Brahma Nand Puri vs Neki Puri on 24 November, 1964

Equivalent citations: 1965 AIR 1506, 1965 SCR (2) 233

Author: N. Rajagopala Ayyangar

Bench: N. Rajagopala Ayyangar, Raghubar Dayal

PETITIONER:
BRAHMA NAND PURI

Vs.

RESPONDENT:
NEKI PURI

DATE OF JUDGMENT:
24/11/1964

BENCH:
AYYANGAR, N. RAJAGOPALA
BENCH:
AYYANGAR, N. RAJAGOPALA
SUBBARAO, K.
DAYAL, RAGHUBAR

CITATION:
1965 AIR 1506 1965 SCR (2) 233

ACT:
Hindu Religious Institution--Dera of Sanyasi Sadhus in Punjab--Succession as Mahant--Whether general law or custom in existence to entitle Chela or Gurbhai to succed without appointment or election by fraternity.

HEADNOTE:
Upon the death of the last Mahant of a Dera of Sanyasi Sadhus in Punjab, the respondent, claiming to be the Chela of the deceased and therefore having a preferential title, entered into possession of certain properties basing his title thereto on an appointment made to the office by the Bhekh and the people of the village. The appellant also claimed the same properties as the successor of the deceased Mahant and brought a suit for a decree for possession of the properties belonging to the Dera, he claimed title on the basis that as Gurbhal of the last Mahant, he was entitled to the Gadi and that he, and not the respondent, had been appointed to it by the people of the village and the Bhekh;

he further claimed in the alternative, that even if it was found that he was not so appointed, according to the custom regarding succession of the Dera and Rewaj-i-am of Deras, he was in any event entitled to become Mahant as he was the Gurbhai of the deceased Mahant.

The trial court found that the respondent was not the Chela of the deceased Mahant and that there was no evidence that be was appointed Mahant, on the other hand the appellant was also held not to have been appointed. However, without recording a finding on the custom set up by the appellant, the trial court held that under the law in Punjab, in the absence of a Chela, a Gurbhai was entitled to succeed to the Gadi apart from any question of appointment by the Bhekh, and on this reasoning, decreed the appellant's suit.

The respondent's first appeal to the Additional Sessions Judge was allowed but a Single Bench of the High Court reversed that decision. Thereafter, in the respondent's Letters Patent Appeal, although the Division Bench concurred with the single Bench on the other issues, the appeal was allowed on the ground that the custom set up in the plaint that a Gurbhai could succeed without an appointment of the Bhekh had not been made out.

HELD : (i) There is no general law applicable to religious institutions in the Punjab and each institution must be deemed to be regulated by its own custom and practice. Therefore, the appellant could not succeed as Mahant without reference to an appointment by the Bhekh or the fraternity unless he could establish a custom which entitled him to succeed by virtue of being a Gurbhai. [238 D-E; 239 C]

Rattigans' Digest of Customary law: Jiwan Das v. Hira Das, A.I.R. 1937 Lah. 311 and Sital Das v. Sant Ram, A.I.R. 1954 S.C. 606, referred to.

On the basis of the evidence before the trial court the appellant had not established the custom put forward by him. [240 G]

Sup./65-16

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(ii)The appellant's suit being one of ejectment he had to succeed or fail on the title that he established; if he could not succeed on the strength of his title, his suit must fail notwithstanding that the defendant in possession had no title to the property. [236 HI

Mukherjea's Hindu Law of Religious and Charitable Trust, 2nd Edition,p. 317, referred.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 813 of 1962. Appeal from the judgment and decree dated July 13, 1960, of the Punjab High Court in L.P. Appeal No. 58 of 1958. N.C. Chatterjee, V. S. Sawhney, S. S. Khanduja and Ganpat Rai, for the appellant.

Naunit Lal, for the respondent no. 1(a).

The Judgment of the Court was delivered by Ayyangar, J. The tenability of the appellant's claim to possession of certain properties belonging to the Dera of Sanyasi Sadhus in Mauza Kharak Tahsil Hansi, District Hissar in Punjab is the subject-matter of this appeal which is before us on a certificate of fitness granted by the High Court of Punjab.

The appellant claimed the properties as the successor of the last Mahant of the Dera-Kishan Puri who died on February 15, 1951. The fortunes of the litigation started by the appellant have greatly fluctuated. His suit was decreed by the learned trial Judge, was dismissed by the first appellate Court, was again decreed by a learned Single Judge of the Punjab High Court on second appeal but this judgment has again been reversed on Letters Patent appeal and the suit directed to be dismissed. On a certificate of fitness granted by the High Court the matter is now before us. The last Mahant of this Dera-Kishan Puri died on February 15, 1951. Immediately on his death disputes seem to have arisen as regards the succession to the Dera. Neki Puri-the original respondent in this appeal (now deceased) claiming to be a Chela of the deceased Mahant appears to have entered into possession of the properties belonging to the Dera basing his title thereto on an appointment made to the office by the Bhekh and the people of the village. The appellant nevertheless claiming to be in possession of the property as the successor of the deceased Kishan Puri by virtue of a title as the Gurbhai of the deceased, brought a suit for a declaration regarding his title and for an injunction restraining Neki Puri from interfering with his possession Neki Puri, as stated earlier, claimed that he was in possession of the properties and asserted a title to such possession by being a Chela who had been appointed by the Bhekh. An issue was raised in the suit as to whether it was the plaintiff or the defendant who was in possession of the properties and on a finding recorded that Neki Puri was in possession, the suit for a mere declaration and injunction was held to be not maintainable and was, therefore, dismissed. Incidentally, however, evidence was recorded on an issue as to whether Neki Puri was a Chela of Kishan Puri-the last Mahant and a finding was recorded on this question adverse to the claim of Neki Puri. An appeal against this judgment was dismissed and 'hat decree has now become final.

The suit for declaration and injunction having been dismissed, Bralima Nand Puri-the appellant-brought the suit out of which ,his appeal arises, in the Civil Court at Hissar for a decree for possession of the properties movable and immovable belongingto the Dera. The suit being on the basis of the plaintiff's title, his was formulated thus :

> "5. According to custom regarding succession of the Dera and the Riwaj-i-Am of Deras the plaintiff being Gurbhai was entitled to Gaddi, as he is the eldest Chela of Shanker Puri and the people of the village and the Bhekh appointed him as Mahant after performing all the ceremonies on the 17th day of the death of Shri Kishan Puri and made him occupy the Gaddi of dera of Kharak."

An alternative basis for the title was also put forward in paragraph 8 in these terms :

> "8. If for any reason it is held that after the death of Shri Kishan Puri, the plaintiff was not appointed as Mahant of the Dera, even then according to the custom regarding succession of the Dera and Riwaj-i-Am, the plaintiff is entitled to become Mahant of the Dera as he is the Gurbhai of Kishan Puri deceased. It was held in the previous case that according to the Riwaj, in the absence of a Chela his (deceased Mahant's) Gurbhai becomes Mahant of a Dera."

in the Written Statement that was filed by Neki Puri two defences were raised : (1) that Neki Puri was a Chela and he had been appointed to succeed Kishan Puri by the Bhekh and other villagers. In other words, he put forward a preferential title based on Chelaship followed by an appointment by the Bhekh and others.,2) Alternatively, while admitting that Brahma Nand Puri was a Gurbhai of the deceased Mahant, he denied that he had been appointed by the Bhekh and also urged that there was no custom by which a Gurbhai who had not been appointed by the Bhekh was entitled to succeed as Mahant merely by reason of his being a Gurbhai. On these pleadings 4 principal questions (omitting certain others which are not relevant in the present context) arose for trial : (1) Was Neki Puri a Chela of the deceased Kishan Puri ?, (2) Was Neki Puri appointed by the Bhekh ? It was admitted by Brahma Nand Puri that a Chela had a right superior to a Gurbhai and therefore if these two issues were found in favour of Neki Puri the plaintiff's suit had admittedly to fail., (3) Was the plaintiff appointed by the Bhekh ? No serious attempt was made to establish that the plaintiff had been appointed by the Bhekh and hence the 4th question that arose was whether there was a custom by which a Gurbhai could succeed to the Mahantship of this institution without an appointment by the Bhekh as pleaded in paragraph 8 of the plaint extracted earlier. On these four matters the learned trial Judge recorded the following findings : (1) that Neki Puri had not been proved to be the Chela of the last Mahant., (2) No definite finding was recorded on the second point but the trial Judge was of the opinion that there was no proof that the Bhekh could appoint as Mahant a person who was not either a Chela or a Gurbhai or that they actually did so in the present case., (3) A definite finding was recorded that the plaintiff was not appointed by the Bhekh., (4) Without recording a finding on the custom set up by the plaintiff in para 8 of the plaint the learned trial Judge held that under the law in the Punjab in the absence of a Chela, a Gurbhai was entitled to succeed to the Gaddi apart from any question of appointment by the Bhekh and on this reasoning decreed the plaintiff's suit.

The defendant went up in appeal to the Additional Sessions Judge. The appellate Court reversed the finding of the trial Judge on the issue as to whether Neki Puri was a Chela of the deceased Mahant and held that he was. A definite finding was also recorded on the basis of the evidence led by the defence that Neki Puri had been appointed to succeed the deceased Mahant by the Bhekh and the villagers. As admittedly a Chela had a superior title to a Gurbhai in the matter of succession the learned District Judge allowed the appeal of the defendant-Neki Puri and directed the dismissal of the suit.

The plaintiff took the matter to the High Court by way of second appeal. The learned Single Judge who heard the appeal in his turn reversed the finding of the first appellate Court on the issue regarding Neki Puri being a Chela of the deceased Kishan Puri. He considered that the finding on this matter by the Additional Sessions Judge was vitiated by serious errors of law and misappreciation of facts. Having thus put aside the claim of Neki Puri to succeed by holding that he

was not a Chela, the learned Judge upheld the plaintiff's claim on the ground that a Gurbhai was entitled to succeed to the Gaddi even if he had not been appointed by the Bhekh. He, therefore, decreed the suit of the plaintiff., Neki Puri then in his turn took the matter before a Division Bench 'by a Letters Patent appeal. The learned Judges concurred with the learned Single Judge on the issue as to whether Neki Puri was a Chela or not. They agreed with him that the first appellate Court had committed serious errors in its reasoning in finding that Neki Puri had established the claim to be the Chela of Kishan Puri and affirmed the finding of the learned trial Judge in that regard. Dealing next with the title of the plaintiff to the Gaddi, the learned Judges held that the custom set up in paragraph 8 of the plaint that Gurbhai could succeed without an appointment by the Bhekh had not been made out on the evidence and on this reasoning they allowed the appeal and directed the dismissal of the suit. It is the correctness of this decision that is challenged before us by the appellant. Two points were urged before us by Mr. Chatterjee-learned Counsel for the appellant. The first was that under the law applicable to Deras in the Punjab that is to say apart from any special custom, a Gurbhai was entitled to succeed to the Dera even without an appointment by the Bhekh or fraternity, (2) that even if that was not the law and a custom was required to sustain that plea, such a custom had been established by the evidence adduced by the appellant in the present case.

Pausing here, we might mention that Mr. Chatterjee referred us to the circumstance that during the pendency of the appeal in this Court Neki Puri had died and that certain others who, he stated, had even less claims to a Mahantship were in possession of the property and that seeing that the appellant was admittedly a Gurbhai it would be most inappropriate that his rights should be overlooked and a stranger permitted to squat on the property. We consider this submission is devoid of force. The plaintiff's suit being one for ejectment he has to succeed or fail on the title that he establishes and if he cannot succeed on the strength of his title his suit must fail notwithstanding that the defendant in possession has no title to the property, assuming learned Counsel is right in that submission. As pointed out in Mukherjea's Hindu Law of Religious and Charitable Trust, Second Edn., page 317 :

> "The party who lays claim to the office of the Mohunt on the strength of any such usage must establish it affirmatively by proper legal evidence. The fact that the defendant is a trespasser would not entitle the plaintiff to succeed even though he be a disciple of the last Mohunt, unless he succeeds in proving the particular usage under which succession takes place in the particular institution."

We, therefore, dismiss this aspect of the case from consideration.

Taking the first point urged by Mr. Chatterjee, we do not consider that learned Counsel is justified in his submission that under the law as obtains in the Punjab a Gurbhai is entitled to succeed without reference to an appointment by the Bhekh or the fraternity. In Rattigan's Digest of Customary Law the position as regards religious institutions in the Punjab is thus stated :

> "There is no general law applicable to religious institutions in this Province, and each institution must bedeemed to be regulated by its own custom and practice. There are, however, certain broad propositions which judicial decisions have shown to have

> received very general recognition, and these propositions are embodied in the following paragraphs :-
>
> 84. The members of such institutions are governed exclusively by the customs and usages of the particular institution to which they belong.
>
> 85. The office of Mahant is usually elective and not hereditary. But a Mahant may nominate a successor subject to confirmation by his fraternity."

From paragraph 85 it would follow that the office of Mahant being usually elective and not hereditary, anyone who lays claims to the office on the basis of a hereditary title resting on Chelaship simplicitor or Gurbhaiship simplicitor must establish it. (See also Jiwan Das v. Hira Das)1 Though, no doubt, the usage of one institution is no guide to that of another, it may be mentioned that in regard to the succession of the Mahantship of a Thakurdwara belonging to the Ram Kabir Sect of Hindu Bairagis in district Jullundur in the Punjab this Court held in Sital Das v. Sant Ram 2

(1) A.I. R. 1937 Lah. 31 1.

(2) A.I.R. 1954 S.C. 606.

that the usage required an appointment by the fraternity before a person could become a Mahant. On the basis, therefore, of the passage in Rattigan's Digest, which we have extracted, it appears to us that the first of the submissions made by Mr. Chatterjee cannot be upheld. In fact, the tenor of para 5 of the plaint we have extracted earlier itself shows a consciousness on the part of the plaintiff himself that he considered that an appointment by the Bhekh was necessary to clothe him with the title to the Gaddi besides his status as a Gurbhai. No doubt the plaintiff was a Gurbhai but he had not established that he had been appointed by the Bhekh or fraternity. In the absence of such appointment under the law and apart from any special custom pertaining to this institution the appellant could claim no title to the Gaddi, by his being a Gurbhai. This takes us to the second point urged by Mr. Chatterjee that on the evidence the plaintiff had made out the special custom pertaining to this institution that no appointment by the Bhekh was necessary before a Chela or Gurbhai could succeed to the Gaddi. We have been taken through the entire evidence in the case. In the first place, there are no documents or anything in writing in support of the custom and the matter depends entirely on the testimony of witnesses produced before the Court. P.W. 4 who claimed to be a Bhekh of this Dera stated in chief examination :

> "According to the custom of our Bhekh if a Mahant died without leaving a Chela his Gurbhai became the successor. If however there is Chela he is the successor."

In cross examination be stated "The custom of succession stated by me above is written nowhere : it is followed by us."

and then he continued :

> "In village Bata there is a Sanyasi Dera. There also Prabhu Puri Chela was not found to be a good man and Sunder Puri Gurbhai of the last Mahant was installed. In Guna there is a Sanyasi Dera. Lachhman Gir Sanyasi died without leaving a Chela. His Gurbbai Phag Gir succeeded him to the Gaddi."

It would be seen that there was nothing specific in his evidence about the absence of an appointment by the Bhekh in those instances which is the special custom which the plaintiff sought to prove by this evidence. P.W. II is another witness to whose evidence reference was made. He stated in his chief exami- nation :

> " According to the custom of the Bhekh if a Mahant leaves no Chela, his Gurbhai succeeds to the Gaddi."

In cross examination he stated :

> "The custom of succession which I have deposed to above is at par with the General Hindu Customary Law .... There might be many instances. But I cannot recall to my mind any such instance now."

P.W. 13 belongs to a different Dera but he claimed that the Dera at Kharak was similar to his institution and stated in his chief examination :

> "Amongst us if a Sadhu does not leave a Chela, the Gaddi goes to his Gurbhai. There is an instance in the Gurdwara of Kosli near my Dera of a Gurbhai succeeding a Mahant in the absence of a Chela. There is another such instance ofDera at Nangri in Rajasthan."

The evidence ofP.W. 16 was similar:

> "My Guru succeeded to the Gaddi as Gurbhai of the last Mahant."

Evidence of P.Ws. 17 and 18 was identical with that of the witnesses who preceded them :

> "According to custom of the Bhekh if a Mahant dies without leaving a Chela his Gurbhai succeeds."

It would be seen from this evidence : (1) that it is lacking in particulars as regards the instances, and (2) there is nothing stated as to whether even in the instances referred to, there was no recognition, appointment or confirmation by the Bhekh which according to Rattigan is part of the customary law of the Punjab as the source of title for the Mahantship. We are, therefore, not prepared to hold that the appellant has established the custom which he put forward in paragraph 8 of his plaint in derogation of the ordinary law viz., that without an appointment by the Bhekh or fraternity a Chela or, in his absence, a Gurbhai succeeds to the headship of a Dera. The plaintiff's suit was, therefore, in our opinion, properly dismissed. Mr. Naunit Lal, learned counsel for the respondent urged that

the learned Single Judge was in error in reversing the finding of the first appellate Court that Neki Puri had proved that he was a Chela of Kishan Puri-the deceased Mahant. It might be noticed that the Division Bench had concurred in the views expressed by the learned Single Judge as regards the defects in the judgment of the first appellate Court on its findings on this issue. Learned Counsel submitted that the learned Single Judge fell into serious errors in interfering with a finding of fact. Though we are satisfied that certain portions of the judgment of the learned Single Judge had suffered from errors, we do not purpose to examine this question as the same is wholly unnecessary for the disposal of this appeal. It is only in the event of our accepting the submissions of Mr. Chatterjee that the correctness of the reversal of the finding on the Chelaship of Neki Puri would have become material. In the view that we have expressed as regards the appellant's title to the Gaddi we do not consider it necessary or proper to discuss what, in fact, is merely an academic question.

The result is, the appeal fails and is dismissed with costs. Appeal dismissed,