GURCHARAN PRASAD & ORS.

v.

P. KRISHNANAND GIRI & ANR. ETC.

December 13, 1967

[R. S. BACHAWAT AND G. K. MITTER, JJ.]

Hindu Law—Endowment—Mchants of math carrying on money-lending business, acquiring and disposing of properties—Properties how far personal—Religious head wheather can own personal property.

The successive Mahants of Uttar Giri Math in Benaras acquired properties and made dispositions of properties to their disciples who succeeded them. The incumbent of the office of Mahant in 1904 entered into a marriage against the custom of the brotherhood. One of his collaterals thereupon filed a suit in which he claimed to be put in possession of the properties of the Math, also challenging some of the dispositions of property made by the Mahant. The defendants contended that all the properties in question did not belong to the Math and that the properties transferred were the personal properties of the Mahant. The trial Court held that the transferred properties were the personal properties of the Mahant and his predecessors and that only 12 items of property were endowed properties. In appeal the High Court held that all the items of property were personal property. In further appeal this Court held that the building in which the brotherhood resided was certainly Math property; as to other properties the case was remanded to the High Court for determining whether they were personal properties or endowment properties. The High Court, noting this Court's view that at least some properties must belong to the Math, observed : "In view of this finding of the Supreme Cour the fact that the evidence on the record does not expressly indicate which property belonged to the Math and which did not, should lead to the conclusion that all the property belongs to the Math. Property acquired by a Mahant personally but blended with the Math property will itself become Math property." On this view the High Court dismissed the appeal. The defendants came to this Court.

HELD : The High Court fell into an error in holding that the observations of this Court in the earlier appeal led to the conclusion that all the property belonged to the Math because the evidence on record did not expressly indicate which property belonged to the Math and which did not. If such had been the intention of the learned Judges bearing the appeal they would have clearly said so. [607 G-H]

On the facts of the case it was not possible to hold that the Mahants blended their self-acquired and personal property with Math property so as to make the whole partake of the character of the latter class of property. The Mahants had systematically pursued a money-lending business, had transferred properties to others in recognition of the claims of

A the disciples or voluntarily for lawful consideration and were describing themselves in the Tamliknamas as the absolute owners of the property. [607 H; 609 GH]

On an examination of the evidence only 15 items of property including the main building in which the Math was situated were Math property. About the rest of the property it could not be said that it was not the B personal property of the Mahant. The transfers of such property by the latter could not therefore be challenged. [608 OC; 609 H]

The fact that the successive Mahants had renounced the world and became sanyasis and had almost uniformly nominated the person who was to succeed them from out of the disciples or disciples of disciples does not lead to the conclusion that the properties must be treated as Math C properties. [608 C]

Parama Nand v. *Nihal Chand*, 65 I.A. 252 and *Raghbir Lala* v. *Mohammad Said*, A.I.R. 1943 P.C. 7, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 212 to 216 of 1965.

D

Appeals by certificates/special leave from the judgment and decree dated September 3, 1965 of the Allahabad High Court in First Appeals Nos. 523 of 1933, and 557 of 1930.

R. K. Garg, D. P. Singh, Anil Kumar Gupta, Shiv Pujan Singh and *K. M. K. Nair*, for the appellants (In C.A. No. 212 E of 1965).

Yogeshwar Prasad, E. C. Agrawala and *P. C. Agrawala*, for the appellants (In C.As. Nos. 213 and 214 of 1965).

G. N. Kunzru, B.P. Singh and *R. B. Datar*, for the appellant F (In C. A. No. 215 of 1965), for the respondent (In C.As. Nos. 212, 213 and 214 of 1965 and for the respondents (In C.A. No. 216 of 1965).

C. B. Agarwala, V. K. Sanghi and *K. P. Gupta*, for the appellant (In C. A. No. 216 of 1965).

G

The Judgment of the Court was delivered by

Mitter, J. Bounded by the river Ganges on the east, in the locality named Tripura Bhairvi of the temple studded city of Benaras there stands a math popularly known as Uttam Giri's Math, the origin of which is lost in antiquity. For well over a H century this Math has been a sanctuary of a spiritual brotherhood of Nihang Dasnami Sanyasis. Claim is laid that they belong to one of the ten orders of Sanyasis founded by the chelas of the

four disciples of the famous philosopher, Sankaracharya. Starting probably without any nucleus of endowed immovable property, the heads of the Math appear to have prospered enormously in matters material and temporal. Successive heads of the Math or Mahants as they were commonly known, seem to have been more keen about the acquisition of wealth and preservation of properties than about the furtherance of the spiritual benefit of the brotherhood. Gifts in the shape of endowments seldom came their way but the Mahants who uniformly pursued a money lending business also styled as a banking business in some of the documents, went on amassing wealth and property treating themselves as full owners thereof and directing their successors almost invariably nominated by their wills, to treat the property in the same way as they themselves were doing but paying scant regard to the cause of the brotherhood or the pursuit of any charitable purposes. One Mayanand Giri became the Mahant in 1904 and it is his acts and conduct which sparked off this litigation nearly forty years ago. The immediate cause of the legal proceedings was his marriage which led the plaintiff, Purushottamanand Giri, to file the suit in the court of the Subordinate Judge of Benaras claiming a declaration that by his marriage, the defendant No. 1, Mayanand Giri, had lost his right to continue as Mahant and that the plaintiff as his nearest collateral should, according to the custom of Nihang Dasnami Sanyasis, be put in occupation and possession of the Math and the properties appertaining thereto. The plaintiff also challenged a number of alienations impleading no less than forty five persons as defendants and claiming that the transfers made by defendant No. 1 were invalid and not binding on the Mahant of the Math. The suit was contested not only by Mayanand Giri but also by a number of the transferees. The defences raised were many and various. The first defendant pleaded *inter alia* that the plaintiff was not his nearest collateral, that there did not exist a Math with the customs and usages alleged in the plaint and that all the properties scheduled in the plaint were not the subject matter of any endowment.

A B C D E F G

The case of the transferees was that most of the properties were acquired by successive Mahants starting from Chaitanya Giri by the practice of a money lending business. It was said that a banking firm styled as Uttam Giri Shivdutt Giri was

H

A started by his successors and it was this business which was pursued by the Mahants that gave rise to the wealth accumulated in the Math. The common defence of all the transferee defendants who contested the suit was that Mayanand Giri was the absolute owner of the properties alienated and that they themselves were
B *bona fide* transferees for valuable consideration and as such the transactions entered into with them by Mayanand Giri could not be challenged. The suit was dismissed as against a large number of defendants who were found to be dead at the time of its institution or because they were not properly brought on
C the record in place of the original defendants.

The Subordinate Judge after a protracted hearing came to the conclusion that the ancient documents on the record, coupled with the other evidence, established the existence of an ancient Math, that the Mahants from the time of Gangot Gir had been
D carrying on a money lending business, that an ancestor of Gangot Gir by name Gomtigir had established a Math on a humble scale, that Prem Giri, a grand disciple of Gangot Gir, established another Math of his own, that Uttam Gir who succeeded Prem Gir had certainly created one and that the predecessors of the defendant, Mayanand Giri like himself had two
E kinds of properties, namely, Math property and personal property. According to the Subordinate Judge the nucleus from which the Math in suit originated was the personal property of Prem Gir. On the evidence he held 12 items of property mentioned in the will of Shivdutt Gir who succeeded Prem Gir and two other
F items of property to be endowed properties. The transfers effected by Mayanand were, according to the Subordinate Judge, beyond challenge because they related only to his personal properties.

G Two appeals were filed against the judgment and decree of the Subordinate Judge, one by the plaintiff and the other by Mayanand. The Allahabad High Court on appeal dismissed the suit on the view that there was no Math at all, that there was only a banking business and that the property was non-religious personal property acquired by Mayanand and his predecessors
H by following a banking business. A further appeal from the Allahabad High Court was disposed of by this Court by a judgment dated December 20, 1954. After noting in brief the

conclusions of the Subordinate Judge and of the Allahabad High Court, it was observed by this Court that "the short and only question therefore before us is, whether or not the existence of the math which is the foundation of the plaintiff's case has been satisfactorily made out." This Court then proceeded to examine the principal ancient documents and observed:

> "All the above documents, broadly considered, indicate definitely—
>
> (1) the existence of a spiritual brotherhood affiliated to each other by ties of initiation and succession,
>
> (2) the existence of a mutt which is the residence of the brotherhood as well as of the gaddinashin thereof and which in specific terms has been successively provided as being inalienable,
>
> (3) the existence of certain properties at least from the date of death of Sheodat Gir which were made specifically inalienable in the hands of his successors, presumably for the use of the spiritual brotherhood, and
>
> (4) the existence of a number of items of property which in terms were dedicated for spiritual uses like Dharmashalas, feeding of ascetcis, etc. and were designated as waqf."

This Court then considered the evidence of prior conduct of Mayanand Giri himself and certain admissions made by him and held "that the case of the first defendant denying the existence of a mutt or of any properties as belonging to it is totally false." According to this Court :

> "it is quite clear that what is now designated as the mutt No. 42/90-D must have been in existence at least from the time of Prem Gir *i.e.* for over a century and that this item of property in the hands of successors of Prem Gir was subject to the condition of inalienability, expressly provided in Premgir's Tamliknama, and impliedly so provided in the will of Sheodat Gir."

A Further

> "notwithstanding that there is no specific deed of endowment, the fact that the particular building has been continuously used as the residence of the brotherhood, and the seat of the head thereof in succession and
B the fact that it has been specifically provided as being inalienable constitute sufficient evidence of dedication of this building as a mutt."

Examining the evidence further, both oral and documentary, this Court was not inclined to concur with the view expressed
C by the High Court that the evidence did not "disclose the existence at any time of a religious institution or a monastery with any attempt at religious study or religious teaching but that it disclosed only banking or money lending business which passed on from each of its proprietors to his chosen successor." Great
D stress was laid on the documents of 1828 and 1839—to be noted in detail hereafter—which did not, according to this Court, indicate that the ownership given thereby to the successors was to be for their personal uses and that all the transactions disclosed by these and other documents noticed by the High Court
E were *inter se* between the members of the brotherhood and not with outsiders. It was observed that

> "The document of 1887 appears to us to clinch the position by specifically providing that the properties left by Sheodat Gir were not to be alienable in the
F hands of the successors. The inalienability impressed upon by these properties by the then head of the spiritual brotherhood can reasonably be presumed to be only for the purpose of spiritual brotherhood."

According to this Court these circumstances should "be normally
G treated as indicative of the religious character of the property for the use of the brotherhood."

The conclusion of this Court (as appearing at page 607 of the paper book) was in these terms:—

> "We are, therefore, satisfied that the existence of a
H mutt as an institution has been clearly made out on the evidence in this case and that the building No. 42/90-D belongs to and constitutes the mutt and that the

contrary view is untenable. The only substantial question in the case is whether and to what extent the properties in suit belong to this mutt as an institution. The learned trial Judge dealt with this question and held only a few out of the large number of items mentioned in the plaint schedule as belonging to the mutt. The learned Judges of the High Court did not feel called upon to give any finding as to this in the view that they had taken. These appeals will, therefore, have to go back to the High Court for further consideration of this question and of other questions left undecided."

Finally it was observed (at p. 610):

"that our judgment concludes the question as to whether house No. 42/90-D is or is not mutt property. The only substantial questions that remain are as to which of the other properties in the plaint schedule belong to the mutt and whether such alienations as relate to mutt properties are valid and binding on the mutt."

This Court further upheld the finding of the Subordinate Judge in favour of a custom among the Dasnami Sanyasis of the neighbourhood that by reason of his marriage Mayanand had become a "Patit" and had forfeited the office of Mahantship and the same community had elected the plaintiff as the Mahant of the Math at Tripura Bhairavi.

On remand, the High Court examined the ancient documents once more and after referring to the observations of this Court quoted above, stated that it had been definitely found by this Court that some of the properties in suit must belong to the Math and went on to add:

"In view of this finding of the Supreme Court the fact that the evidence on the record does not expressly indicate which property belonged to the Math and which did not, should lead to the conclusion that all the property belongs to the Math. Property acquired by a Mahant personally but blended with the Math property will itself become Math property. He is competent to endow his property. Blending it with Math

A property is an indication that he endowed it to the Math or intended it to be Math property."

According to the High Court:

> "It was, therefore, necessary for the defendants to
> B establish that such and such property was acquired not as a Mahant but as an individual and was also kept separate from the Math property which the Mahant was managing."

The High Court then went on to consider the alienations
C made by the Mahants who had preceded Mayanand Giri from time to time and was of the view:

> "during this long period the brotherhood did purchase properties but hardly transferred any property and that this may be either as the properties were not
> D considered personal and alienable or as the mahants had no occasion to transfer property, their income being in excess of expenditure."

The High Court examined the transactions of Mayanand Giri challenged by the plaintiff and was not satisfied that any enquiry
E had been made by the alienees about the necessity or the purpose of the math justifying the alienations. In the result, the High Court allowed the appeal with costs throughout against Mayanand Giri and a number of alienees, some of whom only have come up in appeal.

F [His Lordship then examined the documentary evidence in order to ascertain the character of the property in dispute and held:]

In our view, the High Court fell into an error in holding that
G the observations of this Court led to the conclusion that all the property belonged to the math because the evidence on the record did not expressly indicate which property belonged to the math and which did not. On the facts of this case it is not possible to hold that the mahants blended their self-acquired and personal property with math property so as to make the whole
H partake of the character of the latter class of property. A Mahant is undoubtedly competent to endow the property acquired by him but merely because in the Tamilknamas he makes no dis-

tinction between property acquired by him personally and property which undoubtedly formed the subject matter of a prior endowment, the personally acquired properties cannot be said to be math property when the evidence on record establishes that all the mahants were holding themselves out as absolute owners of the property and were transferring various items of property from time to time *albeit* to persons of the same brotherhood.

. . . . . .

On the evidence on record, we are not in a position to hold that any of the properties other than the 15 items above mentioned were math properties. The fact that the predecessors-in-interest of Mayanand Giri had renounced the world and became sanyasis and had almost uniformly nominated the person who was to succeed them from out of the disciples or disciples of disciples, does not lead to the conclusion that the properties must be treated as math properties. In *Parama Nand v. Nihal Chand*(1) the question before the Judicial Committee of the Privy Council was whether an Udasi could acquire private property with his own money or by his exertions and if he did so, whether it passed on his death to his spiritual heir including his Chela or could be inherited by his natural relatives. There one Narain Das had filed a suit for obtaining an authoritative pronouncement on the character of certain property held by him, the case of the defendants being that Narain Das was no more than the trustee of an endowment and could be called upon to furnish details of the nature and purpose of the trust. The High Court at Lahore had held in favour of the trust, the principal ground of their judgment being that the properties had descended from Guru to Chela. This was not accepted by the Judicial Committee and it was observed that:

> "this circumstance (the descent from Guru to Chela) does not necessarily lead to the conclusion that a property, when acquired by a Mahant, loses its secular character and partakes of a religious character."

In *Raghbir Lala* v. *Mohammad Said*(2) the plaintiffs' case was that the land in suit claimed by the defendants directly or in-

(1) 65 I.A. 252. (2) A.I.R. 1943 P.C.7.

A directly under transfers made in 1915 and 1916 by one Jainandar Kirat were debutter. It was established that one Manindar had purchased the land in the suit but there was no evidence that having acquired the land Manindar dedicated it to any Jain institution or religious purpose. It transpired that he had B solicited subscriptions for the erection of a temple which was not built and that except for the actual site of the foundations of the temple, he had used the rest of his land for his own purposes. According to the Judicial Committee :

> "He appears to have made money by practising C astrology and medicine and by lending money—occupations which he added to that of a religious teacher.....His life and conduct may not have been in accord with his religious professions as a Jain ascetic, but in fact he held and managed the property D which he had bought and indeed litigated about it, as if it were his own without any interference or assistance by the Jain community."

The Judicial Committee held on this evidence that the plaintiffs could not succeed on the ground of dedication by Manindar. E The Board further observed:

> "No doubt if a question arises whether particular property acquired by a given individual was acquired on his own behalf or on behalf of some other person or institution with whom or with which he was connected F the circumstance that the individual so acquiring property was a professed ascetic may have some importance. But it is out of question to suppose that a man's religious opinions or professions can make him incapable in law of holding property."

G In our view, the observations made on the prior occasion by this Court were only an indication that the circumstance of succession of properties from one Mahant to another had an important bearing on the final conclusion as to the character of the properties without being a decisive factor in respect thereof. H In this case, we find that the Mahants had systematically pursued a money-lending business, that there was little nucleus of any endowed property, that during the course of a century and a half

the proved endowments were hardly of any importance, that the Mahants were transferring properties to others in recognition of the claims of the disciples or voluntarily for lawful consideration and were describing themselves in the Tamliknamas as the absolute owners of the property, we cannot but hold that the properties in their charge were their personal properties unless it be established that any particular item of property was the subject matter of an endowment or a gift for a particular charitable purpose. We have already held that only 15 items of property including premises No. 42/90-D were math properties. On the evidence, we are not in a position to declare that the other properties were not personal properties in the hands of Mayanand Giri. It follows that the transfers of Mayanand Giri of this class of properties must be upheld so far as they are subject matter of the appeals before us.

A B C

G.C. *Appeals allowed.*