

*Privy Council Appeal No. 33 of 1925.*

**Shri Sachidanand Vidya Shankar Bharati Swami Guru Shri Sachidanand Vidya Narsinha Bharati Swami Jagadguru and another - *Appellants***

v.

**Shri Vidya Narsinha Bharati Guru Shri Vidya Shankar Bharati Swami Math Karvir and another - - - - *Respondents***

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL DELIVERED THE 18TH JANUARY, 1927.

---

*Present at the Hearing :*

LORD SINHA.

LORD BLANESBURGH.

LORD SALVESEN.

SIR JOHN WALLIS.

[ *Delivered by* SIR JOHN WALLIS. ]

---

This is an appeal from a decree of the High Court of Bombay setting aside the decree of the Subordinate Judge of Belgaum in terms of a compromise entered into between the plaintiff and the second defendant in the suit, and remanding the case for disposal, on the ground that the decree was passed in the absence of the first defendant and without notice to him.

The suit, O.S. 219 of 1910, instituted in the Subordinate Court of Belgaum, was between rival claimants to the office of Jagadguru or head of the Sankeshwar and Karvir Mutt, an ancient foundation having two branches, one at Sankeshwar in the Belgaum District of the Bombay Presidency and the other in the native State of Kolhapur (which of the two is the principal branch is in dispute), and owning properties both in British territory and in Kolhapur. The dispute as to the succession arose from the fact that Bala-vadakar, a former head of the Mutt, who had appointed and

installed one Brahmanalkar as his successor in 1903, afterwards, in 1906, purported to revoke the appointment, and to appoint one Athanikar, who, in turn appointed and installed the plaintiff in 1909. Brahmanalkar, on the other hand, denied that he had been lawfully deposed, and before his death in 1909 appointed and installed one Atmaram Shastri, who was the original defendant in this suit. The plaint alleged that lands owned by the Mutt in British India, which included the Mutt at Sankeshwar, were in the possession of the plaintiff, but that by order of the Commissioner of the Southern Division the Inam villages and cash allowances (in British India) were being held in Amanat (under attachment) and were to be given to the claimant who should obtain a decree declaring his right. The plaint accordingly prayed for a declaration that the plaintiff was the owner of the property moveable and immoveable of the Sankeshwar and Karvir Mutt and of the powers and rights of that Mutt as the duly appointed Jagadguru.

The written statement alleged that the Court had no jurisdiction as the Sankeshwar Mutt was only a branch of the principal Mutt in Kolhapur and the Kolhapur Durbar alone had power to decide who was head of the Mutt; that that Durbar had decided that the defendant was the head of the Mutt, and that, in any case, Balavadakar had no power to depose Brahmanalkar (through whom the defendant claimed), or to appoint the plaintiff.

Atmaram Shastri died in November, 1916, having appointed and installed Atmaram Pitri, the present first defendant, who was brought on the record as defendant on the 28th March, 1917. Subsequently, on the 3rd June, 1917, the first defendant appointed and installed the second defendant Kurtkoti. This having apparently come to the knowledge of the plaintiff on the 25th July, 1917, he obtained leave to administer interrogatories to the first defendant. The questions and answers, which are material for the purposes of the present case, were as follows :—

*Questions.*

*Answers.*

1. Have you installed your disciple on your "Gadi" (seat). And if (you) have installed (him) give particulars in details in respect of the name, &c., of that disciple Swami.

1. We (I) installed our (my) disciple on our "Gadi" (seat), and he has been named "Shri Vidya Shankar Bharati Swami Jagadguru" in accordance with the usage followed in continuity.

2. Do you legally exist so far as this suit is concerned.

2. No.

3. In case your legal existence so far as this suit is concerned is lost, will you please explain as to whom you have transferred rights (and) interest, &c., in the property in this suit you have.

3. As I have lost my legal existence I have transferred my right and interest, &c., in the property in suit to the aforesaid Shri Vidya Shankar Bharati Swami Jagadguru.

The first defendant followed up these answers by applying on the 21st September, 1917, that Kurtkoti's name might be entered as defendant. In his petition he stated again that all the

rights of the Jagadguruship and "all the rights over the income of immoveable and moveable property of the Samsthan belonging to me have been transferred to him." He would appear to have wished that Kurtkoti should be substituted for himself as defendant, but the plaintiff, to whom notice went, petitioned that Kurtkoti be newly entered among the defendants, and he was accordingly added as second defendant, leaving the first defendant on the record. The second defendant then filed an additional written statement in which he stated, among other things, that the plaintiff had appointed one Shirolkar as his disciple. The plaintiff admitted that he had appointed Shirolkar as his disciple to succeed him, but denied that he had resigned the office of Jagadguru in his favour. In these circumstances Shirolkar was added as third defendant in the suit.

It now becomes necessary to advert briefly to the circumstances which led up to the compromise. The second defendant, on his appointment by the first defendant, had entered into possession of the Mutt premises and villages in Kolhapur, but subsequently the Maharajah of Kolhapur ordered his officers to enter into possession of the Mutt villages for reasons which it is unnecessary to examine. Correspondence followed, and eventually, by way of protest, as it seems to their Lordships, the second defendant left the Kolhapur Mutt and premises, taking with him nothing but his sanyasi robe and beggar's staff and bowl. He then approached the plaintiff and a meeting was held between them and their pleaders, at which a compromise was arrived at; and a decree was subsequently passed in terms thereof. The first defendant was not a party to the compromise, and the decree was passed in his absence and without notice to him, but one of the terms was that he should be paid any costs he had incurred, and this term was embodied in the decree. Shortly, the compromise was that the plaintiff's name should be entered in the Government records as the owner of all the property in suit, that the second defendant should receive Rs. 8,001 a year out of the suit property and half the collections in the hands of Government under attachment; that the second defendant and his disciple, if he made one, should have no rights over the Sankeshwar Mutt and its estate; that the second defendant should have the right to found a new Mutt north of the Nerbudda river; and that, if the second defendant got back the villages in Kolhapur he should during his life-time pay the plaintiff and his successors one half of the income.

The first defendant then presented a petition for a review of the compromise decree on the ground that the second defendant had obtained the decree by alleging that the first defendant had transferred all rights, title and interest in the suit properties to him, whereas only a limited interest was transferred to the second defendant not entitling him to alienate the Mutt properties, that the first defendant had always remained a party to the suit, and that his interest thus continuing to subsist, no compromise decree could

be passed without notice to him. Lastly, the petition alleged that before the date of the compromise the second defendant had surrendered his right, title and interest in the Mutt to the first defendant and had ceased to have any authority with reference to the Mutt and its properties. The Subordinate Judge dismissed the petition for review observing that, not being a party to the decree, the first defendant could not be bound by it and could not be aggrieved by a decree which was not binding on him. The first defendant presented an appeal from the compromise decree. The appeal came before Shah and Hayward, JJ., who called for findings on the following issues :—

(1) Had defendant No. 1 any subsisting interest as alleged by him in his application for review at the date of the compromise between plaintiff and defendants Nos. 2 and 3 in the property in respect of which a declaration was sought in the suit ?

(2) Having regard to the nature of the property with reference to which the declaration was sought by the plaintiff, was the compromise between the plaintiff and defendants Nos. 2 and 3 lawful ?

The case went back to a new Subordinate Judge, who recorded findings in the negative on both issues. As regards the first issue he found that the first defendant had no subsisting interest and had none when he made his application for review even as regards the Kolhapur branch.

On these findings the appeal came on again before Macleod, C.J. and Shah, J. when the learned Chief Justice gave judgment allowing the appeal and setting aside the compromise decree on the ground that the first defendant remained on the record after the second defendant was added as a party. The suit, he observed, was of a very special nature and affected the position of all parties, not only from a religious point of view, but also from their position as owners of property. The plaintiff might have applied to strike off the first defendant's name, when it would have been decided whether he had any interest in the suit or not. As it was, the first defendant appeared to have such an interest in the disputes which were in issue in the suits as to entitle him to have the compromise set aside.

Their Lordships are unable to agree with this view. The first defendant was sued solely as the rival claimant to the office of Jagadguru, and after transferring the office to the second defendant, he stated in answer to interrogatories administered by the plaintiff, that he no longer legally existed so far as the suit was concerned, as he had transferred all his rights to the second defendant, a declaration repeated in his petition to bring on the second defendant in his place. In these circumstances, the mere fact that he so remained on the record did not, in their Lordships' opinion, make the compromise to which he was not a party, or the compromise decree which was passed in his absence and without notice to him, binding upon him in any subsequent proceedings

so as to give him a sufficient interest in the suit to entitle him to appeal. The one question in the suit was, who was entitled to the office of Jagadguru. The first defendant admittedly transferred all his rights in the office to the second defendant, in whom they were still vested at the date of the compromise decree, which established the plaintiff's right to the office and its properties in British India. In their Lordships' opinion the fact that the first defendant continued on the record did not entitle him to intervene in the contest between the plaintiff and the second defendant, or to object to the admission by the second defendant of the plaintiff's claim to the office and its endowments either absolutely or on terms. If the rights of the public, the institution, or its dependents, including the first defendant, are injuriously affected by the compromise, relief may be sought by appropriate proceedings, but the first defendant has no right of appeal in this suit. This result is the less to be regretted if, as found by the Subordinate Judge, the appeal is really being prosecuted by the Kolhapur Durbar in the name of the first defendant. In their Lordships' opinion the appeal should be allowed, the decree of the High Court set aside, and the decree of the Subordinate Court restored with costs here and below and they will humbly advise His Majesty accordingly.

In the Privy Council.

---

SHRI SACHIDANAND VIDYA SHANKAR BHARATI  
SWAMI GURU SHRI SACHIDANAND VIDYA  
NARSINHA BHARATI SWAMI JAGADGURU  
AND ANOTHER

vs.

SHRI VIDYA NARSINHA BHARATI GURU SHRI  
VIDYA SHANKAR BHARATI SWAMI MATH  
KARVIR AND ANOTHER.

---

DELIVERED BY SIR JOHN WALLIS.