

(1912) 04 AHC CK 0019

Allahabad High Court

Case No: None

Puran Atal

APPELLANT

Vs

Darshan Das and
AnotherRESPONDENT

Date of Decision: April 18, 1912**Citation:** 14 Ind. Cas. 698**Hon'ble Judges:** Henry Richards, C.J; Banerji, J**Bench:** Division Bench

Judgement

1. This appeal arises out of a suit purporting to be brought u/s 539 of Act XIV of 1882. The plaintiffs allege that there was a charitable trust for public purposes, that they were interested in that trust, that the defendant Puran Atal had for some time been a mahant and gaddinashin of the trust, that he had been deposed as being unfit for the office and the plaintiff Darshan Das had been duly installed in his place, and that the defendant Puran Atal had re-taken possession of the trust property. Various reliefs of the nature provided for by Section 539 were then prayed for.
2. The first question which arose was whether or not sanction had been given according to the provisions of Section 539. The Court held in favour of the plaintiffs and that question has not been argued here.
3. The next question, which is the most important question in the case, was the question whether or not a public charity-existed within the meaning of Section 539. The learned Judge held that such a trust did exist. He then went on to hold that the defendant Puran Atal was not a fit and proper person to be the gaddinashin, that he had been duly deposed, and that the plaintiff Darshan Das had been duly installed in his place, and was a fit and proper person to hold the office. The learned Judge accordingly framed a decree removing the defendant Puran Atal from the management of the property and directing that the property should be placed under the management of the plaintiff Darshan Das, who was to render an account at certain periods of the trust property.

4. From this decree, the defendant Puran Atal appealed. On the case coming before a Bench of (his Court, the learned Judges were not agreed on the question whether or not a "public charitable trust" existed within the meaning of Section 539 of Act XIV of 1882. Hence the present appeal under the Letters Patent.

5. Section 539 of Act XIV of 1882 is not very grammatically expressed. The words are "In the case of any alleged breach of any express or constructive trusts created for public charitable or religious purposes." If we were to read these words according to the ordinary rules of construction, it would mean "in the case of a breach of trusts created for public purposes, charitable purposes, or religious purposes." It would appear, however, that the section has been construed as if the word "public" qualified the word "charitable" and the word "religious." In the new Code the words have been altered as follow: "In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature." We propose to assume for the purposes of this case that the trusts referred to in Section 539 of the old Code are the same as those referred to in Section 92 of the new Code, and that accordingly it is necessary before the plaintiffs can claim the relief they seek that they should show that a trust created for a public purpose of a charitable or religious nature exists. The evidence has been very fully gone into by the Court of first instance and also in the judgments of our learned colleagues, It seems very clear that there exists a certain foundation which is called the "Baksar" foundation. This foundation owns a number of villages including the village of Baksar. For very many generations a Nanakshahi fakir has occupied the gaddi and managed the property. The defendant Puran Atal has put in evidence a document which purports to be a grant of one of the villages, namely, the village Kandalia. This document, assuming it to be genuine, is dated some time about the year 1754 A.D., and purports to be a grant from the Emperor Alamgir II in favour of one Mast Ram, a Nanakshahi fakir. With the exception of this document, the original grants, if such there were, are no longer forthcoming. The learned Judge has doubted the genuineness of the document of 1754 and there are grounds for such doubt. In the year 1818 or 1819 in a proceeding, to which we shall more fully refer presently, a number of sanads connected with the property held by the Baksar gaddi are stated to have been filed and this document was not amongst those sanads. A charitable trust might be created by a grant for that express purpose or a grant having been made in favour of an individual or class of individuals, that individual or class might after obtaining the grant create a charitable trust. In the present case, no evidence of an original grant for a charitable purpose from a ruler, save as before mentioned, is forthcoming nor is there in evidence any instrument expressly creating a charitable trust. We have it, however, clearly established by evidence that for very many generations the property belonging to the Baksar gaddi has been held for the purpose of supporting and maintaining fakirs, entertaining visitors and for the giving of alms. There is no evidence that the property has ever been held for any other purpose. In addition to this, we have the evidence afforded by the proceeding which took place about the year 1818 or 1819. The document relating to this proceeding is dated the 5th of July 1819. At that time the British Government, through their Collector, were considering what should be done in respect of the revenue

and succession to the property belonging to this very gaddi. Questions were put to the mahout who claimed to be the gaddinashin at that time. His answers amount to express declarations that the property was held for the purpose of supporting and maintaining fakirs and visitors and for charitable purposes. It would appear that, on the strength of such declarations as to the purposes for which the property was held, the latter has ever since been held as muafi free from Government revenue. Again, in the year 1851, we have a deposition of the mahout for the time being in which it is declared that the property has always been held generation after generation for the purposes we have already mentioned. Questions connected with the succession to the property and the rights of fakirs, have from time to time come before the Court, and it has always been assumed that the property was the property of the gaddi managed by the gaddinashin for the time being and held for charitable purposes.

6. In our opinion, the Court, on this clear and uncontradicted evidence, not only is entitled to presume, but ought to presume, the existence of a charitable or religious trust. The next question is whether this trust was for a public purpose" within the meaning of the Code. The property was held for the support of fakirs, entertaining visitors and giving alms, and generally for charitable purposes. Even if we assume that the main purpose of the trust was to support Nanakshahi fakirs and to spread the religion founded by Nanak, we think that the trust was for a "public purpose" within the meaning of the section. This was the opinion of the learned District Judge and also of one Judge of this Court. In our opinion, the case was a case coming u/s 539.

7. The next question which arises is whether or not on the evidence we ought to hold that conduct of the defendant Puran Atal was such as to render him unfit to hold the office of gaddinashin and to entitle the plaintiffs to relief in this Court. A large amount of evidence was given which went to show that Puran Atal was a man of immoral character: contrary to the rules of the priesthood, he kept a woman. He had also created a scandal by his intrigues with a Chamar woman. There was also evidence to show that he had spent the income of the property in building houses for the members of his family and in giving ornaments to his mistress. There was evidence to show that he neglected to devote the income to charitable purposes. The Court of first instance believed this evidence, This Court is always reluctant to overrule the decision of the Court of first instance on a pure question of fact, particularly where that Court has had (as in the present case) the advantage of seeing and hearing the witnesses upon both sides. In the present case, there is a strong additional reason why we should hesitate to interfere with the decision of the Court below upon this question. It would appear that Puran Atal had been deposed by a large number of the fakirs of the Nanakshahi sect not, only the fakirs interested in his own particular gaddi but also the fakirs of the neighbouring gaddis of the same section. In our opinion, we ought to accept the finding of the Court of first instance on this question.

8. It is next said that the mahants who purported to depose Puran Atal from the gaddi had no power to do so. The learned District Judge was satisfied that there was a usage which entitled the mahants to depose a gaddinashin for misconduct and that they were entitled

in the same way to elect a successor. So far as the election of a successor is concerned, it would appear that Puran Atal owes his own seat on the gaddi to selection carried out in the very same manner in which the plaintiff Darshan Das was elected in the present case, the only difference being that in the case of Puran Atal his immediate predecessor disappeared, it is supposed, in consequence of his being murdered.

9. Some slight effort has been made to show that Darshan Das is not a fit and proper person to be a mahant. This was no part of the defendant's original case. Darshan Das has been selected by the body of fakirs as a fit and proper person and we agree with the learned District Judge that it is well, so far as possible, to accept the selection of the sect as to the person who ought to occupy the gaddi.

10. In our opinion, the appeal altogether fails. We accordingly dismiss it with costs.