

APPELLATE CIVIL.

Before Broadway and Johnstone JJ.

GOBINDA MAL AND OTHERS, Appellants

versus

LABH SINGH AND OTHERS, Respondents.

Civil Appeal No 1348 of 1923.

Sikh Gurdwaras (Punjab) Act, VIII of 1925, section 16 (2) (ii)—*Dharmshala of Lal Mal Saraf at Amritsar—whether a Sikh Gurdwara—onus probandi.*

By his will the founder of the *dharmshala*, who had lived and died a *Hindu*, appointed a *Sikh* manager of the whole of his property, who he declared was to appoint a *dharmshali* who should recite the *Guru Granth Sahib* every day and serve the *sadh sangat* visiting the *dharmshala*; give a feast to the *sadh sangat* periodically out of the savings of the estate, after paying the cost of the testator's funeral rites starting from the preliminary rites to the *chaubarsi* ceremony (a *Hindu* ceremony). The term *sadh sangat* was preceded in the will by the words "*avind ravindagan*" and thus being interpreted as "itinerant members of the *Sadhs* or *Sadhus*" (holy men) there being no evidence to shew that such holy men were *only Sikhs* or that the trust would be considered as broken by the feeding of others than *Sikhs*. The *dharmshala* was admittedly visited by *Sanatani Hindus* as well as by *Sikhs*. Nowhere in the will, on which the case before the Tribunal mainly rested, did the founder prescribe the worship of the *Granth Sahib*, which is the main essential of the *Sikh* religion, the *Guru Granth Sahib* being by true *Sikhs* regarded as the embodiment of the tenth *Guru*. The trust was partly in the nature of a family arrangement, since his daughter-in-law *Mst. Uttma Devi* was paid from the trust income and for many years lived in the *dharmshala*, and the will made no reference to *Sikhs* or to *Sikh* worship, or, indeed, to worship of any kind; the testator evidently not having in mind the possibility of offerings being made to the *dharmshala*, whereas the worship of the *Granth Sahib* is usually accompanied by offerings.

Held, that in order to succeed the respondents had to show (1) that the *dharmshala* was established for use by *Sikhs*.

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for the purpose of public worship and (2) that it had been so used by *Sikhs*; and, that it was not enough for them to show that the *dharmsala* was used by *Sikhs* or even that *Sikh* worship was actually carried on in that place. More than that had to be proved, *vide* clause (iii) of section 16 (2) of the *Sikh Gurdwaras (Punjab) Act*.

Also, that the respondents had failed to discharge the burden of proof.

Held further, that the word "*dharmsala*" means primarily a place of rest and has subsidiary meanings which connote both a *Hindu* place of worship and a *Sikh* place of worship; and that "*avind ravindagan*" means those who come and go; and therefore the definition of "*sadh sangat*," *viz.*, "congregation" as given in the *Sri Guru Granth Kosh* (which is merely a glossary of words appearing in the *Guru Granth Sahib* and naturally a purely *Sikh* interpretation) could not be accepted in this case; the four words "*avind ravindagan sadh sangat*" meaning itinerant members of the *sadhs* or *sadhus* (holy men).

First appeal from the decree of the Sikh Gurdwaras Tribunal, Lahore, dated the 14th February 1928, declaring that the Dharmsala Lala Lal Mal, Saraf, Amritsar, is a Sikh Gurdwara.

SHAMAIR CHAND, SHAM DAS and SHIV NARAIN KAPUR, for Appellants.

CHARAN SINGH, for Respondents.

JOHNSTONE J.—This appeal against a decision of the Sikh Gurdwara Tribunal concerns a *dharmsala* situated in Amritsar, together with some shops in Amritsar and a piece of land in Gohlwar, a village in the Tarn Taran tahsil of that district. The *dharmsala* is named after its founder Lal Mal and was erected about 1888. In 1895 Lal Mal made a will, which will be examined in detail later, and died three years afterwards. During his life-time

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he managed the *dharmsala* himself and, on his death, Bhai Daya Singh, who was the sole trustee under the will, continued the management, appointing a custodian or *dharmsalia* to look after the place, since he himself spent most of his time in the Gujranwala district. Subsequently the Shiromani Gurdwara Parbandhak Committee took forcible possession of the *dharmsala* and some of the property attached thereto and litigation ensued. That litigation is summed up in the judgment of *Mirza Abdul Rab*, Senior Subordinate Judge of Amritsar, which appears at pages 80 to 91 of the printed book. The judgment is dated 23rd December 1924 and resulted as follows:—*Mussammat* Bhagwan Devi, the only surviving daughter of Lal Mal, obtained a decree for rent against certain persons, together with a declaration that she, being the heir of the original founder, was entitled to realise rent—(2) The suit of the Shiromani Parbandhak Committee against an alleged tenant was dismissed with costs—(3) *Mussammat* Bhagwan Devi obtained a further decree that she was the proper person to manage the trust without any interference from anyone; the whole income derived from the trust property was to be devoted to the maintenance of the *Dharmsala* and to the other objects of the trust. Thereafter *Mussammat* Bhagwan Devi applied for execution and was met with prayers for stay of execution, which prayers were granted. On 1st November 1925 the Sikh Gurdwara Act, 1925, came into force and *Mussammat* Bhagwan Devi was deprived temporarily of the fruits of her decrees.

Fifty-one persons forwarded a petition to the Local Government under section 7 of the Act and a

Government Notification, No. 885 of 8th April 1926, was published in accordance with the procedure laid down by the Act. Thereupon twenty-four persons made a petition in the proper form under section 8 of the Act, and that petition was forwarded to the Tribunal for disposal (see pages 1 to 5 of the printed book). After briefly stating the previous history the petitioners urged that the *dharm-sala* had never been used by *Sikhs*, that *Mussammat* Bhagwan Devi was entitled to manage the institution and that she should be restored to the possession of the *dharm-sala* and its appurtenant property, the Shiromani Gurdwara Parbandhak Committee being ejected therefrom. It appears that *Mussammat* Bhagwan Devi herself forwarded petitions both under section 8 and under section 20 of the Act, but notwithstanding the Tribunal's original order (dated 11th April 1927) that her petitions should be dealt with concurrently with the main petition under section 8, in the result that order was apparently lost sight of and the Tribunal proceeded only with the main petition.

The counsel for the aforesaid Committee, Mr. Bhagat Singh, stated to the Tribunal that the case for his clients was based, not only on clause (iii) of sub-section (2) of section 16 of the Act, but also on clause (v); but on his failing even to suggest any reason for relying on clause (v), the Tribunal framed the sole issue in the proceedings as follows:—

Was the *Dharm-sala* Lal Mal Saraf established for use by *Sikhs* for the purpose of public worship and is it used for such worship by *Sikhs*?

Oral evidence was led by both parties and some documents were filed. Of the latter, one is the judg-

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ment of *Mirza Abdul Rab*, already referred to; another—and that the most important of all—was the will of the founder Lal Mal, which was registered. The other documents are not of much importance. The Tribunal by a majority, *Rai Bahadur Lala Munna Lal* dissenting, held that the *dharmshala* is a *Sikh gurdwara*, and the petitioners under section 8 of the Act have appealed.

In this Court the learned counsel for the appellants has contended that the decision of *Mirza Abdul Rab* regarding *Mussammât Bhagwan Devi's* right to manage the trust without interference is *res judicata* and that the matter now under appeal is concluded by that decision. The point was not, it seems, urged before the Tribunal. In support of his contention Mr. Shamair Chand relied on section 11 of the Civil Procedure Code and cited a number of authorities. The short answer to the contention is that *Mussammât Bhagwan Devi* was not a party to the proceedings before the Tribunal, since the Tribunal dealt only with the main petition under section 8 of the Act and did not take up the petition of *Mussammât Bhagwan Devi*. In reply to that argument Mr. Shamair Chand pointed to explanation VI of section 11, Civil Procedure Code; but the wording of the explanation does not help him—"Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others" All the authorities on which he relied pre-suppose the condition just quoted. *Mussammât Bhagwan Devi's* suit, however, was not brought by her in a representative capacity, and it was agreed there that her suit did not require the previous sanction of the Collector under section 92, Civil Pro-

cedure Code. She was suing persons whom she regarded as trespassers and she sought to establish nothing more than her individual right to management, on the ground that she was the daughter of the original founder of the trust. Apart, therefore, from the question whether the Sikh Gurdwaras Act provides no more than a new machinery for the enforcing of claims and rights, I would hold that the principle of *res judicata* does not apply to the facts before us.

The members of the Tribunal differed on the question whether Lal Mal was a *Hindu* or not. *Sardar* Kharak Singh was of opinion that he was a *Sehjdhari Sikh*, while Mr. Justice Skemp and *Rai Bahadur Lala Munna Lal* held that he was a *Hindu*. Now, in the will (pages 94 to 96 of the printed book) Lal Mal described himself as a *Khatri* by caste and made no allusion to himself as being a *Sikh*. The testimony of the petitioners' witnesses confirm the view that he was a *Hindu*, of the *Khanna* brotherhood, and it is in evidence that in many ways he practised the *Hindu* religion. For instance, he worshipped *thakars*, gods and goddesses, feasted *Brahmans* at the opening ceremony of the *dharm-sala*, visited holy places of the *Hindu* religion, celebrated the marriages of his daughters according to *Hindu* rites, and finally on his death was accorded the *Kirya Karm* ceremonies. Even some of the respondents' witnesses admitted that he was a high caste *Khatri*. In the face of such evidence it is impossible to come to any other conclusion than that Lal Mal both lived and died a *Hindu*.

This finding is not without importance in considering the further question whether he established

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the *dharmsala* as an institution for use by *Sikhs* for the purpose of public worship. The principal evidence of his intentions is contained in his will. There, after describing the property of which he was possessed and of which the expected income was Rs. 21 *per mensem*, he declared that during his lifetime he would manage everything. Thereafter, "Bhai Daya Singh, caste *Arora*, resident of Gujranwala, whom I fully trust, (will act) as the *sarbarah* (manager) of the whole of my property...Daya Singh was to appoint a *dharmasalia*, well-versed in the *Gurmukhi* language and bearing good character, who should recite the *Guru Granth Sahib* every day and serve the *sadh sangat* visiting the *dharmsala*." The next clause of the will explains how the income was to be spent, and among the items is Rs. 8 *per mensem* for payment to his daughter-in-law Uttma Devi during her life. The manager was given authority to give a feast to the *sadh sangat* every month or every six months out of savings. Further, the cost of the testator's funeral rites, starting from the preliminary rites to the *chaubarsi* ceremony (a *Hindu* ceremony) was to be met from the trust money.

We have heard much argument about the meaning of the terms "*dharmsala*" and "*sadh sangat*." The former term need not detain us, for it means primarily a place of rest and has subsidiary meanings which connote both a *Hindu* place of worship and a *Sikh* place of worship. In the first place where *sadh sangat* is used in the will we find an unusual expression "*avind ravindagan sadh sangat*." "*Avind ravindagan*" means those who come and go. "*Sadh sangat*" is the stumbling block. *Sardar* Kharak Singh refers to a definition found in the *Sri Guru*

Granth Kosh, and says that it is a *Sikh* congregation, but it must be remembered that the *kosh* is merely a glossary on words appearing in the *Guru Granth Sahib* and naturally a purely *Sikh* interpretation is there placed on the expression. Mr. Justice Skemp defines the four words as "the congregation of the faithful who come and go." *Rai Bahadur Lala Munna Lal* observes:—"It is evident that "*sadh sangat*" is a *Hindu* word;" he goes on to say that the literal translation is an assemblage of holy persons and finally interprets the whole expression as "holy travellers." Now it seems to me, that the translation of *sadh sangat* cannot be a "congregation," in the sense in which it is ordinarily used as the congregation of a church, or a temple or a mosque, for the essential of a congregation of that type is a certain permanence or continuity; and the two Persian words "*avind ravindagan*" connote just the opposite. I am, therefore, inclined to the view that the four disputed words mean itinerant members of the body of *sadhs* or *sadhus* (holy men). There is nothing on the record to show that such holy men were only *Sikhs*, or that the trust would be considered as broken by the feeding of others than *Sikhs*. The *dharmshala* was admittedly visited by *Sanatani Hindus* as well as by *Sikhs*.

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The greatest stress has, of course, been laid by the respondents' learned counsel on the facts that (1) the *Granth Sahib* was to be read every day and (2) no provision was made for any *Hindu* worship, or for the setting up of objects associated with the *Hindu* religion. Lal Mal was obviously an admirer of the *Sikh* sacred book and he appointed a *Sikh* as his trustee, though he did not describe him as such in

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the will. On the other hand, since he wanted to have the *Granth Sahib* read daily, it was not unnatural that he should appoint a *Sikh* for the purpose of seeing that his wishes were carried out after his death. It is, however, worthy of notice that nowhere in the will did Lal Mal prescribe the *worship* of the *Granth Sahib*; yet that worship is the main essential of the *Sikh* religion, the *Guru Granth Sahib* being by true *Sikhs* regarded as the embodiment of the tenth *Guru*. No doubt, many of the respondents' witnesses do say that in the *dharmsala* the *Granth Sahib* was worshipped, and a reference is also made by some of them to the reciting of morning and evening *Sikh* prayers and hymns. The appellants' witnesses as stoutly deny those allegations and give evidence as to meetings of *Hindus* at the *dharmsala* on occasions of joy and mourning. The evidence of the witnesses is, as in most cases of this description, tinged with a highly partisan colour and it is impossible to hold that reliance can be placed rather on the witnesses of one party than on those of the other.

The case of the parties rests mainly on the will and on the inferences to be drawn therefrom. For the respondents the principal points have already been noted, namely, the daily reading of the *Granth Sahib* by a *granthi* and the absence of any form of *Hindu* worship. For the appellants there is, in my judgment, a longer and a more convincing list of points. First and foremost is the fact that Lal Mal lived and died a *Hindu*. Secondly, the trust was partly in the nature of a family arrangement, since his daughter-in-law *Mussammatt Uttma Devi* was paid from the trust income and for many years lived

in the *dharmsala*. Next, there is the fact that the will itself makes no reference to *Sikhs* or to *Sikh* worship, or, indeed, to worship of any kind. Again, the testator evidently did not have in mind the possibility of offerings being made to the *dharmsala*, whereas the worship of the *Granth Sahib* is usually accompanied by offerings. Another, though admittedly a minor, point is the absence of a *jhanda* (flag) at the *dharmsala*. The feeding of the "*sadh sangat*" is a factor which does not, in my opinion, help the respondents more than the appellants.

In order to succeed, the respondents had to show that the *dharmsala* (1) was established for use by *Sikhs*, for the purpose of public worship, and (2) that it has been so used by *Sikhs*. In view of what I have said above I am unable to hold that the respondents proved their case. It was not enough for them to show that the *dharmsala* was used by *Sikhs* or even that *Sikh* worship is actually carried on in that place. More than that had to be proved, as is clear from the wording of clause (iii) of section 16 (2) of the Act, and the respondents have not discharged the burden of proof. I would, therefore, accept the appeal and pass a decree to the effect that the *dharmsala* of Lal Mal Saraf is not a *Sikh gurdwara* within the meaning of the Act, and I would allow the petitioners the costs incurred by them both in this Court and before the Tribunal.

BROADWAY J.—I agree.

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Appeal accepted.