

*Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Genda Puri and another v. Chhatar Puri, from the High Court of Judicature for the North-Western Provinces, Bengal; delivered 25th June 1886.*

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Present:

LORD WATSON.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

The suit in this case was brought by the first of the Appellants, for a declaration of right in respect of the moveable property and for possession of the immoveable property of one Kapur Puri, Goshain, the mohant of a religious establishment in Mauza Godha in the district of Mainpuri, who died on the 21st December 1873, which Genda Puri claimed as his disciple appointed to succeed him. At the time of his death Kapur Puri had two disciples, Genda and his brother Ramjit. Their Lordships think this was proved, and that the reasons given by the Judges of the High Court in their judgement for not being satisfied with the evidence of it, contrary to the finding of the Subordinate Judge, are not of any weight. The Respondent, Chhatar Puri, had also become a disciple of Kapur Puri before the year 1868, but it was alleged by Genda Puri that he had some time before January 1872 been expelled by Kapur Puri for misconduct,

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and had ceased to be a disciple. A *wajib-ul-arz*, dated the 4th February 1872, of Mauza Ghaaspur, part of the property in dispute, which was proved to have been verified by Kapur Puri, was relied upon by the Plaintiffs. It contained a statement that he was the present *lambardar* of the village, and that any person whom he might make a *chela* (disciple) would succeed him as *lambardar* after his death. As yet he had made no *chela*. In case he made no *chela* his ablest and nearest relation would be *lambardar* after his death.

The statement that he had made no *chela* is not only inconsistent with Chhatar Puri being then a disciple, but also with the evidence as to the time when Genda and Ramjit became disciples, which would seem according to some of it to have been before the date of the *wajib-ul-arz*. It was proved by Mathura Puri, a Goshain, that Kapur Puri, about 20 days before his death, being then ill, called a meeting of the Goshains and householders of the neighbourhood, and in their presence said, "I am sick, there is no hope of my recovery ; after my death instal Genda Puri on the *gaddi*, and appoint Ramjit Puri as house-steward (*bhandari*), both of them are my disciples." According to Tikam Puri, another witness, his words were, "You are all my brethren. I have no hope of my life. If anything happens to me place Genda Puri on the *gaddi*, and make Ramjit Puri *bhandari*." Another witness, Shib Lal Puri, said the words were, "I have made two disciples, viz., Genda Puri and Ramjit Puri. I am ill. There is no certainty of life. Should I die, and a dispute arise (between the disciples), you all should give the *gaddi* to Genda Puri, and make Ramjit *bhandari*." Several other witnesses gave similar evidence.

Immediately upon his death disputes arose as to the succession, and, by an order of the Magis-

trate of Mainpuri, dated the 2nd of March 1874, in which it is stated that a considerable body of men, taking advantage of the absence of the heir in possession, Chhatar Puri, forcibly entered the house, turned out the servants, and kept possession against all comers until a strong body of police had been sent to dislodge them, eleven men were directed to enter into recognizances to keep the peace until the succession was lawfully decided. And, by another order of the Magistrate, dated the 10th of March, it was ordered that both the parties should apply to the Civil Court for a certificate of heirship. On the 28th of March 1874 the Tehsildar of Shikohabad, having made an investigation and taken the statements of residents and zemindars in the neighbourhood, made a report that Chhatar Puri was in possession and Genda Puri was not, whereupon the Deputy Collector of Mainpuri, by an order without any date ordered that Chhatar Puri's name should be substituted in lieu of that of Kapur Puri in the revenue records.

There was no installation of either Genda Puri or Chhatar Puri. The latter being in possession, Genda Puri brought a suit against him in *formá pauperis*, claiming as heir to Kapur Puri according to the Hindu law and the custom prevailing in the Goshain sect. The claim to sue in *formá pauperis* was disallowed, and he and Ramjit then brought a suit for a declaration of right, with a Court fee of Rs. 10, which was dismissed, on the ground that it ought to have been for possession, a suit which required a much higher Court fee. The present suit was then brought, the Appellant Hazari Lal having been made a co-Plaintiff after its institution in respect of an interest which he had acquired.

The Subordinate Judge of Mainpuri dismissed the suit for the declaration of right to the moveable property, on the ground that the

persons in possession of it should be sued, and made a decree in the Plaintiff's favour as to the immoveable. This was reversed by the High Court of the North-Western Provinces, and the suit was dismissed with costs. That Court was of opinion that the claim rested on the ground that Genda Puri was a disciple of the deceased, and appointed by his will to succeed him, and was duly installed, and that the appeal must prevail with reference to the first and fifth grounds of appeal. The first ground was that the Plaintiff's title, as alleged in the plaint, was not established by reliable evidence, and the fifth that the Plaintiff, having failed to prove his own title to succeed the title of the Defendant, required no scrutiny. The plaint stated that, after the death of Kapur Puri, the Goshains installed the Plaintiff to the *gaddi*. If the evidence had proved that the title to succeed depended solely upon the nomination or appointment by Kapur Puri, and the installation was only the giving effect to it, their Lordships would not have considered the failure to prove that averment in the plaint as fatal to the Plaintiff's case. The plaint is very informal, and might possibly be read as stating a title by the appointment of Kapur Puri.

In determining who is entitled to succeed as mohant in such a case as the present, the only law to be observed is to be found in custom and practice, which must be proved by testimony, and the claimant must show that he is entitled, according to the custom, to recover the office and the land and property belonging to it. This has been laid down by this Committee in several cases. The infirmity of the title of the Defendant, who is in possession, will not help the Plaintiff as the Subordinate Judge seems to have thought. The witnesses for both the Plaintiff and the Defendant deposed as to the custom.

Some said that the choice or election was made by the Goshains, others (and these are a majority) that they instal on the *gaddi* the disciple whom the guru (mohant) recommends. One said that the guru nominates his successor, and they give the *gaddi* to him, and another that when a mohant becomes ill he leaves directions as to who would become the mohant. There is no finding of the Subordinate Judge as to the custom. In the judgement of the High Court the whole of the evidence upon it appears to be quoted, and they say, "The general result of this "evidence seems to show that a disciple only can "succeed, and that the guru can nominate his "successor, who, as a rule, is appointed, but we "do not understand the evidence in the sense "that the guru has an absolute power of appoint- "ment; the evidence points to the necessity of "confirmation and instalment on the *gaddi* to "make a complete title; otherwise the ceremony "of installation, on which much stress is laid, "would be but an idle form." It is unnecessary to quote the evidence here. It appears to their Lordships to fail in proving that the mohant had power to appoint his successor, and the Goshains were bound to instal the disciple that he appointed. What was done by Kapur Puri, which in the plaint and judgement of the Subordinate Judge is called his will, was not according to the custom proved sufficient to entitle Genda Puri to recover the property. Their Lordships will therefore humbly advise Her Majesty to affirm the decree of the High Court, and dismiss the appeal. The costs of it will be paid by the Appellants.

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