Privy Council Appeal No. 56 *of* 1946

Gurunatharudhaswami Guru Shidharudhaswami - - *Appellant*

v.

Bhimappa Gangadharappa Divate 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 26TH MAY, 1948

Present at the Hearing:

LORD UTHWATT
LORD MACDERMOTT
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a judgment and decree of the High Court of Judicature at Bombay, dated 31st August, 1939, affirming a judgment and decree of the District Judge, Dharwar, dated the 5th August, 1937.

The appeal arises out of a suit filed by the respondent and three others under Section 92 of the Code of Civil Procedure for a declaration that a certain institution known as Shri Sidha Arudha Swami Math was a public trust of a religious or charitable nature, for the framing of a scheme in connection with the institution, and for the removal of the appellant from his position as the head of the institution on the ground that he is unfit to occupy that position, and for consequential relief. The Shri Sidha Arudha Swami Math would be more accurately described as a Temple than as a Math, but it has been referred to as a Math throughout the proceedings, and will in this judgment be called " the Math."

The facts relating to the foundation of the Math and the acquisition of the properties belonging thereto are not in dispute. The appellant at Exhibit 194 accepted as correct the statements contained in the first fourteen paragraphs of the deposition of the fourth plaintiff which contained a full history of the matter. The contention of the appellant is that the courts in India have drawn wrong inferences from the facts.

The learned trial Judge discussed in detail and with much care the documentary and oral evidence, particularly in relation to the circumstances in which the various properties used in connection with the Math had been acquired. In appeal the High Court again discussed the evidence in considerable detail, and both courts reached the conclusions that the institution, whether it be called a Math or a Temple, was founded by the public for a public, charitable and religious purpose, viz. the worship of the Swami during his lifetime and of his Samadhi (tomb) after his death, and for the purpose of the various festivals which had been started in connection with the institution, and that the offerings made to the Swami,

the properties purchased out of those offerings and those acquired by gifts after 1912 (when the Swami assumed control of the Math), must all be regarded as accretions to the original foundation, and that all the properties in suit form part of a trust created for purposes of a charitable or religious nature. Counsel for the appellant has referred their Lordships to all the relevant evidence and no useful purpose would be served by a further discussion of it in detail. Their Lordships can state shortly and in general terms their reasons for agreeing with the conclusions of the courts in India.

The Swami came first to Hubli about the year 1877 as a mendicant, possessing no property. In the course of time he began to give discourses on the shastras and claimed to be an incarnation of the God Mahadeo, and as such to be worthy of worship. He collected a large body of disciples and before his death property of very substantial value had been acquired for the purposes of the Math. The Swami himself took no interest in material matters, being concerned mainly with the religious side of the activities of the Math, and it is on the face of it improbable that members of the public would have given property of substantial value to the Swami for his own personal use. The evidence shows that in some cases lands were acquired by panchas at Hubli; in other cases lands or ornaments were given direct to the Swami or on his behalf to Shiddappa, the father of the appellant, who had been appointed Mukhtya to the Swami about the year 1920. The buildings on the land used for the purposes of the Math were erected out of offerings made to the Swami. No disputes in connection with the Math seem to have arisen until the year 1924 when the Swami made a will, giving the whole of his property to the appellant. The property comprised in the will included the moveable and immoveable properties used or held in connection with the Math, and the right of the Swami to dispose of this property was challenged in Suit No. 97 of 1927 in the court of the first class subordinate Judge at Dharwar, and the matter went in appeal to the High Court of Bombay. It has not been contended before the Board that this suit has any relevance to the present appeal, and it need not be discussed.

The only question in this appeal is whether the suit properties used for the purposes of the Math belonged to the Swami at the time of his death, or appertained to the Math and were subject to an express or constructive trust created for public purposes of a charitable or religious nature within the meaning of Section 92 of the Code of Civil Procedure. Except in regard to one small property, which will be presently mentioned, their Lordships have no doubt that the courts in India were right in answering this question against the appellant. The evidence establishes beyond doubt, in their Lordships' view, that the properties in suit were either originally given, or were dedicated by the Swami, to the purposes of the Math which was a charitable or religious institution. It has been argued by Counsel for the appellant that even if this be so the trust was not for public, but for private, purposes. But this is clearly not so. It is common ground that anybody was at liberty to go at any time to the Math to worship the Swami and take food there. The trust was plainly one for public purposes.

The only property in suit which in their Lordships' view the respondents have failed to show belonged to the Math is that comprised in exhibit D127 by which a piece of land expressed to be of the value of Rs. 400 situate in Mouji Harti in Taluka Gadag was conveyed to the Swami, the motive expressed being the spiritual good of the donor. There is nothing in the conveyance to suggest that the land was given to the Swami for the purpose of the Math. There is no evidence that this land, which is situate, their Lordships are told, some 40 miles from Hubli was ever used, or that its rents or profits were applied, for the benefit of the Math. The fact that the Swami received many gifts of property for charitable purposes does not disqualify him from receiving gifts for his own personal benefit, and their Lordships think that this small piece of land must be excluded from the decree in the present suit.

By the decree which the learned trial Judge passed it was declared that the properties in suit were properties belonging to a public trust of a religious and charitable character; and that it was necessary to settle a scheme for the administration of the trust. The decree gave general directions as to the scheme to be prepared for carrying out the terms of the judgment and settled an interim scheme. It was directed that the appellant be removed from the position which he occupied as the head of the Math and that his worship must stop. It has been argued on behalf of the appellant that the court had no jurisdiction to remove him from his position as head of the Math to which he had been appointed by the will of the Swami. This contention is quite untenable. In settling a scheme for the administration of a charitable trust involving the appointment of trustees or managers, the court is bound to secure persons whom it regards as suitable. The fact that the Swami desired that the appellant should succeed him does not fetter the discretion of the Court, or preclude consideration of the conduct of the appellant, both before and since the death of the Swami. Both courts in India have held that by his conduct the appellant has shown himself unfit for the position which he occupies, and their Lordships accept such finding.

With regard to costs, both courts in India directed the costs of all parties to come out of the estate. This, their Lordships think, was right, but there was no justification for a further appeal to His Majesty in Council, and their Lordships are not prepared to direct that the costs of such appeal should come out of the estate.

For these reasons their Lordships will humbly advise His Majesty that the decree of the trial Judge dated 5th August, 1937 be modified by excluding from such decree the piece of land comprised in exhibit D127 and that subject thereto this appeal be dismissed. The appellant must pay the costs of the appeal.

(60132) Wt. 8062—31 180 6/48 D.L. G. 336

In the Privy Council

GURUNATHARUDHASWAMI GURU SHIDHARUDHASWAMI

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DELIVERED BY SIR JOHN BEAUMONT

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