

(1930) 02 BOM CK 0031

Bombay High Court

Case No: None

Bhagvanpuri

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision: Feb. 14, 1930

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8

Citation: (1930) 32 BOMLR 1516

Hon'ble Judges: Lancelot Sanderson, J; George Lowndes, J; Binod Mitter, J; Atkin, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Lancelot Sanderson, J.

[The judgment after dealing with the facts of the case proceeded.] Both the Courts in India have held that the said land was not so granted. There is no necessity to enquire into the history relating to the land in suit prior to 1854, for it was agreed at the hearing of the appeal that the abovementioned main question depends upon the construction of the said sanad of January, 10, 1854...

2. A further point was taken by the learned Counsel for the appellant. It is of a technical nature and has no relation to the merits of the case. It was argued that the defendants were not the, proper parties to the suit and that no leave was asked for or obtained from the Court as required under Order I, Rule 8, of the Civil Procedure Code, 1908.

3. It appears that the defendants were elected managers by the akhara at the Kumbh in Hardwar in 1915, and on May 9, 1915, a power-of-attorney was given by them to four persons, of whom Hardayalgorji was one, to act as their general attorneys, and among other matters to file suits, to set up a defence and affix their signature to a written statement, and it was further provided that all. such proceedings taken by the said multtav should be admitted and accepted as having

been done by the defendants personally in the capacity of mahamts.

4. Hardayalgarji gave evidence for the defendants to the effect that there was a kumbh every three years at different places, Hardwar, Prayagraj, Nasik and Ujjain, and that different mahants were elected at each successive kumbh at the four places to officiate for three years. He, however, made certain material admissions in cross-examination, and the result was that there were concurrent findings of fact by both the Courts in India to the effect that the power-of- attorney had not been withdrawn, and that Hardayalgarji was actually managing the akhara properties by virtue of the said power-of-attorney executed by the defendants and was looking after the akhara litigation, and that the defendants were still managers of the Hardwar properties of the akhara.

5. Their Lordships are of opinion that there was ample evidence to justify the above-mentioned concurrent findings of the Courts in India, and they see no ground for disturbing such findings. Their Lordships agree with the finding of the High Court that the proprietary title to the lands in suit is in the plaintiff, and they are of opinion that the defendants, through their agents, were in possession of the said lands at the time when the suit was instituted, and that they were rightly joined as parties to the suit.

6. Order I, Rule 8, contains provisions which enable the Court to grant the permission therein mentioned in a case which comes within the scope of the rule; but, having regard to the facts of this case, their Lordships are of opinion that it was not necessary for the plaintiff to have recourse to the said rule.

7. The decree of the trial Court was that the plaintiff be, on dispossession of the defendants, put in possession of the property in dispute, and that the map attached to the plaint should form part of the decree.

8. This was confirmed by the High Court. Their Lordships are of opinion that the decree of the High Court was correct, and that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.