

Mt. Kaura Devi Vs. Mt. Indra Devi

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Court : Allahabad

Decided On : Apr-19-1943

Reported in : AIR1943All310

Appellant : Mt. Kaura Devi

Respondent : Mt. Indra Devi

Judgement :

Allsop, J.

1. Mt. Indra Devi, the plaintiff-respondent, instituted the suit which has given rise to this appeal in order to obtain a declaration that she was entitled to the estate of Raghubans Puri deceased consisting of moveable and immovable property including the village of Kharkhari. She based her claim on the admitted fact that she was his daughter by his first wife, Mt. Janki, and on the allegation that there had been no valid marriage between him and the defendant-appellant, Mt. Kaura Devi, who claimed to be his widow. The learned Judge of the Court below found, in the first place, that Raghubans Puri and Mt. Kaura Devi had not gone through a form of marriage and, in the second place, that such a marriage, even if it had taken place, would have been invalid for two reasons, namely, that Raghubans Puri was insane at the time and that there could be no legal marriage between a man who was admittedly a grihasth Goshain and a woman who was admittedly a born Rajput. All the learned Judge's findings have been questioned in appeal.

2. In order to avoid unnecessary repetition it will be convenient, in the first place, to say something about the life of Raghubans Puri. This man was the son of Suraj or Surya Gir and was originally known as Lungi Singh. He had two brothers, Ganga Singh and Bahadur Gir and two sisters, one of whom, Mt. Ganga Dei, was the mother of Anant Bharti and the other Mt. Bel Devi. It will be necessary to refer to these people in the course of this judgment. Raghubans Puri became the disciple of Ghanshyam Puri from whom he inherited the property in suit. At that time he took the name of Raghubans Puri. In 1917 his mind began to fail and in 1918 one Nand Gir was appointed manager of his property under the provisions of the Lunacy Act. We have on the record a copy of the deposition of Captain Reader of the Royal Army Medical Corps recorded on 21st February 1918 and a certificate issued by him on 18th February 1918. From these documents it appears that Raghubans Puri displayed the physical signs of general paralysis of the insane, was childish and emotional, laughed foolishly for no reason, replied irrelevantly to questions, became angry without cause and threatened to beat those who were in the room with him and with the doctor, The doctor was of opinion that he was not capable of managing his affairs and stated generally that he would not consider a man who was suffering from general paralysis of the insane to be so capable and that such a man would, at any rate, be very unreliable. Raghubans Puri's wife, Mt. Janki, died in January 1920 and Nand Gir, on 17th April of the same year. Six days later on 23rd April, Bahadur Gir made an application to the District Judge that he should be appointed guardian of the lunatic. The District Judge passed an order that Raghubans Puri should be placed under medical observation and there is evidence that the Assistant Surgeon of Hardwar, where he lived, began visiting him. It is alleged, however, by the defendant-appellant that Raghubans Puri came to Kosan, her village, and married her on 6th May. This place is in the hills. The journey to it from Hardwar must be made on foot or on horseback and can be completed in the inside of a day. On 14th May Raghubans Puri was apparently back in Hardwar because Bahadur Gir made an application to the District Judge on that date complaining that he had already to spend Rs. 35 on doctor's fees and asking that the visits should be reduced to one or at most two a week.

3. On 14th June Anant Bharti put in an application objecting to the appointment of Bahadur Gir and asking that he himself should be made guardian and manager.

He suggested that Bahadur Gir's interests were adverse to those of Raghubans Puri's minor daughter and also that he would be unlikely to enforce payment of a debt of its. 10,000 alleged to be due to the estate from Mt. Bel Devi. On 15th June, Major Hogan, Civil Surgeon at Saharanpur, gave a certificate that Raghubans Puri was suffering from general paralysis of the insane. He stated that his speech was at the time indistinct and incoherent, that he was childish and laughed without any cause, that he was very emotional when questioned about his late wife and his daughter, that his memory was much impaired, that he was restless and that he had a tottering gait and staggered in attempting to walk with closed eyes. On 21st July 1920, the District Judge passed an order declaring Raghubans Puri to be insane and appointing Anant Bharti manager of his property. On 5th August 1920, Bahadur Gir made an application that he was about to appeal against the order of the District Judge and that the property, in the meanwhile, should not be delivered to Anant Bharti to whose presence in the house Raghubans Puri objected.

4. On 11th August an officer of the Court, that is, the Amin, made a report that he had gone to Raghubans Puri's house to make an inventory of his property but that Raghubans Puri was not at home and that his sister, Mt. Bel Devi, would not allow an inventory to be made in the absence of the agent or karinda. On 28th August, Bahadur Gir made a statement that the trunks and boxes which contained the goods of Raghubans Puri were locked in certain rooms, the keys of which were in the possession of Raghubans Puri. He said that Raghubans Puri refused to give him the keys. On 29th August, the Amin made another report that he had again been to the house and that Raghubans Puri had refused to give up the keys until his agent arrived. As the agent did not reach the house up to the evening the Amin had to come away without making an inventory. On 8th April 1921, this Court passed order on Bahadur Gir's appeal. It upheld the appointment of Ananat Bharti upon the ground that the sum of its. 10,000 appeared to be due from Mt. Bel Devi and that it was better not to appoint Bahadur Gir till the trouble about that money had been set at rest. It remarked, however, that it might be possible to appoint Bahadur Gir at some later time.

5. On 11th or 12th May,' Bahadur Gir made a complaint to the District Judge that Anant Bharti had forcibly broken into Raghubans Puri's house, had seized his

property and had ejected the lunatic, his wife and daughter. He alleged that the lunatic had been much upset by this action on the part of Anant Bharti. On 12th May, District Judge passed an order that the wife and daughter of the lunatic should be allowed to be with him. On 17th May, Bahadur Gir made another application that he should also be allowed to live in the house as the wife and daughter were very young and could not live with the lunatic unless there was somebody to look after them. On 28th May, Anant Bharti put in a written statement that he had not ejected the woman who was called the wife of Raghbuana Puri but that Bahadur Gir had himself removed her and Raghubans Puri's daughter. He stated that he was willing that the daughter and the woman should live as they had been living up to the time when he had taken possession of the property in his capacity as manager. He also said that the woman who was called the wife of Reghubans Puri was not, as far as he knew, his wedded wife. On 14th July the District Judge passed another order in which he pointed out that Anant Bharti had been appointed manager of the lunatic's estate but not of his person and that there was no manager of the lunatic's person as far as he knew. He also mentioned that it had not been established that the lunatic was incapable of looking after himself. He directed that the wife and daughter should continue to live in the house and that Anant Bharti should place all the valuables in safe custody and leave the ordinary utensils and clothes for the use of the lunatic and his family. On the same date, presumably before orders were passed, Anant Bharti had filed an application and an affidavit. He stated that Bahadur Gir had removed a girl and a woman from the house and that he himself had not ejected any one. He also alleged that the woman who was called the wife of Raghubans Puri was not his wife but was, on the other hand, a relation of Bahadur Gir's and had been set up in May 1920 as Raghubans Puri's wife at the time when the application for obtaining a certificate of guardianship was pending. There were certain further proceedings in the course of which Bahadur Gir filed accounts to show what he had done with Raghubans Puri's money while he was in charge of the estate between the date of Nand Gir's death and the date when Anant Bharti took possession.

6. On 16th December 1921 Anant Bharti reported to the Court that Bahadur Gir had brought Raghubans Puri with his daughter and Mt. Kaura, who was called his wife, to Hardwar and that Raghubans Puri had begun to live in his house. On 2nd

March 1922 Bahadur Gir made an application that he no longer wished to be appointed Raghubans Puri's guardian as it would not be possible for him to continue living permanently in Hardwar, but on the same date he asked that Anant Bharti should be directed to pay him a sum of Rs. 200 a month to enable him to maintain the lunatic and his wife and daughter. The District Judge made an order for the payment of a sum of Rs. 180 a month on 28th April 1922. On 10th February 1923 the District Judge looked into the account presented by Bahadur Gir and passed them. Anant Bharti had at one time raised certain objections to items in the accounts, but he afterwards failed to put in an appearance. On 4th April 1924 the District Judge directed that the sums spent by Bahadur Gir in excess of the income should be paid to him. Anant Bharti again raised no objection. In 1925, the District Judge made a suggestion to the Collector that the estate should be taken over by the Court of Wards upon the ground that the income was Rs. 20,000 a year and that he himself was not in a position properly to supervise the management of the estate, but Bahadur Gir and Mt. Bel Devi put in an application praising the management of Anant Bharti and suggesting that management by the Court of Wards would be unduly expensive and it appears that the proposal was at that time dropped.

7. On 15th August 1927 Mt. Indra Devi, who had been married in 1924, put in an application accusing Anant Bharti and Bahadur Gir of mismanagement and misappropriation and asking that the allowance of Rs. 180 per mensem should be paid to her instead of being paid to the latter. She followed this up with an application dated 15th September 1927 in which she said that a woman called Mt. Kaura at the instigation of the guardian was falsely setting herself up as Raghubans Puri's wife. On 7th November 1927 Bahadur Gir put in an objection against Mt. Indra Devi's first application which was, it appears, ultimately rejected. In April 1929, Mt. Indra Devi applied to the Court for an allowance of Rs. 150 a month out of the estate and on 7th May, she was allowed an allowance of Rs. 100 a month. In 1931, the question of taking the estate under the management of the Court of Wards was again raised but in 1932 Raghubans Puri died. On 9th March 1933 Mt. Kaura Devi informed the District Judge that Anant Bharti had delivered the property to her as she was the widow of the deceased and on 1st April in reply to a notice from the Court Anant Bharti confirmed the statement. He said that he

had not at first attended the marriage but had been apprised of the facts later and had further relied upon the continuous recognition of Mt. Kaura Devi's claims by the Court and by the relations and friends of the family and the members of the brotherhood. Mt. Indra Devi protested against the delivery of the property to Mt. Kaura Devi and after certain proceedings in the Court of the District Judge and in this Court the property was put into the possession of a receiver. It was in these circumstances that Mt. Indra Devi instituted the suit which has given rise to this appeal.

8. As Raghubans Puri's mental and physical state must be taken into consideration in deciding both the question whether the marriage took place and the question whether it was valid, it will be convenient to discuss it before proceeding further. I have already described the medical evidence which was given in 1918 and 1920 and it seems to me that that evidence must be the basis of our conclusions. The doctors themselves are no longer available and though there is oral evidence on both sides it is of no real assistance. The defendant's witnesses suggest that Raghubans Puri was perfectly sane and that is a suggestion which seems to be absurd when one considers the medical evidence, the Judge orders and the conduct of all concerned. The plaintiff produced a number of witnesses. One of these, Ram Chander Vaid, is a physician practising medicine according to Ayurvedic principles, but it is improbable that he has any knowledge or experience of lunacy and he has not claimed to have any. He had treated Raghubans Puri at one time for syphilis, but he was not treating him in 1920. His evidence is that he attended to Mt. Janki during her last illness and that Raghubans Puri had at that time become quite in-sane and did not even understand that the witness was attending to his wife. The evidence is not that of an expert who had Raghubans Puri under observation and it is not sufficiently definite or detailed to be of much value. This witness also supported Mt. Indra Devi in her contention that there was no marriage at all because he stated that no marriage party went to any place from the Datwali Haveli where Raghubans Puri lived and that he had never seen Kaura Devi in the house up to the year 1930. It is not likely that he could really have had any confidence 14 years after the event when he was giving evidence that there had been no marriage party and in view of the other evidence it is extremely improbable that Mt. Kaura Devi had not been

living in the house. The witness appears to be biased and I would not place any reliance upon him.

9. The learned Judge has mentioned the large number of other witnesses produced by the plaintiff and I do not think it is necessary for me to discuss their evidence in detail. They are all laymen whose opinion is of no great value and their statements appear to be exaggerated. They say that Raghubans Puri was quite unable to recognise anybody or understand anything that was taking place around him, but they are contradicted by the expert evidence given at the time and they also have supported Mt. Indra Devi upon other points upon which their evidence seems to be unreliable. In so far as they say that Raghubans Puri was insane their statements are doubtless true, in so far as ordinary people understand insanity, although there is reason to suspect that some of them at least were not likely to have any knowledge of the matter. That point, however, is not of any great importance because it is clear that the statements can carry no weight where they are inconsistent with the evidence of the medical witnesses. From that evidence it certainly appears that Raghubans Puri was very far from being normal and that he could not be relied upon to make valid judgments or to enter into contracts or dispose of his property, but it does not appear that he was in such a state that he could not understand generally what was taking place. He obviously made an attempt to walk with closed eyes at the instance of Major Hogan and he must have understood what he was required to do. He remembered his deceased wife and understood in some measure his relations with his daughter. He refused to give up the keys of his rooms in the absence of his agent and must have recognised that he was to be deprived of his property. The learned Judge has found that he was 'perfectly lunatic' and that he could not understand even the simple ceremonies of marriage, but it seems to me that the evidence does not justify this finding. The medical evidence is that the disease from which he was suffering is progressive and it is to be noticed that he did not die till twelve years after the alleged marriage. No doubt he was childish and his ideas and emotions were exaggerated, but in my judgment there is no reason for thinking that he could not have understood that he was being married and that the ceremonies in connection with the marriage were taking place.

10. That being his mental state we have now to consider what the effect of it would be upon the validity of a marriage if it was in fact performed. The learned Judge has mentioned the case in *Mouji Lal v. Chandrabati Kumari* ('11) 38 Cal. 700 and has stated that their Lordships of the Privy Council have laid down a rule that the marriage of a man in Hindu law would be invalid if on account of lunacy he could not understand the marriage and the marriage ceremonies. Their Lordships of the Privy Council did not lay down any such rule. They did not consider the question whether unsoundness of mind could in any circumstance invalidate a Hindu marriage. Acting on the hypothesis that it might, they pointed out that the degree of unsoundness would always have to be considered and, in the particular case before them, the man whose marriage was in question was not so insane that he could not understand the ceremonies of the marriage and therefore that particular marriage was not invalid. This Court has recently followed that ruling in *Bhagwati Saran Singh v. Permashwari Nandan Singh* ('42) 29 A.I.R. 1942 All. 267 I.C. 227. The Madras High Court has gone further in *Amirthammal v. Vallimayil Ammal* ('42) 29 A.I.R. 1942 Mad. 693. I do not think it is necessary to discuss the law upon this question at any length in view of these decisions. I do not consider that there is any ground for believing that Raghubans Puri could not understand that he was being married or the nature of the ceremonies and I would, therefore, hold that his marriage was valid provided it took place. We now come to the question whether Raghubans Puri and Mt. Kaura went through a form of marriage. (After considering the evidence his Lordship proceeded.). In discussing the oral evidence, the learned Judge has relied very much upon a number of discrepancies which appear in the statements of the various witnesses, but these discrepancies are upon minor points and it is not fair, in my judgment, to rely upon them when the witnesses were giving evidence fourteen years after the marriage. (His Lordship again considered the evidence and proceeded.) In all the circumstances of this case I am satisfied that a marriage must have taken place and that the evidence of the witnesses at least from the hills must be accepted.

11. There remains the question whether there could be a valid marriage between Raghubans Puri and Mt. Kaura, the former being a Goshain and the latter a Rajput by caste. The allegation made by the defence is that Mt. Kaura was initiated as a Goshain a few days before the marriage according to the usual practice. There is

evidence that the initiation took place. If this was a mere form there is no reason why it should have been omitted. The main argument for the plaintiff is that a Goshain man can contract a valid marriage only with a born Goshain woman, These Goshains were originally members of ten orders of ascetics who neither married nor owned property and who devoted themselves to the study of religion. In course of time they have become to all intents and purposes Hindu castes and have divided themselves into two main groups, namely, Nehangs who do not marry and Girhasths or gharbaris who do marry. Many members of both groups own property. Nobody can enter an ordinary Hindu caste unless he is born into it, but this rule cannot apply at least to Nehang Goshains and entry into their caste is by initiation. There was a question raised whether the custom of initiation prevailed amongst Girhasth Goshains, but there seems to be no reason why it should not. Crooke in his 'Tribes and Castes,' (vol. II, p. 260) says that a man from any caste can become a Sanyasi but they are mostly Brahmins and Kshattriyas. A Sanyasi includes a Goshain. Sherring in his 'Hindu Tribes and Castes,' vol. I, pp. 255 and 257 says that a man may become a Goshain by initiation and is then cut off from his caste. In Steele's Law and Custom of Hindoo Castes (1868 Edn.) as quoted by the learned Judge it is stated that the customs of Girhasth Goshains differ from those of Nehang Goshains only in the matter of marriage. Raghubans Puri himself obviously became a Goshain by initiation. The learned Judge has found that he was born a Goshain, but the reasons for his conclusion are not satisfactory. It is true that his father was called Suraj or Surya Gir, Gir being one of the orders of the Goshains, but this does not establish that he himself was born a Goshain. (His Lordship considered the evidence and proceeded.) It seems to me to be sufficiently established that Raghubans Puri was born a Rajput and consequently the fact of his own initiation which was never questioned shows that Rajputs can become Girhasth Goshains.

12. The main question is whether a man who has become a Girhasth Goshain can marry a woman of another caste who has herself been initiated. The learned Judge's argument is that the ordinary rule of Hindu law is that there can be no valid marriage except between a man and a woman of the same caste and that the custom alleged by the defence required very rigid proof. It seems to me, however, that it would, on the other hand, require very good evidence to establish

the invalidity of any class of marriages if they were very generally contracted. It must be remembered that these Goshains in their origin were celibates and when a certain class of them began to marry, there must at least have been a stage where they married women of other castes because there were no legitimate female children of their own caste whom they could marry and if it is now the rule that a Girhasth Goshain can contract a valid marriage only with a born Goshain woman that rule must have come into existence by custom in the course of time and it must be variation from the original rule which prevailed. The appendix to Mr. Steele's book was compiled as a result of inquiries made by another officer from a number of Goshains in the southern Mahratta country. The learned Judge has quoted extracts from this appendix in which it is said that a Goswami (that is a Goshain) is not permitted to marry other than a Goswami, but if he does so, his marriage is not annulled but his wife is not acknowledged as a Goswami. This seems to suggest that a marriage between a Goswami and a woman of another caste is valid although it is not approved. It is also said that a female of any Hindu caste who is initiated as a disciple is not allowed to marry. It seems to me not improbable that the Goshains or Goswamis who stated the customs of their caste in 1868 or thereabout were stating the customs which they approved rather than those which were in actual existence. It may be that they thought that the initiation of girls with a view to marriage was not quite a respectable practice and I should hesitate to say on the authority of these statements that there was a universal custom and that no Goshain could marry a girl who had been initiated into his caste. The defendant has produced the evidence of a large number of people in support of her allegation that it is quite usual for a girl to be initiated and to be married soon after to a Goshain. There is evidence produced by the plaintiff on the other side but the defendant has produced witnesses to prove a large number of concrete instances. As the learned Judge says, there are four instances from Poona, three from Chhapra in Bihar, four from Ajmer-Merwara, four from Naini Tal, one from Ambala. two from Hisar, one from Delhi, one from Muzaffarnagar, eight from Meerut, four from Roorkee, eleven from Gola Gokaran Nath and seventeen from Hardwar.

13. The learned Judge then proceeds to discuss the evidence and comes to the conclusion that it is unreliable. There is a witness called Narain Giri who says that

he is the Secretary of the Goswami Poona Mandal, that is, some association of Goswamis at Poona. This witness stated that two Giris whom he knew had married two women called Yamna Bai and Saraswati Bai who were a Brahmin and a Kshatriya respectively by caste. The learned Judge disbelieved the witness because he did not know the names of the fathers of the two women and because he could not trace their families. The Judge said that the two men, Mahadeo Giri and Chaman Giri and the woman Yamna Bai were alive and that they had not been produced. He then criticised the witness because he had travelled all the way from Poona to Saharanpur to give evidence for the defendant whom he did not even know from before. It appears that the witness received a letter from Mt. Kaura asking him to give evidence about the custom. The learned Judge thought that the witness was unreliable but there seems to be no sufficient reason for this conclusion. The facts suggest that there may be two sections of opinion among the Goswamis or Goshains one of which wishes to make the caste more-self-contained or pure and the other which approves of introducing people of other castes. The witness is apparently an officer of some Goswami association and he was doubtless interested in the result of a case which might affect the validity of a large number of Goshain marriages. That would be sufficient inducement for him to go from Poona to Saharanpur to give evidence in the case and I do not think there is any reason to disbelieve him. He might very well know of two marriages and yet not know the names of the girls' fathers or have any particular knowledge of their families. On the other hand the people who were married might not be willing to incur the trouble and expense of journeying along. Mt. Kaura might well know the name of an officer of a particular Goswami association, but it is not likely that she would know or be able to trace persons who had themselves contracted marriages. It seems to me unnecessary to discuss the evidence of all the witnesses one by one. The criticisms made by the Judge are largely of the same nature and the same considerations apply to them as apply to the arguments about Narain Giri.

14. About the witnesses from Gola Gokaran Nath, the learned Judge argues that they prove only that there have been Karao marriages between Goshains and women of other castes and he considers the evidence irrelevant because it does not apply to marriages in the ordinary form. A Karao marriage, however, is a

perfectly valid marriage and there seems to be no reason why a marriage in the more regular form should be invalid if there is a custom of marrying by the Karao form. We have been taken through the evidence and I am satisfied that it is a very general custom among Goshains to marry women of other castes after initiation and that these marriages are always treated as valid. The best argument to my mind is that Raghubans Puri's two sisters married Goshains. The learned Judge having held that these women were Goshains by birth has regarded this evidence as of little value, but I have already given my reasons for thinking that the women were born Rajputs. One of them was the mother of Anant Bharti and nobody has ever suggested that Anant Bharti is not the legitimate son of his father. It would be no light matter to lay down a principle which would invalidate a large number of marriages which in fact have taken place and would bastardise the children of those marriages. Even the quotation from Steel's work suggests that a marriage of a Girhasth Goshain with a woman of another caste is perfectly valid although it may not be approved. I am satisfied that there is no reason for holding that the marriage of Mt. Kaura and Raghubans Puri was invalid because the latter was a Goshain and the former was born a Rajput and was initiated as a Goshain only a few days before her marriage.

15. I have mentioned that one of the properties in suit is the village of Kharkhari. It was suggested by the appellant that the plaintiff could not get a declaration about this village because it was held by Raghubans Puri as a trustee. The learned Judge of the Court below came to the conclusion that it was not necessary to decide the question whether the village was the personal property of Raghubans Puri and I think he was right because both parties apparently assumed that Raghubans Puri's successor-in-interest would be entitled to possession as a trustee even if the village was trust property. I may add that the question does not arise if the suit is to be dismissed. In these circumstances I would hold that the appeal should succeed and that the suit by Mt. Indra Devi should be dismissed with costs in both Courts.

Hamilton, J.

16. I agree and have nothing to add.

17. We allow this appeal and dismiss the suit with costs in both Courts.

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