For the reasons set forth above we affirm the decision of the Court below and dismiss the appeal with costs.

Appeal dismissed.

APPEAL FROM ORIGINAL CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Abdul Raoof.

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May 15.

INDAR SINGH AND ANOTHER (DEFENDANTS)—*Appellants,*

versus

FATEH SINGH (PLAINTIFF)—*Respondent.*

Civil Appeal No. 3009 of 1916.

Custom—Religious institution—Darbar Sahib (*Golden Temple*) *Amritsar—Succession to properties in the hand of a* granthi—*Son or successor to the office—Relevancy of previous decision on points at issue—Indian Evidence Act, I of* 1872, *sections* 11, 13 *and* 43.

The plaintiff, as duly appointed successor to Harnam Singh, the late *granthi* of the Sikh religious institution known as *Darbar Sahib* or Golden Temple at Amritsar, sued the son of Harnam Singh for possession of certain properties and the question was which of the properties in possession of Harnam Singh were dedicated to the office of *granthi* and which were his self-aquired property and not dedicated to the religious uses. A previous judgment which was given in a suit contesting the right of the then *granthi* Jawahar Singh (the predecessor of Harnam Singh), to alienate certain shops was referred to by plaintiff as proving that these shops were *waqf* and attached to the *gaddi* as found by the Court. Defendant objected to the relevancy of this judgment.

Held, that in regard to properties dedicated to the office of *granthi* of the *Darbar Sahib*, Amritsar, succession goes to the person succeeding to the office, while properties acquired by the *granthi* himself out of his income and not proved to have been dedicated to the office descend to his natural heirs. There is a presumption that property which has descended from one *granthi* to another to the exclusion of natural heirs has been dedicated to religious uses even if there is no positive evidence of actual dedication.

Ram Singh v. *Nehal Singh* (1) and *Har Parshad* v. *Shadu* (2), approved.

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(1) 136 P. R. 1889, page 470. (2) 31 P. W. R. 1916, page 96.

Held also, that a previous judgment in a suit contesting the right of the then *granthi* to alienate certain shops, wherein it was held that these properties were *waqf* and attached to the *gaddi* and could not be alienated by the *granthi*, could only be treated as admissible in evidence for the purpose of showing that at that time also the right of the *granthi* to alienate certain property was called in question. The finding of the Court that the property was *waqf* and was attached to the *gaddi* is not relevant in the present case.

Gujja Lall v. *Fatteh Lall* (1), *Ramasami* v. *Appavu* (2) and *Maharad Amin* v. *Hasan* (3), followed.

Ameer Ali and Woodroffe's Law of Evidence, 5th Edition, page 179 *et seq*, referred to.

First appeal from the decree of Khan Sahib Mirza *Zafar Ali, Senior Subordinate Judge, Amritsar, dated the 10th of October* 1916, *decreeing the claim in part.*

SANTANAM, MUHAMMAD RAFI and MOTI SAGAR, for Appellants.

BEVAN-PETMAN, TEK CHAND and HARI CHAND, for Respondent.

The facts of the case are given in the judgment of the Court delivered by—

SCOTT-SMITH, J.—The properties in dispute in the case out of which the present appeal arises were in the possession of Harnam Singh, Head *granthi* of the Golden Temple, Amritsar, who died on the 29th of July 1907. The plaintiff-respondent, Fatteh Singh, who claims to be his *chela* was duly installed in the office of Head *granthi* in succession to the deceased on the 4th December 1907. The defendant-appellant, Indar Singh, is the son of the deceased Harnam Singh. His age was about one year at the time of his father's death, and he was, therefore, only about 7 years of age when the present suit was instituted in 1913. Fateh Singh was also a minor at the time of Harnam Singh's death, and the widow of Harnam Singh, who is the mother of Indar Singh, was the guardian of both the present parties. No claim was put forward on behalf of Indar Singh to succeed Harnam Singh as Head *granthi* at the time of the latter's death and Fateh Singh was installed in the office without opposition on the part of any one. About 1909 disputes arose between the parties in respect of the

(1) (1880) I. L. R. 6 Cal. 171 (F.B.) (2) (1887) I. L. R. 12 Mad. 5.
(3) (1906) I. L. R. 31 Bom. 143 (157).

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properties left by Harnam Singh, and Fateh Singh instituted the present suit to obtain possession thereof on the 22nd of April 1913. On the 27th of May 1913 a suit was instituted on behalf of Indar Singh to obtain the office of Head *granthi* for himself, and for the dismissal of Fateh Singh therefrom. That suit was dismissed by the lower Court, and civil appeal No. 907 of 1917,* which we have heard along with the present appeal, was lodged from that order.

In the suit brought by Fateh Singh a decree was given for the properties in list A filed with the plaint, and for Rs. 5,940-0-0 on account of income of the properties in suit out of Rs. 10,423-0-0 actually claimed. The suit for the properties contained in lists B, D and E was dismissed. From this order an appeal has been lodged on behalf of Indar Singh. Fateh Singh has not appealed as regards the portion of his claim dismissed, nor has he filed cross-objections in the appeal of Indar Singh. Our judgment of to-day's date in Civil Appeal No. 907 of 1917* should be read along with the present judgment and our findings recorded therein so far as may be necessary should be taken as findings in the present case also. We have dismissed Indar Singh's appeal in the other case, and in our judgment have held *inter alia*—

(1) that the office of *granthi* is a religion office;

(2) that a son has no right to succeed his father in this office merely on the ground that he is his son;

(3) that Fateh Singh was the *chela* of Harnam Singh and was duly appointed as Head *granthi* of the Golden Temple in succession to him, and that he is entitled to hold that office;

(4) that Jawahar Singh, the predecessor in office of Harnam Singh, succeeded thereto as the *chela* of Jassa Singh with the approval of the brotherhood;

(5) that Harnam Singh was the *chela* of Jawahar Singh and succeeded to the office

*Printed at page 511 *supra*.

of *granthi* as such, and because he was duly appointed thereto and not because he was the brother of Jawahar Singh.

There are at present three *granthis* attached to the Golden Temple, whose pedigree is given in the judgment of the Lower Court at page 431 of the main paper-book, which we call A. It is given more fully in the document relating to the appointment as *granthi* of Fateh Singh, dated the 15th August 1907, marked Exhibit P. 18, printed at pages 88 *et seq.* of the paper-book. The two first *granthis* are not shown in these tables. They were Budha and Gowal Das respectively, the latter having been succeeded by Chanchal Singh. At first there was only one *granthi*, but after Atma Singh there were three. The line of the Head *granthi* started with *Bhai* Sham Singh. In that line the succession has always gone from *guru* to *chela*, for though Harnam Singh was the brother of Jawahar Singh, it has been found that he succeeded him as his *chela* and not as his brother. In this line Harnam Singh is the first *granthi* who has left a son, and this accounts for the dispute between his son and his *chela*. When Jawahar Singh died, there was a dispute relating to his succession. Harnam Singh's title to succeed was disputed by the other two *granthis*, Hira Singh and Bhagat Singh. In 1887 they instituted a suit against him for a declaration that his succession to the *gaddi* should be considered unlawful, and that he should be dispossessed of the properties detailed in the lists filed with the plaint and said to be connected with the *gaddi*, and that the possession of the same should be given to them, the plaintiffs. That suit was eventually decided by a Bench of the Chief Court, the judgment of which is reported as *Bhai Bhagat Singh* versus *Harnam Singh* (1). It was there found that "the rule of succession in the case of the *Darbar Sahib* or Golden Temple, at Amritsar, has been that the *gaddi nashins* have nominated successors, who have been installed in each case without objection." It was held "that no good grounds existed for applying the doctrine of survivorship to the case of succession to the office of *granthi*," and that the plaintiffs had failed to prove that they were them-

(1) 49 P. R. 1892.

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selves the rightful successors to Jawahar Singh, or that Harnam Singh's continuance in the office of which he was in actual possession was opposed to any customary rules governing the institution. The result of this decision was that Harnam Singh continued to hold the office of *granthi* and to remain in possession of the properties previously held by Jawahar Singh. The Lower Court has now held that Jawahar Singh was the *chela* of Jassa Singh and succeeded him as such, and did not get his properties and the *gaddi* on account of a deed of gift said to have been executed by Jassa Singh in his favour. It has also held that the properties in the hands of Harnam Singh and his predecessor in office as *granthi* are *waqf* and attached to the office, and that Indar Singh, merely as the son of Harnam Singh, has no right to succeed to them. The suit has been dismissed as regards certain properties which were acquired by Harnam Singh himself out of his income, and in regard to which it has not been proved that they were dedicated to the office of *granthi*. It is common ground that a *granthi* can spend the income of his office in any way he likes; he is not bound to spend any part of it in charity; he can acquire property out of his income, and can dispose of that property in any way he likes. If he acquires property and dies without having dedicated it to religious purposes, there is no reason why it should not descend to his natural heirs according to the usual rule of inheritance. If, however, it is shown that any part of the property has descended from one *granthi* to another to the exclusion of the natural heirs, then it appears to us that a presumption must arise that such property has been dedicated to religious uses, even if there be no positive evidence of actual dedication. In this connection we have been referred to *Ram Singh v. Nehal Singh* (1) where, at the bottom of page 470, the following passage occurs:—

"No one would have any doubt that if a *Sadh* himself acquires property, and does not devote it to religious purposes (and a *Sadh* can acquire property), he remains absolute arbiter of the disposal of the property; but if the property has once passed to a *chela*, in virtue of his being *chela*, to the exclusion of his

(1) 136 P. R. 1889.

natural heirs, it certainly would be only reasonable to hold that the *chela* must treat the property as religious."

In the case of *Har Parshad* v. *Shadu* (1), a Bench of the Chief Court in considering the case where a trust had been created by the *Nai* community for the maintenance of a *Smadh* made the following remarks at page 96:—

> "This record is equally consistent with the allegation that Shib Charn Gir held the property as trustee, and does not, in our opinion, mean that he was the private owner thereof. The oral evidence on the point is altogether worthless; but the fact that the succession to the entire property has been admittedly from *guru* to *chela* irresistably points to its being a religious trust."

The first two items in list A dealt with by the lower Court are some shops in the rice market and in the wheat market in the City of Amritsar. In connection with these, the lower Court has referred to a judgment of *Sardar* Shamsher Singh, which was given in a suit contesting the right of the then *granthi* Jawahar Singh to alienate these shops. The judgment in question will be found printed at pages 207-210 of paper-book A. It is dated 21st April 1870. It was held therein that the property was *waqf*, and was attached to the *gaddi*, and therefore could not be treated by the *granthi* as his private property. The mortgages made by him were, therefore, cancelled. It has been strongly contended before us on behalf of the appellant that this judgment is inadmissible in evidence for the purpose of proving that the property then in dispute is *waqf* and inalienable. Counsel for the respondent contends that the judgment is admissible under section 13 of the Indian Evidence Act. The admissibility of such judgments is discussed at great length in Amir Ali and Woodroffe's Law of Evidence, 5th edition, at pages 170 *et seq*. The learned authors referred to the case of *Gujja Lal* v. *Fatteh Lal* (2), in which it was held that such judgments are inadmissible in evidence as "transactions" under section 13 of the Evidence Act or as "facts" under section 11, or under any other section of the Act. The learned authors have gone on to point out that the Madras High Court concurred

(1) 31 P.W.R. 1916, page 96. (2) (1880) I. L. R. 6 Cal. 171 (F. B.)

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in the decision in *Gujja Lal* v. *Fatteh Lal* (1) in *Ramasami* v. *Appavu* (2). The authors also considered various rulings of their Lordships of the Privy Council, and finally came to the conclusion that such judgments are not relevant as decisions on points at issue. The matter was also elaborately discussed by Mr. Justice Beaman, in the case reported as *Mahamad Amin* v. *Hasan* (3). The learned Judge's conclusion will be found at the bottom of page 157, from which the following passage may be quoted :—

> "All the best authorities, I think, agree that a judgment *quâ* judgment and in respect to its contents, certainly, is not such a 'transaction' or 'instance,' but it may be the simplest and most convenient proof of the transaction, namely, the litigation, or the instance, namely, the assertion by the plaintiff, and the denial by the defendant of the right so limited, there would be no great objection or difficulty in the way of admitting the judgment. Its probative effect would then be no more than this, to establish that at the time it was given, there had been a transaction between the parties to it in which the right in question had been asserted or denied. It being conceded, as I think, on a correct reading of the best authorities it must be conceded, that if judgments of this kind are admissible at all under sections 43 and 13 they are admissible only as the simplest proof of a transaction, or an instance within the meaning of the latter section, it follows, of course, that the proof cannot be taken beyond the thing to be proved, and the thing to be proved is no more than that there was an assertion, or a denial, not the grounds upon which a Judge held that the assertion or the denial was good or bad in law."

We have no hesitation in agreeing with this interpretation of the law, and we, therefore, consider that the judgment of *Sardar* Shamsher Singh can only be treated as admissible for the purpose of showing that at that time also the right of the *granthi* to alienate certain property was called in question. The finding of the Court that the property was *waqf*, and was attached to the *gaddi*, is, in our opinion, not relevant.

At page 279 of paper-book A is printed a translation of a copy of a copy of a so-called deed of gift which appoints Jawahar Singh in place of Jassa Singh, *granthi*. Now, in regard to this it has been objected that the deed has not been proved in this case, and Counsel for the appellant has quite failed to show us how it has been proved. But even taking this docu-

(1) (1880) I. L. R. 6 Cal. 171 (F. B.) (2) (1887) I. L. R. 12 Mad. 9.
(3) (1906) I. L. R. 31 Bom. 143 (157).

ment at its face value, we do not consider that it shows that Jawahar Singh succeeded to Jassa Singh's office and the property held by him in virtue of a gift. The deed purports to convey not only all Jassa Singh's property, but also the *gaddi* of the *Darbar Sahib*, *i.e.*, the office of *granthi*. It purports to be signed by the *granthis* and *mahants* of other religious institutions in Amritsar, and in our opinion it should really be looked upon as a deed appointing Jawahar Singh as successor of Jassa Singh. In this connection much stress is laid by Counsel for the respondent upon certain admissions of Jawahar Singh contained in the written pleas filed by him in the case of Bhagat Singh and Diwan Singh *versus* Jawahar Singh (see pages 212-213, paper-book A). In ground 3, he states that all kinds of property attached to the *gaddi* is still held by the appellant, *i.e.*, Jawahar Singh. In ground 6 he says it is a fact that the appellant's *guru* (Jassa Singh) with the approval of the *raises*, the *sardars* and the *Sadh Sangat* made over to the appellant all the property attached to the *gaddi*, including the land in dispute and appointed him a *gaddi nashin*, executing a document to the effect, which was also signed by the respondent's *guru*. This, in our opinion, shows conclusively that Jawahar Singh considered the so-called deed of gift to be a deed appointing him to the *gaddi*, and transferring to him all the property attached thereto. Jawahar Singh was duly installed on the *gaddi*, and, therefore, as a matter of course, obtained possession of all the property attached to the *gaddi*.

The lower Court has laid stress on the fact that in the 1887 suit Bhagat Singh and Hira Singh in their plaint referred to the property in dispute as being connected with the *gaddi*. Harnam Singh, in his written pleas, said that being the real brother and *chela* of Jawahar Singh he was, by law and custom, the rightful heir to the *gaddi*, and that according to ancient custom he was appointed *gaddi nashin* by the *sants*, the *mahants*, the *pujaris*, and the Darbar Committee, and that he could not be dismissed after such appointment. The defendant, in that case, never pleaded that, even if he was not entitled to the *gaddi*, he was entitled to inherit the property of Jawahar Singh, because he

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was his brother, nor did he dispute the averment in the plaint that the property in dispute was connected with the *gaddi*. Bhup Singh, the father of Jawahar Singh, had three sons, *viz.*, Jawahar Singh, Harnam Singh and Jit Singh. A statement of Bhup Singh, made by him in the case of Bhagat Singh *versus* Jawahar Singh, on the 27th April 1876 (Exhibit P. 120) is printed at pages 33-34 of paper-book A. In that statement he said "my houses and property are not attached to the *gaddi* (*Darbar Sahib*). This property of mine shall not be inherited by Jawahar Singh, as he has become a disciple of a *Panth*. I have offered him to the *Darbar Sahib*. I have got two other sons, and the property shall be inherited by them" Now, Jawahar Singh actually succeeded to the office of *granthi* and got all the property held by Jassa Singh, during the life-time of his father, Bhup Singh. Jawahar Singh died before his father, and the office of *granthi* together with the property went to Harnam Singh. Bhup Singh died subsequently, and Jit Singh, his son, admittedly inherited the whole of his property, no part of it going to Harnam Singh. Harnam Singh never claimed a share in it, nor did Jit Singh claim any share in the property of Jawahar Singh. These facts are important as showing that the property of Jassa Singh descended to Jawahar Singh and from him to Harnam Singh to the exclusion of the natural heirs. *Primâ facie* the inference to be drawn from this is that the property, which so descended, is attached to the office of *granthi*, and was dedicated thereto.

(*The remainder of the judgment is not required for the purpose of this report*—*Ed.*).

Appeal accepted in part.