

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

NARAYANA AND OTHERS (DEFENDANTS), APPELLANTS,

v.

RANGA (PLAINTIFF), RESPONDENT.*

1891.
July 17.
Oct. 27.

Religious office, transfer of—Transferee not solely entitled in succession to transferor.

In a suit against the mooktessors or trustees of a temple, the plaintiff sought a declaration of his right to perform the puja in the temple, and an injunction restraining the defendants from interfering with the exercise of such right.

It appeared that the office of pujari was hereditary in the plaintiff's family, that it had been held by the plaintiff's undivided uncle (deceased), that he transferred it in 1880 to the plaintiff's father (deceased), in succession to whom the plaintiff now claimed it. The High Court called for a finding as to whether the plaintiff's father was the sole heir next in succession to his transferor, and it was found that he had three brothers :

Held, that the transfer of the office to the plaintiff's father was invalid, and the suit should be dismissed.

SECOND APPEAL against the decree of S. Subbayar, Subordinate Judge of South Canara, in appeal suit No. 380 of 1888, affirming the decree of M. Mundappa Bangera, District Munsif of Karkal, in original suit No. 374 of 1887.

The plaintiff alleged that the office of pujari in a certain temple was hereditary in the plaintiff's family, that the office was held by Baba Bhatta (deceased), that he, in 1880, transferred it to the father (deceased) of the plaintiff, who now sued the mooktessors of the temple for a declaration of his right to perform puja, and for an injunction restraining them from interfering with the exercise of this right.

The transfer to the plaintiff's father was evidenced by a *muk-tiarnama* filed as exhibit A, whereby, as well as the office in question, certain other rights and some property was also assigned, and it was provided that the assignee should pay various creditors therein named.

The District Munsif passed a decree as prayed, which was affirmed on appeal by the Subordinate Judge.

* Second Appeal No. 686 of 1890.

NARAYANA
v.
RANGA.

The defendants preferred this second appeal.

Ramachandra Rau Saheb and *Pattabhirama Ayyar* for appellants.

Bhaskyam Ayyangar and *Narayana Rau* for respondent.

JUDGMENT.—It is argued that the finding that the plaintiff's family had an hereditary right to the office ought not to be accepted, and our attention is drawn to exhibits I, II, F, III, IV and V, and also to exhibits O, VI to XVIII. Nothing is urged to show that they have been misconstrued, or not duly considered by the Court below. Exhibit I only shows that the award A was not thought to favour the claim set up by the then plaintiff. The words in exhibit II "you should act with consent, &c.," are not inconsistent with the plaintiff's case. They only imply that in the conduct of the puja, the son was to act subject to the direction and control of the mooktessors. As regards exhibits F and III, the ground on which the suit to which they refer was dismissed was that there had been a prior partition. Though the District Munsif dealing with the review petition remarks that "the office is dependent on the pleasure of the dharmakartas," we cannot say that the Courts were wrong in not attaching weight to the remark in the face of the other evidence in the case. As to exhibits IV, V and N, the Subordinate Judge is not in error in saying that that the finding in exhibit N was not set aside by the High Court. As to the security-bonds, we agree with the observation of the Subordinate Judge. On the whole we are satisfied that there are no grounds for questioning the finding as to the matter of hereditary right.

The next question argued is that the office was not alienable, and that no effect ought to be given to exhibit A.

It has no doubt been established by a series of decisions that the sale of a religious office is illegal—*Rajah Vurmah Valia v. Ravi Vurmah Kunhi Kutty*(1) and *Kuppa v. Dorasami*(2). But it is urged that the plaintiff's father, the grantee under exhibit A, was the nearest heir of Baba Bhatta, who is now dead, and that the transfer in his favour was in the nature of a relinquishment by way of anticipating his legal right. The District Munsif found that the plaintiff's father was nearer in the line of descent than defendant No. 15, who was appointed by the mooktessors.

(1) I.L.R., 1 Mad., 235.

(2) I.L.R., 6 Mad., 76.

On this point the Subordinate Judge recorded no opinion, though the Munsif's finding was objected to. Before determining whether the instrument A is or is not valid, we shall ask the Subordinate Judge to find whether at the date of exhibit A the plaintiff's father was the sole heir next in succession of Baba Bhatta. Finding is to be returned within six weeks from the date of receipt of this order, when seven days, after the posting of the finding in this Court, will be allowed for filing memorandum of objections.

NARAYANA
v.
RANGA.

Fresh evidence may be taken by the Subordinate Judge by consent.

The Subordinate Judge returned a finding to the effect that the plaintiff's father had three brothers.

This second appeal having come on for final hearing, the Court delivered judgment as follows :—

JUDGMENT.—We have already decided that the office in question is an hereditary one. The question now is whether the transfer of it by the last holder to the plaintiff's father was a valid one. According to general principles, a religious office cannot, *prima facie*, be made the subject of alienation. The succession to such an office is governed, in the first instance, by the will of the founder, and, in the absence of direct evidence on that point, by usage of the particular institution from which the founder's will may be inferred. A religious office appears to us to stand with reference to alienability on a different footing from private property. It was argued at the last hearing on the authority of the case of *Mancharam v. Pranshankar*(1) that the holder of a religious office may transfer it to one who is in the line of descent, whether he be the next heir or a possible future heir, and that the plaintiff's father was, in the present instance, the next heir. The finding, however, returned by the Subordinate Judge shows that he was not the sole next heir, because he had three brothers. In *Kuppa v. Dorasami*(2) it is observed by the learned Judge, with reference to a contention that the alienee was of the same caste and sect as the alienor: "To hold so would tend to public mischief in inducing needy incumbents of hereditary religious offices, who desired to sell them to give a dishonest recognition to qualifications which, in fact, were not the qualifications demanded by

(1) I.L.R., 6 Bom., 298.

(2) I.L.R., 6 Mad., 76.

NARAYANA
2.
RANGA.

the nature of the office." Unless the alienee is the sole heir, the alienor might be under the temptation to make the office the subject of bargain and thereby defeat the intention of the founder. It was in this view that we called for a finding at the former hearing. We are not prepared to dissent from the dictum above quoted, and to hold that in the absence of special usage an alienation would be valid if made in favour of any person other than the sole immediate heir.

It was then argued that in the case before us the brothers of the plaintiff's father consented to the alienation in his favour, and that there is evidence to that effect on the record.

On looking at the evidence of Lakshman Joishi, one of the brothers, we find no distinct admission regarding the office. Moreover this point was not taken at the last hearing, nor we were asked to call for a finding as to the alleged consent. We cannot at this stage allow this point to be raised and order a new trial regarding it. Of course it is not intended that those who may have a claim by hereditary right, the legal heir, should be in any wise prejudiced by this judgment. We must reverse the decree of the Courts below and dismiss the suit. Under the circumstances we direct each party to bear his own costs throughout.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Wilkinson.*

MUTTAKKE AND OTHERS (DEFENDANTS NOS. 1 TO 16 AND 18 TO 41),
APPELLANTS,

v.

THIMMAPPA AND OTHERS (PLAINTIFFS), RESPONDENTS.*

*Aliyasantana Law—Specific Relief Act—Act I of 1877, s. 42—Declaratory relief—
Limitation Act—Act XV of 1877, sched. II, arts. 127, 144.*

In a suit in which the plaintiffs sought declarations that they were members of an undivided Aliyasantana family with the defendants, that certain property belonged to the family, and that plaintiff No. 1, the senior member of the family,

* Appeal No. 131 of 1890.