



11 June 2014

PRESS SUMMARY

Shergill and others (Appellants) v Khaira and others (Respondents) [2014] UKSC 33
On appeal from [2012] EWCA Civ 983

JUSTICES: Lord Neuberger (President), Lord Mance, Lord Clarke, Lord Sumption, Lord Hodge

BACKGROUND TO THE APPEALS

This appeal relates to disputes which have arisen within a Sikh sect associated with three Gurdwaras (Sikh temples) in Bradford, Birmingham and High Wycombe. It raises two questions concerning the trusts on which the Gurdwaras are held. The questions are (i) the extent to which it is open to trustees to alter, or restrict, the terms of the trusts upon which they hold property, and (ii) the extent to which the court can and should refuse to determine issues of religion or religious belief in legal proceedings.

In April 1987, fourteen men attended a meeting at which they decided to establish a Gurdwara under the guardianship of His Holiness Brahamgiani, revered 108 Sant Maharaj Baba Gian Sing Ji of Nirmal Kitia Johal. His Holiness was the then holder of the office of Holy Saint (“the First Holy Saint”), the religious head of the abode of saints at Nirmal Kutia in the Indian village of Johal. The next month a further meeting decided that this Gurdwara, which was to be ‘similar to’ a Gurdwara which had been acquired in Bradford in 1982, be established under the Supreme Authority of the First Holy Saint.

In September 1987 the First Holy Saint approved a property at Oldbury, Birmingham (“the Birmingham Gurdwara”), which was purchased with a combination of donations from devotees and loans. The First Holy Saint gave the responsibility of managing the Birmingham Gurdwara to the first, second and third respondents (“the original trustees”), to whom the Birmingham Gurdwara was then transferred.

In January 1991 the original trustees executed a Deed of Trust (“the 1991 Deed”), in which they declared themselves to be the trustees of a religious organisation preaching and practicing the Sikh faith and following the teachings of the First Holy Saint (“the Society”). Clause 5 of the 1991 Deed (“clause 5”) empowered ‘the Saint or his successor’ to remove the Birmingham trustees and appoint new trustees. A month later the constitution of the Society was signed, Clause 10 of which stated that only the First Holy Saint or his successor could make changes to the Society’s management committee.

In September 1993, a property was acquired at High Wycombe (“the Wycombe Gurdwara”) and transferred to the sixth and eight appellants and the first and sixth respondents, who were declared to hold the property in accordance with the Society’s constitution.

In November 2001, the First Holy Saint died and was succeeded by Sant Harbhajan Ji, who died a few months later in March 2002. In July 2003, at a joint meeting of the management committees of the three Gurdwaras, Sant Jeet Singh was recognised as the Third Holy Saint.

Following the respondents’ refusal to execute a new trust deed, Sant Jeet Singh purported to remove them as trustees and replace them with the second-eighth appellants. The appellants issued proceedings in the High Court seeking various heads of relief, including removal of the first, second, third and fourth respondents as Birmingham trustees and the removal of the fifth and sixth respondents as Wycombe trustees. The respondents sought to strike out the claim on the ground that it was unjudicial. Judge Cooke dismissed the application, but the Court of Appeal allowed the respondents’ appeal, holding that the issue turned on religious beliefs which were not justiciable by the English courts. The appellants now appeal to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal. The judgment is given by Lord Neuberger, Lord Sumption and Lord Hodge, with whom Lord Mance and Lord Clarke agree. The issues should all go to trial. Depending on the facts,

the powers of the respondents as trustees may have extended to agreeing a provision such as clause 5, and in any event they may not be entitled to challenge its validity. Further, while courts do not adjudicate on the truths of religious beliefs, the courts have jurisdiction to determine disputes over the ownership, possession and control of property held on trusts for religious purposes.

REASONS FOR THE JUDGMENT

During argument four issues emerged as likely to be in dispute:

- 1) Whether, as the appellants contend, clause 5 is valid insofar as it accords the power to appoint and dismiss trustees on persons other than the First Holy Saint;
- 2) If the appellants are right on the first issue, whether the reference to the ‘successor’ of the First Holy Saint in clause 5 is to be read as limited to Sant Harbhajan Ji, the immediate successor to the First Holy Saint, or whether it extended to subsequent successors;
- 3) If the appellants are right on the first and second issues, whether Sant Jeet Singh is indeed successor to the First Holy Saint; and
- 4) Whether Sant Jeet Singh has departed from the tenets of mainstream Sikhism and is on character grounds unfit to be the successor [19].

The first issue: was clause 5 of the 1991 Deed invalid?

In *Attorney-General v Mathieson* [1907] 2 Ch 383, the Court of Appeal held that where a charitable trust is initially created by donors in general or vague terms, it is open to the trustee to execute a more specific deed which limits the terms of the trust, provided it does not conflict with the terms on which the donors made their donations [26]. Where the principle in *Mathieson* applies, it would appear that trustees must have the power to include new provisions in the trust deed which they would not normally have the power to impose in the case of a fully constituted trust [33].

It is at least arguable that, where the terms of a trust are so sparse that the trustees have implied authority on behalf of the donors to declare the trusts to which the sums contributed are to be subject, that authority extends to including a provision such as clause 5. It would not be right to resolve this issue at an interlocutory stage for a number of reasons, including the fact that the issue has not been fully pleaded, the parties’ arguments have changed as the proceedings progressed, the various points have not been fully considered in the courts below, and the resolution of this issue is very likely to be fact-sensitive [33-34].

The second issue: the meaning of “successor”

On the face of the 1991 Deed, it appears that, as a matter of language, “his successor” could be limited to the immediate next Holy Saint, or could extend to each successive Holy Saint. It would not be right to resolve this second issue at this interlocutory stage for much the same reasons given in relation to the first issue [36].

The third and fourth issues: non-justiciability generally

The term non-justiciability refers to a case where an issue is inherently unsuitable for judicial determination by reason only of its subject-matter. Such cases generally fall into one of two categories. The first category comprises cases where the issue in question is beyond the constitutional competence assigned to the courts. Once the forbidden area is identified, the court may not adjudicate on the matters within it, even if it is necessary to do so in order to decide some other issue which is itself justiciable. A paradigm case is the non-justiciability of proceedings in Parliament [41-42]. The second category comprises cases based neither on private legal rights or obligations, nor on reviewable matters of public law. These issues are non-justiciable if the court were asked to decide them in the abstract; however, such issues must nevertheless be resolved if their resolution is necessary in order to decide some other issue which is in itself justiciable [43].

The third and fourth issues: religious doctrine

The courts do not normally adjudicate on the truths of religious beliefs or on the validity of particular rites. But where a claimant asks the court to enforce private rights and obligations which depend on religious issues, the judge may have to determine such religious issues as are capable of objective assessment [45]. The courts have jurisdiction to determine dispute over the ownership, possession and control of property held on trusts for religious purposes. Where people set up a trust to govern the purposes for which property is to be acquired and held, they are performing a juridical act which creates interests that the civil law will protect [49].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://www.supremecourt.uk/decided-cases/index.shtml>