

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.200/2004**

% **12th May, 2014**

SH. KUNDAN LAL Appellant
Through: Mr. Ashish Kapur, Advocate.

Versus

STATE AND ORS. Respondents
Through: Mr. Alok Kumar, Advocate with Mr.
Neeraj Kumar Gupta, Advocate and
Mr. Amit Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 384 of the Indian Succession Act, 1925 against the judgment of the probate court dated 31.5.2004 by which the probate court below has allowed the application of the respondent no.2 herein for revocation of the letters of administration granted on 6.2.1997 in the probate case bearing no.163/1997 in favour of the appellant/petitioner.

2. Before me, it could not be disputed, as stated in para 2 of the

impugned judgment, that the issue of whether the deceased Sh. Gokal Chand did or did not renounce the world and became Swami Kesar Bharti was subject matter of a decision of a civil court in Punjab and which ultimately reached the High Court of Punjab and Haryana in RSA No.1723 of 1983 titled as ***Kundan Lal Vs. Atam Parkash and Ors.*** In this judgment, the High Court has given its stamp of finality with respect to Sh. Gokal Chand @ Swami Kesar Bharti having taken sanyas and therefore renouncing the world. Since Sh. Gokal Chand @ Swami Kesar Bharti renounced the world, all his natural relations with natural heirs were severed and such natural heirs as per the personal law cannot claim inheritance and rights to the properties of Sh. Gokal Chand @ Swami Kesar Bharti on the ground of entitlement under the personal law.

3. The relevant paras of the judgment of the Punjab and Haryana High Court are paras 6 to 10 and which read as under:-

“6. Learned counsel appearing for the appellant contended that if the property is admitted to be a separate property of Gokal Chand and did not belong to any religious order, the plaintiff as a legal heir and the nearest agnate was entitled to succeed to the estate. Learned counsel would rely on the judgment in Krishan Singh Vs. Mathura Ahir and others AIR 1980 SC 707 to contend that without proof of religious ceremonies, line of succession cannot deviate from the succession to a legal heir, as per the rules of succession mentioned under the Hindu Succession Act. Learned counsel appearing for the respondents would rely on the judgment of the Privy Council in Pandit Parma Nand Vs. Nihal Chand and another AIR 1938 Privy Council 195, which has also

been referred to by the trial Court and Appellate Court to contend that even a private property acquired by a Mahant descends to a Chela and a descent to a Chela does not warrant its nature as religious. Learned counsel also refers to the decision of the Supreme Court in Sital Das Vs. Sant Ram and others AIR 1954 SC 606 that held that entrance into religious order generally operates as a civil death. The man who becomes an ascetic severs his connection with the members of his natural family and being adopted by his preceptor becomes, so to say a spiritual son of the latter.

VI. A Sanyasi need not be attached to any particular religious order – A secular sanyasi is not opposed to tradition

7. It may seem a contradiction in terms that a Sanyasi that renounces the world leaves large properties for persons to fight for. A Mahant or Sanyasi that renounces the world cannot normally be expected to carry large chunk of properties in his peregrination. A Sanyasi, who is said to renounce the world, cannot be attached to property. But strange are the ways of world that it is ever an experience that Mahants and Sanyasis come to possess large estate and revel in luxury. It is normally expected that Sansayis or Mahants, who come by large donations from disciples secure the benefits of such acquisitions for the public at large and not for personal consumption. A Sanyasi may not at all times be professing any particular religion. A person that truly transcends sectarian approaches of ordinary mortals could alone be said to be a person, who is liberated. In this case, an attempt is made by plaintiff to show that the Gokal Chand was not attached to any particular religious order. The properties held by him ought to therefore devolve only on the blood relations and it ought not to be taken as a property acquired or endowed to any Mahant or Math.

VII. Voluminous evidence available to find the formal induction of 1st defendant to Sanyas

8. These contentions of the learned counsel appearing for the appellant will have to be seen from the perspective of how the plaintiff makes a claim to the property in the suit. The pleadings admit of no ambiguity that the plaintiff was contending that Gokal Chand @ Kesar Bharti was the owner in possession of the land and after his death about two years

and ten months before the institution of the suit in the year 1978 leaving behind no child or widow, the property came to be in the possession of the 1st defendant. The claim by the appellant and the claim by the plaintiff in the suit was that Atam Parkash, the 1st defendant had taken illegal possession of the property before the suit. The trial Court as well as the Appellate Court found that even in the transactions of sales, by Kesar Bharti, he did not describe himself as son of his father but in all the transactions of sales, he had described only as Swami Kesar Bharti. It is also to be seen that although the plaintiff sought to give evidence that the 1st defendant was himself a son born to Kesar Bharti through his wife, the averment in the plaint was that he died issueless. The defendant had produced the evidence DW-2 as Sarpanch of the village who stated that all the villagers knew Kesar Bharti as a Sanyasi having come to India from the place now in Pakistan. He also stated that the 1st defendant was anointed as his Chela even when he was in Pakistan and he had appointed the 2nd defendant Sat Sharan as a 2nd Chela. He spoke from personal knowledge that after the death of Kesar Bharti, Sh. Dayal Bharti had come from Jammu and Sewa Bharti had come from Hardwar to give pagris to these Chelas. Photographs had also been produced before the Court at trial. The witnesses claimed that the plaintiff was present at the time of those ceremonies and he had also signed in some registers when mutations had been sanctioned in favour of Atam Parkash. In particular, witnesses DW2, DW3, DW5 and DW8 had also given evidence about the presence of plaintiffs at the time of Pagri ceremony. The trial Court noticed that no question had been asked even to the photographer, who produced the photographs that they were not taken by him or that such ceremony was not conducted. Several respectables were said to have assembled on 21.02.1976 for the gathering in the village of Talwandi Purdil after the death of Kesar Bharti and when Atam Parkash was given the Pagri. There were voluminous evidence recorded by the trial Court to say that the 1st defendant was the Chela of Kesar Bharti and Kesar Bharti lived the life of Sanyasi. I do not feel compelled to reopen the issue of a pure question of fact relating to the deceased Kesar Bharti as a Sanyasi and that the 1st defendant had been his Chela.

VIII. Applying law enunciated to facts

9. The Hon'ble Supreme Court has held in Krishna Singh's case (supra) that the strict rule enjoined by the Smriti writers as a result of which Sudras were considered to be incapable of entering the order of yati or sanyasi has ceased to be valid. The Hon'ble Supreme Court recorded the fact that the existing practice all over India is quite contrary to the orthodox view and Courts shall apply wherever the usage is established, according to which the Sudra could enter into a religious order and it should have no difficulty in upholding such contention. Learned counsel appearing for the appellant would try to take benefit from the observations of the Hon'ble Supreme Court in Krishna Singh's case (supra) that held that in order to prove that a person has adopted a life of Sanyasi, it must be shown that he has actually relinquished or abandoned all worldly possessions and relinquished all desire for them or that such ceremonies are performed, which indicate the severance of his natural family and his secular life. It must also be proved in a case of orthodox sanyasis that necessary ceremonies were also performed. It is nobody's contention that religious orthodoxy prevailed for the life of Kesar Bharti or the 1st defendant. I have already observed that there was weighty evidence placed before the trial Court that the deceased Kesar Bharti lived a life of Sanyasi and 1st defendant had been anointed as a Chela. Such fact established through evidence cannot be displaced lightly. The plaintiff cannot stake his claim to the properties. The Privy Council's view in Pandit Parma Nand's case referred to above underscores the fact that there is no reason to hold that an Udasi cannot acquire private property with his own money or by his own exertions. If he does acquire property, it cannot be inherited by his natural relations but passes on his death to spiritual heir including his Chela, who is recognized as his spiritual son. The descent of the property from a guru to his Chela does not warrant the presumption that it is religious property. The decision of the Privy Council and the decision of the Hon'ble Supreme Court very clearly conclude the issue as far as the point of law that is taken in this case is concerned.

IX. Conclusion

10. The decisions of the Courts below the plaintiff cannot be a heir and that the 1st defendant was the heir are affirmed. It is irrelevant whether the deceased had joined any particular religious sect and a secular

sanyasi is not an anathema to tradition. A sanyasi could also own property and the chela to a sanyasi is verily the legal heir to succeed to the property. The propositions raised are answered accordingly, dismissing the appeal filed by the appellant.”

4. Section 11 Explanation IV of CPC states that any aspect which might and ought to have been made ground of defence or attack in a former suit shall be deemed to have been decided in the earlier case. Therefore, I disagree with the counsel for the appellant that he can argue the aspect of whether Sh. Gokal Chand @ Swami Kesar Bharti had or had not taken sanyas on the ground that certain aspects were not decided/taken note of in the earlier judgment inasmuch as the issue of taking sanyas by Sh. Gokal Chand has been concluded against the appellant herein in terms of the judgment of Punjab and Haryana High Court dated 14.11.2011.

5. Thus, the appellant/petitioner could not have been granted letters of administration by the probate court and which was claimed on account of personal law, and which personal law ceased to apply to Sh. Gokal Chand on his having taken sanyas.

6. In view of the above, this appeal is wholly frivolous, and is dismissed with costs of Rs.50,000/- as the appellant is unnecessarily litigating for issues which have attained finality. I may note that the Supreme Court in the case of *Ramrameshwari Devi & Ors. Vs Nirmala*

Devi & Ors. (2011) 8 SCC 249 has said that it is high time that in certain litigations, costs be imposed. I am also empowered to impose costs in view of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*. Costs be paid within six weeks from today.

MAY 12, 2014
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VALMIKI J. MEHTA, J.