

*S. Srinivasa Ayyangar* for tenth respondent.

**JUDGMENT.**—The District Judge has dismissed the appeal on the ground that it was alleged that in 1894 certain lands belonging to the joint shrotriemdars were leased out for twenty-four years and that consequently such lands were not available for partition or restoration to the plaintiffs. This decision cannot be upheld. Even if it be shown that certain of the shrotriem lands have been leased out under a subsisting lease, that is no ground for rejecting a suit for partition. If there is a decree for partition and the lands are in possession of tenants, delivery can be given under section 264, Civil Procedure Code. The question as to the ownership of the tenth and other defendants of the lands claimed by them as their own must of course be decided before a decree is passed for partition and such lands as they establish their right to must be excluded from the partition. This second appeal is allowed, the decree of the District Judge is reversed and the appeal will be sent back to him for decision on the merits.

The costs hitherto incurred will be costs in the cause.

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## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Moore.*

**SREE MAHANT KISHORA DOSSJEE (PLAINTIFF), APPELLANT,**

1902.  
February 21.

v.

**THE COIMBATORE SPINNING AND WEAVING COMPANY  
(LIMITED), (DEFENDANTS), RESPONDENTS.\***

*Indian Companies Act—VI of 1882, s. 58—Application for rectification of register—Evidence Act—I of 1872, s. 115—Estoppel—Hindu Law—Property held by head of Mutt—Presumption as to its being property of Mutt.*

The head of a Mutt applied for and was allotted shares in a company in his own name. Payments were made by him by way of calls on the shares, and by his successor in office, and the company credited the amounts paid by the successor towards the amount due as calls on the shares. Subsequently, plaintiff, another successor in the office, applied to have the company's share register altered, so that the shares should stand in the name of the Mutt. This, the directors refused to do unless plaintiff provided them with a transfer from the

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\* Appeal No. 125 of 1899, against the decree of G. T. Mackenzie, District Judge of Coimbatore, in (Original Suit No. 22 of 1898.

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original allottee (who was still alive) or an indemnity by the Mutt. Plaintiff did neither, and the shares were ultimately declared by the company to be forfeited. Plaintiff now sued the company, claiming that the shares were not the private property of the original allottee, but belonged to the Mutt, and that the forfeiture should be declared to be invalid, and that the company's register should be rectified. He adduced no evidence to show that the original applicant had utilised the funds of the Mutt in payment of calls:

*Held*, that no presumption arose that the money paid belonged to the Mutt. Nor was the company estopped, by section 115 of the Evidence Act, from denying that the shares were the property of the Mutt. On the refusal by the directors to transfer the shares to the name of the plaintiff he should have applied for rectification of the company's register, under section 58 of the Indian Company's Act, though such an application could not have been successful, as, in the circumstances, he could not have shown that the directors had acted capriciously and unreasonably in refusing to enter plaintiff's name on the register without a transfer from the original holder or an indemnity.

SUIT for rectification of the share-register of the defendant company. The plaint alleged that plaintiff was at present the head and Mahant of the Hathiramjee Mutt, at Tirupati; that Sree Bagavan Dossjee, who was Mahant in 1889, had subscribed for a thousand shares in the defendant company and paid calls amounting to Rs. 56,000 in respect of those shares; that Bagavan had renounced his right title and interest in his office in 1890, to Sree Mahabier Dossjee, who paid a further Rs. 6,000 in calls in respect of the said shares, and died in 1894; that the defendant company had refused to register Mahabier's name in place of Bagavan's; that plaintiff had succeeded Mahabier; that the company had declared the shares forfeited, which forfeiture, as plaintiff contended was void and illegal and not binding on plaintiff's predecessor, or on plaintiff as representing the Mutt. Plaintiff claimed that the Mutt was the holder of the shares, and sought to have his name, as head of the Mutt, registered as a shareholder, and the company's register rectified, and asked for a declaration that the forfeiture was *ultra vires* and void.

The defendant company admitted that Bagavan had applied for the shares, and that they had been allotted to him, his name being entered in the register, and that Rs. 51,000 had been paid by him, as calls, and a further Rs. 5,000 in 1890. They pleaded that he had made default in respect of further calls, that due notice had been given him, that the company had never received notice that Bagavan had renounced his interest in the shares, that Mahabier had paid Rs. 6,000, but had then made default, refusing to

pay more until the shares should be transferred to his name; that the company had offered to make the transfer on receiving either a transfer from Bagavan, or an indemnity by plaintiff in the name of the Mutt, and had further offered to give plaintiff share certificates in Bagavan's name if the arrears of calls were paid. In 1891, Bagavan had asked for and had been given time for payment of the arrears, but again defaulted, and the shares were declared to be forfeited on May 18th 1892, such forfeiture being duly notified to Bagavan and to Mahabier. They added that the shares had been sold to other parties, and all the remaining shares in the company had been taken up. They filed a certificate of forfeiture under Act 46 of their articles of Association, as well as the articles of Association, and claimed that plaintiff had no cause of action against them, and that, under their articles, no notice of any trust on behalf of the Mutt could affect the company, and that the shares had been validly forfeited.

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The application for the shares (which was filed as exhibit 23) was signed by "Streeman Bagavan Dosjee," and the address given was, "Mahant of Atheeram Bavajee Mutt, Tirupati;" and it requested the directors of the company "to allot me" the shares, and added, "I request that my name may be placed on the register of members in respect of the shares so allotted." In the register of shareholders, Bagavan Dosjee was described as the holder of the shares. When the case came on for hearing, plaintiff adduced no evidence to show the source from which Bagavan had obtained the money which he paid as calls, or that such money was part of the funds of the Mutt. The exhibits which had a material bearing on the case are set out or summarised in the judgment of the High Court. The District Judge held that plaintiff had failed to prove that the shares were the property of the Mutt; that the acceptance of sums of money as calls from Mahabier did not bind the company to admit him as the holder of the shares: and that the forfeiture was valid. He dismissed the suit.

Plaintiff preferred this appeal.

Hon. Mr. *Eardley Norton* and *S. Gopalaswami Ayyangar* for appellant.

Mr. *K. Brown* for respondents.

JUDGMENT.—The main argument advanced in support of this appeal is that the application made by Mahant Bagavan Dosjee for shares in the Coimbatore Spinning and Weaving Company was

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made by him in his capacity as Mahant of the Mutt at Tirupati, that the money paid by him for these shares was a portion of the funds of the Mutt, that the Mahant being a Byragi had not and could not have had any funds of his own, out of which he could have purchased those shares; that the directors of the company must have been well aware that such was the case and that consequently on Bagavan Dosjee vacating the post of Mahant the company was bound to transfer the shares standing in his name to the name of the plaintiff his successor in the office of Mahant. The evidence on the record does not bear out these contentions. It cannot be held that exhibit XXIII shows that Bagavan Dosjee applied for the shares in his capacity of Mahant on behalf of the Mutt. The applicant there applies for certain shares, states that he had paid Messrs. Arbutnot and Co. a deposit on account of such shares, asks that the shares may be allotted to him, agrees to accept them and requests that his name may be entered on the register of shareholders. He signs his name as Sreeman Bagavan Dosjee and gives as his address "Mahant of Atheeram Bavajee Mutt, Tirupati." There is nothing in this application to show that it was made on behalf of the Mutt, or that the money paid for the shares consisted of Mutt funds. In exhibit XXIV, an extract from the share register, the shareholder is given as Sreeman Bagavan Dosjee. Nothing is said as to the Mutt having any concern in the transaction. The plaintiff examined no witnesses before the District Court and made no attempt to prove by evidence as to where Bagavan Dosjee got the money that he paid for the shares, or that that money was a portion of the funds of the Mutt. The learned counsel for the appellant has, at the hearing of this appeal, referred to certain texts in the Hindu sacred Law Books to show that a Byragi is condemned to a life of perpetual poverty and is incapable of acquiring property for his own use and benefit. Such precepts cannot be looked on as anything more than counsels of perfection and cannot be held to carry much weight in the absence of clear and satisfactory proof that as a matter of fact Bagavan Dosjee had no private funds at his disposal. Exhibit NN, the deed under which Bagavan Dosjee, after he had been convicted of a criminal offence and committed to jail, appointed the plaintiff as his successor in the office of Mahant and transferred to him the management of all the Mutt property, does not support the contention now put forward that the executant was not and could not have been possessed of any private funds, for in that document he

is described as living by lands and acquisition from disciples. It will further be remarked that in this document, in which the various descriptions of property held by the Mutt are set out in considerable detail, no mention is made of the shares in this company. It is only reasonable to assume that if these shares, which are of considerable pecuniary value, had been looked upon by the executant as mutt property, they would have been mentioned in this document. It must be held that there is no presumption that the money paid by Bagavan Dosjee belonged to the Mutt and that the plaintiff has completely failed to prove such to be the case.

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It appears that shortly after Bagavan Dosjee had been sent to jail, the plaintiff as his successor in the post of Mahant paid from time to time certain sums as a portion of what was due to the company on account of the shares allotted to Bagavan Dosjee. It is further in evidence that the company received these moneys from the plaintiff, credited them towards what was due on account of these shares, and also that Mr. Stanes, on behalf of the company, in certain correspondence which has been filed as evidence, alluded to these shares as being the plaintiff's shares and also as belonging to the Mahant. The learned counsel who has appeared here in support of this appeal urges that in consequence of these acts the company is estopped from denying that the shares are the property of the Mutt and that on Bagavan Dosjee ceasing to be Mahant, the plaintiff by virtue of his succession to the post of Mahant became the owner of these shares. It is impossible to hold that this contention is a valid one. Section 115 of the Evidence Act provides that when a person has by his declaration act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative can be allowed in any suit between himself and such person to deny the truth of that thing. It cannot possibly be held that the Spinning Company by its action led the plaintiff to believe anything. The plaintiff was presumably aware of the facts relating to the purchase of the shares, the source from which the money paid for them was derived, and the capacity in which Bagavan Dosjee acted when he bought them. The company had no special information as to such matters and could not by its action have caused the plaintiff to believe anything respecting them. It is next urged that when the plaintiff applied to the company to have the shares in the name of Bagavan Dosjee transferred to his name the

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company was bound to comply with his request. It is contended that if the company had transferred the shares the plaintiff would have satisfied all calls made in respect of them, and that the default charged against the plaintiff in consequence of which the shares were eventually declared to have been forfeited was due to the failure of the company to comply with the plaintiff's reasonable request that the shares should be transferred to his name. The correspondence shows that the plaintiff applied to have the shares transferred to his name. The directors of the company replied that they were willing to make the transfer if Bagavan Dosjee would execute the necessary documents, or, in case this could not be arranged, if the plaintiff would give them an indemnity bond in the name of the Mutt (exhibit R). No application for transfer was ever made by Bagavan Dosjee and the plaintiff refused to execute an indemnity bond. The result was that after the necessary formalities had been gone through the shares were declared to have been forfeited. There can be no doubt that the company was from first to last justified in the course of action that it followed. Article 25 of the company's articles of association provides for the action that it is necessary should be taken to get shares registered in the name of a person claiming to be entitled to such shares where no form of transfer signed by the transferor, such as is provided for in Act 20, has been submitted to the company. Article 25 provides that when any person becomes interested in a share in consequence of the death, bankruptcy, &c. of any shareholder or by any lawful means other than by a transfer in accordance with article 20, he may, upon producing such evidence as the Board thinks sufficient, be registered as the holder of the share. It is for the applicant for registration to produce evidence such as to satisfy the Board that the transfer can be made. In the present case the plaintiff produced nothing that could be called evidence to show that he was entitled to have the shares standing in Bagavan Dosjee's name transferred to his name, and when the directors under these circumstances declined to make the transfer without a bond of indemnity the plaintiff refused to execute such a bond. On such refusal the plaintiff's proper remedy, as he person aggrieved by the order of the directors, was to apply under section 58 of the Indian Companies Act to a Civil Court for an order to have the register rectified (*Ex parte Gilbert*(1)). He did not so apply; but even if he had taken such

(1) I.L.R., 16 Bom., 398.

action his application must have been refused unless he had been able to show that the directors had acted capriciously and not honestly and reasonably. (Reference may be made to *In re Gresham Life Assurance Society ex parte Penney*(1)) and *In re Coulfort China Company*(2).

It is clear that the plaintiff in the present case could not have proved to the satisfaction of a Court that the directors acted capriciously and unreasonably as it is shown that the holder of the shares never applied to have them transferred and that the plaintiff never made any attempt to produce such evidence as the directors were clearly entitled to insist on to substantiate his claim to have them transferred to his name. The directors in refusing to do anything in the absence of such evidence without an indemnity bond from the plaintiff must be held to have acted reasonably and with a proper regard for the interests of the company. The decision of the District Judge is, in our opinion, right, and this appeal must be dismissed with costs.

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## APPELLATE CIVIL.

*Before Sir Charles Arnold White, Chief Justice.*

A. L. V. GOPALA AYYAR, PETITIONER.

v.

A. ARUNACHALLAM CHETTY, RESPONDENT.\*

1902  
February 27.

*Religious Endowments Act—XX of 1863, s. 5.—Vacancy in office of manager—Appointment by Civil Court—Civil Procedure Code—Act XIV of 1882, s. 622—Jurisdiction of High Court to entertain petition to revise order appointing manager.*

An order made by a Civil Court under the powers conferred by section 5 of the Religious Endowments Act is a Judicial adjudication in the matter before it, and it is competent to the High Court to entertain a civil revision petition against such an order.

Before the jurisdiction which is conferred by section 5 of the Religious Endowments Act can be exercised by a Civil Court, there must be a vacancy in the office, there must have been a transfer to the former trustee and a dispute must have arisen respecting the right of succession to the office. The words in section 5, "any dispute shall arise respecting the right of succession," apply to a case in which a question has arisen with reference to the person who is to succeed to the office, and the jurisdiction of the Civil Court under the section is

(1) L.R., 8 Ch., 446.

(2) L.R., [1895], 2 Ch., 404.

\* Civil Revision Petition No. 194 of 1901 presented against the order of H. Moberly, District Judge of Madura, dated 2nd May 1901.