APPELLATE CIVIL.

Before Sharfuddin and Coxe JJ.

1915 .

March 12.

PUNCHA THAKUR

v.

BINDESWARI THAKUR.*

Offerings to a Temple—Transferability—Transfer of Property Act (IV of 1882) s. 6, cl. (a).

There are certain rights that cannot be transferred. They are *res extra commercium* ; for instance, sacerdotal office which belongs to the priest of a particular class. Similarly a right to receive offerings from pilgrims, resorting to a temple or shrine, is inalienable. The chance that future worshippers will give offerings is a mere possibility and as such it cannot be transferred.

Lakhsmanaswami Naidu v. *Rangamma* (1), *Kashi Chandra* v. *Kailash Chandra* (2), *Dino Nath Chuckerbutty* v. *Pratap Chandra Goswami* (3) referred to.

SECOND APPEAL by Puncha Thakur and another, the defendants.

The suit out of which this second appeal arises was instituted by the plaintiffs for recovery of possession of 3 annas share in the *charhawa* (offerings) made to the temple of Sri Bhairo Nath. The facts are shortly these. The plaintiffs and the defendant, third party, form members of a joint family. Out of the 16-annas offerings of Sri Bhairo Nath, an idol installed in a temple at Dekuli Khurd, the plaintiffs and the defendant third party, owned and possessed a 3 annas share

* Appeal from Appellate Decree, No. 3828 of 1912, against the decree of Jadunandan Prasad, Subordinate Judge of Mozafferpur, dated Oct. 7, 1912, confirming the decree of Moulvi Abdul Aziz, Munsif of Mozafferpur, dated June 29, 1912.

(1) (1902) I. L. R. 26 Mad. 31. (2) (1899) I. L. R. 26 Calc. 356.

(3) (1899) I. L. R. 27 Calc. 30, 32.

to the extent of which, it is alleged, they used to get *charhawa* offered by the people, from the time of their ancestors. On the 18th of January 1901, the defendant second party took delivery of possession through the Court in respect to the said 3 annas share by virtue of his purchase at auction sale held in execution of his decree and participated in the offerings to that extent. Thereafter, the defendants 1st party, by purchasing the aforesaid share from the defendant second party, commenced to exercise their own possession and to enjoy their share in the offerings. The plaint goes on to state that, on enquiry, it transpired that the defendant third party and Baidaya Nath Thakur, father of the plaintiff No. 5, had executed a mortgage-bond with respect to the 3 annas share in the offerings in favour of the defendant second party, who enforced it and obtained a decree on it, in execution of which he sold and purchased the share in question at auction. It is urged in the plaint that the right in *charhawa* is an inalienable property, and so the father of the plaintiff No. 5 and the defendant third party, had no right to mortgage it, and that the defendant second party and his vendors acquired no valid title in it, the whole transaction from mortgage to sale being invalid. The plantiff No. 2 is said to be insane. The suit appears to have been contested only by the defendants Nos. 1 and 2 of the first party, and the defendant second party whose defence is substantially the same. Their contentions are that there is no cause of action; that the suit, as framed, is not maintainable; that the court-fee paid is insufficient; that the suit is barred by limitation; that the right in *charhawa* is transferable; that the actual share which the plaintiffs and the defendant third party had in the offerings, was only 2 annas and sixteen gandas, one kora and no more; and that the mortgage decree and the sale held on it are binding on them.

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The learned Munsif found upon evidence that the plantiffs' ancestors owned only a 2 annas, 16 gandas, 1 kora interest in the *charhawa* of the temple both as proprietors and *moqurraridars*, and held that a right to receive such offerings was, indeed, inalienable. He found the other issues also in favour of the plantiffs, and accordingly gave a modified decree in their favour and that of the defendant third party, jointly. The defendants Nos. 1 and 2 of the first party preferred an appeal to the Subordinate Judge who confirmed the judgment and the decree of the lower Court and dismissed the appeal with costs. Hence this second appeal.

Babu Baldeo Narain Singh and *Babu Sahay Ram Bose*, for the appellants.

Babu Asita Ranjan Chatterjee and *Babu Gour Chandra Pal*, for the respondent.

Cur. adv. vult.

SHARFUDDIN J. The suit, out of which this second appeal arises, was instituted by the plaintiffs for recovery of possession of 3 annas share in the offerings made to the temple of Sri Bhairo Nath on establishment of their title thereto. The plaintiffs and the defendant third party form a joint Hindu family. It is alleged that out of the 16 annas offerings, they owned and possessed 3 annas share and to that extent they used to get *charhawa* (offerings) offered by the people. The defendant second party, it appears, in execution of a decree put up that share to sale and himself purchased it. Thereafter, he sold it to the defendant first party. The defendant third party, father of plaintiffs Nos. 1 to 4, and the father of plaintiff No. 5, had executed a mortgage-bond with respect to the above share in favour of the defendant second party, and it was in execution of the mortgage decree

obtained on the strength of the above mortgage that the defendant No. 2 sold and purchased that share which he afterwards sold to the defendant first party.

In the plaint it it is urged that the right in the share of the offerings is inalienable and so the father of the defendant No. 5 and the third party defendant, father of plaintiffs Nos. 1 to 4, had no right to mortgage it and that therefore the defendant second party, and his vendee, the defendant first party, acquired no valid title, as the whole transaction from mortgage to sale was invalid.

The suit was contested only by the defendants Nos. 1 and 2 of the first party and by the defendant No. 4 of the second party. Their contention is that the suit is barred by limitation and that the right in the offerings is transferable.

The first Court gave a modified decree in favour of the plaintiffs and the defendant third party, jointly. The defendants Nos. 1 and 2 of the first party therefore appealed to the lower Appellate Court which affirmed the judgment and decree of the first Court, and dismissed the appeal. The decree passed by the first Court, which was affirmed on appeal, is in the following terms :—"That the suit be decreed modifiedly with full costs, that the plaintiffs' title be declared, that they jointly with the defendant third party, do recover possession over 2 annas, 16 gandas, and 1 kora share of *charhawa* interest, and that a permanent injunction be issued on the defendants first and second parties restraining them from receiving the *charhawa* offerings for the aforesaid share."

The defendants Nos. 1 and 2 now appeal to this Court.

Two grounds were urged on their behalf, first that of estoppel and, second, that the right to offerings was transferable.

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SHARFUDDIN J.

The first question to be decided is whether such a right, as is claimed by the plaintiffs, is transferable or not.

I am of opinion that such a right is not transferable. There are certain rights that cannot be transferred. They are termed *res extra commercium*; for instance, sacerdotal office which belongs to the priest of a particular temple. It was so held in *Lakshmanaswami Naidu* v. *Rangamma* (1). Similarly, a right to receive offerings from pilgrims resorting to a temple or shrine, is inalienable and no suit can be maintained for the recovery of *wasilat* in respect of properties derived from a turn of worship which from its very nature is voluntary. It was so held in the case of *Kashi Chandra Chuckerbutty* v. *Kailash Chandra Bandopadhya* (2). Indeed, no man can compel another to make voluntary offerings. Offerings are, according to true significance, made to the deity of which the image is its visual symbol and their appropriation by the officiating priest is not a right in which he is entitled to traffic. This was held to be so in the case of *Dino Nath Chuckerbutty* v. *Pratap Chandra Goswami* (3).

A very strong reason has been given by the lower Appellate Court that such a right is not transferable. It says—"in the present case the duty of a *pujari* seems to have been assigned to Brahmans who make *pujas* to the idol Bhairo Nath. To my mind the performance of *puja* or *sheba* of the idol creates a right to receive the offerings made to it. If it be assumed for a moment that a right to receive offerings is alienable or transferable, then it is clear that an alienation of such right can be made even in favour of a Mahomedan or person of another caste who would

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obviously be incompetent to perform the *puja*." Offerings are voluntary presents to the deity to which, no doubt, the shebait is entitled. They are nothing but voluntary payments. The income arising from them is uncertain and indefinite, and an income from such a right is not transferable under the Transfer of Property Act.

For the above reasons, I am of opinion that the mortgage of that right and the purchase of it in execution of the mortgage decree are invalid, and that the judgment of the lower Appellate Court cannot be assailed on that point.

It is somewhat difficult to reconcile the decree given with the character of the property which is clearly not transferable, but this point is not raised in the grounds of appeal and need not be considered.

As to estoppel, I think, the statutory provisions being against transfer, no question of estoppel can arise.

The appeal is dismissed with costs.

COXE J. I agree. It appears to me that the chance that future worshippers will give offerings to the temple is a mere possibility within the meaning of section 6, clause (*a*) of the Transfer of Property Act. Such a possibility cannot be transferred, and, in my opinion, this being a statutory provision, no question of estoppel can arise.

S. K. B. *Appeal dismissed.*