Mahant Harnam Singh, Chela Ofbhai ... vs Gurdial Singh & Anr on 24 February, 1967

Equivalent citations: 1967 AIR 1415, 1967 SCR (2) 739, AIR 1967 SUPREME COURT 1415

Author: Vishishtha Bhargava

Bench: Vishishtha Bhargava, K.N. Wanchoo, R.S. Bachawat

PETITIONER:
MAHANT HARNAM SINGH, CHELA OFBHAI NARAIN SINGH

Vs.

RESPONDENT:
GURDIAL SINGH & ANR.

DATE OF JUDGMENT:
24/02/1967

BENCH:
BHARGAVA, VISHISHTHA
BENCH:
BHARGAVA, VISHISHTHA
WANCHOO, K.N.
BACHAWAT, R.S.

CITATION:
1967 AIR 1415 1967 SCR (2) 739
CITATOR INFO :
C 1984 SC 858 (23)

ACT:
Code of Civil Procedure (Act 5 of 1908), s. 92-"Persons having interest in the trust", meaning of.

HEADNOTE:
The appellant was the Mahant of a Gurdwara which was maintained for a seat known as. Nirmala Sadhus and was registered as one of the branches of the principal institution of Nirmala Sadhus. All its Mahants, including the appellant were Nirmala Sadhus. The institution owned land,. which was donated to it by the inferior owners of the village. It also Tan a free kitchen for providing food for visitors. The respondents, who were Sikhs filed a suit

under S. 92, Civil Procedure Code, for the removal of the appellant from his office. They sought to establish that they had such interest in the public trust as would entitle them to institute the suit, by showing : (1) that they had interest in the trust property in their capacity as representatives of the owners of the land, and as the representatives of the residents of the village; and (2) that the institution was a Sikh. Gurdwara meant for all persons following the Sikh faith.

The trial court dismissed the suit, but the High Court decreed it.

In appeal to this Court,

HELD: (1) The respondents who were merely Lambardars and residents of the village, bad, in those capacities, no such interest as would entitle them to institute the suit. [743 G]

The mere capacity as Lambardars did not entitle them to claim that they were representatives of the inferior owners of land, when they themselves were not inferior owners of any land, nor successors-in-interest of any inferior owners who donated the land. [742 F-G]

The free kitchen was not being run for the general residents of the village who could, as of right, claim to be fed therein. Nor did the residents of the village have any clear interest in the particular trust entitling them to file such a suit, and mere residence in the village did not. create such an interest. [743 A-B]

Vaidyanatha Ayyar v. Swaminatha Ayyar, 51 I.A. 282, applied.

(2) The Nirmala Sadhus, though they started as a section of Sikhs, became later followers of Vedanta philosophy, adopted the customs of Hindu Sastras, the dress of Indian faqirs, and worshipped at Samadhis. Therefore they could not be regarded as Sikhs at all, and the respondents, who were Sikhs could not be held to have such an interest in the trust as would entitle them to file the suit. [745 E, H; 746 A-D; 747 B-C]

Hem Singh v. Basantdas, Shiromani Gurdwara Prabandhak Committee v. Ram Parshad, 63 I.A. 180, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 1377 of 1966.

Appeal from the Judgment and decree dated September 7, 1962, of the Punjab High Court in Regular First Appeal No. 29(P) of 1956.

Naunit Lal, for the appellant.

I. M. Oberoi, S. K.Mehta and K. L. Mehta, for respondent The Judgment of the Court was delivered by Bhargava, J. This appeal under certificate granted by the Punjab High Court at Chandigarh, has been filed by Harnam Singh appellant against a decree passed by the High Court, decreeing a suit under section 92 of the Code of Civil Procedure, after setting aside the dismissal of the suit by the District Judge, and removing the appellant from the office of the Mahant of an institution described in the plaint as 'Gurdwara Jhandawala.' The suit was brought by two plaintiffs after obtaining permission from the Advocate- General. One of the plaintiffs/respondents, Ishar 'Singh, died and his legal representatives were not brought on the record. However, in view of the nature of the suit, no objection was raised before us about the maintainability of this appeal on this ground and, consequently, we refrain from dilating on this aspect.

The respondents claimed in the plaint that there is one Gur Granth Sahib at village Jhandawala in the name of Gurdwara Jhandawala which is managed by Mahant Harnam Singh appellant as a Mohatmim, and that he is in possession of the 'Dera' and agricultural land belonging to Guru Granth Sahib, Gurdwara Jhandawala. The Gurdwara was alleged to be a public religious place which was established by the residents of the village, and it was pleaded that this religious institution was a public trust created by the residents of the village for the service of the public to provide food to the visitors from the Lungar (free kitchen) to allow the people to fulfill religious beliefs and for worship, etc. The plaintiffs/respondents stated that, in the capacity of representatives of owners of lands situated at village Jhandawala and of residents of village Jhandawala, they submitted an application for permission to institute this suit on the ground that the appellant was indulging in various undesirable activities and was misusing the funds of the trust which justified his removal from the office of the Mahant. The respondents claimed that, in their capacity of representatives of the owners of the land situated at village Jhandawala and of residents of village Jhandawala, they were entitled to institute this suit under s. 92, C.P.C.

The suit was contested by the appellant on various grounds, :amongst which the principal one, with which we are concerned, is that the plaintiffs/respondents had no such interest in this public trust as would entitle them to institute the suit. At the initial stage, the appellant did not admit that there was a public trust in existence at all, but the trial Court held that the institution was a public trust of a religious character ; and that finding was not challenged on behalf of the appellant before the High Court. The two principal grounds, on which the dismissal of the suit by the District Judge was sought to be justified before the High Court, were that the plaintiffs/respondents had no right to institute the suit under s. 92, C.P.C., for want of interest in the trust, and that the respondents had failed to prove that the appellant had indulged in any such activities as would justify his removal from the office of the Mahant. In this appeal, we heard learned counsel for the parties on the first question as to whether the plaintiffs/respondents had any such interest in this trust which could entitle them to institute the suit under s. 92, C.P.C. As has been mentioned above, in the plaint the claim was that the plaintiffs were interested in the capacity of representatives of the owners of the land situated at village Jhandawala and of residents of village Jhandawala. On behalf of the plaintiffs/respondents, the pleading was that this Gurdwara was established as a public trust on behalf of the residents of the village, but, during the course of evidence, even the plaintiffs themselves admitted that, before the residents of the village donated any property at all to this institution, the institution was already in existence. According to the plaintiffs, the institution was

then known as Guru Granth Sahib Dera Bhai Saida Ram, and Bhai Saida Ram was the Mahant of the institution. On February 19, 1904, Shamilat land belonging to the inferior proprietors of the village measuring 92 bighas and 12 biswas was donated to Guru Granth Sahib known as Dera Bhai Saida Ram by way of charity. That gift was subsequently confirmed in a mutation order of the revenue authorities on 1st July, 1905. Some time later, it appears that Mahant Mehtab Singh Sadh Nirmala became the Mahant of this institution, and he was succeeded by his Chela,Mahant Narain Singh. On 20th July, 1926, Mahant Narain Singh, describing himself as the Chela of Mahant Mehtab Singh, executed , a will bequeathing his rights in the Dera to his Chela, Harnam Singh appellant. It also appears that a construction,. described as Gurdwara, was built over an area of 8 kanals and 17 marlas out of the land donated to the Dera by the inferior owners of the village. This suit under s. 92, C.P.C., was instituted on 21st September, 1953 on the allegation that the appellant had started indulging in activities which unfitted him for the position of. the Mahant, as he had been responsible for abduction of women, habouring of dacoits, malversation of the trust income,closure of the Langar stoppage of religious activities and perpetration of immoral acts. Sup.CI/67-2 During the trial of the case, it appears that the plaintiffs attempted to show their interest in the trust property on one other alternative ground. The plaintiffs were admittedly Sikhs by religion, and the claim put forward was that this Gurdwara was a religious institution meant for Sikhs, and, in fact, evidence was also sought to be led on behalf of the plaintiffs to show that the Mahants of this institution were not Sadh Nirmalas, but were Sikhs. One of the plaintiffs/respondents specifically stated to that effect, but there is a concurrent finding by the District Judge and by the High Court that all the Mahants of this institution, from Bhai Saida Ram to the present Mahant Harnam Singh appellant, have been Sadh Nirmalas. The trial Court held that Sadh Nirmalas are not Sikhs and that this institution was not a Sikh institution at all. The High Court disagreed and held that Sadh Nirmalas are a section of the Sikhs and, consequently, that Sikhs had interest in this institution because of its being a Sikh Gurdwara. The High Court thus found in favour of the respondents that they had an interest as required by s. 92, C.P.C., because they were Sikhs and that the institution was a religious institution of Nirmala Sadhs who were a section of Sikhs. It was also mentioned by the High Court that the villagers having made the original donation of land which is the nucleus of the institution, the plaintiffs/respondents could not be said to be devoid of interest in the trust of whose property the appellant now asserts himself to be the sole owner. The correctness of this decision was the main point canvassed before us on behalf of the appellant.

As we have indicated earlier, in the plaint the plaintiffs claimed interest in the trust property in their capacity of representatives of the owners of the land situated at village Jhandawala and of residents of village Jhandawala. The findings of fact recorded show that the land, which was donated to this institution, was given by the inferior owners of this village out of their joint land. The plaintiffs/respondents did show that they were Lambardars in the village, but no attempt has been made at any stage to prove that any of the two plaintiffs was an inferior owner of any land situated in-this village, or that he was a descendant or a successor-in-interest of any of the inferior owners who donated the land to this institution in the year 1904. The mere capacity as Lambardars does not entitle the plaintiffs/respondents to claim that they are repre- sentatives of the inferior owners of the land who donated the land to this institution. The second ground of claim was that the plaintiffs/respondents were residents of village Jhandawala, but, again, there is no pleading and no evidence tendered to show that the residents of village Jhandawala in general had any such interest

in this trust which could entitle them to institute such a suit. The only allegation was that a Langar used to be run in this institution where free kitchen was provided to visitors. It was nowhere stated that any such free kitchen was being run for the general residents of village Jhandawala who could, as of right, claim to be fed in the Langar. Mere residence in a village where free kitchen is being run for providing food to visitors does not create any interest in the residents of the village of such a nature as to claim that they can institute a suit for the removal of the Mahant. The nature of the interest that a person must have in order to entitle him to institute a suit under s. 92, C.P.C., was first examined in detail by the Madras High Court in T. R. Ramachandra Ayyar and Another v. Parameswaran Unni and 5 Others(1) After the dismissal of the suit under s. 92, C.P.C., by the District Judge, the case came up in appeal before Wallis, C. J., and Kumaraswami Sastri, J., who delivered dissenting judgments. The appeal was dismissed and then came up before a Full Bench of three Judges under the Letters Patent. Three different judgments were delivered by the members of the Full Bench, Abdur Rahim, Old field and Coutts Trotter, JJ. Wallis, C. J., when dealing,with the appeal at the earlier stage, expressed his opinion that to entitle him to sue under s. 92, C.P.C., it is not enough that the plaintiff is a Hindu by religion, but he must have a clear interest in the particular trust over and above that which millions of his countrymen may be said to have by virtue of their religion; and this opinion was expressed even though the word "direct" in s. 92, C.P.C., had been omitted. It is not necessary to refer to other opinions expressed by the learned Judges in that case in view of the decision of their Lordships of the Privy Council in Vaidyanatha Ayyar and another v. Swaminatha Ayyar and Another(2), where they approved the opinion expressed by Sir John Wallis, C.J., in the case cited above, and held : "They agree with Sir John Wallis that the bare possibility, however remote, that a Hindu might desire to resort to a particular temple gives him an interest in the trust appears to defeat the object with which the Legislature inserted these words in the section. The object was to prevent people interfering by virtue of this section in the administration of charitable trusts merely in the interests of others and Without any real interests of their own." Agreeing with the view expressed by the Privy Council, we hold that in the present case the plaintiffs/respondents, who were merely Lambardars and residents of village Jhandawala, had, in those capacities, no such interest as could entitle them to institute this suit.

The alternative ground, on which the High Court accepted the claim of the plaintiffs/respondents that they had an interest in this institution entitling them to institute the suit because it is a Sikh Gurdwara meant for all persons following the'Sikh faith, was not specifically taken by the plaintiffs in the plaint. However, it appears that, during the trial of the suit as well as in the appeal before the High Court, the claim of the plaintiffs that they had an (1) I.L.R. 42 Mad. 360.

(2) 51 I.A. 282.

interest entitling them to institute the suit was actually pressed and examined on this ground. The District Judge rejected this claim, but the High Court held in favour of the plaintiffs on its view that Nirmala Sadhus were Sikhs. It appears from the judgment of the High Court that, in arriving at this decision, the Court relied on only two items of evidence consisting of some observations made in Sir Edward Maclagen's Census Report and in Macauliffe's Treatises on the Sikh Religion. The High Court made a reference to a judgment of the Bhide, J., in Kirpa Singh v. Ajaipal Singh and Others(1) in which this question whether Nirmala Sadhus were Sikhs was examined in great detail. An error,

however, appears to have been committed by the High Court in taking from that judgment a few extracts from Sir Edward Maclagan's Census Report and Macauliffe's Treatises on the Sikh Religion and relying on those extracts without examining the entire material that was discussed by Bhide, J. in his elaborate and well-considered judgment. Bhide, J., referred to various books which gave the history and description of Nirmalas and rightly held that, though the origin of Nirmalas was somewhat obscure, it appears to be clear that they were originally the followers of Guru Gobind Singh, but the important point for consideration was whether they had become distinct from the general body of the Sikhs and had ceased to be regarded as such. The quotation from Macauliffe's book "The Sikh Religion"

> relied upon by the High Court, is to the following effect :
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> "There are two great divisions of Sikhs, Sahijdhari and Singhs. The latter are they who accept the baptism inaugurated by Guru Gobind Singh, which will be described in the fifth volume of this work. All other Sikhs are called Sahijdharis. The Singhs, after the time of Guru Gobind Singh, were all warriors, the Sahijdharis those who lived at ease, as the word denotes, and practised trade or agriculture. In the Singhs are included the Nirmalas and Nihangs. The Sahijdhari include the Udasis founded by Sri Chand, son of Guru Nanak."

Reference was also made to an article written by Macauliffe on "Sikhism" in the Calcutta Review in 1881 where he described Nirmalas as only nominally Sikhs. The extract from Sir Edward Maclagan's Census Report, on which reliance was placed, runs as follows :

> "It is said that Guru Gobind Singh sent three followers named Karam Singh, Har Chand and Mihr Rai to Benares to acquire a knowledge of Sanskrit, when the Pandits of (1) I.L.R. II Lah. 142.

that city refused to come themselves to Gobind Singh; and that, on their return the Guru blessed them as being the only learned men among the Sikhs and called them Nirmala. They were allowed to take the pahul and founded the order of Nirmala Sadhus. They are almost always celibate, and almost always in monasteries. Their principal Akhara is at Hardwar and it is said that their societies throughout the province are periodically visited by a controlling council. They have three considerable monasteries in the Hoshiarpur District at Munak, Adamwal and Alampur Kotta and by our returns they appear to be strong in Gurdaspur, where they are mainly returned as Hindus and in Ambala, Ferozepore and Amritsar where they are mainly returned as Sikhs. It is supposed that they are to be found in some numbers in Patiala, but our tables would intimate that they are as strong in Faridkot. They are looked on as unorthodox by most true Sikhs,, and it will be observed that more of them are returned in the census as Hindus than as Sikhs."

We are unable to agree that these passages relied upon by the High Court are enough to lead to an inference that Nirmala Sadhus are Sikhs and that they still retain the essential characteristics of the Sikh faith. It is true that, in their origin, Nirmala Sadhus started as a section of Sikhs who were followers of Guru Gobind Singh, but, subsequently, in the period of about 300 years that has since

elapsed, they have veered away from the Sikh religion. That is why, after giving their historical origin, Macauliffe expressed the opinion that Nirmalas were only nominally Sikhs. In Maclagan's Census Report also it was, mentioned that Nirmala Sadhus are treated as Sikhs in some places, while in other places they are returned as Hindus. He has mentioned the Districts in Punjab where they are returned mainly as Hindus, and others where they were considered as Sikhs. Faridkot, the District within which the institution with which we are concerned is situated, is mentioned as a place where they are regarded as Hindus and in the Census they have been returned as such. In these circumstances, we do not think that this material by itself, which the High Court culled out of the judgment of Bhide, J., could properly lead to the inference that Nirmalas are Sikhs.

Bhide, J., quoted Sir Edward Maclagan's Census Report in greater detail and mentioned how in that Census Report there was a description that the Nirmala Sadhus were at first devoted to the regulations of Gobind Singh, but their taste for Sanskrit literature led them to imbibe the principles of the Vedanta and to readopt many of the customs of the Shastras. They gave up the use of meat and spirits and they adopted the dress of the Indian 'faqir' which was strictly prohibited to the true followers of Guru Gobind Singh. They had so far deviated from the orthodox Sikhs that they were hardly distinguishable from the Udasi followers of Nanak. They were looked on as unorthodox by most true Sikhs and it was also observed that more of them were returned in the Census as Hindus than as Sikhs. Then the "Glossary of the Tribes and Castes of the Punjab and N.W.F. Province" by H. A. Rose contained a statement that the Nirmalas, having adhered to the study of the orthodox Hindus scriptures, had lost touch with Sikhism. In Oman's "Mystics, Ascetics, and Saints of India" Nirmalas were described as followers of "Vedanta philosophy". From all these authorities an inference clearly follows that Nir- malas have a close affinity to Hindus and in the Census Report for the Punjab for the year 1891 a large number of Nirmalas actually declared themselves as Hindus. Bhide, J., on these materials, rightly came to the conclusion that Nirmala Sadhus are not Sikhs.

Further, in this case, there was material showing that this institution at Jhandawala was registered as one of the branches of the principal institution of Nirmala Sadhus known as the Panchayati Akhara situated at Kankhal near Hardwar. There was further evidence showing that in this institution the worship is primarily of a Samadh which is against all tenets of the Sikh religion. Nirmala Sadhus, it appears, as a class worship at Samadhs which goes to show that they can no longer be regarded as people following the Sikh religion. In their beliefs and practices, the Nirmala Sadhus are now quite akin to Udasis, and there is a series of-cases which has laid down that members of the Udasi sect are not Sikhs. We need only mention the view expressed by the Privy Council in Hem Singh and Others v. Basant Das. and Another, Shiromani Gurdwara Parbandhak Committee v. Ram Parshad & Others(1), holding that "parallel with the growth of this movement, there seems from the time of Sri Chand, Nanak's son, to have been a, sect of Udasis who, while using the same sacred writings as the Sikhs, kept up much more of the old Hindu practices, followed asceticism, were given to the veneration of Samadhs and tombs, and continued the Hindu rites concerning birth, marriage, and Shradh.... the Udasis, so far as the matter can be decided by beliefs and practices, are, from the point of view of Sikhs, schismatics who separated in the earliest days of the movement and never merged thereafter." Relying on these observations of the Privy Council, the Lahore High Court in Bawa Ishar Das and Others v. Dr. Mohan Singh and Others(2) held : "It is clearly established in the present case that this is an Udasi institution and that the Sikhs have

nothing to do with it except that they may have gone there to listen to the reading of the Sikh scriptures, which is also done by the Udasis." These decisions clearly indicate the principle (1) 63. I. A. 180.

(2) A.I.R. 1939 Lah. 239.

that, though the Sikh Guru Granth Sahib is read in the shrines managed by the members of the Udasi sect, that was not enough to hold that those shrines were Sikh Gurdwaras. In the case before us, the mere fact that at some stage there was a Guru Granth Sahib in this Dera cannot thus lead to any conclusion that this institution was meant for, or belonged to, the followers of the Sikh religion. Clearly, the Dera was maintained for an entirely distinct sect known as the Nirmala Sadhs who cannot be regarded as Sikhs and, consequently, in their mere capacity of followers of Sikh religion residing in village Jhandawala, the plaintiffs/res- pondents could not be held to have such an interest as could entitle them to institute the suit under s. 92 of the Code of Civil Procedure. The judgment of the High Court has to be set aside on this ground.

In view of the fact that we are holding that this suit was not instituted properly by persons interested as required by s. 92, C.P.C., we consider it unnecessary to express any opinion at all on the second main point decided against the appellant by the High Court, viz., that there were sufficient grounds for the removal of the appellant from the office of the Mahant. In this case, it is not at all neces- sary to record any finding on that aspect of the case and, consequently, we refrain from commenting on the finding recorded by the High Court on this question. The appeal is allowed with costs. The decree of the High Court is set aside and the decree passed by the District Judge is restored.

V.P.S. Appeal allowed.