the provisions of section 578 of the Code of Civil Procedure. The appellant's objection is, no doubt, a very technical one, but we are of opinion that the defective procedure amounted to something more than a mere irregularity. We think that the Court which carried out the remand order had no jurisdiction to try the issues remitted by the lower appellate Court, and that therefore section 578 does not apply to this case. In this view we allow the appeal, set aside the order of the Court below and we direct that Court to restore the appeal to its original number in the register of appeals, and to take it up at the stage at which it had arrived when the order of remand was passed on the 24th of January 1905 and to deal with it according to law. The costs of this appeal will be the costs in the cause.

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ALI SHER KHAN *v.* AHMAD-ULLAH KHAN.

Before Sir George Knox, Acting Chief Justice, and Mr. Justice Dillon.

SHEO PRASAD AND ANOTHER (PLAINTIFFS) *v.* AYA RAM AND OTHERS (DEFENDANTS.)*

1907 *July* 9.

Hindu law—Religious endowment—Right to appoint manager.

According to Hindu law, when a religious endowment has been founded, the right to appoint a manager or superintendent remains in the founder and his descendants, unless there is evidence to show that the founder or his descendants have made any inconsistent disposition. *Gossamee Sree Greedharreejee* v. *Rumanlolljee Gossamee* (1), *Sheoratan Kunwari* v. *Ram Pargash* (2) and *Mussumat Jai Bansi Kunwar* v. *Chattar Dhari Sing* (3) followed.

THIS was a suit by which the plaintiffs as founders of a religious endowment asked for a declaratory decree that certain property scheduled in the plaint was endowed property dedicated to the Sangat Nanak Shahi; that the defendants had no right of their own to that property and that the plaintiffs had authority to appoint on their behalf any person they chose as manager of the endowed property. The defendants claimed that the property in dispute was not endowed property, but was the property of one Baba Sadho Ram, whose heirs they were. They denied that the plaintiffs had any concern whatever with the property in suit or any right to appoint a manager in succession to Sadho Ram.

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* First Appeal No. 153 of 1904 from a decree of Babu Bipin Behari Mukerji, Subordinate Judge of Cawnpore, dated the 19th of May 1904.

(1) (1889) L. R., 16 I. A., 137; I. L. R., 17 Calc., 3.

(2) (1896) I. L. R., 18 All., 227.

(3) (1870) 5 B. L. R., 181.

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SHEO PRASAD v. AYA RAM.

The Court of first instance (Subordinate Judge of Cawnpore) found that the property in suit was endowed property, but dismissed the plaintiffs' suit upon the ground that they had not shown that they had a right to appoint managers of the property.

The plaintiffs thereupon appealed to the High Court.

Babu *Jogindro Nath Chaudhri* and Babu *Durga Charan Banerji*, for the appellants.

Babu *Parbati Charan Chatterji* and Munshi *Gokul Prasad*, for the respondents.

KNOX, ACTING C.J., and DILLON, J.—This first appeal arises out of a suit brought by the appellants who were plaintiffs in the Court below. According to them, they in Sambat 1914, corresponding to the year 1857, made a religious endowment consisting of certain buildings situate at Sarsya Ghat in the city of Cawnpore.

The religious endowment was for the promotion of the Nanak Shahi religion. They installed one Baba Gobind Das to carry out all the necessary rites connected with the endowments, and in succession to him they also appointed one Baba Sadho Ram. Upon Baba Sadho Ram's death they appointed as a temporary measure Baba Kirpal Das to carry on the duties connected with the Sangat until such time as they could make a further appointment.

The first four defendants, who represent themselves as Nanak Shahi Fakirs and as disciples of Baba Sadho Ram and also of Baba Kirpal Das, aforesaid, denied the plaintiffs' title to make any appointment to the religious endowment. They attempted to realize certain bonds belonging to the religious endowment on the ground that these bonds and the properties connected with the endowment were the self-acquired property of Baba Sadho Ram. The plaintiffs accordingly asked for a declaratory decree to the effect that the property scheduled in the plaint was endowed property dedicated to the Sangat Nanak Shahi; that the defendants had no right of their own to that property, and that the plaintiffs had power to appoint on their behalf any person they liked as manager. The defence was that the property in dispute was not the Sangat property, nor was Baba Sadho Ram a superintendent, nor was he appointed on behalf of the plaintiffs. The

whole of the property in dispute was the self-acquired property of Baba Sadho Ram. The property had been purchased in his name and stood in his name in the khewats and other revenue papers. He was not a manager on behalf of, or subordinate to, the plaintiffs. All suits which it had been necessary to bring in respect of these properties had always been brought by Baba Sadho Ram in his own right. Baba Sadho Ram died intestate, and the answering defendants being his disciples are entitled to succeed him. Baba Kirpal Das, defendant No. 5, filed a separate written statement, but it is not necessary to enter at length into what was stated therein, except to say that he sets up in himself a right as Mahant of the Sangat upon appointment by the plaintiffs. Four issues were framed by the Court below, but only the third and the fourth require consideration for the purpose of this appeal. They are as follows:—3rd. Whether the property in suit appertaining to the Sangat is dedicated property; 4thly, if so, whether the plaintiffs have any title to the property as superintendents and also have a right to appoint a successor of Baba Sadho Ram. The learned Subordinate Judge decided the third issue in the plaintiffs' favour and gave them a declaration to the effect that the properties in question are endowed property appertaining to the Sangat at Sarsya Ghat. He dismissed that portion of the plaintiffs' claim in which they seek for a declaration that they are superintendents of the property and have the power to appoint any person they like as a manager. The arguments addressed to us during the hearing of this appeal referred only to this portion of the reliefs claimed. The respondent has printed no evidence, and throughout the hearing of this appeal our attention was confined to the evidence printed by the appellants. The plaintiff went into the witness-box and said without any hesitation that the appellant had absolute power to appoint whomsoever they liked for the worship of the Granth Saheb. He gave the origin of the endowment, deposed that first Baba Gobind Das, and, in succession to Baba Gobind Das, Baba Sadho Ram after an interval was appointed by the appellants as the superintendent of the endowment. He gave more than one instance of direct interference in the affairs of the endowment, and it was not elicited by cross-examination that in making the

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endowment the founder had imposed any limitation on their powers with regard to the same. His statement was confirmed by the evidence of Kirpal Das, who, while, it is true, stating that all who belonged to the sect had power to appoint Mahants, said that the plaintiffs had more authority than others because the buildings belong to them. They installed Granth Saheb. To the same effect is the deposition of Fateh Singh and Gopal Singh who belong to this form of worship. A witness, Bakhtawar Singh, claimed to have been present on the day Baba Sadho Ram was installed, and he says his installation was the work of Sheo Prasad, one of the appellants. The witness Ram Charan gives a very graphic account of the filling up of the vacancy caused by the disappearance of Baba Gobind Das. He too says that Baba Sadho Ram was appointed by Lala Sheo Prasad. Baba Kishan Das confirms him in this .In short, we have very strong and voluminous evidence showing that the religious endowment was founded by the appellants and that each of the two Mahants in turn who had presided over it had been appointed by the appellants. Upon this finding the proposition of law enunciated by their Lordships of the Privy Council in the case of *Gossamee Sree Greedhareejee* v. *Rumanlolljee Gossamee* (1) would apply. Their Lordships say :—" According to Hindu law, when the worship of a Thakur has been founded, the Shebaitship is held to be vested in the heirs of the founder in default of evidence that he deposed of it otherwise or there has been some usage, course of dealing or some circumstance to show a different mode of devolution." The rule of law laid down in that case was applied by this Court in the case of *Sheoratan Kunwari* v. *Ram Pargash.* (2) It was for the respondents to establish that the appellants had divested themselves, either at the foundation or afterwards, of the powers which naturally belong to them. This they have not done. In the present case, moreover, as no one has been shown to be entitled to succeed Baba Sadho Ram, the right of management reverts to the heirs of the founder (see *Mussumat Jai Bansi Kunwar* v. *Chattar, Dhari Sing* (3). It cannot be claimed for Baba Sadho Ram that he held the office

(1) (1889) L. R., 16 I. A., 137; I. L. R., 17 Calc., 3.

(2) (1896) I. L. R., 18 All., 227.

(3) (1870) 5 B. L. R., 181.

of trustee of this religious endowment, for it will be remembered that the case set up by the defendants is that the endowment is not a religious endowment, and that all the buildings and other property, the subject-matter of this appeal, are the self-acquired property of Baba Sadho Ram. This neither the Court below found, nor do we find supported by any evidence that has been shown to us. If no trust was created, then the nomination vests by law in the founder and his heirs, unless there has been some usage or course of dealing which points to a different mode of devolution—see *Sheoratan Kunwari* v. *Ram Pargash*, (1). The result is that we allow this appeal and modify the decree of the Court below so far that we decree the plaintiffs' suit in full, with costs as against all the respondents save Kirpal Das.

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July 11.

Before Mr. Justice Banerji and Mr. Justice Aikman.

JAMNA PRASAD AND OTHERS (DEFENDANTS) v. RAM PARTAP AND OTHERS (PLAINTIFFS).*

Hindu law—Mitakshara—Joint Hindu family—Ancestral property—Property inherited from maternal grandfather.

Held that a son in a joint Hindu family does not acquire by birth an interest jointly with his father in property which the latter inherits from his maternal grandfather. *Vythinatha Ayyar* v. *Yeggia Narayana Ayyar* (2) dissented from. *Sudarsanam Maistri* v. *Narsimhulu Maistri* (3) discussed. *Venkayyamma Garu* v. *Venkataramanayyamma Bahadur Garu* (4) *Karuppai Nachiar* v. *Shankaranarayanan Chetty* (5) and *Chatturbhooj Meghji* v. *Dharamsi Naranji* (6) referred to.

THE plaintiffs in this case sued as the sons of one Rajit Pande to have a sale deed executed by their father in favour of the defendants set aside upon the ground that the property sold is joint ancestral property in which the plaintiffs had a share and that their father Rajit Pande was not competent to sell it. Other pleas were taken by the plaintiffs, but they were abandoned in the Court of first instance. The property in question was admittedly inherited by Rajit Pande from his maternal grandfather, Acharaj Upadhia. The contention of the defendants was that

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* Second Appeal No. 916 of 1906 from a decree of R. L. B. Clarke, Esq., District Judge of Gorakhpur, dated 7th of June 1906, confirming a decree of Munshi Achal Bihari, Subordinate Judge of Gorakhpur, dated the 22nd of March 1906.

(1) (1896) I. L. R., 18 All., 227.
(2) (1903) I. L. R., 27 Mad., 382.
(3) (1901) I. L. R. 25 Mad., 149.
(4) (1902) I. L. R., 25 Mad., 678.
(5) (1903) I. L. R., 27 Mad., 300.
(6) (1884) I. L. R., 9 Bom., 438.