

APPELLATE CIVIL.

Before Mr. Justice *Muttusami Ayyar* and Mr. Justice *Handley*.

GAJAPATI (PLAINTIFF'S REPRESENTATIVE), APPELLANT,

v.

BHAGAVAN DOSS (DEFENDANT), RESPONDENT.*

Mutt—Relation between the founder's representative and the Mahant—Agreement by the Mahant on his appointment—Power of dismissal.

In the absence of a deed of endowment the obligations of the head of a mutt to the representative of the founder can only be deduced from the usage of the institution.

In a suit by the representative of the founder to remove the defendant from the headship of a mutt, it appeared that the usage was for the head of the institution for the time being to nominate his successor, and for the representative of the founder to sanction the nomination and invest the nominee with a *sade* on his installation, and that the defendant had asked the plaintiff to appoint him and had undertaken on his appointment to furnish to him accounts of the income and expenditure of the mutt:

Held, that the plaintiff was not entitled to remove the defendant from office on the ground of his refusal to furnish accounts.

APPEAL against the decree of E. C. Johnson, Acting District Judge of Ganjam, in original suit No. 8 of 1889.

Suit by the Zamindar of Parlakimidi to remove from his office the Mahant of the Devi Mutt at Parlakimidi. The plaintiff alleged that he had dismissed the defendant on 25th November 1885 for not furnishing him with the accounts of the mutt, &c., and that he had been justified in doing so under his authority as representative of the founder of the mutt and also under a document executed by the defendant on his appointment as Mahant.

The District Judge dismissed the suit.

The plaintiff preferred this appeal.

Anandachari for appellant.

Pattabhirama Ayyar for respondent.

JUDGMENT.—It is an essential part of the plaintiff's case, as disclosed in his plaint, that he is the hereditary trustee and manager of the mutt, the subject of the suit. This he has altogether failed to prove and, on the contrary, the evidence—oral and documentary

* Appeal No. 51 of 1890.

—shows that the mutt and some of the property now attached to it were dedicated to the worship of Madana Mohanaswami by the plaintiff's ancestor, and the management was handed over to a Brahman ascetic who, and his successors, have continued to manage the mutt and receive and administer its revenues down to the present time.

The mutt is a religious institution under the management of Byragi Brahman ascetics, and the plaintiff and his family not being ascetics could not take an active part in the management of its affairs. The legal relation, therefore, between plaintiff and defendant is not that of a trustee and his servant, but that of the representative of the founder and the manager of the institution.

The obligations attaching to that relation can, in the absence of any deed of endowment, only be deduced from the usages of the institution. As the plaintiff is not the hereditary trustee and manager, the question is whether the usage of the institution justifies his claim to remove the defendant from the headship of the mutt and the custody of its properties, which is the foundation of his suit. It is argued before us that this claim rests upon the fact that the plaintiff and his ancestors have always appointed the ascetics who have been successive heads of the mutt, and that the right of appointment involves a right of dismissal. And as against the defendant it is said the case for a right of dismissal is strengthened by the fact that, on his appointment, he executed exhibit N in favour of the Zamindar, by which he requested that he might be appointed, and undertook to render accounts of the income and expenditure.

But we agree with the District Judge that the power of appointment, which the plaintiff and his predecessors are shown to have exercised in respect to the headship of this mutt, is a limited one and does not involve the power of dismissal. The appointments have always been made from among the *chelas* or disciples of the last head of the mutt, and have really amounted to nothing more than that the Zamindar, as a powerful supporter and large benefactor of the mutt, has sanctioned the choice of a successor from among his *chelas* made by the head for the time being, and has invested the successor with a *sadi* on his installation.

With the exception of the series of documents marked as exhibits J to J3, which are accounted for by the fact that the Collector called for accounts and particulars of the property and

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income of the mutt, which the Zamindar obtained from the then head, there is no evidence that the heads of the mutt ever furnished accounts to the Zamindar, or except in the case of the demand made upon defendant before suit, were ever asked to furnish accounts.

And we think the defendant's undertaking in exhibit N to furnish accounts cannot operate to alter his *status* so as to render himself liable to dismissal for not furnishing accounts. If he was not by the terms on which he held his office liable to render accounts, he could not, by any voluntary promise on his part, impose on himself an obligation which had no legal existence. The obligation to render accounts does not appear to form part of the usage of the institution, nor does it appear that the provision in exhibit N for rendering accounts was ever acted upon until the demand before suit. No instance of a Zamindar having ever dismissed the head of this mutt, or having appointed a *chela* other than the one nominated by the head of the mutt, is proved. It is urged that it was open to the Zamindar to appoint any *chela* at his discretion. In this case it is not necessary to determine the precise nature of the Zamindar's right of appointment. It is sufficient to observe that he did appoint the defendant and that his right of appointment is a qualified right and does not necessarily involve the power of dismissal. It was for the plaintiff to prove his right to dismiss the defendant and we agree with the District Judge that he has failed to do so.

In this view of the case, the reasons alleged for the dismissal are immaterial, but we may as well express our opinion upon the evidence on this part of the case.

Three grounds of dismissal were originally alleged (1) misappropriation of mutt funds, (2) immorality, and (3) refusal to render accounts. The first is given up in appeal. As to the second the evidence is so vague and improbable that we cannot say the District Judge was in error in declining to accept it. As to (3), as mentioned above, in our opinion, according to the usages of the institution, the defendant was under no legal obligation to render accounts to plaintiff, and his refusal or failure to do so is no justification for his dismissal.

The suit was rightly dismissed by the District Judge, and we confirm his decree and dismiss the appeal with costs.
