

APPELLATE CIVIL.

Before Addison and Monroe JJ.

RAM KISHAN (PETITIONER) Appellant

versus

BUR SINGH AND OTHERS (OBJECTORS) Respondents.

Civil Appeal No. 616 of 1931.

Sikh Gurdwara — *proof of — relevancy of documents — Indian Evidence Act, I of 1872, section 35—Dharamsala at village Her, district Amritsar.*

Held, that in the case of an original grant the acts or statements of the grantee or his successor may be relevantly taken into consideration as to its interpretation, while the method in which the property has been treated in the administrative records may also throw light on the same problem. These things, however, are not conclusive but circumstances worthy of consideration.

Muhammad Raza v. Yadgar Hussain (1), followed.

Held also, that the institution described as *Dharamsala* at village Her, in the Amritsar District had been proved to be a *Sikh Gurdwara* as it was built as a *Gurdwara* for the reading of the *Granth Sahib* and the feeding of wayfarers and *Sadhs*; the original grant of land to it was made by the villagers who publically worshipped the *Granth Sahib* there; and the *Shradh* of Guru Nanak was celebrated there. The *Mahants* themselves may have worshipped the *Smadhs* as they were *Udasis*, but this was merely subsidiary to the main object of the *Gurdwara* as a place of worship for *Sikhs*.

First appeal from the decree of the 1st Sikh Gurdwaras Tribunal, Lahore, dated the 7th March, 1931, declaring the institution in dispute a Sikh Gurdwara, and dismissing the claim.

KAEN CHAND, S. L. PURI and M. L. PURI, for Appellant.

GURCHARAN SINGH, for Respondents.

ADDISON J.—A notification under sub-section (3) of section 7 of the Sikh Gurdwaras Act was published in respect of an institution described as *Dharamsala* at village Her in the Amritsar District. In reply a petition was presented by one Ram Kishan under section 8. In this petition Ram Kishan claimed that the *Dharamsala*, named after Ganga Ram, situate in village Her was not a *Gurdwara* but an *Udasi* institution. He added that the land referred to in the notification was the petitioner's private property and was not attached to the *Dharamsala*. With this question we are not at present concerned. His prayer was that it might be declared that the *Dharamsala* was his residential house, constructed by the petitioner's ancestor, Dharam Das, and that it was not a *Sikh Gurdwara*. The pleas taken by the opposite party were that the *Gurdwara* was a *Sikh Gurdwara* built by Sikhs for public worship and managed by them. It was denied that Ram Kishan, the petitioner, was an hereditary office holder and it was stated that he was only a *Granthi*. It was added that in previous litigation the petitioner had admitted the institution to be a *Sikh Gurdwara*. By a majority of the Sikh Gurdwaras Tribunal it was held that the institution was a Sikh Gurdwara and the petitioner's claim was dismissed. He has appealed against this decision.

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The following is the pedigree-table (Exhibit P. 3) of the persons who have been in charge of this institution:—

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SARMUKH
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Khanda Nand
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Ganga Ram
|
Jarna Das
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Ram Kishan

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Kanda Nand the second incumbent was alive in 1855. He died some time before 1864 in which year there was an enquiry to determine whether the *muafi* should be continued in the name of Ganga Ram. Ganga Ram was alive in 1900 in which year he gifted the entire property including the agricultural land to his daughter's son Jamna Das whom he had made his *Chela*. The necessary entries as regards the land were made in the revenue records by means of the mutation, Exhibit P. 5. Jamna Das predeceased Ganga Ram but no action was taken in the revenue papers till 1907 (Exhibit P. 4). By this time also Ganga Ram was dead. A report was then made that Jamna Das had died and that his son Ram Kishan was alive. The *Tahsildar* who attested the mutation noted that Ram Kishan, son of Jamna Das, was his heir and he directed his name to be recorded in the revenue papers. The case was evidently treated as one of succession to private property. Although Jamna Das was entered as *Chela* of Ganga Ram the new entry was, that Ram Kishan, son of Jamna Das, *Sadh*, was the owner.

Ram Kishan and his predecessors are undoubtedly *Udasis* but the last three have certainly been married. An *Udasi* can be in charge of a *Sikh Gurdwara* as that sect of schismatics reverences the *Granth Sahib*.

The first official document relating to this institution, to which I shall refer, is Exhibit O. 3, an order, dated the 27th September, 1853, by an Extra Assistant Commissioner of the Amritsar District. He was dealing with an enquiry into the *muafi* in respect of 25 *ghumaons* of land. This was in the lifetime of Khanda Nand. The order is to the effect

that the previous papers along with the statement of the *Patwari* were before him and it had transpired that the *Granth* was recited in this *Dharamsala* which was built 40 years before. He therefore ordered the case to be entered in the register of permanent *muafis*. The matter was then referred to the higher authorities and Exhibit O. 4, dated the 17th November, 1855. is an order passed by the same Extra Assistant Commissioner when the matter had been finally disposed of. This order is to the effect that he had received an order, dated the 27th August, 1855. from the Chief Commissioner of the Punjab. It transpired that the land had been made *muaf* for the lifetime of the *muafidar* by the Settlement Officer, the case being sent to the higher authorities for sanction. That day he had received back the case after the sanction of the Chief Commissioner who had ordered that as the *muafidar* had no *sanad* and as it appeared from the *Patwari's* statement that the grant had been made by the *Zamindars* the land should remain *muaf* for the lifetime of the present occupant and be resumed after his death. He therefore recorded a formal order to that effect.

The next document of importance is Exhibit O. 8, a report of the *Tahsildar*, Amritsar, relating to an enquiry into the *muafi* of the same land. It is dated the 15th November 1864. Apparently Khanda Nand had died and Ganga Ram desired the *muafi* to be continued in his name. The *Tahsildar* conducted an enquiry and noted as follows:—"The *Dharamsala* built of *kacha* masonry and having two stories is situate on the road leading from Amritsar to Sialkot and other villages. There is a grinding mill there. Ten or fifteen travellers stay there daily. Five *Sadhs* permanently reside there..... The water of the

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well is used by travellers and *Sadhs* of the *Dharamsala*. The *Granth Sahib* is recited there daily. The *Dharamsala* is a *Gurdwara*. All the residents of the village come there and hear the *Granth Sahib* being recited. They are strong supporters of the *Dharamsala*. During *Sharadh* days the *Sharadh* is celebrated on the 10th day..... The resumption of the *muafi* will result in the ruin of the *Dharamsala*. Travellers and residents of the village resist the resumption. Hence I am of opinion that this *muafi* should be continued.”

The first two documents referred to are of the time of the second incumbent and the third relates to the time when he had just died. These documents are relevant under the provisions of section 35 of the Evidence Act and they show that the *Dharamsala* was a *Gurdwara* where all the residents of the village worshipped, where *Sadhs* and travellers were put up and that it had been built in 1813, the grant of the land having been made by the villagers.

I consider that these documents constitute valuable evidence. Their Lordships of the Privy Council held in *Muhammad Raza v. Yadgar Hussain* (1) that the acts or statements of the grantee or his successor may be relevantly taken into account as to the interpretation of the original grant: while the method in which the property has been treated in the administrative records may also throw light on the same problem. These things are not conclusive but are circumstances worthy of consideration. At the time in question there was no dispute and the officials were attempting to ascertain what the institution was, how it had been

(1) (1924) I. L. R. 51 Cal. 446 (P.C.).

founded and what was done at it. The documents in question therefore are entitled to considerable weight.

There is one other document which may be mentioned. In 1922 the *Akalis* seized the institution and there was a criminal case brought against them by Ram Kishan. This case was compromised. In the compromise Ram Kishan agreed that the *Granth Sahib* should always remain open in the *Gurdwara* and that the village people should not be prohibited from worshipping there. The complainant and his family could reside in the *Gurdwara* as well as wayfarers; but no relative of the complainant was to do so. It may be said that this compromise was forced upon him and I would therefore not attach much importance to it.

At the trial the petitioner produced evidence to the effect that the Gola Sahib and a picture of *Baba Siri Chand* were objects of worship and that the *Granth Sahib* was relegated to an inferior position. This was not stated in his petition and I agree with the majority of the Tribunal that these facts have not been established. The office holders have been *Udasis* and consequently their *Smadhs* do exist near the institution but at a distance of 260 feet. There is some evidence that they are washed and illuminated at night. This does not establish that this is purely an *Udasi* institution as the evidence of the witnesses produced by the respondents proves beyond any doubt that the *Granth Sahib* is the principal object of worship there. The documents already referred to also establish this.

Further, in Exhibit O. 8 it is mentioned that the 10th *Sharadh* was celebrated there. This *Sharadh* is

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generally taken to be the *Sharadh* of Guru Nanak. The petitioner has tried to explain away this by stating that in this *Dharamsala* it is the *Sharadh* of his ancestor Dharam Das who, according to him, preceded Sarmukh Das. His own *Udasi* witness Brahm Das, P. W. 2, connects it with Guru Nanak and his explanation must be rejected.

To sum up, the evidence in my judgment sufficiently establishes that this institution was built as a *Gurdwara* for the reading of the *Granth Sahib* and feeding wayfarers and *Sadhs*. The original grant of land to it was made by the villagers. From the very beginning it has been considered a village *Gurdwara* where the villagers publicly worshipped the *Granth Sahib* and where the *Sharadh* of Guru Nanak was celebrated. In these circumstances the only possible conclusion is that it was established for use by *Sikhs* for the purpose of public worship and was used for such worship by *Sikhs*. The *Mahants* themselves may have worshipped the *Smadhs* as they were *Udasis* but this was merely subsidiary to the main object of the *Gurdwara*. It has not been proved that the ball of ashes or the image of *Baba Siri Chand* was worshipped. The *Dharamsala* is, therefore, clearly a *Sikh Gurdwara*.

For the reasons given I would dismiss the appeal with costs.

MONROE J.

MONROE J.—I agree.

A. N. C.

Appeal dismissed.