties belonged to him and he was competent to transfer them. We have, therefore, the assertions of private ownership made by these *mahants* for so long a period, and we also have their course of conduct during all this time. In the absence of any evidence to the contrary it must be assumed that they were dealing with properties which belonged to them as owners. There is no presumption that they were trust properties and the plaintiff has therefore failed to prove that they were part of the trust properties belonging to the *math*. We accordingly dismiss these appeals with costs.

Appeal dismissed.

(1) (1920) I.L.R., 1 Lah., 540.