

Privy Council Appeal No. 25 of 1914.

Mahant Lahar Puri - - - - - *Appellant,*
v.
Mahant Puran Nath - - - - - *Respondent.*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 15TH MARCH 1915.

Present at the Hearing.

LORD DUNEDIN.

SIR JOHN EDGE.

SIR GEORGE FARWELL.

MR. AMEER ALI.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal from a decree of the High Court of Judicature at Allahabad, dated the 11th March 1912, which reversed a decree of the Subordinate Judge of Saharanpur, dated the 29th November 1909, and dismissed the suit with costs. The suit was brought on the 12th January 1909 by Lahar Puri, who is the appellant, against Puran Puri, who is the respondent. The dispute between the parties to this appeal relates to the title to the mahantship of a Hindu math, or temple, at Hardwar, known as the Akhara Baba Sarwan Nath, and to the property appertaining to the math.

The math was founded by one Baba Sarwan Nath, who was a Sunniyasi Rukhar Fakir and

died in 1849. Since his death there have been several mahants of the math in succession. It does not appear that Baba Sarwan Nath, in founding the math, prescribed any rules or practice to be followed in the selection and appointment of the future mahants. Consequently, the selection and appointment of a person to be the mahant of the math on a vacancy occurring in the mahantship must depend on the custom or usage and the practices which have prevailed in the appointment of mahants of this math, and on that principle this suit has been fought in the First Court, in the High Court, and before this Board.

The dispute as to the title to the mahantship arose in February 1905, on the death in that month of Jhandu Nath, who was the mahant of the math, and had succeeded Tej Nath in the mahantship in 1897. In this suit the plaintiff alleges that he was the only *sadhak* (disciple) of the deceased Mahant Jhandu Nath, and being the only *sadhak* of Mahant Jhandu Nath, he was the only one of the mendicant fraternity of the temple who was qualified for election to the mahantship; that he was duly elected mahant by the ten classes of mendicants (*dasnam bhik*) on the 24th February 1905; and that he was appointed with the usual ceremonies. On the other side the defendant denies that the plaintiff had ever been the *sadhak* of Mahant Jhandu Nath, or was qualified for election to the mahantship, or was elected mahant. The defendant's case is that it is not necessary that the *sadhak* of the last mahant should be elected as the mahant. He alleges in his written statement that:—

“ The *sadhak* or a co-disciple, or the *sadhak* of a co-disciple of the deceased mahant is appointed a mahant,

“ and failing these or in the event of none of these being
 “ a fit person, the mendicants of all the ten classes (*dasnam*
 “ *bhik*) have the power to make any fit person the *sadhak*
 “ of the *gaddi* and appoint him a mahant.”

The defendant further alleges that he was a *sadhak* of Mahant Tej Nath, who preceded Mahant Jhandu Nath on the *gaddi* of the temple, and as such *sadhak* was qualified for election to the mahantship, and that he was duly elected and with the usual ceremonies was appointed mahant by all the ten classes of mendicants (*dasnam bhik*) on the 24th February 1905. It is not disputed that the defendant was a *sadhak* of Mahant Tej Nath. It is common ground that the time for the election of a successor in the mahantship of this temple in the *terhwin*, the thirteenth day ceremony, after the death of the deceased mahant, which in this case fell on the 24th February 1905. It is also common ground that on the death of a mahant of this temple the election of his successor takes place at Hardwar, and that the election and appointment of the new mahant is by the ten classes of mendicants (*dasnam bhik*) assembled at Hardwar for that purpose. From the evidence their Lordships infer that the usual place at which the *dasnam bhik* assemble for the purpose of electing a mahant of this temple and at which they elect a mahant is at the temple. Another common ground is that on the election and appointment of a mahant of this temple a mahantinama is drawn up and is witnessed by those who were present at the election, and is registered.

The defendant, who was the general attorney and storekeeper of the deceased mahant, is in possession of the temple and of the property appertaining to it. Consequently it is for the plaintiff to prove his right to the

mahantship, which, if proved, would in the case of this temple carry with it the right to the possession of the temple and of the property appertaining thereto. If the plaintiff has failed to prove that he is the duly elected mahant of the math his suit must fail, and in that event it would be immaterial to consider whether the defendant is or is not the mahant of the math, or whether he has or has not any better title to the temple and the property which appertains to it than a title of mere possession.

Much evidence has been led by each side. The documentary evidence is not, in their Lordships' opinion, conclusive in favour of either side. The oral evidence is, as the High Court observed, extraordinarily conflicting, even for a case of this kind. Some of the material witnesses, who, if their evidence was true, must have been in a position to contradict or explain much of the evidence of the other side as to the events of the 24th February 1905, were examined and were cross-examined at great length, but were allowed to leave the witness box without their attention having been directed to the case of the other side. As the case was treated in the court of the trial judge it was an important question whether there were on the 24th February 1905 two elections of a mahant by the *dasnam bhik*, or one election only, or no real election at all. As the learned judges of the High Court observed in their judgment in the defendant's appeal before them :

“The witnesses for the respondent (the plaintiff) say
 “ nothing about the election of the appellant (the defen-
 “ dant), and the witnesses for the appellant, with one or
 “ two exceptions, say nothing about the election of the
 “ respondent,”

and yet it is alleged that there were two elections on the morning of the 24th February 1905 by the *dasnam bhik* then assembled at the temple.

The Subordinate Judge found as a fact that the plaintiff was the *sadhak* of Mahant Jhandu Nath. The learned judges of the High Court, after reviewing the evidence bearing on that question, and not overlooking the fact that it was a strong point in favour of the view which the Subordinate Judge had taken that a number of fakirs who were unlikely to choose a complete outsider had joined in the so-called election of the plaintiff as mahant, were on the whole unable to say that the evidence that the plaintiff had been duly appointed a *sadhak* was satisfactory. As the plaintiff had failed to satisfy the judges of the High Court that he had been a *sadhak* of Mahant Jhandu Nath, and as he had neither alleged nor proved that he was in any other way qualified for election as mahant of the math, they might have allowed the appeal and have dismissed the suit without going into the question as to whether he was or was not elected. However, they did not dispose of the appeal before them on that point; they decided the appeal on the question as to whether the plaintiff had or had not been duly elected the mahant. In the view which their Lordships take of this case it is not necessary for them to decide whether or not the plaintiff had been a *sadhak* of Mahant Jhandu Nath.

The evidence as to the so-called elections on the 24th February 1905 is most conflicting. Each party claims to have been elected mahant by the *dasnam bhik* on that day. That there were, in fact, two factions amongst the *dasnam bhik*—one faction desirous of electing the plaintiff as mahant, the other faction desirous of

electing the defendant as mahant is on the evidence obvious. The Subordinate Judge found that it was satisfactorily proved that the plaintiff was duly elected mahant by the *dasnam bhik* on that day, and that the alleged election of the defendant as mahant was a fictitious transaction. The High Court found it proved that the defendant was elected on the 24th February 1905 by a large gathering of qualified persons and that the election of the plaintiff was :—

“ A hole-and-corner affair in comparison with that of the appellant (the defendant), and seems to have been carried out hurriedly by a discontented minority ”

of the *dasman bhik* which had assembled at the temple on the morning of the 24th February 1905.

There is evidence to support each of these contradictory findings. If their Lordships were to confine their attention to the evidence as to what took place on the 24th February 1905, it might be difficult to come to a conclusion as to the side on which the truth is to be found. The plaintiff's case is that he was elected at the temple that morning by the *dasnam bhik*, and that, having gone with his supporters to the Ganges to bathe before the completion of the ceremonies, they found on their return from bathing that the doors of the temple were closed, and they were obliged to complete the ceremonies at the *haweli* of the Rani of Landhaura, where he was installed, and that the *bhandara*, the customary feast on such occasions, took place at the Rani's *haweli*.

The plaintiff represented that he had been deceived by the defendant, and had believed until he returned from bathing that the defendant was favourable to his election. He represented that before he went to bathe the defendant had at the temple handed to him

the ceremonial robes to be used at his installation, and given him the mahantinama of Mahant Jhandu Nath as a precedent upon which his own mahantinama should be drawn up. The defendant's case was that he and he alone had been elected by the *dasnam bhik* at the temple on the morning of the 24th February 1905, and that the ceremonies for the completion of his appointment as Mahant had taken place at the temple.

Mahant Jhandu Nath, being ill, went to Lahore and died there on the 12th February 1905. There is some evidence, which their Lordships see no reason to doubt, that when at Lahore Mahant Jhandu Nath nominated the defendant as a fit person to succeed him in the mahantship. It is not suggested that Mahant Jhandu Nath had any power to appoint anyone as his successor, but his nomination would probably have weight with the *dasnum bhik*. The plaintiff, even assuming for the moment that he was a *sadhak* of Mahant Jhandu Nath, had no experience in the management of the affairs of the math or of the property appertaining to the temple. On the other hand the defendant, who undoubtedly had been a *sadhak* of Mahant Tej Nath and a co-disciple of Mahant Jhandu Nath, had been for years the general attorney of Mahant Jhandu Nath and the store-keeper of the temple. On the death of Mahant Jhandu Nath the defendant was early in the field preparing to secure his own election as mahant in succession to Mahant Jhandu Nath. The defendant and some supporters of his executed an agreement on the 18th February 1905 by which they settled between them that the defendant should be the mahant and should be installed on the *gaddi* of Baba Sarwan Nath. The defendant before the 24th February 1905

took a step which must have been notorious as indicating that he claimed to succeed Mahant Jhandu Nath; he filed an application in the Revenue Court in which he prayed that his name should be entered in the Revenue papers in respect of the property of the temple in place of that of the late Mahant Jhandu Nath. When the defendant was examined in this suit as to his application to the Revenue Court for mutation of names he, in answer to the pertinent question:—

“How did you file an application for mutation of names when you had not been elected a mahant?”

replied—

“We had settled the matter amongst ourselves.”

In reply to the interrogative observation on that answer:—

“The *dasnam bhik* had not settled the question up to that time?”

the defendant said

“When Jhandu Nath was elected to the *gaddi* the *dasnam bhik* said that Puran Puri (the defendant) would be appointed mahant after Jhandu Nath; and on the *tija* day also the *panches* settled that Puran Puri would be appointed mahant.”

It was the defendant who sent out the invitations to the mahants and other people to attend on the *terhwin*, the thirteenth day ceremony, when a mahant should be elected. None of the invitations have been produced, but from some of the replies which have been put in evidence it may be inferred that the invitations were to attend for the election of the defendant as mahant. It was the defendant who made the preparations for the *bhandara*, the customary feast, which was to take place at the temple on the day of the election of

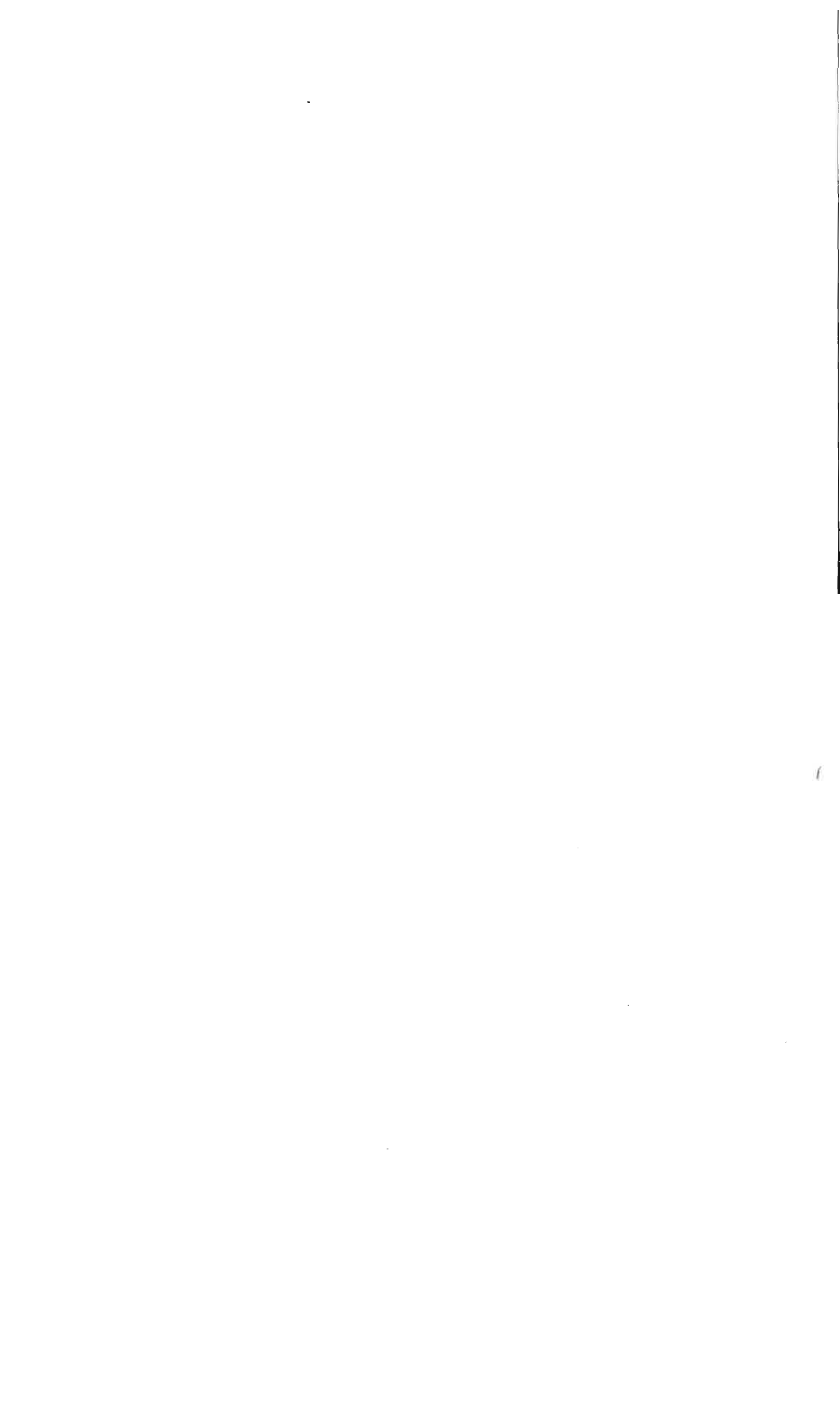
the mahant. That *bhandara* was held at the temple, and it is not pretended that the plaintiff and his supporters took part in it. The *bhandara* in which the plaintiff and his supporters took part was held at the *haweli* of the Rani of Landhaura. The plaintiff had then no money, but after he had been placed on the *gaddi* at the Rani's *hawili* he borrowed some money from one Swami Shimboo Gir and sent two brahmans into the bazaar, who bought the things which were required for his *bhandara*.

According to some of the plaintiff's witnesses the defendant was present at the temple when it was settled by the *dasnam bhik* that the plaintiff had a right to the mahantship and should be appointed mahant, and did not object or claim that he, and not the plaintiff, should be elected mahant. Having regard to the facts to which their Lordships have referred, it is impossible to believe that the defendant was assenting to the election of the plaintiff. There is a large body of evidence in support of the defendant's case that he was elected mahant on the morning of the 24th February 1905.

The High Court has found that the majority of the persons present on the morning of the 24th February who were qualified to elect a mahant of this temple were in favour of the defendant; that in point of numbers and of influence the defendant received more support than the plaintiff did; that the election of the defendant must have taken place before that of the plaintiff; and that there was no attempt on the part of the defendant to conceal the arrangements which he had made for the 24th February 1905. It has not been shown to their Lordships that the High Court came to a wrong conclusion on any one of these points.

An election by *dasnam bhik* of a mahant to be a valid and effectual election must be by a majority of the *dasnam bhik* assembled for that purpose. A separate election by a faction of the *dasnam bhik* is not a valid and effectual election. Their Lordships have come to the conclusion that the plaintiff has failed to prove that he was elected a mahant.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed. The appellant must pay the costs of this Appeal.



In the Privy Council.

MAHANT LAHAR PURI

v.

MAHANT PURAN NATH

DELIVERED BY SIR JOHN EDGE.

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