

Privy Council Appeal No. 44 of 1929.
Allahabad Appeal No. 32 of 1927.

Baba Jwala Das - - - - - *Appellant*

v.

Pir Sant Das and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH MAY, 1930.

Present at the Hearing :

LORD THANKERTON.
SIR GEORGE LOWNDES.
SIR BINOD MITTER.

[*Delivered by* SIR GEORGE LOWNDES.]

The question in this appeal is as to the right to appoint a successor to one Kan Das, the *bairaji mahant* of a *muth* in Hardwar, who died in 1923 leaving no *chela* and having made no appointment to the *gadi*. On his death the appellant took possession of the *muth*, claiming to be entitled thereto as the *mahant* of a neighbouring institution at Sainwal from which he asserts the Hardwar *muth* was founded. The moveable property was locked up in a room by the police. The respondents then came forward with a rival claim as representing another *muth* at Koh Kerana. The matter was investigated by the Sub-divisional magistrate, who held that the appellant had made out a *prima facie* title to the succession, but ordered the moveables to be kept under lock and seal for a further period of six weeks to enable the respondents to take proceedings in the Civil Court, failing which the property was to be made over to the appellant, who was left in possession of the immoveable property valued at between two and three lakhs of rupees. The respondents thereupon filed the suit out of which this appeal arises in the court of

the Subordinate Judge of Saharanpur claiming a declaration of their title to and possession of the *muth* and property, upon the allegation that the first respondent as the *mahant* of Koh Kerana had the right of appointment to Hardwar, and that he had appointed his own *chela*, the second respondent, as the successor of the deceased Kan Das.

It is admitted by counsel for the respondents that under these circumstances the burden was upon them to establish the right they claimed, and their Lordships have no doubt that this is so.

Reliance was placed in the plaint upon a deed of appointment, executed in the interval between the magistrate's order above referred to and the institution of the suit, by which a number of persons describing themselves as "*mahants, santans* and *jogis*" purported to appoint the second respondent to the vacant *gadi* with the consent of the first respondent, but no reliance has been placed on this document before their Lordships. It seems, indeed, to be inconsistent with the contention to which the respondents now pin their faith, namely, that the right of appointment lies solely with the *mahant* of Koh Kerana.

It is common ground that the Hardwar *gadi* was established in or about the year 1818, and that the first *mahant* was one Ottam Das, to whom Kan Das was according to one account the third, and according to another the fourth successor. Ottam Das was the *chela* of Godha Das who was the *chela* of Pir Sukol, the then *mahant* of Koh Kerana, a *muth* which though itself the offshoot of another and older *muth* at Tila, was an institution of considerable antiquity.

In his preliminary examination by the trial judge, the second respondent admitted that if the *mahant* of a subordinate *gadi* dies without leaving a *chela*, the "*Sadar gadi*" (*i.e.*, the superior institution) has power to appoint a *mahant* to the subordinate *gadi* or to manage it himself. He also admitted that "if any other *gadi* sends its disciple and establishes an "*asthan*" (*i.e.*, an institution of this nature) at any place, and that disciple dies without leaving a disciple, the *mahant* who sent his disciple and established the *asthan* shall be entitled to manage that *asthan* or to appoint any person thereto." These statements were reaffirmed by the second respondent in his subsequent deposition before the Court.

It is clear therefore that what the respondents had to prove was that the Hardwar *muth* was the immediate offshoot of Koh Kevana, and the real question in the case is whether Godha Das, whose *chela* was the first *mahant* of Hardwar, was himself a *mahant* at Sainwal, and so intermediate between Koh Kerana and Hardwar.

The respondents alleged in their plaint, and it has been their case before this Board, that Sainwal is not a *gadi* at all but is merely a subordinate "*kotla*," *i.e.*, the granary, or possibly

the treasury, of Koh Kerana. The Subordinate Judge, before whom the suit was tried, in a careful judgment, came to the conclusion that this was not established, and that there was no direct link of any kind between Koh Kerana and Hardwar. He held on the evidence that Ottam Das, the first *mahant* of Hardwar, was the *chela* of Godha Das, the *mahant* of Sainwal; that Hardwar always remained subordinate to Sainwal, and that the right of management of Hardwar, on the *mahant* of that institution dying without a *chela*, belonged to Sainwal. He accordingly dismissed the respondents' suit. On appeal the High Court came to the opposite conclusion and made a decree declaring the right of the second respondent to the management of the Hardwar property and ordering possession to be given to him.

After perusal of the evidence recorded their Lordships have no doubt that the respondents have failed to establish that Sainwal, from which it is clear that Hardwar was founded, was merely a *kotha* of Koh Kerana and therefore that the necessary link between that *muth* and the Hardwar *muth* is not made out.

It has hardly been disputed before the Board that Sainwal is now, at all events, a *muth* of which the appellant is the recognised *mahant*, and there appears to have been a regular succession in respect of the property there from Godha Das downwards. How this could be if Sainwal was merely the "*kotha*"—whatever may be the true implication of that term—of Koh Kerana, has not been explained.

As far back as 1864, long before the present dispute arose, Santok Das, the predecessor of Kan Das, in proceedings in the Criminal Court at Saharanpur referred to Ram Das the *guru* and predecessor of the appellant as the "*Sajadanashin* of Sainwal" (a title admittedly equivalent to *gadinashin* or *mahant*), and gave his spiritual pedigree from Godha Das. In 1875, on the death of Shanker Das, of Koh Kerana, Ram Das describing himself as "*Gadinashin* of Kotha Sainwal," laid claim to the Koh Kerana *gadi*. His claim was dismissed, but from the judgment in the case, which is part of the present record, it does not appear to have been disputed that he was the then *de facto gadinashin* of Sainwal, and what is almost more suggestive still, the judgment refers to a similar claim which had been made by his *guru* and predecessor Pir Ganesh Das, "*Gadinashin* of Sainwal." In 1895 Ramdas instituted a suit against one Narotam Das in connection with the Sainwal property. In this suit he deposed to the history of the Sainwal *muth* as founded by Godha Das, and said that he had been on the *Gadi* for 50 years. There was no suggestion in his cross-examination that Sainwal was not a *muth* at all but merely part and parcel of Koh Kerana. The Koh Kerana *mahant* was not a party to this suit, but he can hardly have been ignorant of it if Ram Das was really only a subordinate official of his *muth*, and the deposition is put in evidence in the present suit by the respondents. This deposition,

taken in conjunction with the 1875 judgment above referred to, makes it abundantly clear that Sainwal had at least claimed to be a *gadi* from the time of Ganesh Das some time prior to 1845 or 1846. No attempt seems to have been made by Koh Kerana to refute or even to dispute the pretences of Sainwal, or to assert what is now claimed on their behalf that Sainwal was not and never had been anything but an integral part of Koh Kerana, and this is the more remarkable in view of the obvious hostility between the two institutions.

Their Lordships do not think it necessary to go further into the documentary evidence in this case or to deal with the oral evidence which is, as might be expected, contradictory and of little real weight. It is sufficient to say that counsel for the respondents has been unable to point to any evidence of direct connection between Koh Kerana and Hardwar during the course of more than a century, whether by way of pecuniary assistance, selection or appointment of a *mahant*, or even consultation on the affairs of the *muth*.

The learned Judges of the High Court before whom the appeal came founded their judgment in favour of the respondents largely upon the fact that the appellant, in his application to the magistrate shortly after the death of Kan Das, calls the Sainwal Gadi "Gadi Sainwal Kotha Koh Kerana," and translating "*kotha*" as "granary" or "treasury," they regard this as an admission that Sainwal was nothing more than a part of the institution of Koh Kerana. They also rely upon the statement of Ramdas in the proceedings of 1895-6 in which he refers to "Kotha" Sainwal having been founded by Godha Das, as an "admission" by him to the same effect, and upon his description of himself as "*Baba*" Ram Das, instead of "*Mahant*," which they say "has some significance." Their Lordships are not impressed by this reasoning. If a statement is to be relied upon as an admission the whole statement must be taken, and in each of the cases to which the learned judges refer it is clear that there was a definite assertion that Sainwal was a *gadi*, and the person making the statement the *gadinashin*, which is admitted to be the equivalent of *mahant*. It may well have been that the building in which the Sainwal Gadi was originally established was a "*kotha*" of Koh Kerana, and that the title of the *gadi* had its origin in this. But if the burden of proving that Koh Kerana was the immediate founder of the Hardwar *muth* is upon the respondents, as it admittedly is, their Lordships cannot think that it has been discharged by inferences of this nature.

The learned Judges also held that "the very fact that Ram Das claimed to succeed to the *mahantship* of Koh Kerana goes to show" that he could not have been at that time the *mahant* of Sainwal, for "a *mahant* of an independent *muth* could not claim to succeed to the *gadi* of another independent and separate *muth*." It is not stated upon what this dictum is founded, and

no attempt has been made to support it before this Board. Nor, in their Lordships' opinion, could Sainwal be regarded as "independent" of Koh Kerana. It was founded from Koh Kerana by a *chela* of the Koh Kerana *mahant*, and was clearly therefore subordinate to it in the sense in which this term has been used throughout the case.

Their Lordships do not, however, desire to criticise the judgment of the High Court in detail. For the reasons already given they think that the respondents have failed to establish the right that they have claimed in this litigation and that their suit must be dismissed. Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed and that the decree of the High Court should be set aside and that of the Subordinate Judge restored. The plaintiff-respondents must pay the costs both in the High Court and before this Board.

In the Privy Council.

BABA JWALA DAS

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PIR SANT DAS AND OTHERS

DELIVERED BY SIR GEORGE LOWNDES.

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