

PETITIONER:
MAHANT BHAGWAN BHAGAT

Vs.

RESPONDENT:
G. N. BHUGAT AND ORS.

DATE OF JUDGMENT 04/01/1972

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
SHELAT, J.M.
DUA, I.D.
KHANNA, HANS RAJ

CITATION:
1972 AIR 814 1972 SCR (2)1005
1972 SCC (1) 486
CITATOR INFO :
R 1974 SC 199 (60)

ACT:
Custom-Mutt-Method of choice of successor to office of mohunt.

HEADNOTE:

Three aspects have to be borne in mind in connection with the question of succession to the office of a mohunt : (i) if the founder or endower has laid down any particular rule of succession, that is to be given effect to; (ii) in the absence of the above the usage of the particular institution, is to be followed; and (iii) the party who lays claim to the office on the strength of any such usage must establish it affirmatively. The fact that the defendant is a trespasser would not entitle the plaintiff to succeed, unless he succeeds in proving the particular usage under which he claims. [1 009 E-G]

In a Mourasi mutt the office of the mohunt is hereditary and devolves upon a disciple of the existing mohunt who usually nominates him as the successor. Though generally the senior disciple succeeds, a junior disciple may succeed if he is found more capable and if he is selected by the last mohunt as his successor. The appointment or nomination is done by the reigning mohunt during his life time or shortly before his death and it is possible for the mohunt to make over the endowment during his life time to the successor. [1010 B-D, F]

In the present case, the mutt was a Mouriasi mutt and the second respondent was its mohunt. He nominated the first respondent as his successor by a deed. and by a second deed, surrendered to him his right to, the office of mohunt. The appellant claimed the office as the senior disciple on the contention that the devolution to the office was to the senior disciple according to the tenets and customs of the sect which established the mutt.

The trial court decreed the suit but the High Court set aside the decree

Dismissing the appeal to this Court,

HELD : The appellant had not discharged the onus which lay

on him to substantiate the custom pleaded by him. The documentary evidence, which was ante litem motam did not support the appellant's case that invariably only the senior disciple was selected. On the contrary, the entire evidence in the case led to the conclusion that in the matter of nomination of a successor to the office of mahant seniority was not the decisive factor, but that ability and efficiency in management coupled with a good moral character, adherence to the religious rites practised at the. mutt and a spirit of service to the sadhus etc. entered into consideration in the selection of a successor. [1012 A-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 171 of 1967. Appeal from the judgment and decree dated April 12, 1966 of the Patna High Court in Appeal from Original Decree No.445 of 1963.
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D. V. Patel and U. P. Singh, for the appellant.

C. B. Agarwala, Umesh Chandra singha , R. Goburdhun and D. Goburdhun, for respondent No. 1.

The Judgment of the Court was delivered by Mitter, J. This is an appeal from a judgment of the Patna High Court reversing the decree in favour of the plaintiff-appellant declared to be the duly installed Mahant of Turki Math and of all its subsidiary maths and as such entitled to possession of the properties covered by the decree. The, undisputed facts are as follows. In the village of Turki in North Bihar there is a Math or as that of the Kabirpanthi Bhagatatha Vairagi sect established over a century back. There are asthals subordinate to the principal one at Turki located in different districts of Bihar. Devolution of the Mahantship has always been from a Guru to his Chela. Defendant No. 2 executed a deed dated December 17, 1951 nominating the first defendant as Ms successor to the Mahantship and a second deed on September 15, 1952 surrendering his right to the Mahantship in favour of the first defendant with, immediate effect. The suit of the appellant was launched in 1959 for a declaration that he himself was the duly installed Mahant of saddar asthal Turki in the circumstances mentioned in the plaint, that the second defendant had ceased to be the Mahant by his, voluntary of retirement and the first defendant being a junior Chela could have no right or Claim to the Mahants. As a corollary to the above declaration, he also asked for a decree for recovery of possession of all the properties of the asthal including those which had been purported to be transferred by the first two defendants.

The appellant made a two-fold claim in his plaint. It was his case that under the tenets and the customs of the asthal and Bhagataha sect of Kabirpanthies, the devolution of the office of Mahantship is always from a Guru to the senior celebrate Chela ,either, on the death of. the Mahant for the time being or by the said Mahant nominating. his successor by deed and himself retiring from the Mahantship In either case, after the death or retirement of the Mahant for the time being, the senior chela succeeds to the Mahantship and is' duly installed on the Gaddi after the performace of Bhandara in an assemblage of Mahants and sadhus of the sect and respectable persons of the locality at which The Chaddar of Mahanthi is bestowed on the new Mahant by the Mahant of

Acharya Math Dhanauti in the District of Saran. The deeds of 1951. and 1952 being in violation of the ancient custom of the asthal, the first defendant was never of the as or became the Mahant of Turki nor was any Chaddar ceremony 1007

performed at any requisite ceremony in recognition of such succession. 'The appellant had filed a suit in the court of the Subordinate Judge at Muzaffarpur in the year 1953 for declaration of his riots and for setting aside the deeds of 1951 and 1952. After the suit was pending for some time,, a compromise was arrived at whereby it was agreed that the appellant should assume the office of Mahantship and take possession of all the properties of the Math. The appellant put his signature on a sheet of blank paper for recording the terms of settlement. He had actually assumed the office of the Mahant of Turki in April 1954, and an elaborate ceremony was performed on the 16th February 1956. whereat he was installed. as the Mahant of Turki and given the Chaddar of Mahanti by the Acharya of Dhanauti before a big gathering. A document known as the Surat Hall was prepared regarding the plaintiff's installation. This bore the signature, of innumerable persons. This was followed by his taking, charge of all the properties of the saddar and subordinate asthals. The first two defendants thereafter dispossessed him and being unsuccessful in proceedings under the Code of Criminal Procedure for securing possession of the math and its properties, he was compelled to file the suit.

Respondents 1 And 2 filed a joint written statement. They pleaded that the custom and usages of the Turki Math relating to devolution of Mahantship was for the Mahant for the time being nominating a fit and proper person as his successor from amongst his Chelas irrespective of his seniority and the person so nominated invariably became the Mahant on the demise or retirement of the; incumbent Mahant. A ceremony of installation of the new Mahant on the Gaddi and the bestowing of a Chaddar on him were not essential for establishing his title to this office in place of the retiring or the deceasing Mahant. The defendants denied the factum of the installation of the appellant relied on in the plaint. According to them the appellant had at all times knowledge of the nomination of the first defendant by the deed of December 17, 1951 and his appointment with immediate effect by the, deed of September 15, 1952. It was on realisation of the weakness of his case that he had approached the defendants for a compromise agreeing, to given up his claim in the suit of 1953. He had appended his signature to the petition of compromise in that suit being fully conversant with the terms thereof.

The two main issues framed by the trial court and relevant for the disposal of this appeal bear on the custom governing the succession to the Mahantship of the Turki Math and the right of the incumbent mahant to nominate a junior Chela in preference to a senior Chela. Issues were also framed by the trial court as to whether an installation ceremony was an essential pre-requisite

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to a Mahant's lawfully functioning as such and whether the plaintiff had factually been installed as a Mahant of the Turki Math. The findings of the trial court were as follows :-

- 1.From 1899 onwards only senior Chelas had succeeded their Gurus.
- 2.According to the custom of the Muth the Mahant had the right to nominate his successor and the choice rested upon

the senior Chela unless he suffered from any disqualification or was found to be unfit for the office. The right of nomination was not absolute but was subject to the approval of others.

3. An installation ceremony was not essential to complete the title of the Mahant. Such a ceremony had been performed in the case of the plaintiff in 1956 and he became the Mahant of Turki although not in possession of the properties thereof at the time of the suit.

The High Court rejected the custom as to succession set up by the plaintiff. It found-

1. Since the time of the founder, Chaturbhuj Gosala, six Mahants had occupied the office of whom three were described as junior Chelas by some of the witnesses on the defendant's side. The evidence did not establish that there was an invariable custom of the senior Chela being nominated by the outgoing Mahant.

2. The Mahant in office had an undoubted right to nominate his successor and ordinarily the right of appointment was exercised in favour of the senior Chela but the choice was exercised in favour of a celebrate chela taking into account his all round ability and character. The second defendant had as a matter of fact nominated one Ganesh Bhagat as his successor even before the deed of nomination of 1951 in favour of the first defendant. This nomination of Ganesh Bhagat was cancelled as he was found to be unfit. Compared to the plaintiff, the first defendant was decidedly superior in learning, ability and conduct : as the main function of the Mahant was to propagate the Kabirpanthi cult and the maintenance of a peaceful and harmonious atmosphere in the mutt where people were expected to congregate for religious discussion and discourses and other benevolent functions the choice of the first defendant by the second defendant in preference to the plaintiff was not undeserved and must be taken as final.

3. The High Court did not examine the question as to whether an installation ceremony was necessary to perfect the title of Mahantship in view of the concession by counsel for the plaintiff. Differing from the finding of the trial court, the High Court held that no ceremony of installation of the plaintiff had been performed in 1956 as alleged in the plaint.

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4. The deeds of nomination and surrender in 1951 and 1952 by the first defendant were valid and binding.

The general law as to succession to Mahantship is now well settled by innumerable decisions of the Judicial Committee of the Privy Council and some decisions of this Court. It will be enough to quote some passages from Mukharji's book on the Hindu Law of Religious and Charitable Trusts. The learned author states (third edition, p. 257):

"Once a Mutt is established, succession to headship takes place within the spiritual family according to the usages that grow up in a particular institution."

"The, primary purpose of a Mutt..... is to encourage and foster spiritual learning by maintenance of a competent line of teachers who impart religious instructions to the disciples and followers of the Mutt and try to strengthen the doctrines of the particular school or order of which they profess to be adherents."

At page 269 :

"In a Mutt.... it is the custom or practice of

a particular institution which determines as to how a successor is to be appointed."

Three aspects have to be borne in mind in connection with the question of succession to the office of a Mahant (p. 269):

"The first is that if the grantor has laid down any particular rule of succession, that is to be given effect to. Secondly, in the absence of any grant the usage of the particular institution is to be followed; and in the third place, the party who lays claim to the office of a Mohunt on the strength of any such usage must establish it affirmatively by proper legal evidence. The fact that the defendant is a trespasser would not entitle the plaintiff to succeed even though he be a disciple of the last Mohunt, unless he succeeds in proving, particular usage under which succession takes place in the particular institution."

At p. 270 :

"Generally speaking, the Mutts are divided into three classes according to the different ways in which the heads or superiors are appointed. These, three descriptions of Mutts are Mourasi, Panchayati and Hakimi. In the first, the office of the Mohunt is hereditary and devolves upon the chief disciple of the existing Mohunt

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who moreover usually nominates him as his successor; in the second, the office is elective, the presiding Mohunt being selected by an assembly of Mohunts. In the third, the appointment of the presiding Mohunt is vested in the ruling power or in the party who has endowed the temple

In a Mourasi Mutt the chela or disciple of the last Mohunt succeeds to the office when there are more, chelas than one the eldest generally succeeds, but a junior chela may succeed if he is found more capable and if he is selected by the last Mohunt is his successor

In various institutions the custom is that in order to entitle a chela to succeed, he must be appointed or nominated by the reigning Mohunt during his life time or shortly before his death and this may be done either by a written declaration or some sort of testamentary document. In other cases again, the nominee is formally installed in the office and some sort of recognition is accorded to him by the members of the particular sect either during the life time of the last Mohunt or when the funeral ceremonies of the latter are performed."

At p. 273.

"When the Mohunt has the right to appoint his successor, he may exercise the right by an act inter vivos or by will."

At p. 274 :

"In a Mourashi Mutt it is possible for the Mohunt to make over the endowment during his life time to his chela whom he appoints as a successor."

At p. 275:

"In many cases when a successor is appointed by Mohunt, he is installed in office with certain ceremonies, This cannot be deemed to be essential."

Admittedly Turki was a Mourasi Mutt The evidence as to custom adduced in the case is both documentary and oral. The oral evidence which will be noted hereafter is discrepant and mostly of persons who were not disinterested. The documentary evidence undoubtedly furnishes more reliable testimony being ante item motam and brought into existence at a time when the plaintiff was not on the scene and when no dispute as to succession to ship was raging.

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The earliest document exhibited in this case is that of 1899 executed by Mahant Lal Bahadur Bhagat in favour of Ram Bhagat describing him as the senior chela, able, clever, literate and by all means fit for the Mahantship. Mahant Ram Bhagat in his turn nominated Mahadeo Bhagat as his successor by a deed of November 1910. Like the document of 1899 this deed also describes the nominee as able, clever and fit to discharge the duties of the Mahant Mahadeo Bhaat however is not described as the senior Chela but only as a disciple of the executant. By a deed of August 1937 Mahant Mahadeo Bhagat nominated Narsingh Bhagat, defendant No. 2 as his successor describing the latter as his only disciple worthy, clever and fit in all respects for the Gaddi. By a document of June 1947 Narsingh Bhagat nominated one Ganesh Bhagat as his successor to the Gaddi. This nomination was cancelled by Narsingh Bhagat on the ground of unfitness of the nominee for the office but mention is made in this document of 1947 of the practice and custom relating to the succession to the office of the Mahant. This document goes against the contention of the plaintiff that by custom the senior Chela was eligible to the office in preference to all others. It recites :

"It has been the practice in the Asthal from the time of my predecessors that the Gadinashin leads a life of Brahmacharya and he does not marry. One Mahanth Gadinashin appoints and nominates his able Brahmachari disciple as Gadinashin and future successor during his lifetime. After the death of his Guru, the rightful disciple becomes heir and Gadinashin of the Asthal of the Sadar Nath at Turki. I the executant thought it proper to make over the management of the property under a will, according to previous custom and appoint Ganesh Bhagat as my successor."

This was followed by a description of the nominee as literate, able and efficient. The document of December 1951 by Narsingh Bhagat in favour of Girija Nandan Bhagat, the first defendant, describes the nominee as fit and qualified in all respects to be the Mahant and recites the custom as in the case of Ganesh Bhagat.

The trial Judge's view that the nominations of 1899, 1910 and 1937 'being invariably in favour of the senior disciple went a long way to establish the custom relied on by the plaintiff was not accepted by the High Court. Apparently the trial Judge was of the view that Mahadeo Bliagat who became the Mahant in 1910 was the only disciple of Ram Bhagat and it was therefore not felt necessary to mention him as the senior chela Quite a number of defendants' witnesses made statements to the effect that Ran-. Bhagat had a number of Chelas. The trial Judge obviously over-

locked the statement of the plaintiff in his cross examination that

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Ram Gossai had 5 or 6 Chelas and he himself had seen all of them. A fairly large number of witnesses stated that the qualifications for a person's nomination to the Mahantship did not depend only on seniority but on ability to manage, celibacy, adherence to religious principles and a habit of serving sadhus, fakirs and visitors besides a good moral character. Some even suggested that it was the ablest Chela who was made the Mahant. Making due allowance for the witnesses who came to support the case of the party examining them, the oral testimony unquestionably leads us to hold that in the matter of nomination of a successor to the Mahantship seniority was not the decisive factor but that ability and efficiency in management coupled with a good moral character and adherence to the religious rites practised at the mutt and a spirit of service to sadhus etc. all entered into consideration in the selection of a successor by a Mahant. This conclusion is fortified by the documents exhibited. As already noted they do not support the plaintiff's version that invariably the senior Chela was selected. In our view the document executed by Narsingh Bhagat in favour of Ganesh Bhagat sets out the custom as to succession fairly accurately.

The argument advanced on behalf of the appellant that the plaintiff was installed as the Mahant of Turki in 1956 before a wide gathering of sadhus and respectable persons at which the Chaddar ceremony was performed does not merit any elaborate or serious consideration. As noted already, the trial court did not take the view that the performance of the Chaddar ceremony was an essential pre-requisite to a person becoming a Mahant and before the High Court counsel for the plaintiff expressly gave up that point. Although the trial court found in favour of the plaintiff that such a ceremony had actually been performed, the High Court came to a different conclusion. One of the reasons which prompted the High Court to take this view was that the document evidencing the installation ceremony styled the Surat Hall had not been produced in any court of law before the institution of the suit of 1959 although litigation in respect of the properties of the mutt and the plaintiff's right to possession were being canvassed before courts of law. The High Court also relied on the fact that a respectable and reliable witness like the Mahant of the Acharya Mutt denied having signed this document Ex. 1 and no attempt was made on behalf of the plaintiff to controvert the said denial by examination of a hand-writing expert. Reliance was also placed by the High Court on the fact that the plaintiff who filed a petition under ss. 107 and 145 Cr. P.C. against the first defendant and 12 others on 8th December, 1956 described himself as the Mahant of Chanwa Math and made no reference in the petition itself to the installation ceremony at Turki. The High Court also did not believe the plaintiff's version that he had signed a blank

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sheet of paper to be used as a compromise petition in the earlier suit filed by him and nothing has been shown to us as to why we should take a different-view.

In the result we hold that the plaintiff was unable to discharge the onus which lay on him to substantiate the custom as to succession pleaded in his plaint. He also failed to establish that he had in fact been installed as the Mahant of the said Math. The appeal fails and is

dismissed with costs.

V.P.S. Appeal dismissed.

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JUDIS