

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Hayward.

1914.
September 7.

SADHU RAMDAS GOPALDAS (ORIGINAL PLAINTIFF), APPELLANT, *v.*
BALDEVNASJI KAUSHALYADASJI (ORIGINAL DEFENDANT 1),
RESPONDENT.*

Hindu Law—Mitakshara, chap. II, sec. 8, para. 2—Claim by plaintiff as Pitrai Chela to recover the property of a deceased Bairagi—Claim not maintainable on the ground of custom and Hindu Law—Bairagis—Sanyasis—Hermit, ascetic, student in theology—Heirs—Preceptor, virtuous pupil and spiritual brother in reverse order.

The plaintiff claiming as Pitrai Chela of a deceased Bairagi sued to recover the property of the deceased.

Held, dismissing the suit, that both on the ground of custom and on the ground of Hindu Law the plaintiff had failed to make out his case.

The declared heir of a Sanyasi under the Mitakshara is a virtuous pupil.

According to the Mitakshara, chap. II, sec. 8, para. 2, the heirs of the property of a hermit, of an ascetic and of a student in theology are the preceptor, the virtuous pupil and the spiritual brother belonging to the same hermitage in the inverse order.

Quære, whether Bairagis can be classed as Sanyasis because the order of Bairagis is not confined to the members of the twice born castes.

FIRST appeal against the decision of H. A. Mohile, Additional First Class Subordinate Judge of Ahmedabad, dismissing the plaintiff's claim in suit No. 815 of 1910.

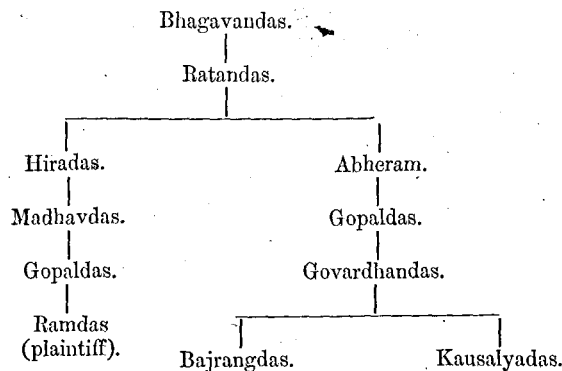
The plaintiff sued to recover possession of the immovable and moveable properties specified in the plaint alleging that a Sadhu (Bairagi) by name Bajrangdas Govardhandas was the owner of the properties, that Bajrangdas lived at Dakore and died on the 1st February 1907 without appointing a Chela (disciple), that Bajrangdas was the Mahant of the temple of Ramji at Dakore, that the temple belonged to an ancestral Guru of the plaintiff,

* First Appeal No. 30 of 1913.

that according to Hindu Law and in accordance with the customary law of Sadhus, the plaintiff was a Pitrai Chela of the deceased Bajrangdas and thus entitled to his property, that the plaintiff called upon defendant 1 under a notice dated the 10th March 1910 to restore the properties in suit to plaintiff but he failed to do so and hence the suit.

Defendant 1 answered *inter alia* that the plaintiff was not the heir of the deceased Bajrangdas Govardhandas, that the plaintiff's grand-guru Govardhandas had two Chelas, namely, Bajrangdas and Kausalyadas, that Kausalyadas became the heir as guru brother of Bajrangdas on his death which occurred on the 1st February 1907, that Kausalyadas had, just before his death, executed a registered will in favour of the defendant and that under the will, which was dated the 21st February 1907, the defendant had become the owner of the property.

The following genealogical tree explains the relationship of the parties :—



The parties were Bairagis belonging to the sect of Ramanandi class.

Defendants 2 and 3 set up their claims as mortgagees of some of the properties in dispute.

The other defendants did not appear.

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The Subordinate Judge found that the plaintiff was not the heir of the deceased Bajrangdas Govardhandas, that Kausalyadas was the Chela of Govardhandas, that the will of Kausalyadas was not genuine and he had no authority to make one in favour of defendant 1 and that the plaintiff was not entitled to any relief. The suit was, therefore, dismissed.

In the course of his judgment the Subordinate Judge observed :—

Plaintiff, defendant No. 1, Bajrangdas and Kausalyadas are not Gosawames. They are not the disciples of any of the 10 Gosawames named at page 434 of the New Edition of Steele on Law and Custom of Hindu castes. They cannot be regarded as Sanyasis, as they are not Brahmans and as women from Patidar caste like witnesses Bai Suraj, Bai Chimani (Exhibits 117, 119) are admitted into their paternity. They are not Vana Prasthas, they are not Naishtik Brahmacharis. We apply the term Yati to Jain or Buddhist mendicants. They cannot therefore be considered as Yatis. They are Bairagis as described on page 103 of Steele on Hindu Law and Custom. In the absence of any other evidence of any custom as to succession among the Bairagis or Bawas or Sadhus to which paternity plaintiff, defendant No. 1 and most of the witnesses belong, the rules of Shankar Muls, *viz.*, the rules applicable to Gosawames and Sanyasis are applicable to Bairagis also (Gharpure's Hindu Law, pages 177, 178) and page 787 of the 2nd Edition of the principles of Hindu Law by Mr. Ghose.

The principles that we deduce from a number of decided cases and standard works are these :—No Chela has a right to succeed to the property of a deceased Guru. His right of succession depends upon his nomination by the deceased Guru in his lifetime which nomination is generally confirmed by the Mahants of the neighbourhood when they assemble together to perform the Bhandara or the funeral obsequies of the deceased Guru. When a Guru does not nominate his successor from among his Chelas, such a successor is elected and installed by Mahants and principal persons of the section (I. L. R. 1 All. pp. 539, 540 ; 29 All. p. 109 ; 14 Cal. W. N. p. 210 ; and I. L. R. 11 Bom. p. 514). Succession is certainly regulated by the special custom of the foundation, 9 All. p. 116. * * Though a precedent quoted at page 572 of the 2nd Edition of West and Buhler's Hindu Law shows that one of the sect of the Bairagis will be his heir and though a Guru Bhair was regarded as an heir, and a Guru's Guru was considered to be an heir (pages 574, 575 of West and Buhler's Hindu Law), still we do not find any instance in which agnatic

Succession of Chelas, as for the pedigree given in the 4th para. of the plaint, was even recognized at any time by any Court of Justice among Gosawames, Sanyasis and Sadhus and Bairagis. There may have been sprung up a regular genealogy among Sanyasis as in the case of ordinary individuals. The idea is however a creation of the fancy of the ignorant in these latter days and is not based on the Smritis (page 775 of the 2nd Edition of Mr. Ghose's Hindu Law). The principles already given clearly indicate that plaintiff has no right to succeed to the properties in suit as heir to the deceased Bajrangdas. * *

* * * Conceding for the sake of argument that the temple in suit was a dependent Mahant, still the principle of succession is based upon fellowship and personal association and a stranger, though of the same order, is excluded (I. L. R. 4 Cal. p. 543). Plaintiff cannot therefore be regarded as heir to the deceased Bajrangdas. The temple at Dakore would be guided by its own rules of management (14 Cal. W. N. p. 211).

Plaintiff and defendant 1 admittedly belong to a sect of Vaishnavas of the Ramanandi class, Ramanuj belonged to the same class. The principles of succession already indicated and those laid down in *Mohunt Ranji Dass v. Lachaman Dass*, 7 Cal. W. N. 145, apply to plaintiff's case. These principles, it must be repeated, do not show that plaintiff is the heir of the deceased Bajrangdas.

These Sadhus think that they have a right to dispose of the properties of the temples of which they are the Mahants. They are engaged in worldly pursuits. Most of them only know how to make their signatures in Devnagari which they call Sudha language and speak a dialect which is a mixture of Hindi and Gujrathi. They have no control over their passions, and they cannot be called Gosawames, i.e., those who are the Swamis or Masters of "Go" or passions. They do not seem to have cut off all their love for worldly things and they cannot consequently be called Vairagis or those who have given up their "Rag" or love for worldly things. They do not strive for absolution or annihilation and they cannot therefore be called "Yatis". They have not shaken off the trammels of the 6 enemies काम, क्रोध etc., and they cannot be called Shuda Dhus or Sadhus. They do not in short answer the root meanings of Gosawames, Bairagis, Yatis and Sadhus. Though Shastras are admitted into the paternity of Sanyasis, they cannot be called Sanyasis, as they live permanently in towns like Dakore and Nadiad. Though the term Yati is applied to Bairagis (28 Cal. p. 608), they are not Bairagis in the strict sense of the word. They are not assiduous in the study of theology, in retaining the holy science and in practising its ordinances. They do not seem to know anything about the tenets of Ramanand or Ramanuj, Nimbadijja, Kabir or

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Dado (*vide* page 572 of the 2nd Edition of West and Bühler's Hindu Law). They cannot therefore be regarded as "virtuous" pupils of their Gurus.

The plaintiff appealed.

I. N. Mehta with *N. N. Mehta* for the appellant (plaintiff):—The parties are Bairagis, Bawas or Sadhus. The special rule of succession applicable to such people is laid down in Yajnavalkya Smriti, chap. IV, sec. 8, verse 137. We take our stand on this text of the Mitakshara and not quite so much on custom: *Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran*⁽¹⁾.

Bajrangdas died without a Chela (disciple), and in the absence of any Chela, the plaintiff, who belongs to the same sect or order founded by Bhagvandas, has the right to succeed as the heir of Bhagvandas. It is laid down in the Mitakshara: "But on failure of these, namely, the preceptor and the rest, any one associated in holiness (*ekatirthi*) takes the goods, even though sons and other natural heirs exist." Colebrookes' Mitakshara, p. 355, para. 6.

Bhagvandas was the original founder of the order and it was he who sent Abheram to take care of the Dakore temple. We submit, therefore, that in the absence of any special custom, which we have not alleged, the said text of the Mitakshara should apply and the plaintiff has the right to succeed as *ekatirthi*.

Setlur with *N. K. Mehta* for the respondent (defendant):—The passage in the Mitakshara which is relied on deals with the inheritance of Sanyasis and it is not applicable. Chapter IV, sec. 8, verse 137, of the Mitakshara distinctly deals with hermits, ascetics or Sanyasis and Naishthik Bramhacharins. These orders are not open to those who are not twice born. The

⁽¹⁾ (1887) 10 Mad. 375.

Sanyasis spoken of here are the twice born : Mitakshara, Prayashchitta, Book-III, chap. IV, cl. 201.

The parties to the suit are Bairagis who admit in their order men of all castes and even females. They are governed by customary law : West and Bühler, pp. 552 *et seq.* In the absence of any special custom, the general custom which has been recognized by the law Courts must govern the case. The inheritance goes to the nominee of the deceased Guru. In the absence of such nomination it goes to the one elected by the Mahants connected with the Math : West and Bühler, p. 554, and cases cited in the footnote (b).

SCOTT, C. J. :—The plaintiff sued to recover possession from the 1st defendant of certain temple properties at Dakore, claiming to be the Pitrai Chela of the deceased Bajrangdas who was a Mahant of the Dakore temple. The first defendant disputed his claim and called upon the plaintiff to prove the claim he asserted. The parties, it is not disputed, are Bairagis belonging to the sect of Vaishnavas of the Ramanandi class. It has been laid down in *Ram Dass Byrayee v. Gunga Dass*⁽¹⁾, that in that class of Bairagis on the demise of the superior Math, when there is no Chela to succeed, the heads of the Maths ordinarily elect a successor from pupils of some other teacher (compare replies 39 and 40 relating to Bairagis in Borradaile's Caste Customs in Gujarat). That has not been done in the present case, nor has the plaintiff proved the existence of any special custom relating to the Dakore Math. It is contended on his behalf that Bajrangdas under whom he claims was a Sanyasi, and that he is entitled by virtue of a certain passage in the Mitakshara, chap. II, sec. 8, para. 2, to succeed to the property of that Sanyasi. The passage is as follows :—“The heirs to the property of a hermit,

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of an ascetic, and of a student in theology, are, in order (that is, in the inverse order), the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage," and the three following paragraphs make it clear that the expression "in the inverse order" means that the heir of a student in theology is a preceptor, the heir of an ascetic is a virtuous pupil, and the heir of an hermit is a spiritual brother belonging to the same hermitage. But as I understand the argument which has been addressed to us on behalf of the appellant, it is contended that the plaintiff is a spiritual brother of the deceased Bajrangdás, but the deceased Bajrangdas was not a hermit, and therefore, that class of heirs cannot be resorted to in the present case. Putting the position of Bajrangdas at its highest he was a Sanyasi, and, therefore, the declared heir of the Sanyasi under the Mitakshara would be a virtuous pupil. But the plaintiff was not a pupil of Bajrangdas, therefore he does not take as his heir according to the Mitakshara. It is, however, extremely doubtful whether the Bairagis can be classed as Sanyasis, because the order of Bairagis is not confined to the members of the twice born castes. As to this, reference may be made to Mitakshara Prayashchita, Book III, chap. IV, cl. 201, of the Allahabad translation. It appears to us, therefore, that both on the ground of custom and on the ground of Hindu Law the plaintiff has failed to make out his case. We, therefore, affirm the decree of the lower Court and dismiss the appeal with costs.

Decree affirmed.

G B. R
