

## PRIVY COUNCIL.

P.C.

1914

May 1, 26.

JALANDHAR THAKUR

v.

JHARULA DAS.

## [ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]

*Limitation—Limitation Act (IX of 1908) Sch. I, Art. 124—(Act XV of 1877) Sch. II, Art. 124—Hereditary office of shebait—Successor of shebait when bound by decree against predecessor in shebaitship—Decree-holder and purchaser at sale in execution who by reason of low caste is not competent to hold office of shebait—Adverse misappropriation of temple income by trespasser incompetent to be shebait—Wrongful possession not constituting wrongful holder shebait—Res judicata.*

This was an appeal from the decision of the High Court in the case of *Jharula Das v. Jalandhar Thakur* (1) in which the widow of the shebait of a temple (the shebait of which were Brahmin Pandas) who succeeded her deceased husband in that office, mortgaged land together with her interest in the income of the temple to the defendant (who was not a Brahmin). The defendant obtained a decree on his mortgage on 24th September 1880, in execution of which he put up for sale the share of the temple income, purchased it himself, and got delivery of possession in 1892. The widow died in May 1900. In a suit brought on 28th January 1910 for the land and mesne profits, and for a declaration that the plaintiff was entitled to receive the share of the temple income as it was inalienable, the defence was that the suit, so far as it related to the temple income, was barred as being *res judicata*, and by limitation.

*Held* by the Judicial Committee (reversing the decision of the High Court), that Art. 124 of the Limitation Act was not applicable. The suit was not one for an hereditary office which could not be held by a person who was not a Brahmin, and the defendant was therefore not competent to hold the office of shebait, and had not taken possession of it. By adversely taking, and appropriating to his own use a share of the surplus daily income from the offerings the defendant acquired no title, and no right to a share of that

\* *Present* : LORD MOULTON, LORD PARKER OF WADDINGTON, SIR JOHN EDGE AND MR. AMRER ALI.

income. On each occasion on which he received and wrongfully appropriated to his own use a share of the income to which the shebait was entitled the defendant committed a fresh actionable wrong in respect of which a suit could be brought against him by the shebait; but it did not constitute him the shebait for the time being, or affect in any way the title to the office.

*Held*, also, that the defence (which had been upheld by the High Court) that the suit was barred as *res judicata* by the decision in a former suit brought by the widow to set aside the sale of the temple income, was not maintainable.

APPEAL No. 68 of 1913 from a judgment and decree (12th March 1912) of the High Court at Calcutta which partly affirmed and partly reversed a judgment and decree (3rd April 1911) of the Court of the Subordinate Judge of Bhagalpur.

The representatives of the plaintiff were the appellants to His Majesty in Council.

The original plaintiff, Bhaiji Thakur, was a Brahmin panda, and one of the shebaites of an ancient Hindu temple of Mohadeoji, called Singheswar, in Mauza Gouripur, in Bhagalpur district. The shebaites perform the sacred worship or *puja* of the Deity, and receive offerings made to the Deity by the worshippers. After defraying the expenses of the management of the temple, and the charities connected with it, the pandas divide the balance of the income among themselves in proportion to their rights for services rendered by them. The right to participate in the offerings is in return for the services rendered from day to day by the pandas. Jalandhar Thakur and Holdhar Thakur were made parties on the death of Bhaiji in the course of the suit.

The respondent (defendant) was a Beldar by caste, and therefore not a member of the twice-born castes.

The facts of the case are sufficiently stated in the report of the appeal to the High Court which will be found in I. L. R. 39 Calc. 887.

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The Subordinate Judge decreed the plaintiff's claim; but the High Court (COXE and IMAM JJ.) held that the suit, so far as the claim to receive a share of the surplus profits of the temple offerings, was barred by limitation; and as being *res judicata* by the decision in a former suit.

On this appeal,

*A. M. Dunne* and *B. Dubé*, for the appellants, contended that the suit was not barred either by *res judicata* or by limitation [*Lowndes* said he relied not on *res judicata* but on limitation only.] A woman as shebait had no greater power than a Hindu widow had with regard to the estate of her husband, or than any other female heir with a like estate. She had no right therefore to alienate any part of the shebait property: *Prosunno Kumari Debya v. Golab Chand Baboo* (1). It was submitted that the shebait's right to receive the  $3\frac{1}{2}$  annas share of the surplus profits of the offerings made to the Deity was not alienable; and that in any case what was purchased by the respondent at the sale of 20th November 1891, was the right of Musammat Grihimoni which came to an end at her death. As to limitation, the case was governed by Article 124 of Schedule 1 of Act IX of 1908; "12 years, for possession of an hereditary office." And the cause of action arose "when the defendant takes possession of the office adversely to the plaintiff": see the definition of "plaintiff" in section 2 of the Limitation Act IX of 1908. The cause of action arose on the death of Grihimoni in May 1900, and the suit having been brought on 28th January 1910, was, it was submitted, not barred. Reference was made to *Gnanasambanda Pandara Sannadhi v. Velu Pandaram* (2).

(1) (1875) L. R. 2 I. A. 145, 153; (2) (1899) I. L. R. 23 Mad. 271;  
 14 B. L. R. 450, 460. L. R. 27 I. A. 69.

*G. R. Lowndes*, for the respondent, contended that his possession of the share in the temple offerings was adverse to Bhaiaji Thakur and therefore to the appellants from its inception, namely, from 30th March 1892, more than 12 years before the suit was instituted, and the suit was therefore barred under Article 124 of Schedule I of the Limitation Act (IX of 1908): *Pydigantam Jayannaatha Row v. Rama Doss Patnaik* (1). The position of a widow as shebait was that she had larger powers of alienation than she would have had as a mere Hindu widow; she had the same estate, the same powers, and the same right of alienation as a male shebait. As a mere widow she could only alienate for necessity. But as shebait she had more than a life estate; and a succeeding shebait could not dispute his predecessor's alienation: adverse possession which would bar the widow barred the reversioner. Reference was made to *Katama Natchier v. Rajah of Shibagunga* (2), *Pertab Narain Singh v. Trilokhinath Singh* (3), and *Nobin Chunder Chuckerbutty v. Gurupersad Doss* (4); and Articles 140 and 141 of the Limitation Act, Schedule I.

*Dunne* replied.

The judgment of their Lordships was delivered by

SIR JOHN EDGE. The appellants here are the heirs and legal representatives of one Bhaiaji Thakur, now dead, who was the plaintiff in the suit in which this appeal has arisen. Bhaiaji Thakur was a Shebait of an ancient temple of Mahadeoji, called The Singheswar Temple, which is situate in Mauza

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(1) (1904) I. L. R. 28 Mad. 197, 199. (3) (1884) I. L. R. 11 Cal. 186, 197:

(2) (1863) 9 Moo. I. A. 539, 588, L. R. 11 I. A. 197, 206.

589, 603, 604.

(4) (1868) B. L. R. Sup. Vol. 1008 :

9 W. R. 505.

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Gouripur, otherwise Singheswarpur, in the district of Bhagalpur. Bhaiji Thakur became a shebait of the Temple on the death in 1900 of one Musammat Grihimoni who was the widow of one Pratipal Thakur. Pratipal Thakur had been a shebait of the Temple, and until his death had been, as such shebait, entitled to receive a  $3\frac{1}{2}$  annas share of the daily surplus income from the offerings to, after defraying the expenses of, the Temple: on his death his widow Musammat Grihimoni, succeeded to his shebaitship and accordingly became entitled to receive the same share of the daily surplus income from the offerings. The right to such  $3\frac{1}{2}$  annas share came to Bhaiji Thakur on the death of Musammat Grihimoni as the next reversionary heir under the Hindu Law to the shebaitship. The shebait of the Temple are Brahmin Pandas who, as shebait have to perform, or to provide for the performance of, the sacred worship or *puja* of the Deity at the Temple. Jharula Das, who is the defendant to the suit and the respondent to this appeal, is by caste a Beldar, and, as a Beldar, is not competent to perform, or to provide for the performance of, the sacred *puja* to the Deity at the Temple, and consequently was incapable of acquiring or holding the office of a shebait.

In 1880, Jharula Das obtained a decree for money on a mortgage which had been granted by Musammat Grihimoni. In execution of that decree Jharula Das in 1891 caused the  $3\frac{1}{2}$  annas share of Musammat Grihimoni to be put up for sale, and at the sale on the 20th November 1891 purchased the share. Jharula Das on the 8th February 1892 obtained a certificate of sale in which the property which he had purchased was described as the "Income of the Muth of Sri Singheswarthanji Mahadeo, which muth is situated in Mouzah Singeswarthan, pergunnah, Nisankhipur

Khurha, to the extent of 3 annas 6 pies, which belongs to the judgment-debtor, within the jurisdiction of the Madhepura Sub-registry Office, Bhagalpur Collectorate."

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In November 1892, Musammat Grihimoni and Bhaiaji Thakur brought a suit against Jharula Das to have the sale to him of the 20th November 1891 set aside. That suit was by the permission of the Court withdrawn by Musammat Grihimoni and Bhaiaji Thakur with liberty to bring a fresh suit on the same cause of action. In 1895, Musammat Grihimoni brought a fresh suit against Jharula Das to have the sale set aside on the ground that the decree and the order for sale had been fraudulently obtained by Jharula Das. The suit of 1895 was dismissed on appeal on the ground that her proper remedy was by an application under section 244 of the Code of Civil Procedure, 1882, to dispute the validity of the sale, and consequently that the suit did not lie. Their Lordships fail to understand how section 244 of the Code of Civil Procedure, 1882, could have applied to a suit which in effect was brought to set aside the decree of 1880, and the order for sale, on the ground that Jharula Das had obtained them by fraud.

Musammat Grihimoni died in 1900. On the 25th January 1910, Bhaiaji Thakur brought the present suit in the Court of the Subordinate Judge of Bhagalpur and claimed possession of certain lands and mesne profits and a declaration that he was entitled to receive the 3½ annas share of the net income from the offerings to the Temple with other reliefs. In his written statement the defendant Jharula Das alleged, so far as is now material, that Bhaiaji Thakur was bound by the decree which dismissed Musammat Grihimoni's suit of 1895, and that the

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decision in that suit operated on the principle of *res judicata* to defeat the claim in respect of the  $3\frac{1}{2}$  annas share. At the trial, a defence that the suit was barred by limitation was raised. As to the defence of *res judicata*, the Subordinate Judge rightly held that the decision in Musammatt Grihimoni's suit of 1895 did not operate as a bar to this suit. On the question of limitation, the Subordinate Judge found that Jharula Das had not purchased the right of shebaitship, but the Subordinate Judge held that the appropriation by Jharula Das of the  $3\frac{1}{2}$  annas share of the surplus income from the offerings to the Temple practically amounted to a dispossession, and treating Bhaiaji Thakur's suit, so far as it related to the  $3\frac{1}{2}$  annas share, as a suit for the establishment of his right to shebaitship and for recovery of the profits of that office, and having found that Musammatt Grihimoni had died in 1900, he applied Article 124 of the First Schedule of the Indian Limitation Act, 1908, and decided that the suit had been brought within time. On the 3rd April 1911, the Subordinate Judge gave to the appellants here, who had been brought on the record as the representatives of Bhaiaji Thakur, who had died, a decree for possession of the land claimed, for possession of the  $3\frac{1}{2}$  annas share of the net income from the offerings to the Temple, and for mesne profits subsequent to the institution of the suit. From that decree of the Subordinate Judge, Jharula Das appealed to the High Court of Judicature at Fort William in Bengal. The High Court in the appeal upheld the decision of the Subordinate Judge so far as it related to the land claimed and to mesne profits in respect of the wrongful possession by Jharula Das of that land, and to that extent by their decree affirmed the decree of the Subordinate Judge. With that part of the decree

of the High Court this appeal is not concerned. Those learned Judges of the High Court considering that Article 124 of First Schedule of the Indian Limitation Act, 1908, applied to the claim in respect of the  $3\frac{1}{2}$  annas share of the surplus daily income from the offerings to the Temple, and being of opinion that the 12 years' period of limitation provided by that Article began to run in 1892, when Jharula Das first began to appropriate to his own use the income of the  $3\frac{1}{2}$ -annas share, decided that the claim in respect of the  $3\frac{1}{2}$ -annas share was barred by limitation. They also held that the claim to the share was barred by the principle of *res judicata*, arriving at that decision apparently on the view that the dismissal of Musammat Grihimoni's suit of 1895 extinguished the claim of the shebait to the  $3\frac{1}{2}$ -annas share. Accordingly, the High Court by its decree of the 12th March 1912 set aside the decree of the Subordinate Judge so far as it related to the claim to the  $3\frac{1}{2}$ -annas share and the profits of that share. From that decree of the High Court the present appellants have appealed to His Majesty in Council. The defendant Jharula Das has not appealed.

On the hearing of this appeal, the contention that the dismissal of Musammat Grihimoni's suit of 1895 extinguished the right of the shebaits to the  $3\frac{1}{2}$ -annas share, and that the claim in respect of that share was *res judicata* was very properly abandoned; it was untenable. But it was strongly contended on behalf of the respondent that the claim in respect of that share came within Article 124 of the First Schedule of the Indian Limitation Act, 1908, and was barred by limitation. It is not necessary for their Lordships to consider whether, if that Article applied, the 12 years' period of limitation began to run in 1892 or on the death of Musammat Grihimoni in 1900, as they are of opinion that Article 124 of the First Schedule of the

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Indian Limitation Act, 1908, does not apply in this case. Bhaiaji Thakur's suit was not a suit for possession of an hereditary office. Jharula Das had not taken possession of an hereditary office. The office of shebait of the temple was an hereditary office which could not be held by any one who was not a Brahmin panda. Jharula Das was not a Brahmin panda, he was of an inferior caste, and was not competent to hold the office of shebait of the temple, or to provide for the performance of the duties of that office. The appropriation from time to time by Jharula Das of the income derivable from the  $3\frac{1}{2}$ -annas share did not deprive Musammatt Grihimoni or, after her death, Bhaiaji Thakur, of the possession of the office of shebait, although that income was receivable by them in right of the shebaitship. The right to the office of shebait did not arise from, or depend upon, the receipt of a share of the surplus daily income from the offerings to the temple, although the right to receive daily a share of the net income from the offerings to the temple was attached to and dependent on the possession of the right to the shebaitship. Unless the shebait received their share of the daily net income from the offerings, it does not appear how the ministrations of the temple could be provided for. By adversely taking and appropriating to his own use a share of the surplus daily income from the offerings Jharula Das acquired no title and no right to a share of that income. On each occasion upon which Jharula Das received and wrongfully appropriated to his own use a share of the income to which the shebait was entitled, Jharula Das committed a fresh actionable wrong in respect of which a suit could be brought against him by the shebait. But it did not constitute him the shebait for the time being or affect in any way the title to the office.

The appellants here are entitled to have the decree of the High Court so far as it relates to the  $3\frac{1}{2}$ -annas share, and to the costs in the High Court and in the Court of the Subordinate Judge varied by setting aside that part of the decree of the High Court which relates to the  $3\frac{1}{2}$ -annas share and those costs, and by giving them a decree for all the costs in the High Court and in the Court of the Subordinate Judge, and a declaration that Bhaiaji Thakur was at the date of the suit entitled to the  $3\frac{1}{2}$ -annas share of the net daily income of the offerings to the temple. Their Lordships will advise His Majesty accordingly.

The respondent must pay the costs of the appeal.

*Appeal allowed.*

Solicitors for the appellants: *Barrow, Rogers & Nevill.*

Solicitors for the respondent: *T. L. Wilson & Co.*

J. V. W.

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