Privy Council Appeal No. 42 of 1938

Lala Raghbir and Others – – – – – – *Appellants*

v.

Babu Prag Narain (since deceased) and Others – *Respondents*

Same – – – – – – – – – – *Appellants*

v.

Mohammad Said and Others – – – – *Respondents*

Same – – – – – – – – – – *Appellants*

v..

Mohammad Said and Others – – – – *Respondents*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH JULY, 1942

Present at the Hearing:

LORD THANKERTON
LORD MACMILLAN
LORD ROMER
SIR GEORGE RANKIN
SIR MADHAVAN NAIR

[*Delivered by* SIR GEORGE RANKIN]

The appellants represent the plaintiffs in a suit brought on the 19th April, 1921, in the Court of the Subordinate Judge at Delhi to eject a large number of defendants from certain lands known as the Minarwala garden at or near Sabzi Mandi at Delhi. The defendants were persons who claimed title directly or indirectly to divers portions of the land under transfers made in 1915 and 1916 by one Janindar Kirat. The plaintiffs' case at the trial and before the Board is that the land in suit is *debutter*, being property dedicated to religious uses of the Digambar sect of Jains. It is described in the plaint as *dharamarth* and as *wakf*. The plaintiffs sued as followers of the said sect and as having been appointed to recover the property by a general meeting of persons interested in a Jain temple or temples at Delhi. On the 28th November, 1921, an order under rule 8 of Order I of the Code appointed them to represent the Jain community at Delhi for the purposes of the suit. The trial Court by decree dated 29th February, 1928, decided in the plantiffs' favour, but the High Court on 7th March, 1935, reversed this decision and dismissed the suit.

The Minarwala property was the subject of a deed of sale dated 4th December, 1895. It was described as a garden with certain buildings thereon which were partly intact and partly in ruins and as measuring 6 bighas and 13 biswas. It was said to have two wells and to carry with it the right to draw water in a certain manner from the Jamna canal. The vendor was one Jauhri Mal and the purchase price Rs.7,000. A

pandit called Jia Lal acted for the purchaser. He belongs to the town of Farrukh Nagar, which is not far from Delhi, and he gave evidence at the trial for the plaintiffs. The purchaser was magniloquently described in the deed as Digambar Acharaj Maharaj Bhattarak Sri Manindar Kirat Ji *guru* of the *Saraogis* and *gaddi nashin* of Kashta Sang, Delhi city. According to the translation laid before their Lordships, the deed contained the following sentence: " The said vendee has purchased and acquired " with his own fund of his gaddi the aforesaid garden together with all " the appurtenant rights for constructing a Jain temple and dharamsala " and for a small garden." The learned Subordinate Judge having transcribed what he takes to be the words of the vernacular, translates the important words by the phrase " with the pure money of the capital of his " gaddi ". The learned Judges of the High Court say that the recital is that it was " the money of his own gaddi ", but do not profess to be clear as to the meaning. Learned counsel for the plaintiffs in the High Court appears from the judgment to have read it as meaning " from the special " fund of his own gaddi ".

As to the purchase money, it is not now contended that its source has been proved or that its *debutter* character can be established by tracing its origin. Jia Lal's evidence and the Sub-Registrar's endorsement on the sale deed show that Rs.1,000 had been borrowed from Rai Bahadur Sultan Singh, who was the original plaintiff No. 1; that it was paid to the vendor as earnest money; and that the lender has been repaid. The same evidence proves that on the day after the deed was executed Jai Lal handed to the vendor before the Sub-Registrar a promissory note for Rs.2,500 and Rs.3,500 in notes and coin. Jai Lal says that the promissory note had been received from Arrah and Chapra, but that he does not know who the drawer and drawee were. Also that the currency notes and cash were obtained from the cashier of Manindar. Beyond this nothing is known of the source of the purchase money.

No case is made by the plaint as to the original source of the money, but in paragraph 2 it is suggested that the land was bought out of the fund of a Delhi gaddi which belonged to the Aggarwal Jains of the Digambar sect and of which Manindar was the last gaddi-nashin. The plaintiffs have not, however, succeeded in showing that any Jain temple or institution in Delhi or elsewhere had any claim to the money with which Manindar purchased the land in suit. When he came to Delhi (which was some time before 1895) there existed in Delhi a Jain temple in the Khajur Mohalla which was managed by a panchayat and is called a Panchayati temple. At first he was welcomed by the followers or *shravaks*, but before 1895 they had ceased to countenance him. It is not proved that he was ever given a position of authority in this temple, whether as Bhattarak or otherwise; and if he was a Bhattarak it would appear that monetary or other business transactions on its behalf would not have fallen within his sphere, which would have been confined to that of a religious teacher and ascetic.

Again, it is not shown that Manindar, having acquired the land in suit, dedicated it to any Jain institution or religious purpose. Whether because he had quarrelled with those who frequented the existing Jain temple or because he had ambitions of his own, he had a project of building a new temple. What his own position in regard to it was to be after it had been constructed does not appear, because his project was not carried out. The subscriptions which he solicited were insufficient to build more than the foundations, and there was trouble about the proximity of a mosque. The land now in suit does not include the actual site of these foundations, as the High Court is careful to notice. The remainder of the land was used by Manindar for his own purposes—on one part he lived in some sort of hutment; on another he set up a small *chatiala*, apparently a room containing a wooden bench on which one or two images were placed; other parts were let out and the rents used for his maintenance. He appears to have made money by practising astrology and medicine and by lending money—occupations which he added to that of a religious teacher. There is no reliable evidence to show that the *chatiala* was a public temple. 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 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 plaintiffs cannot claim to succeed on the ground of dedication by Manindar.

The learned Subordinate Judge proceeded not so much upon evidence of Jain witnesses as upon information derived by him from articles on Jainism in certain Encyclopædias and other books. He notices that " the " ordinary idea of a *gaddi* involves the existence of an institution managed " by some person who becomes the head of the institution and sits on the " *gaddi* or seat of authority of the institution as its head. The very idea of " an institution involves the existence of some property or business, religious, " public or private, which the *gaddi nashin* manages. When Manindar Kirat " first came to Delhi there was no other *gaddi* except the Panchayati temple " in the Masjid Khajurwali lane." He found that Kashta Sangh was not a Jain *gaddi* in the ordinary sense; that a Jain sadhu or Digambar-acharya would not manage any institution; that " these Sanghs are merely monastic " orders of Jain sadhus or acharyas ". He enlarged on the precepts by which the Jain religion prescribes asceticism for its devotees and held that by the tenets of that religion an acharya is incompetent to acquire, hold or manage property. His conclusion is that " the suit property was not " the personal property of Manindar Kirat. It was the property of his " *gaddi* known as Kashta Sangh Gaddi, though not appertaining to any " special Jain shrine." " This finding," he adds, " is somewhat based on " the inferential reasoning as to the status of Jain acharyas and the prac- " tices which they are enjoined to follow." The High Court observe that it is based " on a theoretic consideration of certain books appertaining to " Jain doctrines on the question of the nature of a Bhattarak ". The only authoritative definition which has been produced of this word Bhattarak is that it means " a head of the Digambar sect of the Jains who " clothes himself in one garment which he lays aside during meals ". This may be taken to imply asceticism, but does not show that the Bhattarak has a relation to any institution like that which a *mahant* has to a *math*. Their Lordships are in agreement with the High Court in thinking that the learned Subordinate Judge's reasoning cannot be accepted. 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 the circumstace that the individual so acquiring property was a professed ascetic may have importance. But it is out of the question to suppose that a man's religious opinions or professions can make him incapable in law of holding property. He may fail to act up to them or take heretical and inconsistent views without incurring any penalty or disability at law. In the present case it is plain enough on the one hand that Manindar acted not much like an ascetic as like a *grihastha* or householder. He did manage property. He acquired and even dealt in money. He practised medicine and astrology for payment. He lived with a woman by whom apparently he had a son. In such circumstances professions of ascetism as a religious doctrine or a philosophical position would go but a little way to show that he was not acting for himself in various transactions. On the other hand, it is reasonably clear that he was not acting for the Panchayati temple in Khajur Mohalla, and the trial Judge has himself shown that the Kashta Sangh, though called a gaddi, is really a " monastic order " and not an institution owning property.

In the absence of any real information as to the source of the purchase money these circumstances afford a foundation for the plaintiffs' case. Can they be regarded as reinforced by the recital in the sale deed of 4th December as to what is meant by " the money " of his own gaddi "? Does this refer to the money of the religious institution as the owner of the money or to the money of any religious endowment? The learned Judges in the High Court were puzzled by the phrase, but considered that it may have been used to show that the money was his private money and had nothing to do with the community. Their Lordships cannot claim to be certain on this point, but consider this

to be a probable interpretation. The word *gaddi* is used very loosely and in different senses: in one use of the word a *gaddi* appears to be a necessary part of the dignity of a religious ascetic in the highest class. The words here are " of his own *gaddi* " and the phrase is wholly insufficient to raise against him any kind of trust or to show that the money was not his own.

Manindar, having died in 1914, was succeeded by Janindar Kirat, who made the alienations of which the plaintiffs complain. It is not now contended that if the property in suit was not *debutter* in Manindar's hands it became so by reason of Janindar Kirat's succession. Since he claimed to succeed not only as *Chela*, but also by reason of a will and an adoption, the fact of his succession throws no light upon any disputed issue in this case.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellants will pay the costs of those of the respondents who appeared.

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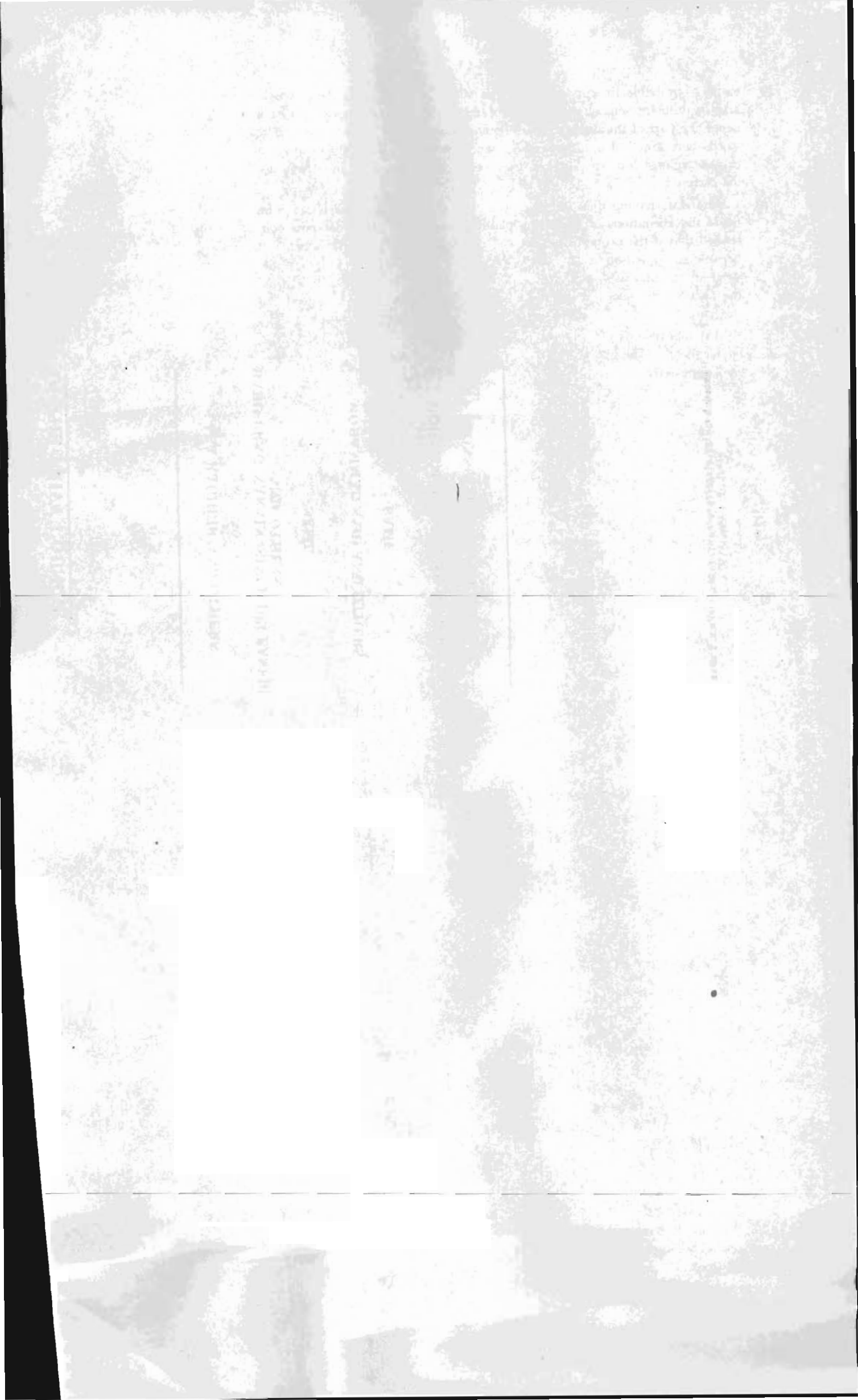

IN THE PRIVY COUNCIL

LALA RAGHBIR AND OTHERS

v.

BABU PRAG NARAIN (SINCE DECEASED) AND OTHERS

SAME

v.

MOHAMMAD SAID AND OTHERS

SAME

v.

MOHAMMAD SAID AND OTHERS

CONSOLIDATED APPEALS

DELIVERED BY SIR GEORGE RANKIN

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1942