

APPELLATE CIVIL.

Before Addison and Bhide JJ.

BISHAMBAR DAS AND OTHERS (PLAINTIFFS)

Appellants

versus

MST. PHULGARI (DEFENDANT) Respondent.

1930

Feb. 24.

Civil Appeal No. 324 of 1928.

Civil Procedure Code, Act V of 1908, section 92—Dharm-sala Sain Bhagat, Lahore—Suit by Barbers to expel the female Mahant—Sanction of Collector—whether necessary—Succession of Mahants—Custom.

Held, that though the *Dharm-sala Sain Bhagat*, Lahore, was founded by the barbers of Lahore, who have undoubtedly power to sue to set aside unauthorised alienations of the property by the *Sanyasi Mahants*; the property being a religious trust, the *Mahant* could only be evicted by a suit brought with the Collector's sanction on proper grounds.

Held further, that as the barbers had never exercised the right to nominate a *Mahant*, this being done by each *Mahant* nominating his successor, the barbers have now no power to do so; the only law as to *Mahants* and their office is to be found in custom and practice.

And, that the devolution of the office of a *Mahant* is different from that of a *shebait*. Thus, though it may be the correct rule as regards the latter that the title and control of the property follows the line of inheritance from the founder, that principle has no application in the case of the *Dharm-sala Sain Bhagat*.

Mulla's Principles of Hindu Law, 6th edition, paras. 418-419, referred to.

Held also, that it could not be said that the appointment of a woman to the *mahantship* of this institution was illegal; and, that the defendant in this case was lawfully appointed a *Mahant* with the consent of the *Sanyasi* brotherhood and was in possession of the suit-property as such.

Second appeal from the decree of Rai Sahib Lala Topan Ram, Additional District Judge, Lahore, dated the 26th October 1925, affirming that of Bawa Kanshi

1930
 BISHAMBAR DAS *Ram, Subordinate Judge, 1st Class, Lahore, dated the
 23rd April 1924, dismissing the plaintiff's suit.*

v.
 Mst.
 PHULGARI. JAGAN NATH AGGARWAL and NAWAL KISHORE, for
 Appellants.

Nemo, for Respondents.

ADDISON J.

ADDISON J.—There is a large *ihata* containing a *dharmshala*, a *shivala* and a *samadh* in Lahore City. The *samadh* was founded by the Hindu barbers in memory of Sain Bhagat *Hajam*. Much later a temple was built in the courtyard and other buildings added. The person presently in charge is *Mussammatt* Phulgiri, defendant, widow of Shamgir. The *mahants* of the institution have been *sanyasis* since the history of the institution has been able to be traced. The first known *mahant* was Harigir who was followed by Lachhmangir, his *chela*. He was succeeded by *Mussammatt* Aitwargiri. She was followed by her son Shiv Charangir who was succeeded by his *chela* Shamergir, the latter being succeeded by his *chela* Shamgir. The defendant's case is that she was nominated *mahant* by her husband Shamgir with the consent of the *sanyasi* brotherhood or *bhek*. The plaintiffs are certain barbers of Lahore along with one Ganga Puri. Their case was that the barbers of Lahore appointed Ganga Puri *mahant* of the institution and they, therefore, claimed a declaration that the property in dispute was *wakf*, and that an injunction should issue to *Mussammatt* Phulgiri not to interfere with the suit property. It may be mentioned here that the suit property comprises everything inside the *ihata* in question except the *samadh* itself, two shops, a staircase and a *chaubara*, situated in a corner of the *ihata* as to which another suit has been brought.

The trial Court held that the property was *wakf* that the joining of Ganga Puri along with the other plaintiffs was unimportant as Ganga Puri could have no cause of action unless the barbers had power to appoint him, that *Mussammat* Phulgiri was the widow of Shamgir, the previous *mahant*, and that she had been nominated by him with the consent of the fraternity as his successor. It further found that a woman could be a *mahant* and that the barbers had no power to appoint the *mahants* of the institution and had never exercised such power. Finally it was held that the suit for injunction did not lie and the suit for a declaration was dismissed on the other findings.

The learned District Judge dismissed the appeal and against his decision this second appeal has been preferred.

There has been much litigation about this institution and the first judgment as regards it was delivered on the 16th June 1871. It was held then that the property was *wakf* and that Shiv Charangir, referred to above, being the third *mahant* in ascent above Shamgir, was not competent to alienate the property without necessity. That suit was brought by certain barbers and there is no doubt that the barbers have power to sue to set aside unauthorised alienations by the *mahants*.

I need only refer to one other suit. That was again a suit by certain barbers for a declaration that the alienation of four shops and a *kothri* by Shamgir, the predecessor and husband of the present defendant, were unauthorised. It was held by the Chief Court in that case that the property was *wakf* and that the suit lay. It was stated in that judgment that succession to the entire property had been admittedly from

1930

BISHAMBAR DAS

v.

MST.

PHULGIRI.

ADDISON J.

1939
 BISHAMBAR DAS
 v.
 Mst.
 PHULGAR.
 ADDISON J.

guru to *chela* and that this irresistibly pointed to its being a religious trust. There is no question that the findings of the courts below are correct in the present case that the property is *wakf* and that the succession of the *mahants* has been from *guru* to *chela*. The finding is also correct that the barbers have failed to establish that they ever exercised the right to nominate a *mahant*. This has been done by each *mahant* nominating his successor. This custom, which is established in the present case, is in accordance with paragraph 418 at page 474 of Mulla's Principles of Hindu Law, sixth edition, where it is said that the only law as to *mahants* and their office is to be found in custom and practice. The custom that prevails, it is added, in the majority of cases is that the *mahant* nominates his successor by appointment during his lifetime or by will. Where there is no such custom, or where no nomination has been made, the usage of some institutions is to have the successor appointed by a system of election by the *bhek*.

The devolution of office of a *mahant* is different from that of a *shebait*, see paragraphs 418 and 419 of Mulla's Hindu Law. It was argued before us that as the barbers are proved to be founders, the title to the management and control of the property followed the line of inheritance from the founder. This may be the correct rule as to the devolution of the office of *shebait*, but it has obviously no application to the present case. The barbers have never exercised the right to nominate a *mahant* and have no power to do so.

Further, it has been established that the last *mahant* validly nominated his successor. A written document was drawn up which was signed by eight of the members of the *sanyasi bhek*. That shows that the

brotherhood approved of her appointment. It cannot be said that the appointment of a woman to the *mahantship* is illegal as in this institution *Mussammai Aitwargiri*, the mother of Shiv Charangir, was at one time a *mahant*. It was also stated in the deed nominating the defendant that she had power to nominate a *chela*. There can be no question, therefore, in the present case that the defendant was lawfully appointed a *mahant* and is in possession of the suit property as such. It follows that she can only be evicted by a suit brought with the Collector's sanction on proper grounds. This suit was properly dismissed and I would dismiss the appeal. I would make no order as to costs as the respondent is not represented.

1930
 BISHAMBAR DA
 v.
 Mst.
 PHULGARI.
 ADDISON J.

BRIDE J.—I agree.

BRIDE J.

N. F. E.

Appeal dismissed.