APPEAL FROM ORIGINAL CIVIL.

Before C. C. Ghose A. C. J. and Mitter J.

1932

Aug. 15, 31.

PRASADDAS PAL

v.

JAGANNATH PAL.*

Hindu Will—Meaning of the word bangsa—*Charitable endowment—Public and private trust—Provision for the feeding of the poor and of students—Execution of private trust, if all trustees must act together.*

The word *bangsa* in a Hindu will means family and not merely lineal descendants.

Provision for the feeding of the poor and of students, if the income of property, endowed for the *pujâ* of a deity, increases, is incidental to the main purpose of the endowment and such a trust is wholly of a private nature.

Sathappayyar v. *Periasami* (1) followed.

In the case of a private trust, where there are more trustees than one, all must join in the excution of the trust.

APPEAL from a judgment of Lort-Williams J.

The facts of the case are sufficiently set out in the judgment of Mitter J.

N. N. Sircar, Advocate-General (*J. C. Hazra* and *J. K. Ghose* with him) for the appellant. The word *bangsa* means and includes only direct male lineal descendants and not collaterals. Jagannath not being a direct male descendant is not eligible, under the will, to be appointed *shebâit*. His appointment is *ab initio* void.

Further, the trust is private and all the trustees must concur in appointing a new trustee. Therefore, the appointment of Jagannath is clearly invalid.

Pugh (with him *P. N. Chatterjee*) for the respondents. The word *bangsa* must include all members of the family and not merely lineal male

*Appeal from Original Decree, No. 51 of 1932, in Original Suits Nos. 933 and 838 of 1930.

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descendants. It must include any person competent to offer *pinda* to the testator, in the paternal line.

The trust is clearly public, as there is provision for feeding of the poor and of students. Therefore, trustees may act by majority.

In such a case, leave of the Advocate-General is not necessary, since the relief claimed is not within section 92 of the Civil Procedure Code.

Cur. adv. vult.

GHOSE A. C. J. I have had the advantage of reading the judgment which has been prepared by my learned brother and I agree with him in the conclusions summarized in his judgment.

MITTER J. This is an appeal from the judgments and decrees of my learned brother Mr. Justice Lort-Williams and arises in two suits. The appellant Prasaddas Pal was the plaintiff in suit No. 933 of 1930 and defendant in suit No. 838 of 1930. Jagannath Pal and others are plaintiffs in the latter suit. The suit brought by Prasad was dismissed, whereas the suit brought against him was decreed.

It appears that one Nilmani Pal, who was governed by the *Dâyabhâga* school of Hindu law, executed, at Calcutta, a deed of endowment, on or about the 25th of July, 1911, by which he dedicated the house and premises No. 61, Clive Street and the house and premises No. 105, Balaram De Street to the *shebâ* of the Idol Shree Shree Annapoorna, established by him in the latter house and premises, and for feeding the poor and carrying out other charitable objects. He appointed himself as the *shebâit* and five other persons as assistant *shebâits* for carrying out the *shebâ* of the deity, as also for carrying out the charitable objects. These assistant *shebâits* are named in paragraph 2 of the plaint in suit No. 838 of 1930. The first three plaintiffs of the suit are three of the five assistant *shebâits*. It was further provided that, on the death of the said Nilmani Pal, the five

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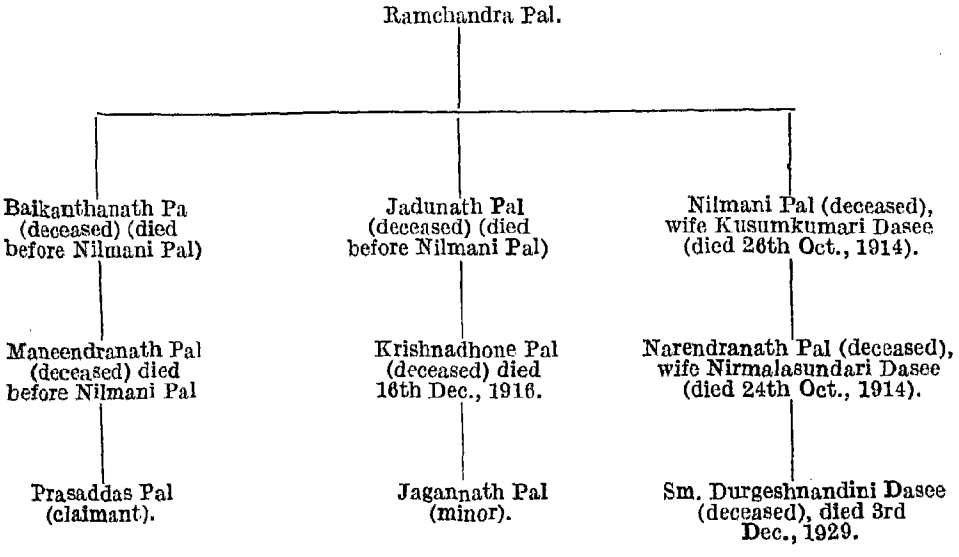
assistant *shebâits* should do the work of the *shebâ* and his wife, Kusumkumari Dasee, will get the *shebâit's* salary and shall reside in the *thâkur bârhi*. It was further provided that, on the death of Kusumkumari, his daughter-in-law, Nirmalasundari, would be next *shebâit* and, on her death. his grandson would be the *shebâit* and, on his death, his grand-daughter shall be the *shebâit*. Then follows a clause in the deed of endowment, which has been the subject of much controversy both before the learned Judge and before us. That clause runs as follows :—

> In the absence of any such grandson or grand-daughter one of the members of my family who is competent shall be the *shebâit*.

The following pedigree will show the state of the family of Nilmani Pal at the time of the suit :



On the death of Durgeshnandini, the assistant *shebâits* became entitled to select and nominate a person from amongst the descendants of the brothers of Nilmani to act as *shebâit* according to the directions in the deed of endowment. The three plaintiffs, being three out of the four assistant *shebâits*, selected Jagannath Pal, who is the fourth plaintiff in the suit and nominated him to act as *shebâit*. The plaintiffs allege that the defendant Prasaddas Pal, although he was not selected to act as *shebâit*, has been wrongfully asserting that he is the proper person to act as *shebâit* and has taken wrongful possession of one of the properties, *viz.*, 105, Balaram De Street.

The plaintiffs made certain allegations against defendant Seetanath Pal in paragraph 11 of the plaint, but we are not concerned in the present appeal with the relief asked for against him. The fourth surviving assistant *shebâit* Ramchandra Sreemani did not join as plaintiff in the suit and has been made a defendant to the suit. The defendant Prasad, in his defence, stated *inter alia* that he is the proper person to act as *shebâit* and that the nomination of Jagannath to act as *shebâit* is invalid. On the 9th of May, 1930. Prasaddas Pal filed suit No. 933 of 1930, in which he asked for a declaration that he is a fit and proper person to be appointed *shebâit* under the deed of trust dated 25th July, 1911, and that the defendant Jagannath Pal is not such a person, for an order removing the defendant Jagannath Pal from acting as trustee and the other defendants as co-*shebâits*, for an enquiry as to who should be appointed co-*shebâits* in place of the present co-*shebâits*, for the framing of a scheme of worship to carry out the worship according to the deed of trust dated 25th July, 1922, for an account of moneys received by the defendants since the death of Sreematee Kusumkumari Dasee, for receiver, injunction and costs of this suit. The answer to this suit was a denial of Prasad's right to be the *shebâit*. The defendants also pointed out that this suit was really a counterblast to the suit brought by the defendants, *i.e.*, suit No. 838 of 1930.

In both these suits, two issues were raised: (1) whether the word *bangsa* in the deed of endowment means "lineal descendants" or "members of my "family" and (2) whether the consent of all the assistant *shebâits* for the time being was necessary for the election of the *shebâit*. Both these issues were decided by the learned Judge in favour of the plaintiffs in the earlier suit and against the appellant Prasad Pal and the suits were decided in the manner already indicated.

Against the decrees in the two suits the present appeal has been brought. The learned Advocate-General (Sir Nripendranath Sircar) who appears for

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the appellant Prasad raises three contentions before us: (1) that the learned Judge has put a wrong construction on the deed of endowment in question in holding that the word *bangsa* should be taken to mean "members of my family"; (2) that the finding of the learned Judge that the endowment was partly a public one was wrong, whereas he should have held that it was a private and not a public charitable endowment; (3) that if the trust is a private trust, then, on the statement of the law made by the learned Judge, the consent of all the assistant *shebâits*, and not simply of the majority of them, was necessary in order to make the election of Jagannath Pal as *shebâit* valid, and, if this position is established, plaintiffs' suit No. 838 of 1930 should be dismissed.

I will deal with the respective contentions in the order in which I have stated them.

Taking the first contention, I am of opinion that the word *bangsa* means family. It would be too restricted an interpretation of the word *bangsa* to confine it to the lineal descendants of Nilmani Pal's family. That this was the meaning which was intended by the founder would appear clearly from the context in which it occurs. The founder states that "in the absence of any such *grandson* or *grand-daughter* who are the lineal descendants one of my *bangsa* who is competent in this behalf shall be the *shebâit*". This clearly shows that the member of the founder's family, who is to be elected as *shebâit*, must be outside the line of lineal descendants like grandson or grand-daughter. We have, therefore, no hesitation in rejecting the contention of the Advocate-General.

With regard to the second contention, it is argued that the provision that the whole of the income of the *debattar* property shall be wholly spent for the purposes of the *debshebâ* and the feeding of the poor does not make the endowment a public charitable one. It is argued that this provision about feeding of the poor is part and parcel of the *debshebâ* and cannot be regarded as independent charity in which any class of the public was to have a direct and independent

interest. The argument is that the feeding of the poor is really incidental to the *pujâ*. Mr. Pugh, who appears for the respondent, argues that the trust is principally public, seeing that the feeding of the poor and the feeding of students of educational institutions have been provided for in the deed of endowment. We are unable to accept this contention of the respondent, for it seems to us that the feeding of the poor and the feeding of students, if the income of the *debattar* property increases, are really incidental to the main purposes of the endowment, namely, the *pujâ* of the deity. The view we take is supported by the decision of *Sathappayyar* v. *Periasami* (1). We are, therefore, of opinion that the learned Judge was not right in the view that this trust was partly of a private and partly of a public nature and not one wholly of a private nature. This being our view, the third contention of the Advocate-General must be given effect to. On the authorities cited by Mr. Justice Lort-Williams, it is clear that, in the case of a private trust, where there are more trustees than one, all must join in the execution of the trust. In the present case it is conceded that all the assistant *shebâits* have not joined in electing Jagannath as a *shebâit*. In the circumstances, the appeal must be allowed and the judgment and decree in both the suits set aside and in lieu thereof it is declared that, subject to the election of a *shebâit*, in place of Durgeshnandini, deceased, by all the assistant *shebâits*, pursuant to directions that may be given by the Master of this Court, a scheme may be framed for the worship of the deity Shree Shree Ishwar Annapoorna Debee and for carrying out the other objects of the endowment, in a manner so that the scheme might follow as closely as possible the intention of the founder. In our view, both Jagannath and Prasad might be appointed *shebâits*, alternately, and a scheme may be framed for a *pâlâ* of either six months or one year as may be convenient, considering all the circumstances of the case. The

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framing of the scheme is referred to the Master of this Court, who after framing the scheme will submit it for the approval of the Judge sitting on the Original Side. Costs of this appeal and of the two suits, including a sum of Rs. 200 on account of the costs of both sides in the reference now pending before the Assistant Referee, will come out of the estate.

Attorney for the appellant: *A. N. Bose.*

Attorneys for the respondents: *M. N. Mitra, B. N. Basu & Co.*

S. M.