Supreme Court of India
Biram Prakash And Ors. vs Narendra Dass And Ors. on 6 October, 1965
Equivalent citations: AIR 1966 SC 1011
Author: Ramaswami
Bench: A Sarkar, R Dayal, V Ramaswami
JUDGMENT Ramaswami, J.

1. This appeal is brought by special leave on behalf of the plaintiffs from the judgment and decree of the High Court of Allahabad dated November 13, 1959, dismissing First Appeal No. 342 of 1948 arising out of the judgment and decree of the Civil Judge of Saharanpur, dated September 6, 1948, in Suit No. 64 of 1945.

2. This suit was brought by the appellants as representing the Udasi sect under Order 1, Rule 8 of the Civil Procedure Code in respect of the 'Dharamshala' at Hardwar containing the Samadhi of Baba Bakhat Mal, founder of the Gaddi Shanter Shah which is located in Roorkee Teshil of Saharanpur District. The appellants prayed for a declaration that the Dharamshala was a wakf property and not transferable and that the sale deed dated June 14, 1945 executed by respondents 1 and 2 in favour of respondents 3 and 4 was illegal and inoperative. It was alleged by the appellants that the Dharamshala was not part of the Gaddi Shanter Shah but was a separate endowment and the Mahant of Gaddi Shanter Shah had no right to alienate practically the entire dharamshala and destroy the substratum of that endowment. It was stated that respondents 1 and 2 executed the sale deed to set aside the auction sale of a major part of the Dharamshala in satisfaction of a mortgage decree in Suit No. 66 of 1935 obtained by Panchayati Akhara Kalan Kankhal on the basis of a mortgage deed dated June 1, 1933 executed by Mahant Saheb Dass. It was also alleged that the mortgage deed to enforce which the decree was passed was not executed by Mahant Saheb Dass for legal necessity and the transaction was not binding on succeeding Mahants. The suit was contested by the respondents on the ground that the Dharamshala at Hardwar was part of the Gaddi Shanter Shah and the mortgage deed executed by Saheb Dass dated June 1, 1933 was supported by pressing legal necessity and the sale deed executed in favour of respondents 3 and 4 on June 14. 1945 was binding upon the Gaddi of Shanter Shah. It was stated on behalf of the respondents that the decree in the mortgage suit being Suit No. 66 of 1935 created a binding debt against the Gaddi Shanter Shah and that the impugned sale deed was executed in order to save the whole of the Dharamshala from passing out of the hands of the Mahant of Gaddi Shanter Shah and the impugned alienation was of a protective character and was for the benefit of the estate of the Mahant of Shanter Shah. It was alleged on behalf of the respondents that the Samadhi of Baba Bakhat Mal and a substantial portion of the Dharamshala had been excluded from the sale deed dated June 14, 1945. It was further alleged that the suit was barred by res judicata in view of the compromise in Suit No. 3 of 1943.

3. Upon these rival contentions the Civil Judge of Saharanpur held that the Dharamshala at Hardwar was not a separate endowment but was part and parcel of Gaddi Shanter Shah. The Civil Judge also held that the sale deed dated June 14, 1945 was legally valid as it was executed to discharge the decretal obligation created by the decree in suit No. 66 of 1935 and that the sale transaction was of a defensive character and was beneficial to the estate of the Gaddi Shanter Shah.

It was accordingly held by the Civil Judge that the sale deed dated June 14, 1945 was executed for legal necessity and for adequate consideration. The Civil Judge also found that the suit was barred by Section 11 of the Civil Procedure Code on account of the Compromise decree in suit No. 3 of 1943. The Civil Judge accordingly dismissed the suit. Against the judgment and decree of the Civil Judge the plaintiffs preferred First Appeal No. 342 of 1948 in the Allahabad High Court which dismissed the appeal by its judgment and decree dated November 13, 1959. The High Court confirmed the finding of the Civil Judge that the Dharamshala was not a separate endowment but was part and parcel of the Gaddi Shanter Shah. The High Court also took the view that the sale deed of June 14, 1945 was justified by legal necessity and was, therefore, legally valid. The High Court, however, differed from the trial Court on the question of res judicata and held that the decision in suit No. 3 of 1943 did not operate as res judicata in the present suit.

4. In support of this appeal Mr. Purshottam Tricumdas contended, in the first place, that the Dharamshala at Hardwar was a separate endowment from the Math of Shanter Shah and the Mahant of Shanter Shah could not alienate the major part of the Dharamshala and destroy the substratum of that separate endowment. We do not think there is any warrant for accepting this argument. Both the lower courts have concurrently found that the Dharamshala at Hardwar was not independent of the endowment of Gaddi Shanter Shah but that it was only a part of the property of the Mahant of Shanter Shah. In our opinion, the finding of the lower courts is supported by adequate evidence. It is the admitted position that Baba Bakhat Mal was the founder of Gaddi Shanter Shah which was a Math intended for the initiation of disciples into the mysteries of the Udasi cult and for imparting spiritual knowledge of the Udasi cult. Exhibit 14 is a copy of a proceeding under Act II of 1819 and Act III of 1838. In the course of this proceeding Sant Das of Shanter Shah Math stated that "there was a dharamshala at Hardwar where all the Sadhus who came there from the Punjab, east and south were given food, and that anybody who happened to come to Shanter Shah was given bread and flour". It is also stated in the proceeding that the village of Shanter Shah had been "a chartered muafi" since the time of Emperor Mohd. Shah and that "the petitioner who was about 75 years old, was in the sixth generation from the original donee" and that "the produce of the village was spent over Sadabarat and feeding the Faqirs of whom about 50 were then present at Mauza Shanter Shah and Hardwar, and those who came from day to day were all fed and that a very large number of Faqirs visit the place during the mela at Hardwar". It is further stated that "in the book of Muafi, Mohammad Shah Badshah is recorded as donor and Mahant Sajanand and Sadanand are recorded as donees" and that "the possession of the Muafidars has been continuing and the person present in possession Ganga Das is their disciple and the produce of this village is spent towards the feeding of all the visiting Faqirs at Hardwar". The document, Ex. 14 indicates that there were sanads granted by Emperor Mohd. Shah to the Mahant of the Shanter Shah Math for meeting the expenses over Sadabarat and feeding the Faqirs at the Dharamshalas at Hardwar and Shanter Shah. It is significant to note that the grant was made to the Mahant of Shanter Shah for the maintenance of both the Dharamshalas. In this context it is important to notice that the feeding of disciples and travellers and ascetics is an integral part of the duties of a Mahant. This is apparent from the form of dedication of a math from the text of Varaha Purana quoted by Dr. Mukherjea in his treatise on Hindu Law of Religious and Charitable? Trust, Second Edition at page 32:

"A mutt should, by person having faith in the Sastras, be made three-storied or two-storied, consisting of different apartments, accommodated with places for meditation, for study, for burnt offering to consecrated fire and the like . .And he should endow a village or sufficient land for meeting the expenses, so that the ascetics and the travellers getting shelter (there), may receive sandals, shoes, umbrellas, small pieces if cloth, and also other necessary things. Thus having established an asylum beneficial to persons practising austerities, and also to other poor people seeking shelter, he should declare--'I am endowing this asylum--May he who is the support of the universe be pleased with me'."

It is established by the evidence in this case that the Dharamshalas at Hardwar and Shanter Shah and the property of the Math of Shanter Shah have always been under one management and have always been dealt with together as one unit. In suit Nos. 135 of 1915 and 70 of 1925 the property of Gaddi Shanter Shah was the subject-matter of the claim between the rival parties and the whole property including the two Dharamshalas constituted the subject-matter of the litigation. In Civil Suit No. 135 of 1915 which was instituted by Sital Das against Saheb Dass for recovery of possession of property of (Gaddi Shanter Shah the whole Dharamshala at Hardwar was claimed and decreed as part of the Gaddi Shanter Shah and there was an express finding to that effect. In suit No. 70 of 1925 between Mahant Anand Prakash and Saheb Dass the Dharamshala at Hardwar was again claimed as part of the Gaddi Shanter Shah Under the mortgage deed dated June 1, 1933 the Dharamshala was alienated as belonging to the Gaddi of Shanter Shah and was sold as such in execution decree passed on the basis of the mortgage in suit No. 66 of 1935. In view of this evidence we are of opinion that both the lower courts have rightly found that the Dharamshala at Hardwar was not a separate endowment but was a part and parcel of the Gaddi Shanter Shah. We are of the opinion that Mr. Purshottam Tricumdas has been unable to make good his submission on this aspect of the case.

5. We pass on to consider the next question in the case, viz., whether the sale deed dated June 14, 1945 executed by respondents 1 and 2 in favour of respondents 3 and 4 is supported by legal necessity and is legally valid. It is necessary at this stage to set out the relevant facts regarding the usufructuary mortgage dated June 1, 1933 and the course of litigation ending with the sale of the portion of Dharamshala in favour of respondents 3 and 4 on June 14, 1945. Upon the death of Mahant Tulsi Das in 1914, a suit, No. 135 of 1915, was instituted by Mahant Sital Das for the Gaddi against Mahant Saheb Dass, when there was a dispute arising for the Gaddi. The decree dated September 6, 1918 passed in that suit recognised the right of Sital Das to the post of Mahant. On July 18, 1919 Sital Das executed a mortgage deed for Rs. 10,000 in favour of Panchaiti Akhara Kalan in respect of the money borrowed for the litigation. The debt came to Rs. 30,825 on June 1, 1933. In the year 1923, after the death of Sital das the dispute again arose between Saheb Das and Anand Parkash for the Gaddi. The suit No. 70 of 1925 filed by Anand Prakash against Saheb Das was decided in favour of the latter. Mahant Saheb Das had also borrowed from Panchaiti Akhara during that litigation. In order to discharge this debt and also the debt due under the mortgage deed dated July 18, 1919 Mahant Saheb Das executed on June 1, 1933 a mortgage deed with possession of the Dharamshala for Rs. 61,000 but the room occupied by the Samadhi of Baba Bakhat Mal and two other rooms were excluded from the mortgage. On October 21, 1935 Mahant Saheb Das filed suit No. 66 of 1935 against the Akhara under Section 33 of the U. P. Agriculturists Relief Act for rendition of account in respect of the mortgage of 1933, and on March 27, 1936 a compromise

decree was passed in that suit for Rs. 53,500 which was payable in 20 yearly instalments. As there was default in the payment of instalments, the mortgaged property was brought to sale and purchased in Court auction by Panchaiti Akhara on November 17, 1942. The sale was confirmed on November 23, 1943 after an application made on February 6, 1943 by Pooran Das to set aside the execution sale was dismissed. The Panchaiti Akhara obtained possession of the property on November 23, 1943. In the meantime, on February 3, 1943, Narain Das and 2 others filed suit No. 3 of 1943 against the Akhara for a declaration that the Dharamshala was a wakf property and no right accrued to the Akhara through auction-sale and for a permanent injunction restraining the Akhara from taking proceedings for confirmation of sale. On December 4, 1944, Narendra Das filed an application for withdrawing himself from the suit as he had been appointed Mahant of the Gaddi in place of Pooran Das who was removed, and the prayer was granted by the court. The other two plaintiffs made an application that the suit had been compromised and may be dismissed; and accordingly an order was passed on December 7, 1944. In First Appeal No. 163 of 1943 which was filed against the dismissal of the petition to set aside the sale, the High Court made an order that if the judgment-debtors, deposited a sum of Rs. 1,50,300 in Court to the credit of the the Akhara before July 25, 1945, the sale would be set aside. The order was made by the High Court on April 30, 1945. It appears that Mahant Pooran Das resigned the Gaddi of Shanter Shah and Narendra Das was installed as Mahant in his place. In the interest of the Gaddi Mahant Narendra Das appointed a committee of trustees to advise him in the management of the affairs of the trust. The committee of trustees was appointed in pursuance of an agreement dated July 27, 1944. The committee consisted of eight leading Mahants of the Udasi sect and the committee was constituted to safeguard the interest of the trust and to place the management of its affairs on a satisfactory basis. After the High Court's order dated April 30, 1945 efforts were made by Mahant Narendra Das and the committee of trustees appointed by him to persuade the Akhara to take a smaller portion of the Dharamshala for the same amount, but their efforts were fruitless. The committee of trustees and Mahant Narendra Das had meetings on April 15, 1945 and April 30, 1945 to consider the matter. After the Akhara refused the offer of the committee of trustees, respondents 3 and 4 were approached by the committee and were persuaded to take a much smaller portion of the building of Dharamshala for the same amount. It was in these circumstances that respondents 1 and 2 executed the sale deed on June 14, 1945 in favour of respondents 3 and 4 for the portion of the Dharamshala mentioned in that document for a consideration of Rs. 1, 50,300.

6. On behalf of the appellants it was contended by Mr. Purshottam Tricumdas that the mortgage deed executed on June 1, 1933 by Mahant Saheb Das was not supported by legal necessity because the suits of 1915 and 1925 were instituted against Saheb Das challenging his right to hold the office of Mahant which was merely a personal right. It was argued that the money borrowed for meeting legal expenses of such a case was not properly chargeable to Gaddi Shanter Shah because there was no question of vindication of the rights of the Math but that the suits were contested only for vindication of private and personal rights. In support of this argument Mr. Purshottam Tricumdas referred to the decision in Sharada Peeth Math, Dwarka v. Rajrajeshvarasharma, AIR 1933 Bom 276, but that decision was concerned with the question of limitation and has no bearing on the question presented for determination in the present case. It is true that there is a distinction between a suit to establish a claim to an office and a suit filed on behalf of an endowment as such to recover certain property which is claimed to belong to it, but in the present case the question is

whether suit No. 135 of 1915 brought by Mahant Sital Das against Mahant Saheb Das and suit No. 70 of 1925 brought by Anand Prakash against Saheb Das were merely suits to establish the right of the plaintiffs to the Mahantship or whether they were suits to get the endowment property into the possession of persons who were the rightful Mahants. The very object of a Math is to maintain a competent line of religious teachers for propagating and disseminating the religious doctrines of a particular order or sect. In the eye of law there cannot be a Math without a lawfully appointed Mathadhipati as its spiritual head. For the proper functioning of a Math, it is also essential that the rightful Mahant should be in control and possession of the property belonging to the Math. Where, therefore, a lawful Mathadhipati is kept out of the possession of the endowed property by a trespasser asserting a hostile claim, there is a hostile title asserted in the litigation against the Math itself. In the litigation in suit No. 185 of 1915 filed by Sital Das the expenses incurred by the mahant must therefore be held to have been incurred in repelling a hostile attack on the trust property. Similarly, in suit No. 70 of 1925 filed by Anand Prakash against Saheb Das which was decided in favour of the latter, the expenses incurred by Mahant Saheb Das must be held to have been incurred in repelling a hostile attack on the trust property. This conclusion is also borne out by the circumstance that none of the succeeding Mahants challenged the validity of the mortgage transaction and by the other circumstance that the Akhara being the high command of the Udasi sect proceeded on the basis that the cost of the litigation was a legitimate charge on the Math properties. Reference may be made in this context to the observations of the Judicial Committee in Murugesam Pillai v. Manickavasaka Pandara. 44 Ind App 98 at p. 102: (AIR 1917 PC 6 at p. 7):

"The Board does not wish to cast any doubt upon the proposition that, in the case of mortgages granted over the security of an adhinam or math by the head thereof, it lies upon the mortgagee, or those in his right, to prove that the debt was a necessary expense of the institution itself. But it is a circumstance of great weight when holder after holder of the headship recognizes and deals with the debt on that basis; and as time goes on this may itself come to be a not unimportant element of probation upon the issue. It must also be fully borne in mind that with the lapse of time the parties to the transaction may die or disappear. In the present case Pillai, the lender, is dead; Manickavasaka, the borrower, is also dead; and it is conceivable that, as years elapse, in such cases nearly all the material evidence may in the course of years disappear while the debt itself still remains, having from its initiation till almost the date of suit been recognized by all concerned as a debt truly constituted by the Adhinam. In such cases a Court is much more easily satisfied that the debt was properly incurred than where the transaction was itself recent and can therefore be the subject of more exact evidence, or where the transaction, although remote, has been the subject of challenge or dispute by those charged with the interests of the institution."

We are accordingly of opinion that the mortgage deed dated June 1, 1933 executed by Saheb Das is supported by legal necessity. It is equally manifest that the sale deed dated June 14, 1945 in favour of respondents 3. and 4 executed to satisfy the mortgage decree obtained by the Akhara is supported by legal necessity and is a valid transaction. We accordingly reject the argument of Mr. Purshottam Tricumdas on this part of the case.

7. There is also an alternative ground upon which the validity of the sale deed of June 14, 1945 can be supported. It appears that on October 21, 1935 Mahant Saheb Das brought suit No. 66 of 1935

under Section 33 of the U. P. Agriculturists Relief Act in the Court of 1st Civil Judge, Saharanpur There was a compromise decree on March 27, 1936 by which the mortgagee--the Panchaiti Akhara was awarded a sum of Rs. 53,500 and it was agreed that this amount will be paid in 20 annual instalments of Rs. 4,000 each and the mortgaged property was to be sold in the event of default in payment of any of the instalments There was default after payment of the first instalment by Mahant Pooran Das who succeeded to the Gaddi on the death of Saheb Das in 1936. The result was that the disputed Dharamshala was sold with the exception of the three rooms and was purchased by the Akhara Panchaiti Kalan on November 17, 1942 for Rs. 1,50,300. The Akhara Panchaiti Kalan took possession of property on November 23, 1945 but in the meantime Pooran Das filed an objection before the execution court for setting aside of the sale on the ground of material irregularity under Order 21, Rule 90, Civil Procedure Code. The application was dismissed on February 6, 1943. Pooran Das filed an appeal before the High Court against the order of the Civil Judge dismissing the application. Pooran Das thereafter applied to the High Court for permission to sell a part of the building for the amount for which almost the whole of the Dharamshala bad been sold in favour of the Akhara. It appears that after the resignation of Mahant Pooran Das respondent No. 1, Narendra Das succeeded him and that Narendra Das appointed a Committee of Trustees for the management of the Gaddi Shanter Shah. On April 15, 1945 the trustees adopted a resolution that the Akhara Panchaiti Kalan should be approached to purchase a lesser portion of the Dharamshala for the amount for which it had originally purchased almost the whole of the building. There was no response from the Akhara and therefore the Committee of Trustees resolved on May 30, 1945 to negotiate a sale with respondents 3 and 4. Ultimately respondents 3 and 4 agreed to purchase a much smaller portion of the Dharamshala for the amount of Rs. 1,50,300 payable to the Akhara. On June 14, 1945 respondents 1 and 2 executed the sale deed in favour of respondents 3 and 4 and they recited in the course of this document that the transaction was entered into in the interests of the Math because the entire building of the Dharamshala would be lost to the Math for ever if the transaction with respondents 3 and 4 was not concluded and the amount, Rs. 1,50,300 was not deposited in the High Court within the time granted. It is recited in the sale deed that by alienating a portion of the building for Rs. 1,50,300 in favour of respondents 3 and 4 a sufficient portion of the property would be saved for the gaddi and the gaddi will be benefited. In this state of facts it is clear that the sale deed dated June 14, 1945 in favour of respondents 3 and 4 was supported by legal necessity, for otherwise the portion of the Dharamshala which was saved by means of the sale deed would have been lost irrevocably to the trust.

8. In Prosunno Kumari Debya v. Golab Chand Baboo, (1874-75) 2 Ind App 145 (PC) it was observed by the Judicial Committee that notwithstanding that property devoted to religious purposes is, as a rule, inalienable, it is competent for a sebait to incur debts and borrow money for the service of the idol and preservation of its property, to the extent to which there is an existing necessity for so doing, his power in that respect being analogous to that possessed by the manager for an infant heir. In Hunooman Persaud Panday v. Mt. Babooee Mundraj Koonweree, (1856) 6 Moo Ind App 393 at p. 423 (PC) Lord Justice Knight Bruce observed:

"The power of the manager for an infant heir to charge an estate not his own is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in a case of need or for the benefit of the estate. But where, in the particular instance the charge is one that a prudent owner would

make in order to benefit the estate, the bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded. But, of course, if that danger arises or has arisen from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong to support a charge in his own favour against the heir grounded on a necessity which his own wrong has helped to cause. Therefore the lender in this case, unless he is shown to have acted mala fide, will not be affected, though it be shewn that with better management the estate might have been kept free from debt."

In Niladri Sahu v. Mahant Chaturbhuj Das, 53 Ind App 253: (AIR 1926 PC 112) the mahant of a math mortgaged certain of the endowed properties at 1 per cent per mensem in order to discharge loans at 2 per cent per mensem which were an accumulating burden upon the endowment; he also covenanted personally to pay. The original loans had been incurred mainly for the purpose of constructing pakka buildings for the accommodation of wealthy devotees visiting the math, and in part for the ordinary expenses of the worship. In a suit to enforce the mortgage against the mahant personally and against the mortgaged property, in which suit the mahant failed either to give evidence or to produce the books of the math it was held by the Judicial Committee that the mortgage was for necessity so as to be within the power of the mahant, even if the original loans had been incurred recklessly and not for the benefit of the math, which however was not shown to have been the case. At p. 267 (of Ind App) Lord Atkinson states:

"Even if the building scheme of the defendant had been reckless, inconsistent, unsound and liable to fail, which has not been proved, what drove him to borrow this money Rs. 25,000 on mortgage, to pay old debts, and so be relieved of the oppressive burden which the exorbitant rate of interest at which these earlier loans were made imposed upon him? It was the high rate of interest, which he was already bound to pay, that was the necessary and immediate cause of his giving this mortgage, though the remote cause of it was the getting into debt by the building operation. In their Lordships' view the principle of the case above mentioned applies to this case."

9. In testing, therefore, the question of legal necessity for the impugned transaction regard must be paid to the actual pressure on the estate, the immediate danger to be averted or the benefit to be conferred upon the trust estate. Applying the test in the present case, we are satisfied that the transaction of sale dated June 14, 1945 in favour of respondents 3 and 4 was beneficial to the gaddi of Shanter Shah and the finding of the lower courts on this point is correct.

10. On behalf of the respondents Nos. 3 and 4 Mr. Viswanatha Sastri contended that the decision of the High Court on the issue of res judicata was not correct. We are, however, satisfied that the High Court was right in taking the view for the reasons given by it that the decision in suit No. 3 of 1943 did not operate as res judicata.

11. For these reasons we hold there is no merit in this appeal which is accordingly dismissed with costs.