A HIS HOLINESS DIGYA DARSHAN RAJENDRA RAM DOSS

v.

DEVENDRA DOSS

November 6, 1972

[A. N. GROVER, K. K. MATHEW AND A. K. MUKHERJEA, JJ.]

B *Tirupati Mutt—Succession to office of Mohunt—Successor must be North-Indian Brahmin and senior-most disciple of last Mohunt—Agreement acknowledging R as North-Indian Brahmin—Agreement cannot support plea of estoppel when both parties adduce evidence before the Court—If there is a break in line of succession the custom must be re-established as from death of last reigning mohunt.*

C Succession to the office of Mohunt of the Mutt at Tirupati in Andhra Pradesh is regulated by custom which provides that upon the death of a Mohunt his senior disciple becomes next mohunt. This is, however, subject to the condition that the senior disciple must be a North-Indian Brahmin. In 1947 P was the Mohunt of the Mutt. Upon his death in 1947 the succession was disputed between N and C. The dispute was resolved under the terms of the compromise recorded in Ex. B-8. Under the compromise N became the Mohunt, and after him the office was to devolve on C and after C on a senior disciple of N. Upon the death D of N in 1958 there was again a dispute as to succession. C claimed to be the mohunt under the terms of Ex. B-8, while R the present appellant claimed the office by virtue of his status as a senior disciple of N. The dispute was settled in terms of a document Ex. B-1 whereby C was to succeed N and after C the office was to go to R. Very soon after this on 18 March, 1962 C died. Dispute again arose about succession R claimed the office in terms of Ex. B-8 and Ex. B-1 and also by virtue E of his being the only surviving disciple of N. The other claimant was D, the respondent in this appeal, who put up claim to the office by virtue of his position as senior disciple of the last reigning Mohunt. As D was a minor, a suit was filed on his behalf by his next friend. In that suit he claimed for a declaration of his title to the office of mohunt with all the properties attached to the office as well as an injunction against R restraining him from interfering with affairs of the Mutt. The subordinate Judge held that R was a North-Indian Brahmin and was entitled to F succeed as the senior disciple of N and the period of mohuntship of C was to be treated as a break in the practice of the customary rule that only the seniormost disciple succeeds upon the death of the reigning mohunt. In the appeal the High Court found that N was not a North-Indian Brahmin and therefore not entitled to succeed. The High Court further held that since D was a senior disciple of C he should by the rule of custom succeed to the office of the mohunt upon the death of C. R appealed to this Court with certificates.

G HELD : (1) The High Court was right in its findings that the plaintiff was a North-Indian Brahmin while the defendant was a South-Indian Iyengar. It was true that there was a recital in Ex. B-1 that R was a North-Indian Brahmin. Apart from the solitary evidence, the entire evidence on record went to show that R was not North-Indian Brahmin. [915 C]

H Even though a clear plea of estoppel arose from the recital in Ex. B-1 the defendant did not rely on this plea and entered into an issue on the fact so that the whole matter became open for the decision of the learned subordinate Judge. R not only failed to invoke the doctrine of estoppel before the learned Subordinate Judge but joined issue with the

plaintiff upon the question whether the defendant was not a North-Indian Brahmin and accordingly an issue was raised and evidence adduced on this question R could not therefore rely on the doctrine of estoppel to prevent the plaintiff from proving that R was in fact not a North-Indian Brahmin. In the light of the foregoing considerations there was no reason to discard the finding of fact recorded by the High Court to the effect that D was North-Indian Brahmin and R was not [916 C; E & 917 A] A B

Young and Anr. v. *Raincock*, 18 L.J.C.P. 193 and *Greer* v. *Kettle Re Parent Trust & Finance Co. Ltd.*, [1937] 4 All. E.R. 397, referred to.

(2) It was not possible to make R the mohunt for the simple reason that he was not a North-Indian Brahmin. The rule of custom should prevail in all cases and if any aberrations have to be corrected such correction must take its in the direction of re-establishing the rule of custom. [918 A] C

Annasami Pillai and Ors. v. *Ramakrishna Mudaliar and Anr.*, I.L.R. 28 Mad. 219, relied on.

(3) In most cases if there is a break in the customary rule it may not at all be possible to revert back to the customary succession if one has to start from the point when the original break had commenced. In such cases even if it may be possible to revert to the customary practice, it may not be possible to go back to the point where the customary line of succession had its first break. Thus, in this case though it had been possible to trace at least one person who was a disciple of N after whom the customary practice was broken and the office handed over to an alleged interloper, even this lone survivor of the original line of succession was not a person who was competent to become the Mohunt by the immemorial custom of the Mutt. Therefore, it was not possible at all to re-establish the customary line of succession if one treats the period of C's mohuntship as altogether non-existing. It was not open to the Court to lay down a new rule of succession or to alter the rule of succession completely. The only way to save the custom was by accepting something as a fact which had so far been accepted by everybody concerned with the Mutt as a fact and which could not any longer be undone without demolishing altogether the custom of the Mutt. [918 E-G] D E

In these circumstances it must be held that D was entitled to succeed C as his senior-most disciple on the strength of immemorial custom of this Mutt. [919 E] F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 407 (N) of 1971.

Appeal by certificate from the judgment and decree dated September 21, 1970 of the Andhra Pradesh High Court in A.S. No. 476 of 1966. G

M. C. Chagla, M. X. Cardoze, E. C. Agarwala and *A.T.M. Sampath*, for the appellant.

K. R. Chowdhary and *K. Rajendra Chowdhary*, for the respondent.

The Judgment of the Court was delivered by. H

MUKHERJEA J. This appeal by certificate from a judgment of the High Court of Andhra Pradesh arises out of a dispute re-

garding the succession to the office of the spiritual head (Mohunt) of Sri Swami Hathiramjee Mutt, Tirumalai Tirupati. The facts out of which the appeal arises may be stated briefly. Succession to the office of the Mohunt of the Mutt is admittedly regulated by custom which provides that upon the death of a mohunt his senior disciple becomes the next mohunt. This is, however, subject to the condition that the senior disciple must be a North-Indian Brahmin. In 1947 Sri Prayagadasjee Varu was the Mohunt of the Mutt. Upon his death in 1947 there was a dispute about the succession to the office of Mohunt between two contestants *viz.* Sri Narayanadasjee Varu and Sri Chetandossjee Varu. The dispute appears to have been resolved by the intervention of what is described as the Supreme Council of Mohunts *viz* the Akada Panchayat. Under the terms of compromise which are to be found in Ex. B-8, Sri Narayanadasjee Varu became the Mohunt and after him, the office was to devolve on Chetandoss and after Chetandoss on a senior disciple of Narayandasjee Varu. Narayandasjee Varu died in 1958 and there was again a dispute as to who would become the next mohunt. Chetandos claimed to be the mohunt under the terms of Ex. B-8 while Sri Rajendra Ram Doss Jee Varu the present appellant before us claimed the office by virtue of his status as a senior disciple of Narayanadasjee Varu. Rajendra Ram Doss Jee Varu filed a suit to establish his right. The dispute and the suit were both settled by another agreement between Chetandoss and Rajendra Ram Doss Jee Varu the terms of which are to be found in Ex. B-1. Under this agreement Chetandoss was to succeed Narayanadasjee Varu and, after Chetandoss, the office was to go to Rajendra Ram Doss. Very soon after this, however, on 18 March 1962 Chetandoss died. This became the occasion for yet another dispute about the succession to the office of the mohunt. Rajendra Ram Doss claimed to be the mohunt in terms of the two agreements we have referred to just now and also by virtue of his being the only surviving disciple of Narayanadasjee Varu. Devendra Doss Jee, the respondent in this appeal, however, put up a claim to the office of mohunt by virtue of his position as a senior disciple of the last reigning mohunt Chetandoss. He was, however, a minor at that time and a suit was filed on his behalf by his next friend Sri Mukundadasjee Varu, Mohunt of Bugga Mutt, Tirupati. In that suit he claimed for declaration of his title to the office of the mohunt with all the properties that are attached to that office as well as an injunction against Rajendra Ram Doss Jee Varu restraining him from interfering with the affairs of the Mutt.

At the time of the trial of the suit both parties agreed about two propositions :

(i) By immemorial custom and practice, upon the death of a mohunt his eldest or seniormost disciple succeeds to the Gaddi; and

(ii) Only a North-Indian Brahmin is entitled to be a mohunt. A

It was contended by each party before the learned subordinate Judge that the other party was not a North-Indian Brahmin. The learned Subordinate Judge held that the defendant Rajendra Ram Doss was a North-Indian Brahmin and was also entitled to succeed as the senior disciple of Narayanadossjee Varu. According to the learned Subordinate Judge the period of mohuntship of Chetandoss was to be treated as a break in the practice of the customary rule that only the seniormost disciple succeeds upon the death of the reigning mohunt. Devendra Doss appealed against this judgment to the High Court. The High Court found on facts that Narayan Doss was not a North-Indian Brahmin and was, therefore, not entitled to being considered as a possible successor to the office of the mohunt. The High Court further held that since Devendra Doss was the senior disciple of Chetandoss he should by the rule of custom succeed to the office of the mohunt upon the death of Chetandoss. On these grounds the High Court upheld the plaintiff's appeal and gave a declaration in his favour and also an injunction against Narayan Doss from interfering with the affairs of the Mutt. Rajendra Ram Doss has now appealed from the decision of the High Court. B C D

Mr. Chagla appearing for the appellant raised two contentions in support of the appellant's claim. First, he contended that the customary rule by which a senior disciple succeeds to the Gaddi of a mohunt upon the death of a reigning mohunt has always prevailed in this Mutt except for what may be described as an *interregnum* when Chetandoss was installed as the Mohunt. It was during this period that there was a departure from the custom and at the end of this period the custom has been restored. Therefore, Mr. Chagla argued, if after the death of Chetandoss his period of mohuntship be altogether ignored, Rajendra Ram Doss would automatically become entitled to become the mohunt as the senior disciple of Narayandass. Secondly, Mr. Chagla argued that Devendra Doss, the respondent, is bound by the agreement of 15 July 1961 which not only recognised that Rajendra Ram Doss was a North-Indian Brahmin but also stipulated that Rajendra Ram Doss as the only surviving disciple of Narayanadass should become the Mohunt of the Mutt. It was contended that since Rajendra Ram Doss claimed through Chetandoss, he could not throw overboard the agreement to which Chetandoss was a party. In other words, Mr. Chagla sought to meet the finding of fact arrived at by the High Court to the effect that Rajendra Ram Doss was not a North-Indian Brahmin by pointing out that Devendra Doss would be estopped from making that contention in view of the clear statement in the agreement of 29 October 1947 that Rajendra Ram Doss was in fact a North-Indian Brahmin. E F G H

A For the sake of convenience we shall examine these two contentions of Mr. Chagla in the reverse order; that is to say, we shall deal with his second contention first. The High Court after carefully examining the evidence on record has come to a clear finding on facts that Rajendra Ram Doss was not a North-Indian Brahmin. The High Court has also found that the respondent B Devendra Doss was a North-Indian Brahmin. This Court is not generally inclined to set aside or ignore the findings on fact of the High Courts unless they appear to have been manifestly wrong. In this case, however, after going through the evidence ourselves we are clearly of the opinion that the High Court was right in its findings that the plaintiff was a North-Indian Brahmin while the C defendant was a South-Indian Iyengar. It is true that there is a recital in Ex. B-1 which is the agreement executed by and between Chetandoss and Rajendra Ram Doss on 15 July 1961, that Rajendra Ram Doss was a North-Indian Brahmin. It may be useful here to set out the material portion of the agreement :—

D "Now, therefore, it is agreed as follows :—

(1) x x x

(2) x x x

(3) Sri Digyadarsan Rajendra Ramdossjee Varu (the plaintiff in the suit) who is a North Indian Hindustani Brahmin and a disciple of the late E Mahant Narayandossjee Varu has to succeed to the Mahantship after (the Defendant) Sri Mahant Chethandossjee Varu and till then he shall be the junior Mahant;

Far from treating this as an evidence in support of Rajendra Ram F Doss's contention that he was a North-Indian Brahmin the High Court considers this to be a very suspicious recital. The High Court observes :

> ".....The very description of the defendant in Ex. B-1 as a North-Indian Brahmin when in the context of that document it was really unnecessary to describe G him as such makes the recital suspicious."

Apart from this solitary evidence of Ex. B-1 the entire evidence on record goes to show that Rajendra Ram Doss was not a North-Indian Brahmin. Mr. Chagla, however, contended that since Devendra Doss is claiming through Chetandoss, he is estopped from denying the correctness of a categorical statement made in H an agreement to which Chetandoss was a principal party. The principle on which, Mr. Chegla relies has been formulated by Gross in his book on Evidence, Third Edition, in the following manner :—

"It not infrequently happens that two people agree, expressly, or by necessary implication, that their legal relations shall be based on the assumption that a certain state of facts exists, and, when this has been done, the original parties to the agreement, as well as those claiming through them, are estopped from denying the existence of the assumed state of facts."

Though this principle invoked by Mr. Chagla is quite correct so far as it goes and is a principle which has found expression in a large number of judgments, ancient and modern, we do not think that in the facts of this case Mr. Chagla's client can rely on this principle. Even though a clear plea of estoppel arises from the recital in Ex. B-1 the defendant did not rely on this plea and entered into an issue on the facts so that the whole matter became open for the decision of the learned Subordinate Judge. In *Young and Anr.* v. *Raincock*(1) Coltman, J. after having observed that "where it can be collected from the deed that the parties to it have agreed upon a certain admitted state of facts as the basis on which they contract, the statement of those facts, though put in the way of recital, shall estop the parties to aver the contrary", yet refused to treat the recital of the deed as conclusive on the question before him on the ground that "if the estoppel appears on the record the party who is entitled to take the advantage of it, instead of relying on it goes to issue on the fact, he puts the matter at large, and the jury may disregard the estoppel" In the instant case Rajendra Ram Doss, the defendant, not only failed to invoke the doctrine of estoppel before the learned Subordinate Judge but joined issue with the plaintiff upon the question whether the defendant was not a North-Indian Brahmin and accordingly an issue was raised and evidence adduced on this question. Rajendra Ram Doss cannot, therefore, rely on the doctrine of estoppel to prevent the plaintiff from proving that Rajendra Ram Doss was in fact not a North-Indian Brahmin. The principle has been confirmed by a recent decision of the House of Lords in *Greer* v. *Kettle Re Parent Trust & Finance Co., Ltd.*(2) Referring to the decision of *Lainson* v. *Tremere*(3) which is often relied upon as an authority for the proposition that, in all circumstances, statements in deeds estop all parties to the deed from ever alleging and proving the true facts, Lord Russell, in his opinion, observed :

"I would not, speaking for myself, be prepared to accept it as authoritative at the present day..... Later decisions, however, put the matter on what seems to be the sounder basis."

(1) 18 L.J.C.P. 193. (2) [1937] 4 All. E.R. 397.
(3) [1834] 1 Ad. & El. 792.

A Then, his Lordship quotes with approval the observation of Coltman J. in *Young and Anr.* v. *Raincock*(1) which we have already cited above. In the light of the foregoing considerations we see no reason to discard the finding of fact recorded by the High Court to the effect that Devendra Doss was a North-Indian Brahmin and Rajendra Ram Doss was not.

B

We now come to the first contention of Mr. Chagla. Starting from the proposition which is admitted by both parties to the suit and which states that by immemorial custom the office of Mohunt upon the death of a reigning mohunt goes to the latter's senior-most disciple, Mr. Chagla contends that by this test Chetan Doss C could not have become the Mohunt when he assumed that office as a result of the two agreements embodied in Ex. B-8 and Ex. B-1. He further suggests that the period between Chetan Doss' accession to the office and his demise should be treated as an *inter-regnum* of irregularity which is to be ignored completely as if it never came to happen. On this footing, since Chetan Doss D succeeded Narayan Doss the office of the Mohunt is to be filled up by finding out who would be the person entitled to succeed upon the demise of Narayan Doss. That is how Mr. Chagla sought to claim this office for Rajendra Ram Doss who, it was contended, was the only surviving disciple of Narayan Doss. Reliance was placed for this proposition on a Division Bench E Judgment of the Madras High Court in *Annasami Pillai and Ors.* v. *Ramakrishna Mudaliar and Anr.*(2) in which it was held that it would seem "not unreasonable to hold that where a person, who had no right to the office of a trustee according to the rule of devolution established by the founder, acquires a title to the office by prescription, but restores it to one, who, except for the transferor's prescriptive title, could have taken the office according to F the rules laid down by the founder, such transfer should be treated as an exception to the general doctrine that a trusteeship is not assignable.....for such a transfer would put an end to the continuance of a management inconsistent with the founder's intention and once more let in the class of persons by whom the founder contemplated the management should be carried on". It G was argued that after the death of Narayan Doss his senior disciple should have become the Mohunt according to the rule of custom which is paramount in these matters. Though the fact remains that Chetandoss became the Mohunt as a result of two agreements after his death, the customary line of succession should be restored and a senior disciple of Narayan Doss at that point H of time should become the Mohunt. This could be achieved only by giving the office of Mohunt to Rajendra Ram Doss.

1 18 L.J.C.P. 193. (2) I.L.R. 28 Mad. 219.

As we have already seen, it is not possible to make Rajendra Ram Doss the Mohunt for the simple reason that he has been found not to be a North-Indian Brahmin. Even on the assumption that Rajendra Ram Doss was the senior-most disciple of Narayan Doss at the time of the latter's death and, therefore, satisfies the requirement of one customary rule, Rajendra Ram Doss cannot become the Mohunt according to the other equally customary rule that only a North-India Brahmin can be the Mohunt of this Mutt.

In our opinion the rule of custom should prevail in all cases and if any aberrations have to be corrected such correction must take us in the direction of re-establishing the rule of custom. To that extent the principle laid down in the case of *Annasami Pillai and Ors.* v. *Ramakrishna Mudaliar and Anr.* (*supra*) is a correct principle and has to be followed. That, however, does not resolve the difficulty in this case. Assuming that Chetan Doss was not a validly appointed Mohunt so that his period of office is to be ignored, the question still arises whether in making a reversion to the customary rule of succession to the office of a mohunt such reversion is to operate from the point where Chetan Doss' period ended or from the point when this had commenced. It is only an accident that in this case Chetan Doss had a very brief period of office so that on his death it was at least possible to find one surviving disciple of the Mohunt who held the office before Chetan Doss succeeded him. In most cases if there is a break in the customary rule it may not at all be possible to revert back to the customary succession if one has to start from the point where the original break had commenced. In such cases even if it may be possible to revert to the customary practice, it may not be possible to go back to the point where the customary line of succession had its original break. Thus, in this case though it has been possible to trace at least one person who was a disciple of Narayan Doss after whose death the customary practice was broken and the office handed over to an alleged interloper, even this lone survivor of the original line of succession is not a person who is competent to become the Mohunt by the immemorial custom of the Mutt. Therefore, it is not possible at all to re-establish the customary line of succession if one treats the period of Chetan Doss' mohuntship as altogether non-existing. If we have to revert to the custom of the Mutt we cannot do so from the point of time when Narayan Doss died and Chetan Doss became the Mohunt. We have to do so from the point when Chetan Doss died. After all, Chetan Doss has been unquestionably the Mohunt of the Mutt. It is true that on a subsequent re-examination of the whole matter, doubts have been cast on his title for the office but by common acceptance of the Chelas of the Mutt he had become the Mohunt and had remained a mohunt till his death. Ignoring the fact that

A he was really the Mohunt of this Mutt for a specific period does not help us re-establish the rule of custom prevailing in this Mutt. The only possible way in which the old custom may be re-established is by making a fresh start from the point of the death of Chetan Doss and that can only be done by allowing Devendra Doss to be the Mohunt. The High Court has come to a clear B finding that Devendra Doss is a North-Indian Brahmin and is therefore fit to hold the office of a mohunt according to the custom of this Mutt. The High Court has also found that he was the senior-most disciple of Chetan Doss who had been the reigning mohunt upto the point of time when the dispute regarding succession arose. If Rajendra Ram Doss' right to become the C Mohunt be rejected on the ground that Chetan Doss was perhaps an interloper the whole line of succession will be broken beyond repair or redemption, for, once it is accepted that Rajendra Ram Doss is not a North-Indian Brahmin there is no other living disciple of Narayan Doss who could restore the original line of succession. In our view it is not open to us to lay down a new rule of succession or to alter the rule of succession completely. The D only way we can save the custom is by accepting something as fact which has so far been accepted by everybody concerned with the Mutt as a fact and which cannot any longer be undone without demolishing altogether the custom of the Mutt. In these circumstances we hold that Devendra Doss is entitled to succeed Chetan Doss as his senior-most disciple on the strength of the E immemorial custom of this Mutt.

In the view that we take of this matter the appeal fails and is dismissed. In the peculiar circumstances of this case we make no orders to costs. All the stay orders passed in this matter by this Court shall stand vacated.

G.C. *Appeal dismissed.*