

PETITIONER:
BABA CHARAN DASS UDHASI

Vs.

RESPONDENT:
MAHANT BASANT DAS BABAJI CHELA BABA LAXMANDAS UDASI SADHU

DATE OF JUDGMENT: 14/07/2000

BENCH:
Y.K.Sabharwal, M.Jagannadha Rao

JUDGMENT:

Y.K.SABHARWAL, J.

The dispute in this appeal relates to the appointment of the Madathipathi of Shiva Kanchi Udasi Math, Kanchipuram. The parties or through whom they claim have been litigating for the last more than four decades.

The Math in question was founded by one Yogadhiana Mahant Bavaji under an instrument dated 29th January, 1870. The executant of this document described himself as the disciple of Bavaji Niranjan Dass and executed the document in favour of Gurusarandass Bavaji describing him as his chief disciple. This document not only establishes the foundation of the Math but also provides for the mode of devolution of its headship. The outgoing head could nominate his disciple to be the next head. The mode of devolution thus is from Guru to disciple (Sishya Parambarais). Gurusarana Dass Bavaji later succeeded as Madathipathi (hereinafter referred to as 'head'). Gurusarana Dass Bavaji was succeeded by Narayana Dass Bavaji as head under the will dated 2nd September, 1901 executed by said Gurusarana Dass. Mahant Narayana Dass Bavaji remained head of the Math from 1901 to 1925. By a deed of appointment dated 1st May, 1925, Mahant Narayana Dass Bavaji appointed one Ramjidadass as the head of the Math.

Nagendra Dass came on the scene in the year 1928. The appellant claims through Nagendra Dass. Nagendra Dass allegedly appointed Surjan Prakash who in turn appointed the appellant as the head of the Math.

Ramji Dass executed a power of attorney dated 11th January, 1928 appointing Nagendra Dass as his agent. The reason for the execution of the power of attorney is stated to be that Ramji Dass had to often remain away visiting villages and, therefore, he appointed Nagendra Dass to look after the Math and its properties. Nagendra Dass claimed that Ramji Dass had appointed him as the head of the Math. There is, however, no document appointing Nagendra Dass as head in succession of Ramji Dass. In respect of earlier appointments of heads upto the appointment of Ramji Dass, the documents of succession have been placed on record and

proved.

The Society by the name of Shri Pujya Padh Aduyath Panch Parmeshwar Panchayati Akara Bara Udasin Nirwan (for short the "Allahabad Society") having head office at Allahabad was founded as a religious society and registered under the Societies Registration Act of 1860. In substance the disputes are between the Allahabad Society and those claiming through the said society on one hand and Nagendra Dass or those claiming through him on the other.

The Memorandum of the Association of the Society of the year 1927 inter alia provide as under:

"1. To manage the funds provided by the Udasin Sants Mahants and householders for the service of the Udasin Sadhus of the Akhara while establishing the same and to increase by proper means the said fund as well as these that may be required or added to it from time to time and we spend the same on objects which are in accordance with the religious principles and practices of the Udasin and to maintain and improve the position of the akhara.

2. To make arrangements for the food and accommodation of such Udasin Mahants and Sants as may visit and of the centers of this Akhara, or attend the fairs such as Eambha and the Adhkumbi bathing fairs, which are usually held at certain places of pilgrimage for the meeting together of Sadhus; and

3. to make arrangements for the appointment of Mahants of the Sthans of Udasin called Sangate which are independent of this Akhara but from which the Akhara often draws its disciples and for the protection and supervision of the said Sangate and to take proper steps to maintain their states in case of interference on the part of others".

Nagendra Dass is described as a disciple of Mahant Karan Dass and is a signatory to the Memorandum of Association of the Allahabad Society holding the office of Mukami (Agent). A Mukami is a person appointed in accordance with the rules of the Allahabad Society and entrusted with the management of the head office and branches of the society.

In the judicial proceedings initiated on behalf of Muth in the year 1928 and 1944 by Nagendra Dass, he described himself and also acted as a Mukami appointed by the Allahabad Society. The said proceedings pertained to the management of the Math and its properties.

The disputes between the Allahabad Society and Nagendra Dass commenced some time in the year 1955. The genesis of the dispute is said to be the alleged transfer of Nagendra Dass made by Allahabad Society from Math in question to Gaya. According to the society, Nagendra Dass handed over possession of the properties of the Math but later trespassed into the said properties and assumed possession thereof asserting that the Math in question was an independent institution of which he was the head. This led to the filing of suit No: OS No.12 of 1956 by the Allahabad Society seeking declaration that the properties belong to it and also praying for delivery of possession and certain other reliefs. Nagendra Dass contested that suit

inter alia contending that the society was no more than a voluntary organisation formed for the mutual hold, benefit, guidance and better management of the various institutions of the religious order of Udasis which had been founded and established in several parts of the country and that neither he nor his predecessors surrendered to the society any power or authority over the Math in question. During the pendency of the suit Nagendra Dass was appointed receiver and in the said capacity he was submitting accounts to the court in respect of the management of the Math properties. The said suit was dismissed on 12th February, 1960. However, in the judgment certain observations were made and some of the findings were recorded against Nagendra Dass as well. The result was that both the society and Nagendra Dass preferred separate appeals before the Madras High Court. The High Court while dismissing the appeals by judgment dated 29th April, 1966, issued directions for the appointment of the head of the Math. Nagendra Dass was not found by the High Court to be a duly installed or duly appointed head of the Math and he was thus held incompetent to nominate or appoint his successor. It is evident that the High Court thought it fit and proper to issue directions for due appointment of the head of the Math for future even while confirming the judgment of the trial court dismissing the suit. It seems that the High Court adopted this course on account of the peculiar circumstance, namely, the incompetency of Nagendra Dass to nominate or appoint his successor and was of the view that the Math should not remain headless. The relevant part of the judgment dated 29th April, 1966 reads as under:

"If the defendant's statement as to his nomination by the predecessor is not made out the question may arise whether he is properly in office this may lead to further difficulties as if he is not validly in office he would be incompetent to nominate or appoint his successor. In the circumstances it is desirable that the validity of the claim of the defendant to the headship is determined. If he has not been duly nominated to the office but is otherwise suitable his position as head will have to be regularised according to the practice of the Math in question or the vacancy has to be filled up in accordance with the rules and usages governing the Math which in a way have been indicated above briefly. So far as the fitness of the defendant to the office is concerned, from the secular aspect the learned District Judge observes that he has been managing the Math properties to the best of his ability in the interests of the Math. Steps in this regard for regularisation if required of his headship of the Math may have to be taken by persons interested. The defendant himself admits that the plaintiff society has been formed for the guidance and better management of the various institutions of the religious order of udasis. The rules and regulations governing the plaintiff society also provide for making arrangement for the appointment of the mahants of the sthans or udasis called sangats which are independent of the plaintiff Akhara from which the Akhara draws its disciples. In the circumstances it will be open to the plaintiff society itself to move in the matter or the disciples of the suit udasi Math may take the necessary action. We may also point out that if need be the Commissioner under the Madras Hindu Religious and Charitable Endowments Act (Act XXII of 1959) may intervene and take steps to fill up the vacancy if any in the headship of the Math. Meanwhile in our view it is desirable that the defendant continues to submit statement of accounts of the affairs of the Math duly

audited by a chartered accountant at the expense of the suit Math to the plaintiff society and to the trial court once in six months."

Nagendra Dass did not challenge the judgment of the High Court. The Allahabad Society, however, filed an appeal before this Court (Civil Appeal No.799 of 1967). Nagendra Dass died during the pendency of the appeal. He is stated to have been died on 8th February, 1970. In the appeal, Surjan Prakash was substituted as a respondent in place of Nagendra Dass. The appeal was, however, dismissed as withdrawn in terms of the order of this Court dated 3rd August, 1972. The order records that counsel for the appellant sought permission to withdraw appeal and counsel for the respondent gave an assurance that his client will not apply for withdrawal of the amount in deposit in the district court for a period of two months so that the appellants, if they so desire, may take appropriate proceedings as indicated in the judgment of the High Court.

After the withdrawal of the appeal as aforesaid, the suit (OS No.: 21 of 1973) out of which the present appeal has arisen was filed. In the plaint, it was, inter alia, pleaded that the plaintiff was legally and validly appointed as head of the Math in question according to the rules and regulations of the Allahabad Society and the practice and the customs prevailing in the Udasis Sect of Sadhus in terms of the document dated 20th November, 1972 and that all the formalities regarding Madathipathiship have been completed according to the customs prevailing in the community and the plaintiff has been accepted as Madathipathi of the Math in question by members of the fraternity. It was further pleaded that the defendant Surjan Prakash was illegally occupying the said Math without any authority and that it had been finally held by the court of law that Nagendra Dass was not the Madathipathi of the Math in question and the vacancy was to be filled according to rules and as per directions contained in the judgment dated 29th April, 1966. The further averment made in the plaint was that Ramji Dass was the last head of the Math and he did not nominate anyone as successor. Nagendra Dass was not the disciple of Ramji Dass to succeed as head as a Chela succeeding the Guru and he was only appointed as agent under the power of attorney. There is no head for the Math after Ramji Dass death and the plaintiff was rightly appointed on 20th November, 1972. The decree for declaration was sought that the plaintiff is the Madathipathi of the Math and its properties detailed in the schedule annexed to the plaint in respect whereof decree for possession was also sought.

The suit was resisted on various grounds by defendant Surjan Prakash. By judgment dated 12th of July, 1979, the Principal Subordinate Judge, Kanchipuram dismissed the suit. In appeal preferred before the High Court, the three points urged on behalf of the plaintiff were:

1. whether the appointment of the plaintiff as the Head of the suit Math is valid and binding?
2. Whether the defendant is a properly appointed Madathipathi of the suit Math?
3. Whether the defendant has perfected his title by

adverse possession?

The High Court by the impugned judgment held that the judgment and decree of the trial court is not sustainable and thus allowing the appeal, the suit as prayed, was decreed. The impugned judgment is substantially based on the earlier judgment of the High Court dated 29th April, 1966 which became final. The High Court has held that Nagendra Dass was not legally and validly appointed as head of the Math and his appointment was not recognised or regularised by any of the modes directed in the earlier judgment of the High Court and that the plaintiff had been validly appointed. Surjan Prakash, the original defendant having died during the pendency of the appeal before the High Court, the present appellant was substituted as a respondent having been allegedly appointed as a successor by Surjan Prakash. The contention of adverse possession was also rejected.

The basis of the right of the respondent (plaintiff) to occupy the office of the head of the Math is the Memorandum of the Allahabad Society of the year 1927; the earlier judgment of the High Court and his appointment as a head on 20th November, 1972. The claim of the appellant is based upon the rights of Nagendra Dass and Surjan Prakash.

Learned counsel for the appellant submits that Nagendra Dass was appointed and remained a head of the Math during his life time and after his demise his appointee Surjan Prakash and after him, the appellant was rightly and validly appointed as the head of the Math and, therefore, the office of the head of the Math was not vacant and thus there could be no question of appointing the respondent as a head of the Math. In our view, The question whether the vacancy of the head of the Math existed or not stands concluded by the earlier decision of the High Court which, inter alia, directed the vacancy to be filled in accordance with the rules and usages governing the Math. Further there is ample material on record to establish that Nagendra Dass was appointed merely a Mukami (Agent) and was not appointed head of the Math. Nagendra Dass had himself so described his status in the judicial proceedings initiated by him in respect of the properties of the Math against third parties. In OS No.43/44 which was pending before Sub-Judge, Chittore, Nagendra Dass had stated that he had been appointed by the Allahabad Society. Nagendra Dass was appointed as an agent as per general power of attorney executed by Ramji Dass. In view of the overwhelming evidence the appellant cannot be allowed to plead that Nagendra Dass was head of the Math. That being the position he could not validly nominate any person as head of the Math. The alleged nomination of Surjan Prakash was, therefore, illegal and so also the nomination of the appellant. In the earlier decision, the High Court had concluded that Nagendra Dass was "incompetent to nominate or appoint his successor."

The Allahabad Society, it was next contended, had no power to make the appointment of the head of the Math. It deserves to be noticed that the appointment of the respondent as a head of the Math has not been made by the Allahabad Society but has been made in a congregation of Mahants arranged by the society. Para 3 of Memorandum of Association of Allahabad Society extracted hereinabove shows

that the society could make arrangements for the appointment of the Mahants of the Sthans of Udasis called Sangats and it seems that in view thereof the earlier decision of the High Court directed the vacancy of the office of the head of the Math to be filled in accordance with rules and usages governing the Math. Learned counsel for the appellant contended that the words 'to make arrangements for the appointment of Mahants' does not mean that the Allahabad Society has been given power to appoint a Mahant and as per para 3 of Memorandum of Association the Society could only make arrangements for such appointment which is different than making appointment itself. We are unable to see any relevance of the fine distinction sought to be made by the learned counsel. In any case, the appointment has been made in the congregation called by the Allahabad Society. The appointment as such has not been made by the society. The society had only called for the meeting of various Mahants which amounts to making arrangement for the appointment of the Mahant of the Math in question. In that meeting the respondent/plaintiff was appointed as Mahant, i.e., head of the Math. Nagendra Dass had admitted that the Allahabad Society had been formed for the guidance and better management of various institutions of the religious order of Udasis. In fact, even these questions cannot be reopened in view of the decision dated 29th April, 1966. Considering that Nagendra Dass was not validly nominated as head of the Math in question, the High Court while deciding earlier appeal, was left with the option to either let the things remain as they were which may have resulted in uncertainty and possibly further litigation or to issue necessary directions for the filling up of the vacancy of the office of the head of the Math. While dismissing the appeal, the High Court exercised the second option leaving it open to the Society to even regularise/appoint Nagendra Dass as head of the Math according to the practice of the Math in question and in the meantime Nagendra Dass was directed to continue to submit statement of accounts of the affairs of the Math duly audited by a Chartered Accountant to the Allahabad Society and to the trial court once in six months. It appears that Nagendra Dass had come down from Allahabad some time in the year 1925 and was appointed as an agent of Ramji Dass to assist him in the management of the Math in question under the terms of the power of attorney referred to above. He continued to act as an agent even after the demise of Ramji Dass who died at Hardwar in 1932. There are documents proved on record in respect of appointment of the other heads of the Math but there is no document showing the appointment of Nagendra Dass as head of the Math. It seems that no religious head/Madathipathi of the Math in question was appointed after the demise of the last appointee namely Ramji Dass. Under the aforesaid circumstances, the Allahabad Society had rightly called for the meeting to appoint head of the Math in question. It may, however, be clarified that once someone is validly appointed as the head of the Math, the future mode of devolution would be governed by the Sishya Parambarais (Guru to disciple) which is the mode contemplated by the document by which the Math was established. There could not be any departure from the said mode without any valid justification. It is neither necessary to decide nor there is sufficient material on record to form a definite opinion as to why departure of the mode of Sishya Paramparai was made on earlier occasion. Ordinarily the devolution should be from Guru to disciple.

Nagendra Dass was neither appointed as head nor his

appointment was regularised during his lifetime. He died in Feb. 1970. The resolution dated 20th November, 1972 unanimously appointed plaintiff as the head of the Math. The said meeting, it has come on record, was attended by 21 Mahants of independent Maths and 12 Members of Governing Body of the Society. In that congregation was also present the Mahant of Maharashtra Mandal. It has also come on record that about 2000 Udasin Mahants spread over different parts of the country come under four pangats. The said four pangats are further divided into 50 mandals and the Math in question comes under Maharashtra Mandal. It has also come in evidence that since there was no separate Udasin Mandal for Udasin Maths in Tamil Nadu, for sake of convenience Udasin Maths in Tamil Nadu were included in Maharashtra Mandal for proper management. In view of the evidence on record, the contention that the respondent/plaintiff was not validly appointed as the head of the Math in question cannot be accepted.

Learned counsel for the appellant further contended that Nagendra Dass was functioning as the Mahant since 1932 and, therefore, the suit filed in 1973 was hopelessly barred by limitation and also that he had perfected his title by adverse possession. Learned counsel for the respondent, on the other hand, sought to rely on Section 10 of the Limitation Act. In our view, however, the said Section has no applicability as it only excludes the application of limitation in suits against trustees. That was not the status of either Nagendra Dass or Surjan Parkash or the present appellant. We, however, need not dwell further on this aspect as in our view, even otherwise there is no merit in the contention urged on behalf of the appellant. It has been established that Nagendra Dass had been only acting as an agent till 1954. It is only in 1955 or thereabout that he had set up an independent title which led to earlier suit being filed in February 1956. In that suit Nagendra Dass was appointed as a Receiver. That position continued even when the appeal of the Allahabad Society was dismissed by the High Court on 29th April, 1966. In the judgment dated 29th April, 1966, the High Court continued the status of Nagendra Dass as a Receiver till such time the appointment of Mahant is made in accordance with the judgment of the High Court. It was directed that Nagendra Dass would continue to submit statement of the accounts of the affairs of the Math duly audited by a Chartered Accountant to the Allahabad Society and to the trial court. As already noticed in this Court, the appeal against the decision of the Madras High Court was withdrawn on 3rd August, 1972 with a view to take proceedings for appointment of the head of the Math as indicated in the judgment of the High Court. The said proceedings took place on 20th November, 1972 and soon thereafter the suit out of which the present appeal has arisen was filed.

The last contention urged on behalf of the appellant relying upon Section 60 of the Madras Hindu Religious and Charitable Endowments Act is that the appointment of Nagendra Dass as a Mahant was regularised under the orders dated 4th June, 1973 passed by the Commissioner and on this ground too suit ought to have been dismissed. This contention also deserves to be rejected. Prior to 4th June, 1973 the respondent had been appointed as a head of the Math. Further, Section 60 only empowers the Commissioner to take steps for the temporary custody and protection of the endowments of the Math. Thus, the regularisation of

appointment, if any, could only be as a temporary measure. Section 60 does not empower the Commissioner to appoint a head of the Math. The said Section reads as under:-

Section 60(1) : When a vacancy occurs in the office of the trustee of a math or specific endowment attached to a math and there is a dispute respecting the right of succession to such office or when such vacancy cannot be filled up immediately, or when the trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or

When the trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unable to perform the functions of the trustee.

The Assistant Commissioner take such steps and pass such order as he thinks proper for the temporary custody and protection of the endowments of the math or if the specific endowment as the case may be, and shall report the matter forthwith to the Commissioner."

(2) Upon the receipt of such report, if the Commissioner, after making such enquiry as he deems necessary, is satisfied that an arrangement for the administration of the math and its endowments or of the specific endowment, as the case may be, is necessary, he shall make such arrangement as he thinks fit until the disability of the trustee ceases or another trustee succeeds to the office, as the case may be.

(3) in making any such arrangement, the Commissioner shall have due regard to the claims of the disciples of the math, if any.

(4) Nothing in this section shall be deemed to affect anything contained in the Tamil Nadu Court of Wards Act, 1902. (Tamil Nadu Act I of 1902)."

The last contention is thus also without any merit. The direction in the earlier judgment that the Commissioner under the Madras Hindu Religious and Charitable Endowments Act may intervene and take steps to fill up the vacancy if any in the headship of the Math has to be understood to mean that the vacancy is to be filled by the Commissioner as a temporary measure within the ambit and scope of the provisions of the said Act. The appellant cannot make the order of the Commissioner dated 4th June, 1973 as a basis for his rights to be appointed as a head of the Math.

For the aforesaid reasons, we find no substance in the appeal which is accordingly dismissed. The parties are, however, left to bear their own costs.