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**SooperKanoon Citation** : sooperkanoon.com/475847

**Court** : Allahabad

**Decided On :** May-19-1916

**Reported in** : AIR1916All225; 34Ind.Cas.502

**Judge** : Henry Richards, C.J. and ;Sunder Lal, J.

**Appellant** : Ganga Ram and ors.

**Respondent** : Mahant Ram Saran Alias Risbiji

**Judgement** :

1. This suit relates to a religious institution which has been described as the samad of Babu Lal Chand. The plaintiff's case is that the defendant Nanak Saran was at one time the mahant of this samad, that by reason of certain acts of which he has been guilty he has forfeited the position of mahant and that the plaintiff has been appointed mahant of the gaddi. The claim does not describe how the plaintiff was appointed and who appointed him, but it goes on to say that the defendant Nanak Saran has, without legal rights, granted a lease of the property to the defendant Ganga Ram for a term of 24 years. The plaintiff sues for possession of the property and for an injunction. The suit was dismissed by the Court of first instance. In the first place the Court held that it was a suit under Section 92 of the Code of Civil Procedure. It also held that as the plaintiff was not in possession of the property in suit, he was not entitled to bring a declaratory suit. The learned Judge in appeal has reversed the decision of the Court below and remanded the case for trial under Order XLI, Rule 23. In the case of a math like this, according to

the ruling of the Privy Council in the case of Genda Puri v. Chatar Puri 9 A. 1 : 13 I.A. 100 : 4 Sar. P.C.J. 726, the succession to a gaddi is governed by the custom and rules of the section to which the math belongs, which the plaintiff has to prove in each case unless the custom is admitted. The first point for decision by the Courts below was whether the plaintiff was really appointed by a duly constituted body a mahant of this institution. The next point for decision of the appeal was whether Nanak Saran had ceased to be a mahant and whether he had authority to grant a lease. The authority of mahants according to the Privy Council is like that of guardians in charge of minors' property. They can do all acts which are for the benefit of the institution and the Court would have to try whether the lease was one beneficial to the math itself. These are points which will arise for decision in the Court of first instance. The suit is clearly not barred by Section 92 of the Code of Civil Procedure. It is one for a declaration and if the plaintiff is a duly constituted mahant, as he alleges himself to be in the plaint, he would be entitled to the declaration sought for by his suit. We think the order of remand was correct, but it ought to have been an order on more general terms, directing the Court below to dispose of all issues arising in the case. We modify the order of remand by directing the Court of first instance to frame the proper issues in the case and try the case de novo and dispose of it according to law. Subject to the above observations, the order of remand stands. Costs here and hitherto will abide the result, which in this Court will include fees on the higher scale on behalf of the respondents.

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