

who sets up a registered conveyance of a later date unaccompanied by possession. The second purchaser presumedly has notice of the title of the first purchaser from the fact of possession having been given. I therefore concur in dismissing this appeal with costs.

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Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Maclean.

DHURRUM SINGH (DEFENDANT) v. KISSEN SINGH AND OTHERS
(PLAINTIFFS).*

1881
July 14.

Religious Endowment—Act XX of 1863, s. 14—Restraining Manager from allowing Property to be removed—Form of Order—Injunction—Civil Procedure Code (Act X of 1877), s. 30.

In 1849, the Board of Revenue, acting under Reg. XIX of 1810, interfered in the management of the affairs of a temple. In a suit relating to the affairs of the temple instituted in 1878, it did not appear whether any transfer of property had been made under s. 4 of Act XX of 1863, but it did appear that, in 1865, the Judge of Patna had appointed a manager of the temple.

Held, that the right of the Government officers to control the affairs of the temple had been sufficiently proved.

Section 14 of Act XX of 1863 is generally applicable to all religious endowments, and while it in one sense restrains the ordinary Courts from dealing with cases against trustees of religious endowments, it gives special facilities for suits in the principal Civil Court of the district by any of the persons interested in these endowments.

Quere.—Whether, considering the provisions of s. 30 of the Civil Procedure Code, the retention of s. 14 of Act XX of 1863 is at all necessary?

An order under s. 14 of Act XX of 1863 should be mandatory, and not prohibitory.

Where a sacred book was kept at a temple, and was an object of veneration to the members of the sect entitled to worship there,—

Held, that a suit would lie under s. 14 of Act XX of 1863, by some of the persons interested in the temple, to restrain the superintendent from removing the book to another place, and that he should be directed to retain it as a portion of the furniture of the temple.

THE facts of this case sufficiently appear from the judgments.

* Appeal from Original Decree, No. 66 of 1880, against the decree of H. Beveridge, Esq., Officiating Judge of Patna, dated the 15th January 1880.

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Baboo *Unnoda Prosad Banerjee* and Baboo *Mohesh Chunder Chowdhry* for the appellant.

Baboo *Gurudas Banerjee* and Baboo *Kallymohun Das* for the respondents.

The judgments of the Court (MITTER and MACLEAN, JJ.) were as follows :

MACLEAN, J.—This is a suit instituted under the provisions of Act XX, 1863, entitled “an Act to enable the Government to divest itself of the management of religious endowments.” Leave to institute the suit was given under s. 18 of the Act. The plaintiffs are members of the Nanuk Shai sect of Sikhs resident at Patna, and the defendant is the superintendent or mohunt of the temple of Guru Gobind Singh, called Harmandir, at the same place. The temple is said to be on the site of the Guru’s birthplace, and it contains his cradle ‘Pangura’ and several copies of the Granth, a sacred law of the Sikhs. One of these Granths purports to have been sent by Guru Gobind Singh to the temple more than a century ago, and to contain a gold leaf on which the Guru himself inscribed some words. This cradle and book are, therefore, objects of great veneration to the Sikhs, and the temple is visited by the chiefs of the Sikh nation and others.

It appears that the Maharaja of Jhind, a leading Sikh Chief, is said to have expressed a wish that the Granth referred to above should be sent to his capital, that his Ranis might have an opportunity of paying their respects to it. He is said to be willing to make a considerable present to the temple for this privilege, and the present superintendent or mohunt is, or was, anxious to comply with the Maharaja’s wishes. The plaintiffs, professing to represent the general body of persons interested in the temple, object to the removal of the Granth, on the ground that its removal will “leave the temple empty,” or “render it desolate.” It is not clear, whether they apprehend that the sacred book will be permanently lost to the temple or not, but they urge that its removal will be an innovation contrary to practice, and will impede the Sikhs of Patna from the due performance of their religious duties. They, therefore, pray:

that the superintendent may be restrained, by order or injunction, from carrying out the proposed removal of the book.

The defendant, the superintendent, urges that the temple is "not governed by Act XX of 1863," nor is he a trustee appointed under the Act. He states that the Granth is not 'established' or 'asthopou,' nor is it, like the cradle, worshipped. That it is not contrary to the religion of the Sikhs to remove the Granth, and that this particular Granth has on previous occasions been removed. He alleges that it will really be for the temporal advantage of the temple to send the book to Jhind, and that the prohibition asked for will involve loss.

It may be remarked that the defendant's (appellant's) pleader informed us, that his client had abandoned his intention of removing the book, though still questioning the applicability of the Act No. XX of 1863 to the temple.

The District Judge, disbelieving the evidence as to the removal of the Granth last year, *i.e.*, 1878, to the Sonapore fair, has directed the issue of an injunction prohibiting the defendant from removing the book. The defendant has appealed to this Court.

The first question is, whether Act XX of 1863 has any application to this temple at Patna. That Act was passed to divest the officers of Government of the control which they were empowered to exercise over religious endowments by Reg. XIX of 1810, and it directed that they should hand over to the trustees of a certain class of endowments all the land and property then (1863) in the possession or under the superintendence of the Board of Revenue or any local agent. The class of endowments referred to were religious endowments to which the Regulation specified was applicable, and the nomination of the trustee, manager, or superintendent whereof was vested in or might be exercised by Government. The evidence of the control of this temple having been exercised by Government is not very strong, but we find that, in 1849, the Board of Revenue forbade any unsolicited interference with the affairs of the temple. There is nothing to show that any transfer of property was made under s. 4 of the Act of 1863, although we find that the Judge of Patna, on the 11th March 1865, acting under

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Act XX of 1863, appointed Genda Singh, the defendant's immediate predecessor, manager of the temple, which he could only do if the Act applied. On the whole, I am disposed to think that the right of the Government officers to control the affairs of the temple was asserted or admitted in 1849 and 1865 without question.

Even if it can be held that sections of Act XX of 1863 are of doubtful application, I am disposed to think, that s. 14 is generally applicable to all religious endowments, and while it in one sense restrains the ordinary Courts from dealing with cases against trustees of religious endowments, it gave special facilities for suits in the principal Civil Court of the District by any of the persons interested in these endowments. Under the Civil Code then in force, *viz.*, Act VIII of 1859, no such suit could have been brought in the ordinary Courts on behalf of the community, but the present Code provides for such suits in s. 30. It may be doubted whether the retention of s. 14 is at all necessary under the present Code of Civil Procedure.

As to the merits, I think the decree a proper one, save that it should be mandatory rather than prohibitory, for s. 14 requires that the Court should direct the performance of some specific act. It is clear that the Granth to which it refers is one of the main attractions of the temple. Its value as an object of veneration is clearly demonstrated by the mere fact that the Maharaja of Jhind is stated to be anxious to present the ladies of his family to it at his own capital. The objections to its removal could hardly be better illustrated than by the fact proved in this case, that Runjit Singh, the most powerful Chief the Sikhs ever had, yielded to the auguries which are said to have been against its removal, and we find an informal piece of evidence on the record that the question of removing it was seriously debated in the Patiala durbar, and it was decided that it was contrary to the wishes of the States and Sikhs of the Khalsa community that the book should be removed. We cannot say that the evidence of removal of other Granths is conclusive in favor of the removal of this one, or that the Judge has improperly rejected the evidence of one instance of a temporary move of the book to Sonapore fair.

I think, therefore, that the decree of the Judge of Patna should be so far modified as to make it direct that the defendant retain the Granth referred to as a portion of the furniture of the temple. With this alteration in the decree, the appeal should be dismissed with costs.

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MITTER, J.—I am also of the opinion that the conclusion to which the lower Court has come is correct.

The provisions of Act XX of 1863 are applicable to this case. The Act in question is applicable to all cases of religious endowments and temples to which Reg. XIX of 1810 was applicable. It is said, that s. 4 of the Act is not applicable, because there was no transfer of property. But if Reg. XIX of 1810 governed this temple, then, by the operation of s. 4 of Act XX of 1863, there was a transfer of the superintendence, which was vested in the Board of Revenue under s. 2, Reg. XIX of 1810. That such superintendence was vested in the Board of Revenue under the Regulation in question is clear from their letter, an extract of which has been filed as an exhibit in this case. This is further corroborated by the fact that the predecessor of the appellant, *viz.*, Genda, was confirmed in his appointment under the provisions of s. 5 of Act XX of 1863. It seems to me, therefore, that Act XX of 1863 is applicable to this temple.

The next question is, whether the present suit could be brought under the provisions of s. 14, Act XX of 1863. The plaintiffs charge the defendant with misfeasance, breach of trust, and neglect of duty in respect of the trusts confided to him. If the charge be established, then the Civil Court, under the section in question, would be competent to direct the specific performance of the following act, *viz.*, to keep the Granth in question within the precincts of the temple, so that the pilgrims who may come to visit it may worship it.

On the merits, I think that the plaintiffs' claim is just. Quite apart from any other consideration, it is evident that it would be a breach of trust on the part of the defendant if by any act of his the pilgrims visiting the temple should be deprived of the opportunity of worshipping the sacred Granth. They, undoubtedly, have the right to worship it any time they may choose to visit the temple. The defendant, who is a trustee

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on behalf of all these pilgrims, would be clearly guilty of breach of trust in allowing the sacred Granth to be removed from the temple.

The appeal will, therefore, be dismissed, subject to the alteration of the decree as proposed by my learned colleague. The appellant will pay the costs of this suit to the respondents in both the Courts.

Appeal dismissed.

Before Mr. Justice Cunningham, Mr. Justice Prinsep, and Mr. Justice Wilson.

1881
Aug. 10.

ANUND MOYE DABI (PLAINTIFF) v. GRISH CHUNDER MYTI AND ANOTHER (DEFENDANTS).*

Limitation Act (XV of 1877), s. 10—Trust—Charge of Debts by Testator.

A charge of debts generally by a testator upon his property or any part of it, will not affect limitation, because it does not at all vary the legal liabilities of the parties, or make any difference with respect to the effect and operation of the Statute itself. The executors take the estate subject to the claim of the creditors, and are in point of law trustees for the creditors, and such a charge adds nothing to their legal liabilities. But the case is different when particular property is given upon trust to pay a particular debt or debts. In such a case the trustee has a new duty, not the ordinary duty of an executor to pay debts generally out of property generally, but a duty to apply a particular property to secure a particular debt; and there is a trust within the meaning of s. 10 of the Limitation Act.

Scott v. Jones (1), *Williamson v. Naylor* (2), and *Philips v. Philips* (3) followed.

THIS was a suit to recover the sum of Rs. 24,300 from the infant defendant Grish Chunder Myti and from certain properties which were bequeathed to him by his maternal uncle, one Shib Pershad Giri, under the following circumstances: Shib Pershad Giri borrowed a sum of Rs. 15,000 from the defendant Goluck Chunder Myti, the father of the infant defendant Grish

* Appeal from Original Decree, No. 143 of 1880, against the decree of Baboo Jadu Nath Roy, Subordinate Judge of Midnapore, dated the 5th March 1880.

(1) 4 C. and F., 382. (2) 3 Y. and C., Ex., 208. (3) 3 Hare, 281.