APPEAL FROM ORIGINAL CIVIL.

Before Costello and Lort-Williams JJ.

1938

Feb. 15, 16, 17.

MANIK CHAND AGARWALA

v.

PARESH NATHJEE.*

Will—Dedication to Paresh Nathjee or Munderjee—Paresh Nathjee, if Deity —Consent decree—Transfer of property—Indian Registration Act (XVI of 1908), s. 17(2) (vi)—Transfer of Property Act (IV of 1882), s. 2(d).

In 1826, H by his will dedicated certain property in the following terms :— "To the *manderji* at Sri Calcutta of the Tairopuntee Amnyo I have given and cause to be given thus:—The *Puccka'h* House for my own dwelling situate in Sootaluttee.... which said house I give in the *Munderjee*.... The rent or interest that is obtained from the aforesaid House and Lane shall be expended for the *Munderjee's poojarhey*, Tailooha, Repairs, *Poojapats* and Articles for the *Poojáhas et cetera*". Paresh Nathjee, a Digambari Jain Deity, was located at the said *mander*.

Held that the dedication was to the Deity and not to the *munder*.

Where, in a previous suit by some members of the Digambari Jain sect against D, the heir of H, for a declaration that the property dedicated by H belonged to the Deity, a consent decree embodying the following terms of settlement was made : (i) D was declared entitled to a part of the property, but only during the period of his natural life. (ii) After D's death the said property was declared as dedicated by D to the Jain temple of the plaintiff Deity and formed part of the trust estate of the Deity. (iii) The property was declared as dedicated to the said Deity.

Held that the effect of the terms of settlement read as a whole was a recognition of a previous dedication to the Deity by H in 1826.

Where the terms of settlement effecting a transfer of property were embodied in a decree of a Court they come within the provisions of s. 17 (2) (*vi*) of the Registration Act and do not require registration.

Under s. 2 (*d*) of the Transfer of Property Act any transfer in execution of a decree or order of a Court of competent jurisdiction is not affected by the provisions of that Act.

According to the existing Jain system and Jain thought, which has existed for many hundreds of years, Paresh Nathjee is to be regarded as a Deity and capable of holding property, though not exactly similar to a Hindu Deity.

APPEAL from a judgment of Ameer Ali J. preferred by the defendant.

The facts of the case and the argument in the appeal appear in the judgment.

*Appeal from Original Decree, No. 6 of 1937, in Suit No. 1115 of 1935.

1938

Manik Chand Agarwala v. *Paresh Nathjee.*

N. N. Bose and *B. M. Chatterjee* for the appellant.

S. R. Das and *Bachawat* for the respondent.

LORT-WILLIAMS J. This is an appeal by the defendants against a judgment of Ameer Ali J. The plaintiffs were Paresh Nathjee, a *Digambari* Jain Deity, located at the *munderjee* at No. 1, Basak Lane in the town of Calcutta, by its next friend Baldeo Das Serowgi, and certain trustees.

The claim was for a declaration that premises No. 35B, Braja Dulal Street belonged to the plaintiff Deity and/or the other plaintiffs as trustees for the plaintiff Deity. The defendants were the heirs of the original founder of the alleged trust.

The material facts are as follows:—One Hulashi Lal, a wealthy *Digambari* Jain resident of Calcutta, by his will dated December 20, 1826, dedicated *inter alia* the premises No. 35, Braja Dulal Street, now known as Nos. 35-A and 35-B, Braja Dulal Street, in favour of the plaintiff Deity. In that will there are many references to religion or religious purposes and *inter alia* the following statements:—

To the *Manderjee* at Sri Calcutta of the Tairopuntee Amnyo I have given and cause to be given thus:—

The *Pucckah* House for my own dwelling situate in Scotaluttee..which said house I give in the *Munderjee*. As long as Babu Hurshahay shall live in this, so long he will pay Rent at sixteen rupees per month, expenses for repairs are at the charge of Baboo Hursahay if he does not pay rent then, the value of Rupees 6,000 (in letters) six thousand, as the consideration for this house, he will pay in the *Munderjee* if he pays neither the price nor rent, then, he will vacate the place. Whatever repairs are necessary to be made of breaches in the premises, the expenses thereof shall be defrayed out of the profits of the two annas share that *Munderjee* has in the shop..... The rent or interest that is obtained from the aforesaid House and Lane shall be expended for the *Munderjee's poojahrey*, Tailooha, Repairs, *Poojapats* and Articles for the *Poojâhas et cetera*, *Mooktears* for making those disbursements, are the Tairopuntee Jainee Brethren of Calcutta.....After this matter I have put the *Munderjee* at Sri Calcutta under the charge of the Tairopuntee Amnio Jainee Brothers.

There were two executors, one of them was Harsahay who had married Hulasi Lal's daughter Mannu Bibi. He died in 1858 and was succeeded by his son Inder Chandra. He died in 1871 and the

1938

Manik Chand Agarwala v. *Paresh Nathjee.*

Lort-Williams J.

evidence seems to show that, in his lifetime, a division was made between two portions of the premises, one being made into a *thâkur bârhi* and in it was installed an image or representation of Paresh Nathjee. Inder Chandra left two sons Nanu and Chanu and a daughter Shyam Bibi. Nanu did not long survive Inder Chandra, but Chanu lived until 1912. During his lifetime, there was a partition suit between Chanu and Nanu's son Dhanu for the partition of the estate of Inder Chandra. This suit is of importance, because the proceedings show that the family property on partition was assumed to exclude the estate of the *Thâkur*, *i.e.*, Paresh Nathjee, and that the property in the present suit was omitted from the list of properties to be partitioned. It was thus acknowledged by the parties that the property in question was dedicated, and belonged to the *Thâkur* Paresh Nathjee.

In 1877, a suit was filed in which the plaintiffs were the members of the *Panch* who looked after the property of the Jain temple at Calcutta including the property in suit, their intention being to obtain a declaration from the Court regarding the *Thâkur's* rights. The suit was dismissed in the lower Court. There was an appeal, followed by a remand, but apparently nothing further was done. This suit is of importance, because in the written statement of Chanu there was an acknowledgment that there existed a religious estate of the *Thâkur* Paresh Nathjee. In that suit, there was no suggestion that there was no estate belonging to Paresh Nathjee or that Paresh Nathjee was incapable of holding any estate or that the immoveable property was not the property of the *Thâkur*. The suit really turned upon a question about the share of profits and the matter of the dedication of the house does not seem to have been discussed.

After this, Chanu remained in control of the house. There is a minute dated September 1, 1881,

to which Chanu, Dhanu and others were signatories, recognising the rights of the *Panch* and the *Munder* to receive the revenues of the house. From the evidence it is clear that Chanu, who was a prominent member of the sect and a member of the *Panch*, used to look after the property. He and others were in charge of the affairs of the temple including this property. These people, including Chanu, were called either *shebâits* or members of the *Panch*, and apparently there were five *Panchs* in Calcutta at that time. Chanu was not a *shebâit* in the sense in which the term is generally used, and in those days there was not very much business to be done in respect of the temple and its properties, but there was one ceremony *Kârtik mahotsav* which was organised annually, when a large procession used to be taken out, and the trustees used to make arrangements with regard to that procession. It appears, therefore, that Chanu was associated with a number of others, who were in the position of trustees in control of the various properties connected with the main *Thâkur* in No. 1, Basak Lane, as well as the property in suit. There was no regular legal arrangement made with regard to these matters until after the death of Chanu. When he died, Dhanu took possession and at the same time took up a different attitude. He seems to have contended that the property was in the nature of a private *debattar* or family endowment, the object being the image of Paresh Nathjee set up in the *thâkur bârhi* in the premises in suit. The result was that a suit was brought in 1917 which was eventually compromised and a consent decree made in 1922.

The issue in the present suit and appeal turned upon the terms of settlement then arrived at. In the first paragraph of those terms, the defendant Dhanu was declared entitled to the house and premises No. 35-B, Braja Dulal Street, but only during the period of his natural life. Paragraph 2 provided that after the demise of Dhanu, the said premises were declared as dedicated by the defendant

1938

Manik Chand Agarwala v. *Paresh Nathjee.*

Lort-Williams J.

to the Jain temple of the *Digambari* Deity Paresh Nathjee at No. 1, Basak Lane in Calcutta, and formed part of the trust estate of the said Deity of the Jains of the *Digambari* sect to be used as a *dharam shâlâ* in the name of Dhanu's mother Champa Debi and vested in certain persons therein named as trustees with power to nominate future trustees. The third paragraph provided that the premises No. 35-A, Braja Dulal Street were declared as dedicated to the said Deity, and the said *Digambari* Jain community were to be entitled to use the same as a *thâkur bârhi* as at that time used. It was further provided that, in case the defendant let out or transferred the said premises, that is to say, the premises No. 35-B, Braja Dulal Street, and inconvenience was felt by the *thâkur bârhi*, certain windows should be screened off. Such lease or transfer, if any, should not be made except to a Hindu for residential purposes only.

The main argument raised by the defendants with regard to these terms of settlement was that Dhanu was declared entitled to the premises No. 35-B, Braja Dulal Street, and that after his death the premises were dedicated by him to the Jain temple of *Digambari* Deity Paresh Nathjee at No. 1, Basak Lane: therefore, the dedication of these premises, if at all, was by him, and there was no provision in the terms of settlement divesting him of the property to which he was declared entitled in the first paragraph. A further argument was that the dedication, if at all, was to a *munder*, and not to a deity, and that such a dedication is a nullity according to Hindu law. Further, it was argued that Paresh Nathjee is not a deity in the sense in which the term is used in Hindu law, and is not regarded by the Jain community as a god.

The first argument, it appears to us, is based upon a fallacious reading of the terms of settlement. In these terms the paragraphs, if read separately,

might conceivably support the argument raised by the defendants. But they must be read together in order to arrive at a correct construction. If so, it is clear in the first place that the parties intended that it should be recognised that the property was dedicated to the Deity. This is not disputed by the defendants. But the argument raised on their behalf is that, whatever the parties intended, they did not succeed in carrying out that intention. In our opinion, this contention is unsound. If the terms of settlement are read as a whole, it is clear that the parties intended that the terms agreed upon should embody a recognition that the property had already been dedicated to the Deity, but that, as a compromise, the defendant Dhanu would be allowed to occupy No. 35-B, Braja Dulal Street during the term of his natural life. Further it was agreed apparently that Dhanu should have the satisfaction of purporting to dedicate No. 35-B, as a *dharam shâlâ* in memory of his mother Mussammat Champa Bibi. In the first paragraph, it is true, that the defendant is declared entitled to No. 35-B, and it is true that in the second paragraph it was he who was declared to have dedicated the property to the Deity. But he was only declared entitled for the period of his natural life. It is clear, therefore, that he had no power of dedication except possibly for the period of his natural life. Moreover, the dedication in para. 2, though by the defendant, is declared as from the date of the terms of settlement, though it was to take effect only after his demise. The effect, in our opinion, was, that the terms of settlement in reality only recognised a previous dedication, namely, the dedication made by Hulashi Lal in 1826.

With regard to the contention that the dedication was made to a *munder*, again this is a matter of construction and we agree with the learned Judge in the conclusion to which he came that the original dedication by Hulashi Lal was really a dedication to the Deity and not to the *munder* and, therefore, was a valid dedication.

1938

Manik Chand Agarwala v. *Paresh Nathjee.*

Lort-Williams J.

With regard to the contention that Paresh Nathjee is not a deity or a god, a great deal of evidence was given and there was considerable discussion before the learned Judge and he came to the conclusion that there was a great deal of historical and philosophical foundation for the line of argument advanced by the defendant with regard to remote ages, but that according to the existing Jain system and Jain thought, which has existed for many hundreds of years, Paresh Nathjee is to be regarded as a Deity and capable of holding property, though not necessarily exactly similar to a Hindu Deity. Though the learned counsel who appeared for the appellants did not abandon this part of his case, he did not press it.

He raised, however, two further arguments, first, that the so-called dedication in the terms of settlement really amounted to something in the nature of a will, because it was to take effect only after the demise of Dhanu, and that, as it was not in proper form, it was of no effect. This argument is disposed of by the finding which I have already indicated that the terms of settlement amounted to a declaration of a prior dedication and were not in the nature of a will. Secondly, he argued that, in any case, the terms of settlement effected a transfer of property and, therefore, required registration. This argument, however, is unsound, because the terms of settlement were embodied in a decree of the Court and clearly come within the provisions of s. 17(*2*) (*vi*) of the Registration Act. Moreover, it is provided by s. 2(*d*) of the Transfer of Property Act that any transfer in execution of a decree or order of a Court of competent jurisdiction is not affected by the provisions of that Act. The learned counsel half-heartedly raised a further argument that the terms of settlement amounted to an instrument of gift and, therefore, were not affected by the provisions of s. 17(*2*) (*vi*) of the Act and, therefore, required to be registered. But, in our opinion, it is quite clear that it cannot be contended that the dedication

contained in para. 2 of the terms of settlement amounted to a gift or that the decree can be considered to be in the nature of a deed of gift. His further contention that there could be no dedication because there was no divestment of the proprietary rights of the defendant in the premises in suit is disposed of by what I have already said. The defendant never, in fact, was vested with any proprietary rights in any part of the property.

The result is that this appeal is dismissed with costs.

The order for stay of execution is vacated and the respondent is at liberty to proceed against the security and otherwise against the appellant.

COSTELLO J. I agree.

Appeal dismissed.

Attorneys for appellant: *R. L. Dutt & Co.*

Attorneys for respondent: *P. D. Himatsingha* and *N. C. Gupta & Co.*

G. S. & A. C. S.