Privy Council Appeal No. 44 of 1926.

Acharyashri Sripati Prasadji Bihari Lalji Maharaj - - - *Appellant*

v.

Barot Laxmidas Dungerbai and others - - - - *Respondents*

Barot Laxmidas Dungerbai and others - - - - *Appellants*

v.

Acharyashri Sripati Prasadji Bihari Lalji Maharaj - - - *Respondent*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD NOVEMBER, 1928.

Present at the Hearing:

VISCOUNT DUNEDIN.
LORD SHAW.
LORD BLANESBURGH.
SIR JOHN WALLIS.

[*Delivered by* LORD SHAW.]

These are consolidated appeals from a decree of the High Court of Judicature at Bombay, dated the 22nd December, 1922, and made in appeals Nos. 164 and 199 of 1919, varying a decree of the Court of the District Judge of Ahmedabad dated the 14th August, 1919.

The suit arises in this way. In 1804 a Hindu religious reformer, an ascetic coming from Northern India, named Swaminarayan, formed in the Bombay Presidency a new religious sect named after his own name. It consisted of men who had renounced the world, secondly of widows of men who had renounced the world, and thirdly of lay followers. He built two main temples, one in the city of Ahmedabad and the other at Vadtal in the

Kaira District, with the latter of which this suit is concerned. Amongst the buildings were a temple, a monastery, a theological and Sanskrit school and other accommodation for dwelling and residence.

The head of the establishment was the Acharya. The founder was worshipped as an incarnation of the god Krishna. It is undoubtedly true that according to the foundation the successors of the founder are similarly worshipped and are preceptors of the sect and heads of its spiritual and temporal affairs.

Abuses arose with regard to this institution, which has now become possessed of considerable wealth. A variety of disputes have arisen with regard to the management of the property of this institution. So far back as 1882 a suit was brought in the time of Viharilal the then Acharya, under section 539 of the then Civil Procedure Code. That section corresponds with section 92 of the present Civil Procedure Code of 1908 which will be presently referred to.

"The position of the Acharya of the southern diocese," says Mr. Justice Marten in the present case, "was considered

> by this Court in 1885 by Sir Charles Sargent and Mr. Justice Birdwood. There the Court decided that the Acharya held the suit property upon trust for the maintenance of the temple. The judgments there describe him as a trustee or manager of it. The Court there rejected the argument that the temple was not a temple of the god because it was dedicated to the Acharya as spiritual head. It also held that the trust for the temple was a public religious trust."

During the regime of Laxminarayan, the successor of Viharilal as Acharya, serious disputes again broke out, and as the appellant's case briefly puts it, "having had differences with his followers, he abdicated by a deed dated the 16th April, 1909." Then Shripatiprasadji, the defendant No. 1, became Acharya.

Fresh differences again arose, and on 31st October, 1914, about 40 lay members of the sect brought the present suit.

The central point of all these disputes, was—put in a word—whether the Acharya was, as representative of the god, the owner of the properties of the institution, "not accountable" for the "management nor for the expenditure of the income, provided he does not apply it to any purpose other than what may fairly be regarded as in furtherance of the objects of the institution." It is in this guarded manner that both in his case and argument the appellant asserts absolute and unrestricted ownership.

Further, in the course of the 1885 suit, the defence was raised that the temples were maintained for the sole use of the Swaminarayan sect and it was submitted that the sect was not a public body. The High Court overruled that contention. The same thing took place in the present case, and it is admitted that there is no appeal, and no appeal is made, against the decision that the institution and its property fall within the scope of charitable and religious trust property to which section 92 of the Civil Procedure Code of 1908 applies.

Section 92 is as follows :—

> "In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original juisdiction, or in any other Court, empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree."

There then follows a list of the courses which by decree may be taken by the Court, including the removal and the appointment of trustees, vesting of property, directing of accounts, etc., and by sub-section (*g*) "the settling of a scheme."

A scheme has been settled in the Courts below. Only two points out of this confused and protracted litigation have been argued at their Lordships' Bar. First, but very faintly indeed, that there was no occasion for the settling of any scheme; secondly, as to certain points in the scheme itself which the appellants submit have been improperly adjusted.

Their Lordships may say at once that, looking to the procedure in this case, it would be highly undesirable and unsettling for this Board to interfere with the action of the Court below.

But it may be expedient in the first place to state that their Lordships do not understand that the scheme, as settled, in any way interferes with the institution as a spiritual institution, or with the duties of the adherents thereof, whether ritual, ceremonial or ethical; nor does it presume to modify in any degree the worship paid by the members of the sect to the occupant of the *gaddi* as the representative of the god.

The institutional documents are thus fairly set forth by the appellant :—

> "4. It is admitted that the said foundation to-day is of precisely the same character as the founder left it. Four documents are of paramount authority in determining the constitution of the foundation and the sect in question. These are (1) the Lekh, (2) Satsangjivan, (3) the Shikshapatri, and (4) the Vachanamrat. The Lekh, a document in the Gujrati language, was drawn up by Sahejanand himself, and records the fundamental constitution of the sect and the foundation in suit. The Satsangjivan is a Sanskrit poem, which contains the official record of the foundation of the sect. The Shikshapatri is also written in the Sanskrit language, and contains the essence of Sahejanand's teaching for his disciples who are enjoined to read it daily. The Vachanamrat is written in the Gujrati language, and contains a record of the conversations or discourses of the founder, committed to writing each evening by faithful devotees, and has an introduction of uncertain date relating to the life of the founder and the miraculous occurrences that distinguished it. The four together admittedly form scriptures of authority, forming the constitution of the foundation, and paramount amongst all members of the sect.

The Board repeats that the scheme settled does not in their opinion make any inroad upon the spiritual, ceremonial or ethical code, or with the duties of piety and worship which those documents prescribe. It is a scheme regulative of the conduct of the institution as the owners of monies and property which it possesses.

As to such property it is not open to doubt that the scheme is in accord with the principles laid down by this Board in *Ram Parkash Das* v. *Anand Das* (43 I.A., p. 73). The institutional trust must be respected: but the sect and body of worshippers for whose benefit it was set up have the protection of the Court against their property being the subject of abuse, peculation and waste.

As to management, the scheme prescribes that (1) the property aforesaid shall be managed by the Acharya with the assistance of a Committee. That Committee is to consist of a treasurer appointed by the Acharya, four Grahasthas or laymen, and three ascetics or religious members—these seven to be elected by the whole body of worshippers or members of the institution. Then follow the working details.

It cannot be denied, and it has already been held in the Courts below in the case previously alluded to, that this institution falls within the language of Section 92 of the Civil Procedure Code, which includes any express or constructive trust created for public purposes of charitable or religious nature. The suit is brought by no fewer than 40 members of the sect having in the language of the section " an interest in the trust " and also having obtained, as prescribed by the Act, the consent in writing of the Advocate General.

No doubt whatsoever existed in the Court below that a suitable occasion had arisen for the settling of the scheme. Nor is the Board in doubt upon that subject. The High Court quotes with approval and concurrence the learned District Judge:—

> " It seems to me that having regard to the admitted maladministration of the predecessor of the present Acharya and the assumption of the latter of the position of an absolute owner wholly incompatible with the letter and spirit of the written constitution, and the fact of the phenomenal augmentation of the trust funds since the foundation, and consequently of the numerous chances of maladministration, it is necessary in the general interest of the community to frame a Scheme conforming with the principles of the institution."

This is also the opinion of the Board.

As to the terms of the scheme, the Board sees no occasion whatsoever to interfere. Its terms were made the subject of apparently most careful consideration not only in the Courts below but by learned counsel representing both parties. The draft scheme was in all its detail before them. Suggestions were made on both sides, and, as clearly appears, careful discussion ensued. A narrative of this is given in the judgment of the High Court dated the 22nd December, 1922, in which the Court

expresses its obligation to counsel for the great care taken over the management of the scheme. "Mr. Koyaji has told us," they say, "that it is Sir Thomas Strangman who is principally responsible for the alterations that have now been made." Sir Thomas represented those who are now the present appellants.

This judgment shows in detail objection and adjustment at repeated stages of the negotiations; and Mr. Justice Marten, in the closing paragraph of the judgment of the High Court, adds: "I wish to add that in framing this order I have been influenced by the appeal made to us by Sir Thomas Strangman on behalf of the Acharya that we should assist the parties to let this be a new and friendly starting-point in the history of the institution."

The Board thinks it right to state that in their opinion the appeal now made to it is a very regrettable appeal. Two matters giving point to this observation may be noted. In settling the scheme a certain personal allowance was made to the Acharya, the occupant of the *gaddi*, namely Rs. 2,000 per month along with travelling and other expenses. With regard to the Rs. 2,000 the scheme conceded to him that no account need be kept of the details thereof. An account is only wished from him for any excess over that sum. The argument against the scheme reached the point of triviality when it questioned the sufficiency of this allowance of Rs. 2,000.

In the second place in the working of this scheme it is no doubt not unlikely that defects or differences may emerge, and practicable adjustments may be necessary. This consideration accentuates the opinion of the Board in favour of non-interference with the action and judgment of the Court below. The cross-appeal also fails.

Sufficient has been said to make it doubtful whether the appellants should not be cast in costs, but upon the whole their Lordships are of opinion that the costs of the appeals should be disposed of as in the Court below, and should come out of the estate.

Their Lordships will humbly advise His Majesty that the costs of all parties should be allowed accordingly, and that the appeals should be refused.

In the Privy Council.

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DELIVERED BY LORD SHAW.

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