

*Privy Council Appeal No. 36 of 1924.*

*Patna Appeals Nos. 7 of 1923 and 52 of 1921.*

**Maharaj Bahadur Singh** - - - - - *Appellant*

*v.*

**Seth Hukum Chand and others** - - - - - *Respondents*

AND

**Seth Hukum Chand and others** - - - - - *Appellants*

*v.*

**Maharaj Bahadur Singh** - - - - - *Respondent*

*(Consolidated Appeals)*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 4TH DECEMBER, 1925.

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*Present at the Hearing :*

LORD SHAW.  
LORD PHILLIMORE.  
SIR JOHN EDGE.  
MR. AMEER ALI.  
LORD SALVESEN.

[*Delivered by* LORD PHILLIMORE.]

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The circumstances which have given rise to these consolidated appeals from the High Court at Patna are briefly as follows :

The professors of the Jain religion have been for a very long period divided into two sections, the Swetambara (white-clothed) and the Digambara (clothed with the sky—an expression for the unclothed).

The division is so ancient that it is apparently uncertain whether it took place some little time before or some little time

after the Christian era. There is some suggestion in the papers before their Lordships that there are certain differences of doctrine, but the division is principally in matters of ritual and worship. Broadly speaking, the Swetambara after washing the sacred images, clothe them and decorate them before worship, while the Digambara remove all covering before they worship; and the ritual which is applied to the images, is also applied to certain sacred footprints.

The Jains recognise 24 highly saintly personages—men who have attained salvation or Nirvana, who are called Tirthankars (finders of the ford, across the river of death). These four and twenty are counted in many respects as higher than the gods or some of the gods in the Hindu Pantheon.

Twenty of them are believed to have attained Nirvana in the present cycle of the world's history upon the Hill Parasnath in the district of Hazaribagh in Bengal, with the result that the hill is held in reverence by Jains. The hill itself has some remarkable natural features, and rises into several peaks. Twenty spots apparently marked out by natural features, are believed to be places from which the 20 Tirthankars quitted earth; and at each of these spots, a footprint of the Saint is worshipped. There is a small enclosure covered with a cupola, which at the present moment is made of white marble. These spots have been set apart from remote antiquity. The four remaining Tirthankars quitted earth in other parts of India. In respect of them conventional spots have been since the year 1868 set apart and treated in a similar way.

Upon the hill there are also a shrine to a lesser Saint called Gautama Swami, an important temple in one of the highest parts of the mountain—called Jalmandil, certain platforms set apart for religious contemplation and two Dharamsalas or rest-houses for pilgrims. The hill is much frequented by pilgrims, who take the 24 shrines or tonks in regular order, worshipping at each.

According to the tenets of the Digambara, this worship must be performed fasting, and the whole hill is so sacred that from the moment they set foot on it, they must abstain from any office of nature, even spitting. The Swetambara do not so limit themselves.

For many years the Rajah of Palgunj, in whose zemindari the hill is, appears to have managed and kept in repair the temples and tonks and to have taken the offerings from the pilgrims. But in 1872 the Swetambara made an agreement with the Rajah for an annual payment, and proceeded to take the offerings for themselves and to manage and keep in repair the sacred places.

As time went on, differences in respect of their different mode of worship and the confusion resulting from different sets of pilgrims desiring to carry out their own ritual led to disputes between the two sections; and proceedings were taken to have a "record of rights" under the Chhota Nagpur Tenancy Act of 1908 established. A Record of Rights was framed by the proper

officer, and a table was drawn up in which the whole hill was described as "private unculturable land," and then 48 items described as house, temple, tonk or platform, were enumerated, and the following description was added :

" Temple and dharamsala referred to in this Khata in which all the Jains have the right to stay and to make Puja (worship) without the permission or opposition on the part of any person."

Whether the words " temple " and " dharamsala " referred only to the first two items, or whether it was intended that the description should apply to all the 48 does not clearly appear. But whichever is the true construction, it was considered by the Svetambara to be unfavourable to them, and accordingly the present suit was instituted on their behalf, impeaching the record and claiming

" (b) That it be declared that the defendants as also the whole Digambari sect of Jains have no right to worship in the temples on the Pareshnath Hill in Gadi Palgunj, Sub-District Giridih, District Hazaribagh, without permission of the Sitambari sect of Jains and in a mode not approved by them and that they cannot occupy the Dharamsalas on the said Hill without similar permission.

" (c) That an order be passed directing the correction of the entry in the Khas Khatian of Khewat No. 7 to the effect that the Digambari sect of Jains can worship in the temples on the Pareshnath Hill only with the permission of the Sitambari Jains and in a mode approved by them and can occupy the Dharamsalas only with their permission."

When the case came on for trial, it was found that there were 31 edifices in dispute. Of these 5 (Numbers 26 to 30), which were structures or platforms for purposes of contemplation, were admitted to be exclusively devoted to the Svetambaras. In respect of the 20 tonks dedicated to or commemorating the 20 Tirthankars who found Nirvana from the hill, and the shrine of Gautama Swami, the Subordinate Judge found that both sections of the Jains had an equal right of worship ; while with regard to the remaining 4 tonks and the Jalmandil temple, he found that the Digambaras had no right to worship and could only do so with the permission of the Svetambaras ; and as to the Dharamsalas he decided that they belonged to the Svetambaras, and that the Digambaras could not use them except by permission.

He appended to his finding an observation about the " usual practice " as to which their Lordships will make a separate reference subsequently.

Appeal and cross-appeal were brought from this decision, but it was affirmed. And both parties have now appealed to His Majesty in Council.

Much of the case turns upon disputed questions of fact ; and upon all the important questions of fact subject to one reservation, both Courts have come to the same conclusion, while nothing has been brought to their Lordships' notice which would induce them to depart from their usual rule of accepting concurrent conclusions of fact.

Taking now the case of the 20 tonks and the shrine of Gautama Swami, it is clear that they are of ancient date, and that the holiness of the sites may go back to a time anterior to the division into Svetambaras and Digambaras.

No doubt the Svetambaras being the richer sect have rebuilt or largely improved the present buildings. But if the ancient buildings were already dedicated to the common use of both sections, this contribution to the common religious buildings can create no exclusive right. Upon this short ground their Lordships think that the decision should stand.

Now as regards the 4 tonks commemorating the Tirthankars who attained Nirvana from different places in India. As to these there is no ancient appropriation of site. They were marked out and built upon by members of the Svetambara section as late as 1868. No doubt Digambaras as well as Svetambaras have worshipped in them; but their Lordships agree with the Courts below that there is no evidence that they worshipped in them as of right. They may well have done so by permission of the Svetambaras, and there is nothing in the papers to show that this permission will not continue to be given, subject to such conditions as the prior claim of the Svetambaras may demand.

It was urged before their Lordships that there was no legal appropriation of the site of these tonks; but counsel for the Digambaras, while urging this argument, requested their Lordships to decide no question of title with regard to the ownership of the hill, stating that there was a suit pending in India which involved this question.

Confining themselves therefore to what appears in the papers in the present case, their Lordships would gather that at any rate there was no title in the Digambaras which could prevent the Svetambaras from lawfully acquiring possession of the 4 sites.

If the title be in the Rajah, there is quite sufficient evidence of a grant by him for this purpose.

The only conflicting suggestion was that in some manner the whole hill had become vested in the whole Jain religious community or was held by the Rajah in trust for that purpose.

Their Lordships neither affirm or disaffirm this contention; but if it were proved, it would not in their opinion affect this case.

The hill is said to be of an area of about 25 square miles, rough, and as stated in the record of rights, "unculturable."

Supposing it to be dedicated to the religion of the Jains, generally, it was still possible for the Svetambaras to appropriate these 4 sites, and the fact that they without interference built upon them is at this lapse of time sufficient evidence of appropriation.

There remains for consideration the temple of Jalmandil. As to this it is admitted that in the central chamber the images or idols are those of the Svetambaras, and that 2 of the 4 side chambers are used to contain some of their paraphernalia of

worship. The Swetambaras say that the other 2 chambers either are empty or are used as lumber rooms.

The Digambaras say that their images were there and were worshipped there and have been improperly removed by the Swetambaras.

It seems certain that the images were not there at the time when the settlement officer made his inquiry with a view to the record of rights ; and the view of the Subordinate Judge was that no consecrated images had ever been there.

The High Court thought that the evidence of the one witness of respectability who said that he worshipped Digambara images in one of these rooms in 1909, was worthy of credit, and that possibly the evidence might be reconciled by supposing that some of the Digambara images had been stored there for a time.

This is the only substantial point on which the two Courts differed ; but the Judges of the High Court thought that such user as they found, which might well have been permissive, gave no title to the Digambaras : and it is enough for their Lordships to say that they agree in this conclusion.

As to the Dharamsalas, the Digambaras owing to their special ascetic tenets have not found and will not find much need to use them. At the time when they were built, the sites had not been specially consecrated or otherwise appropriated. They were built by the Swetambaras, and both Courts have found that such user as the Digambaras have had of them was by permission of the Swetambaras. On the question of title, their Lordships need only refer to what they have said with regard to the 4 tonks. In this respect as in the others, the cross-appeal fails.

Before parting with the appeal their Lordships have a further observation to make.

When the learned Subordinate Judge was dealing with the history of the case, he laid considerable stress upon the fact that, possibly for reasons connected with their ascetic rules, the Digambara pilgrims usually began their cycle of visitation of the tonks earlier in the day than the Swetambaras, so that the covering and adornments put by the Swetambaras would usually remain untouched till the following morning. And he finished his judgment by saying :

“ I find so far as the 20 tonks are concerned, one sect has no right to restrict the others as to its mode of worship, provided the usual practice referred to above is observed.”

In his actual decree he made no reference to this proviso. He was subsequently prayed to amend his decree by inserting this proviso, and he refused.

The Judges in the High Court agreed with this decision. Indeed, they thought that the practice had not been as uniform as it appeared to the Subordinate Judge to have been.

Before their Lordships great stress was laid by counsel for the Swetambaras upon the necessity of either inserting this proviso

or making some regulation limiting the hours during which the Digambaras might worship.

Their Lordships find themselves unable upon the materials before them, to comply with this request.

Nor do they think it necessary, as it was urged in the alternative, to remit the case to the High Court, with directions to make some such regulation.

If after or in the working out of this judgment, there should be collision between the worship of the two sections in the 20 tonks, or any difficulty should unhappily occur in the conduct of orderly worship, such a matter could be regulated by competent local authority.

Their Lordships will humbly recommend His Majesty that the appeal and cross-appeal should be dismissed with costs.



In the Privy Council.

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MAHARAJ BAHADUR SINGH

vs.

SETH HUKUM CHAND AND OTHERS

AND

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vs.

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