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The result is that the appeal succeeds and is allowed with costs, the judgment and order of the High Court dated October 5, 1953, are set aside and the petition of Srimati Charusila Dasi must stand dismissed with costs.

Appeal allowed.

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April 15.

THE STATE OF BIHAR & OTHERS

v.

BHABAPRITANANDA OJHA

(S. R. DAS, C. J., S. K. DAS, P. B. GAJENDRAGADKAR, K. N. WANCHOO and M. HIDAYATULLAH, JJ.)

Hindu Religious Trusts—Constitutional validity of Bihar Hindu Religious Trusts Act—Trust properties situate outside Bihar —Legislative competence—Scheme framed for Trust by Calcutta High Court—Applicability of Act to such Trust—Bihar Hindu Religious Trusts Act, 1950 (Bihar 1 of 1951), ss. 3, 4(5), 28, 29— Code of Civil Procedure, 1908 (Act 5 of 1908), s. 92—Constitution of India, Arts. 14, 19(1)(f), 25, 26, 27.

In respect of an ancient temple situate in the State of Bihar, disputes arose in 1897 between the high priest and the "pandas" regarding the control of the temple which ultimately led to a suit being filed under s. 539 (now s. 92) of the Code of Civil Procedure, in the Court of the District Judge of Burdwan and a decree was passed by the Additional District Judge, under which a scheme was framed for the proper management of the temple. The decree was confirmed by the Calcutta High Court and the scheme itself was later modified from time to time by the said High Court. After the coming into force of the Bihar Hindu Religious Trusts Act, 1950, the President of the Bihar State Board of Religious Trusts, acting under s. 59 of the Act, served a notice on the respondent, who had been appointed Sardar Panda for the temple under the scheme, asking him to furnish a statement in respect of the temple and the properties appertaining thereto. The respondent made an application under Art. 226 of the Constitution to the High Court of Patna challenging the validity of the action taken against him on the grounds (1) that the Bihar

Hindu Religious Trusts Act, 1950, was *ultra vires* the Bihar Legislature, (2) that the Bihar Legislature did not have legislative competence to deal with the temple in question as some of the properties appertaining to the temple were situate outside Bihar, and (3) that, in any case, the Act did not apply to the temple by reason of the fact that the temple and its properties were administered under a scheme made by the Court of the District Judge of Burdwan and approved by the Calcutta High Court both of which were situate outside the territorial limits of Bihar, as otherwise the Act by some of its provisions would seek to interfere with the jurisdiction of courts which are outside Bihar and thereby get extra-territorial operation.

Held: (1) that the Bihar Hindu Religious Trusts Act, 1950, is *intra vires* the Bihar State Legislature;

Mahant Moti Das v. *S. P. Sahi*, [1959] Supp. 2 S.C.R. 563 followed.

(2) that it is competent to the Bihar Legislature to legislate in respect of religious trusts situate in Bihar though some of the properties belonging to the trust may be outside Bihar;

State of Bihar v. *Charusila Dasi*, [1959] Supp. 2 S.C.R. 601 followed.

(3) that the provision of law in sub-s. (5) of s. 4 of the Act by which s. 92 of the Code of Civil Procedure shall not apply to any religious trust in the State of Bihar, is valid; and

(4) that as under s. 4(5) of the Act religious trusts in Bihar are taken out of the purview of s. 92 of the Code of Civil Procedure, the jurisdiction of the District Judge of Burdwan or the Calcutta High Court to deal with the temple in question under s. 92 comes to an end; consequently the Act and its several provisions do not suffer from the vice of extra-territoriality and the Act applies to the temple in question and the properties appertaining thereto.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 236 of 1954.

Appeal from the judgment and order dated October 9, 1953, of the Patna High Court in Misc. Judicial Case No. 181 of 1953.

Mahabir Prasad, Advocate-General for the State of Bihar, Bhagwat Prasad and *S. P. Varma*, for the appellants.

P. R. Das, A. C. Roy and *R. R. Biswas*, for the respondent.

1959. April 15. The Judgment of the Court was delivered by

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S. K. DAS, J.—This is an appeal from the judgment and order of the High Court of Patna dated October 9, 1953, in Miscellaneous Judicial Case No. 181 of 1953 of that Court. It relates to a temple commonly known as the Baidyanath temple situate in the town of Deoghar within the limits of Santal Parganas in the State of Bihar.

For the purposes of this appeal it will be necessary to refer to some earlier litigation about this temple. The history of this temple, it is not disputed, goes back to remote antiquity. According to Hindu tradition referred to in the Siva Purana and Padma Purana, extracts from which, with translations, are given by Dr. Rajendra Lal Mitra in his paper on the Temples of Deoghar (see Journal of the Asiatic Society of Bengal, Part 1, 1883, quoted in the Bihar District Gazetteer relating to Santal Parganas, 1938 edition, pp. 373-376), the origin of the temple is traced to the Treta Yuga, which was the second age of the world by Hindu mythology. Side by side with Hindu tradition, there is a Santal tradition of the origin of the temple given by Sir William Hunter (see the Annals of Rural Bengal, p. 191 ; Satistical Account of Bengal, Vol. XIV, p. 323). But these materials afford no evidence as to when and by whom the idol was established or the temple was built.

The temple sheltering the " lingam " and dedicated to Mahadeva stands in a stone-paved quadrangular courtyard. The courtyard contains eleven other temples, smaller in size and of less importance than that of Baidyanath. Pilgrims visit the temples in large numbers and make offerings of flowers and money in silver or gold ; rich people offer horses, cattle, palanquins, gold ornaments and other valuables and sometimes, rent-free land in support of the daily worship. There is a high or chief priest (Sardar Panda) who it appears used to pay a fixed rent to the Rajas of Birbhum during the Muhammadan regime, and the administration of the temple was then left entirely in the hands of the high priest. It may be here stated that about 300 families of " pandas ", who belong to a branch of Maithil Brahmins, were attached to the

temple and earned their livelihood by assisting pilgrims in performing the various ceremonies connected with the worship of the God. When the British rule began, it was decided to take over the management of the temple, and with this object an establishment of priests, collectors and watchmen was organised in 1787 at Government expense. The revenue soon fell off, as the chief priest beset the avenues to the temples with emissaries, who induced the pilgrims to make their offerings before approaching the shrine. (See the District Gazetteer, ibid, p. 383). In 1791 Government relinquished its claim to a share of the offerings and entrusted the management of the temple to the head priest on his executing an agreement to keep the temples in repair and to perform all the usual ceremonies. This agreement was entered into by Ram Dutt (the ancestor of the present respondent), then high priest of the temple and Mr. Keating who was then Collector of the district. According to Mr. Keating the income of the temple in 1791 consisted of the offerings of the proceeds of 32 villages and 108 bighas of land which he estimated at Rs. 2,000 a year; some years later the total income was estimated at Rs. 25,000 a year. Under the system introduced by the agreement of 1791, the mismanagement of the temple was a source of constant complaint; the temple and "ghats" were frequently out of repair and the high priest was charged with alienating villages from the temple and treating his situation as a means of enriching himself and his family. On the death of the high priest in 1820 a dispute over the succession arose between an uncle and a nephew. The nephew Nityanand was eventually appointed, but neglected to carry out the terms of his appointment. Finally, Nityanand was charged with malversation of the funds and the uncle Sarbanand was appointed in his stead in 1823. There was a faction which was opposed to Sarbanand's retention in office and asked for Government interference in the internal management of the temple. In 1835 Government declined all interference in the matter and the parties were left to have recourse to the established courts of law. Sarbanand

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died in 1837 and Iswaranund Ojha, son of Sarbanand Ojha, was subsequently elected Sardar Panda. Iswaranund was succeeded by his grand-son, Sailajanund Ojha.

There were, however, frequent disputes between the high priest and the "pandas" regarding the control of the temple and in 1897 a suit was filed under s. 539 (now s. 92) of the Code of Civil Procedure in the Court of the District Judge of Burdwan. This was Suit No. 18 of 1897 which was decided by the learned Additional District Judge of Burdwan by his judgment dated July 4, 1901. Sailajanund Ojha was dismissed by the order of the court, as he by his conduct and behaviour and by causing loss to the Debutter properties rendered himself unfit and disqualified to hold the post of Sardar Panda and trustee of the temple of Baidyanath. It was further ordered by the learned Additional District Judge in the decree granted by him that some fit person be elected as Sardar Panda by the "pandas" of the temple and that the affairs of the temple be managed under a scheme which was framed by the learned Additional District Judge and formed a part of the decree. Under this scheme three persons were to be appointed to look after the temple and its properties and for a proper administration of the same. One of these three persons was to be elected from amongst the descendants of Ram Dutt Jha. After this Umeshanund Dutt Jha, second son of Iswaranund Ojha, was elected Sardar Panda. On the death of Umeshanund Dutt Jha, Bhabapritananda Ojha, who was the petitioner in the High Court and is now respondent before us, was appointed Sardar Panda. Bhabapritananda is the grand-son of Sailajanund Ojha, and we shall hereinafter refer to him as the respondent.

The scheme which was framed as a result of the decision in Civil Suit No. 18 of 1897 was confirmed by the Calcutta High Court and the decision of the High Court is reported in *Shailajananda Dut Jha* v. *Umeshanunda Dut Jha* (1). This scheme was modified in a subsequent litigation in 1909, when one of the members of the committee applied to the District Judge

(1) (1905) 2 C.L.J. 460.

for a modification of the scheme. The application was first dismissed, but the matter was taken to the Calcutta High Court, and on September 8, 1910, that Court on the authority of the decision of the Judicial Committee in *Prayag Doss* v. *Tirumala* (1) and with the consent of counsel on both sides, directed the insertion of two clauses in the decree; by one of these clauses, liberty was reserved to any person interested to apply to the District Court of Burdwan with reference to the carrying out of the directions of the scheme and by the other clause, liberty was reserved to any person interested to apply from time to time to the Calcutta High Court for any modification of the scheme that might appear necessary or convenient. Under these two clauses the members of the committee subsequently applied to the District Judge of Burdwan that certain directions might be given to the high priest; the high priest opposed the application on the ground that it was in essence an application for modification of the scheme and could be entertained only by the High Court. The learned District Judge overruled this objection. The matter was again taken to the Calcutta High Court and that Court directed (1) that the committee must prepare an annual budget of the income and expenditure; (2) that provision must be made for quarterly audit and annual inspection of the accounts; (3) that provision should be made for joint control of the temple funds after they have been realised; (4) that there must be no undue interference on the part of the committee with the high priest in the internal management of the temple; and (5) that no one who has any pecuniary interest in the temple properties or is a creditor of the endowment should serve on the committee. The High Court further directed that clauses embodying the aforesaid five directions should be inserted in the scheme. This decision of the High Court is reported in *Umeshananda Dutta Jha* v. *Sir Ravaneswar Prasad Singh* (2).

We now come to more recent events which gave rise to Miscellaneous Judicial Case No. 181 of 1953 in the

(1) (1906) I.L.R. 30 Mad. 138. (2) (1912) 17 C.W.N. 871.

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Patna High Court. The Bihar Hindu Religious Trusts Act, 1950 (Bihar I of 1951), hereinafter referred to as the Act, received the President's assent on February 21, 1951, and came into force on August 15, 1951. This Act established the Bihar State Board of Religious Trusts to discharge the functions assigned to the Board by the Act. Sometime in August 1952 the President of the Bihar State Board of Religious Trusts acting under s. 59 of the Act asked the respondent to furnish a statement in respect of the Baidyanath temple and the properties appertaining thereto. The respondent wrote back to say that the administration of the temple and its properties was in the hands of a committee constituted under a scheme made by the District Judge of Burdwan and approved by the Calcutta High Court, and these Courts being outside the jurisdiction of the Bihar Legislature, the Act did not apply to the temple and the respondent was not in a position to carry out the directions of the President of the Bihar State Board of Religious Trusts which might be in conflict with those of the Calcutta High Court. The Board, however, proceeded to assess and demand payment of Rs. 1,684-6-6 as fee payable by the respondent in respect of the Baidyanath temple to it under s. 70 of the Act. The respondent then made an application under Art. 226 of the Constitution to the High Court of Patna, which application gave rise to Miscellaneous Judicial Case No. 181 of 1953. On various grounds stated therein, the respondent contended that the Act was *ultra vires* the Bihar Legislature; he further contended that even if *intra vires*, the Act properly construed did not apply to the Baidyanath temple and the properties appertaining thereto by reason of the circumstance that the said temple and its properties were administered under a scheme made by the court of the District Judge of Burdwan and approved by the Calcutta High Court both of which are situate outside the territorial limits of Bihar.

The State of Bihar, the Bihar State Board of Religious Trusts and the President thereof, now appellants before us, contested the application. Relying on the

principles (1) that there should be as far as possible no conflict or clash of jurisdiction between two equally competent authorities and (2) that no intention to exceed its own jurisdiction can be imputed to the Bihar Legislature and of two possible constructions of the Act, the one that would make it *intra vires* should be preferred, the High Court came to the conclusion that the expression "religious trust" as defined in s. 2 (l) of the Act must be construed not in the plain and grammatical sense but must be cut down so as to exclude such religious trusts as are administered under a scheme made by a court situate outside the territorial limits of Bihar and, therefore, the Act did not apply to the Baidyanath temple and the President of the Bihar State Board of Religious Trusts constituted under the Act had no jurisdiction to take any proceedings against the respondent under the provisions of the Act. Accordingly, the High Court allowed the application of the respondent, quashed the proceedings taken against him by the Bihar State Board of Religious Trusts, and issued a writ prohibiting the said Board from taking any further proceedings against the respondent under any of the provisions of the Act.

The State of Bihar, the Bihar State Board of Religious Trusts and its President obtained a certificate under Art. 132 of the Constitution from the High Court and the present appeal has been filed by them in pursuance of that certificate. We shall hereinafter refer to them compendiously as the appellants.

We have had before us a number of appeals in which the validity of the Act has been challenged on several grounds and in some of these appeals, further questions were raised as to the application of the Act to private religious trusts and even to public trusts some properties of which are situate outside the State of Bihar. These appeals we put in four categories. They have been heard one after another, and though we are delivering judgment in each category separately, it has been made clear that the reasons for the decision on points which are common to all or some of the appeals need not be repeated in each judgment. In Civil Appeals Nos. 225, 226, 228, 229 and 248 of

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1955 (1), which fall in the first category, we have considered the questions if the Act is bad on the ground that its several provisions infringe the appellants' fundamental rights guaranteed under Art. 14, Art. 19 (1) (f), and/or Arts. 25, 26 and 27 of the Constitution, or on the ground that it imposes an unauthorised tax. We have given reasons for our conclusion that the Act is not bad on any of the aforesaid grounds. These reasons we do not wish to repeat here; they govern the present appeal also in so far as the Act is challenged on the self-same grounds. In Civil Appeal No. 343 of 1955 (2), which is in the second category, we have dealt at length with the definition clause of the expression "religious trust" in the context of other provisions of the Act, and have come to the conclusion that the Act does not apply to private trusts. In the appeal under consideration in this judgment the admitted position is that the Baidyanath temple is a public trust; so it was held in the earlier litigation to which we have already referred and the scheme was formulated on that footing in Suit No. 18 of 1897. In Civil Appeal No. 230 of 1955 (3), which is the third category, we have considered the question if the Act suffers from the vice of extra-territoriality by reason of the provisions in s. 3, which says that the Act shall apply to all religious trusts, whether created before or after the commencement of the Act, any part of the property of which is situate in the State of Bihar. We have held therein that two conditions must be fulfilled for the application of the Act—(a) the religious trust or institution itself must be in Bihar and (b) part of its property must be situated in the State of Bihar. Those two conditions are fulfilled in this case; the Baidyanath temple is in Bihar and it is admitted that the properties belonging to the temple lie mainly in Bihar though there are some properties in the districts of Burdwan, Murshidabad and Birbhum in the present State of West Bengal.

Now, we come to the points which have been

(1) *Mahant Moti Das* v. *S. P. Sahi*, see p. 563, *ante*.
(2) *Mahant Ram Saroop Dasji* v. *S. P. Sahi*, see p. 583, *ante*.
(3) *State of Bihar* v. *Charusila Dasi*, see p. 601, *ante*.

specially raised in this appeal, which is in the fourth or last category. On behalf of the appellants it has been very strongly contended that the High Court was in error in relying on the doctrine of comity of jurisdictions and cutting down the scope of the Act on such a doctrine. It has been submitted that the doctrine of comity of jurisdictions has no application to the facts of the present case and there is no possibility of any conflict or clash of jurisdiction between two equally competent authorities. It is pointed out that item 28 of the Concurrent List in the Seventh Schedule to the Constitution of India is "Charities and charitable institutions, charitable and religious endowments and religious institutions". It is argued that the Bihar Legislature has, therefore, full legislative competence to enact the statute in question, and it has been submitted that if the Act does not suffer from the vice of extra-territoriality, then it is good and all courts must obey it. Under s. 4(5) of the Act, s. 92 of the Code of Civil Procedure, 1908, has ceased to apply to any religious trust as defined in the Act; therefore, no action under s. 92, Code of Civil Procedure, can be taken, after the commencement of the Act, in respect of religious trusts in Bihar which are governed by the Act and there can be no question of any conflict of jurisdiction in respect of such trusts as between the Bihar State Board of Religious Trusts and a court in Bihar on one side and the courts outside the State of Bihar on the other. On these submissions, learned counsel for the appellants has argued that the real question for decision is if the Act or any of its provisions suffer from the vice of extra-territoriality and if that question is answered in favour of the appellants, then the High Court was in error in cutting down the scope and ambit of the Act by invoking the doctrine of comity of jurisdictions.

At this stage it is convenient to set out in brief the argument which Mr. P. R. Das, learned counsel for the respondent, has advanced in support of the judgment of the High Court. In one part of its judgment, the High Court has referred to the principle that every

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statute should be so interpreted and applied, in so far as its language admits, as not to be inconsistent with the comity of nations or with the established rules of international law, and has referred to certain decisions in support of that principle. Mr. P. R. Das has frankly conceded before us that no question of any inconsistency with the comity of nations or with the established rules of international law arises in the present case and he does not contend that the Act or any of its provisions violate any established rule of international law. Therefore, it is unnecessary to consider this part of the judgment of the High Court. Before us Mr. P. R. Das has developed his argument in the following way. He has first submitted that Suit No. 18 of 1897 which was instituted in the court of the District Judge of Burdwan in respect of the Baidyanath temple and its properties is still pending and the administration of the temple and its properties is being carried on by a committee appointed under a scheme made by the District Judge of Burdwan and later approved and modified by the Calcutta High Court; therefore, the District Judge of Burdwan and the Calcutta High Court are in full seizin of the trust and its properties, and the Bihar Legislature cannot take away or interfere with the jurisdiction of either the District Judge of Burdwan or the Calcutta High Court. In this connection he has referred to cl. 39 of the Letters Patent of the Patna High Court, particularly to item (a) of the first proviso thereto. That clause is in these terms:—

"And We do further ordain that the jurisdiction of the High Court of Judicature at Fort William in Bengal in any matter in which jurisdiction is by these presents given to the High Court of Judicature at Patna shall cease from the date of the publication of these presents, and that all proceedings pending in the former Court on that date in reference to any such matter shall be transferred to the latter Court:

Provided, first, that the High Court of Judicature at Fort William in Bengal shall continue to exercise jurisdiction—

(a) in all proceedings pending in that Court on

the date of the publication of these presents in which any decree or order, other than an order of an interlocutory nature, has been passed or made by that Court, or in which the validity of any such decree or order is directly in question; and

(b) in all proceedings (not being proceedings referred to in paragraph (a) of this clause) pending in that Court on the date of the publication of these presents under the 13th, 15th, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 32nd, 33rd, 34th or 35th clause of the Letters Patent bearing date at Westminster the Twenty-eighth day of December, in the year of Our Lord One thousand eight hundred and sixty-five, relating to that Court; and

(c) in all proceedings instituted in that Court, on or after the date of the publication of these presents, with reference to any decree or order passed or made by that Court:

Provided, secondly, that, if any question arises as to whether any case is covered by the first proviso to this clause, the matter shall be referred to the Chief Justice of the High Court of Judicature at Fort William in Bengal and his decision shall be final".

His argument is that the scheme made by the District Judge of Burdwan and later approved by the Calcutta High Court can be modified only by the Calcutta High Court and that High Court continues to exercise jurisdiction in respect of the scheme under item (a) of the first proviso to clause 39 referred to above, and cl. 41 of the Letters Patent does not empower the Bihar Legislature to amend any of the clauses of the Letters Patent. He has also submitted that on February 9, 1917, the Calcutta High Court decided that any application for enforcement of the scheme would lie to the District Judge of Burdwan and not to the Deputy Commissioner of Dumka. It may be stated here that Burdwan is in the State of West Bengal and Dumka in the State of Bihar. Mr. P. R. Das has contended that in so far as the provisions of the Act interfere with the jurisdiction of courts outside Bihar, they have extra-territorial operation and must be held to be bad

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on that ground; because under Art. 245 of the Constitution, the Bihar Legislature may make laws for the whole or any part of the State of Bihar, but it cannot make any law which will have extra-territorial operation. He has drawn our attention to the provisions of ss. 3, 4 (5) and 28 of the Act, and has laid particular emphasis on the provisions of s. 29 of the Act, which provisions, according to him, have extra-territorial operation.

Having set out in some detail the arguments which have been advanced before us on behalf of the appellants and the respondent, we proceed now to consider them on merits. We agree with learned counsel for the parties that no question arises in this case of any conflict or inconsistency with the doctrine of comity of nations or with any established rule of international law. The question which really arises for decision is if any of the provisions of the Act have extra-territorial operation. This question has two aspects. First, there is s. 3 which says *inter alia* that the Act shall apply to all religious trusts, any part of the property of which is situated in the State of Bihar. The argument is that the Bihar Legislature has no power to legislate about trust property which is outside the territorial limits of Bihar and s. 3 of the Act in so far as it seeks to operate on trust property outside Bihar makes the Act bad on the ground of extra-territorial operation. This part of the argument has been fully dealt with and rejected in the decision relating to the Charusila Trust, Civil Appeal No. 230 of 1955 (1). The second facet of the argument is what Mr. P. R. Das has specially emphasised before us in this appeal. His argument in substance is that the Act by some of its provisions seeks to interfere with the jurisdiction of courts which are outside Bihar, and this in effect is the vice of extra-territorial operation from which, according to him, the Act suffers.

We are unable to agree with him in this contention. Section 3 we have already referred to. Sub-section (5) of s. 4 states *inter alia* that s. 92 of the Code of Civil Procedure, 1908, shall not apply to any religious trust

(1) *State of Bihar* v. *Charusila Dasi*, see p. 601, *ante*.

in the State of Bihar as defined in the Act. We have considered the effect of this sub-section in the decision relating to the Charusila Trust (ibid) and have held that the Act applies when the trust itself, temple or deity or math, is situate in Bihar and also some of its property is in Bihar. We have pointed out therein that the trust being situated in Bihar, that State has legislative power over it and over its trustees and their servants or agents who must be in Bihar to administer the trust; therefore, there is really no question of the Act having extra-territorial operation. In our opinion, this reasoning is equally valid in respect of the argument of Mr. P. R. Das. If, as we have held, it is open to the Bihar Legislature to legislate in respect of relgious trusts situate in Bihar, then that Legislature can make a law which says, as in sub-s. (5) of s. 4 of the Act, that s. 92 of the Code of Civil Procedure shall not apply to any religious trust in the State of Bihar. If sub-s. (5) of s. 4 of the Act is valid as we hold it is, then no question really arises of interfering with the jurisdiction of the District Judge of Burdwan or of the Calcutta High Court in respect of the Baidyanath temple, inasmuch as those courts exercised that jurisdiction under s. 92, Code of Civil Procedure, which no longer applies to the Baidyanath temple and the properties appertaining thereto, after the commencement of the Act. It is true that the Act does put an end to the jurisdiction under s. 92, Code of Civil Procedure, of all courts with regard to religious trusts situate in Bihar, but that it does by taking these trusts out of the purview of s. 92. In other words, the Act does not take away the jurisdiction of any court outside Bihar but takes the religious trusts in Bihar out of the operation of s. 92 so that a court outside Bihar in exercise of its jurisdiction under s. 92 will decline to deal with a religious trust situate in Bihar just as it will decline to entertain a suit under that section regarding a private trust of religious or charitable nature. Civil Procedure, including all matters included in the Code of Civil Procedure at the commencement of the Constitution, is item 13 of the Concurrent List. It has not been disputed before us that it is open to the Bihar

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Legislature to amend the Code of Civil Procedure while legislating in respect of religious endowments and religious institutions in Bihar, and the President's assent having been received to the Act, the law made by the Bihar Legislature shall prevail in that State, under Art. 254(2) of the Constitution, in respect of all religious trusts situate in Bihar. In this view of the matter, it is unnecessary to consider the further questions if Suit No. 18 of 1897 is still pending, the proper scope and effect of cl. 39 of the Letters Patent of the Patna High Court, and which authority can amend the Letters Patent. Even if Suit No. 18 of 1897 is deemed to be still pending, though we do not so decide, any further action under the scheme in respect of the Baidyanath temple and its properties can be taken either by the District Judge of Burdwan or the Calcutta High Court only if the jurisdiction under s. 92, Civil Procedure Code, is still preserved in respect of it. If that jurisdiction has come to an end in respect of the Baidyanath temple and its properties, then no question of any conflict of jurisdiction between two equally competent authorities arises at all, apart altogether from the more debatable question as to whether the Bihar Legislature on one side and the courts in Bengal on the other can be said at all to be equally competent authorities in respect of a religious trust situate in Bihar. The question really boils down to this. Is the Act bad on the ground of extra-territorial operation, because it takes certain religious trusts situate in Bihar out of the purview of s. 92, Code of Civil Procedure ? If the answer to this question is in the negative, then all the hurdles created by the argument of Mr. P. R. Das must disappear ; because if the Act is good, it must be binding on all courts and no question of any conflict of jurisdiction can arise.

Learned counsel for the respondent has made a pointed reference to ss. 28 and 29 of the Act. Section 28 deals with the general powers and duties of the Board. We have examined these powers and duties in our decision in connected Civil Appeals Nos. 225, 226, 228, 229 and 248 of 1955 (1) and have held that

(1) *Mahant Moti Das* v. *S.P. Sahi*, see p. 563, *ante*.

there is nothing in these powers and duties which can be said to have extra-territorial operation. Our attention has been drawn to cl. (j) of s. 28 (2) which empowers the Board to sanction on the application of a trustee or any other person interested in the religious trust the conversion of any property of such trust into another property, if the Board is satisfied that such conversion is beneficial for the said trust. We have pointed out that these powers and duties are really for the fulfilment of the trust and they do not in any way contravene the rights of the trustees. Section 29 states :—

" 29(1). Where the supervision of a religious trust is vested in any committee or association appointed by the founder or by a competent Court or authority, such committee or association shall continue to function under the general superintendence and control of the Board, unless superseded by the Board under sub-section (2).

(2) The Board may supersede any committee or association referred to in sub-section (1) which in the opinion of the Board, is not discharging its functions satisfactorily and, if the Board does so, any decree or order of a Court or authority by which such committee or association was constituted shall be deemed to have been modified accordingly :

Provided that before making any order under this sub-section, the Board shall communicate to the committee or association concerned the grounds on which they propose to supersede it, fix a reasonable period for the committee or association to show cause against the proposal and consider its explanations and objections, if any.

(3) Such committee or association or any other person interested in the religious trust may, within thirty days of any order of the Board under sub-section (2), make an application to the District Judge for varying, modifying or setting aside such order, but, subject to the decision of the District Judge on any such application, the order of the Board shall be final and binding upon the applicant and every person interested in such trust.

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(4) Where such committee or association has been superseded under sub-section (2), the Board may make such arrangements as may be necessary for the administration of the religious trust concerned."

It has been argued that s. 29 in terms gives the Bihar State Board of Religious Trusts power to interfere with a committee appointed by the founder or by a competent court or authority. The argument is that the Bihar State Board of Religious Trusts can now interfere with the committee appointed under the scheme made by the District Judge of Burdwan and approved by the Calcutta High Court, and can even supersede it. The answer to this argument is the same as that given before. Either the Act is bad on the ground of extra-territorial operation or it is not. If the Act is bad on the ground of extra-territorial operation, then there is good reason for cutting down the scope and ambit of s. 29 of the Act so that it will apply only to committees appointed by a competent court or authority in Bihar. If, however, in respect of a religious trust in Bihar, the Bihar Legislature can amend the Civil Procedure Code and take the trust out of the purview of s. 92, Civil Procedure Code, then there is no good reason why the ambit of s. 29 should be cut down in the manner suggested by the High Court.

It is true that the legislation of a State is primarily territorial and the general rule is that *extra territorium jus dicenti impune non paretur*. There is, however, no departure from that general rule when the trust itself is in Bihar and in legislating about that trust, the legislature lays down what should be done to fulfil the objects of the trust and for that purpose puts an end to an old jurisdiction in the sense explained above and creates a new one in its place. The doctrine of territorial nexus which arises in this connection has been commented on before us at great length by learned counsel for the respondent. That doctrine and the decisions bearing on it we have considered at some length in our decision relating to the Charusila Trust, Civil Appeal No. 230 of 1955. We do not wish to repeat what we have said therein.

The conclusion at which we have arrived is that the Act and its several provisions do not suffer from the vice of extra-territoriality in the sense suggested by learned counsel for the respondent and there is no such conflict of jurisdiction as learned counsel for the respondent has suggested. Accordingly, the Act is good and applies to the Baidyanath temple and the properties appertaining thereto.

The result, therefore, is that the appeal succeeds and is allowed with costs. The judgment and order of the High Court dated October 9, 1953, are set aside and the petition under Art. 226 of the Constitution made by the respondent must stand dismissed with costs.

Appeal allowed.

MESSRS. R. C. MITTER & SONS

v.

THE COMMISSIONER OF INCOME-TAX, WEST BENGAL, CALCUTTA

(B. P. SINHA, J. L. KAPUR and M. HIDAYATULLAH, JJ.)

Income-tax—Registration of firm—Procedure—"Constituted under an instrument of partnership", Meaning of—Indian Income-tax Act, 1922 (XI of 1922), s. 26A, Rules 2 to 6B.

The question for determination in these two appeals was whether the appellant firms were entitled to registration under s. 26A of the Indian Income-tax Act and the common point of law involved was the interpretation of the words "constituted under an instrument of partnership" occurring in that section. In Appeal No. 85 the assessee firm was said to have been constituted by a verbal agreement in April, 1948, and the deed of partnership was drawn up in September, 1949. The application for registration under s. 26A of the Act for the assessment year 1949-1950 was made thereafter to the Income-tax Officer. In Appeal No. 389 the assessee firm was verbally constituted in