

## APPELLATE CIVIL.

1906  
May 18.

*Before Sir John Stanley, Knight, Chief Justice and Mr. Justice  
Sir George Know.*

CHANDRANATH CHAKRABARTI AND ANOTHER (DEFENDANTS) v.

JADABENDRA CHAKRABARTI AND OTHERS (PLAINTIFFS).\*

*Religious endowment—Succession to management.*

*Held* that in the absence of express directions by the founder of an endowment, the right to nominate the manager reverts to the heirs of the founder on failure of the persons expressly appointed. *Sheoratan Kunwari v. Ram Pargash* (1) approved.

Babu *Harendra Krishna Mukerji*, for the appellants.

Babu *D. N. Ohdedar*, Dr. *Satish Chandra Banerji* and  
Babu *Satya Chandra Mukerji* for the respondents.

In this case one Durga Kant by this will, dated the 16th of March, 1897, created an endowment of a certain house in favour of a temple of Shiva and appointed one Musammat Umamoi Debia its *pujari*, and after her death one Krishna Kishore, who, however, died in the life-time of Musammat Umamoi. No definite arrangements were made by the testator as to what should happen on the death of Krishna Kishore. Musammat Umamoi died leaving a will dated the 29th March, 1895, of which probate was duly taken out by some of the executors named therein, and in which she directed her executors to maintain the worship of Shiva as required by the will of Durga Kant.

Subsequently it would appear that one Radha Kant Lahiri, as the nearest surviving relative of the settlor Durga Kant, took possession of the house and put in as his manager one Chandra Nath Chakrabarti. The present suit was brought by some of the executors of Musammat Umamoi Debia's will claiming possession of the house under the provisions of the will of Durga Kant. The Court of the first instance (Munsif of Benares) gave the plaintiffs a decree for possession of the house, and this decree was on appeal upheld by the District Judge. The defendants Chandra Nath Chakrabarti and Radha Kant Lahiri thereupon appealed to the High Court.

\* Second Appeal No. 81 of 1905, from a decree of F. J. Pert, Esq., District Judge, Benares, dated the 19th of September, 1904, confirming a decree of Babu Hira Lal Singh, Munsif of Benares, dated the 20th of July, 1904.

1906

CHANDRA-  
NATH  
CHAKRA-  
BARTI  
v.  
JADABENDRA  
CHAKRA-  
BARTI.

STANLEY, C.J. and KNOX, J.—This appeal relates to the management of a small religious endowment created by the will of one Durga Kant Lahiri. By that will the testator appointed Musammat Umamoi his executor and gave her all his property with the exception of the land upon which stands the house which is the subject-matter of the endowment. As to the endowed property he directed that Umamoi should always maintain and keep up the performance of the worship of Shivaji from the rent of the house in question. Then the will contains a provision that if Musammat Umamoi should die, Krishna Kishore should come to Benares and maintain and keep up the worship in her place in accordance with the terms of the will. Krishna Kishore predeceased Musammat Umamoi. Musammat Umamoi in the year 1895 by her will appointed the plaintiffs her successors in the office of *pujaris* of the temple in question and died in 1902. The appellants, who are heirs of the testator, object to this appointment and contend that they as the heirs of the testator, in the absence of any express provision in the will for the appointment of a successor to Musammat Umamoi, are by law entitled to appoint managers of the endowed property. We think that their contention is well founded. In the absence of express directions by the founder of an endowment as to the management of endowed property the right to nominate a manager reverted to the heirs of the founder on failure of the persons expressly appointed for that purpose. *Sheoratan Kunwari v. Nam Pargash* (1). The view taken by the Lower Courts is not in our opinion correct. We therefore allow this appeal, set aside the decrees of both the lower Courts and dismiss the plaintiff's suit with costs in all Courts.

*Appeal decreed.*

(1) (1896) I. L. R., 18 All. 277.