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the share of the property mentioned in it which he claims to recover. They accordingly think that these appeals should be allowed, that the three judgements and decrees of the Court of the Judicial Commissioner, dated the 19th of March, 1909, and the 29th of March, 1911, respectively, should be set aside, that the two judgements and decrees of the lower Courts, namely, that dated the 3rd of August, 1909, of the Subordinate Judge, and that of the District Judge of Rae Bareli, dated the 5th of February, 1910, should also be set aside, and that both the suits should be dismissed with costs, and they will humbly advise His Majesty accordingly. The respondent must pay the costs of these consolidated appeals.

Appeals allowed.

Solicitors for the appellants :—*Barrow, Rogers and Nevill.*

Solicitors for the respondents :—*Watkins and Hunter.*

J. V. W.

MOHAN LALJI AND ANOTHER (PLAINTIFFS) *v.* GORDHAN LALJI MAHARAJ AND OTHERS (DEFENDANTS).

[On appeal from the High Court at Allahabad.]

P. C.* 1913 *February*, 11. *March*, 17.

Hindu Law—Endowment—Right of succession to sebaitship of temple belonging to Ballavacharya Gossains—Evidence of dedication—Claim of persons incompetent to be sebaits (as being Bhats) of Ballav temple disallowed as defeating the purpose for which the founder established the worship—Title—Proof of independent title to succession as sebait.

In a suit for possession and the right of sebaitship of a temple belonging to the Ballavacharya Gossains founded by one Muttuji, the maternal grandfather of the plaintiffs (appellants) the defendant (respondent) contended that the ordinary Hindu law was not applicable as alleged by the plaintiffs, and that daughter's sons were excluded by custom from succession.

Held that, apart from positive testimony on the point, the performance of the worship of the idol in accordance with the rites of the sect for whose benefit it was held, might be treated as good evidence of dedication, and the ordinary rule of Hindu law relating to the descent of private property was not applicable.

Held also that the rule that the heirs of the founder succeed to the sebaitship laid down in *Gossamee Sree Greedharreejee* v. *Rumanlalljee Gossamee* (1) was, as there implied, subject to the condition that the devolution in the ordinary line of descent is not inconsistent with or opposed to the purpose the founder had in view in establishing the worship. In the present case the appellants being Bhats, and not belonging to the Gossain *kul* were not competent to be sebaits of a Ballav temple where the rites were performed according to the Ballav

* *Present* :—Lord ATKINSON, Lord MOULTON, Sir JOHN EDGE and Mr. AMEER ALI.

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

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ritual, which, it was clearly established they could not perform. To allow their claim would defeat the purpose for which the worship was established.

Held further that the respondent had established an independent title of his own to the temple as being the nearest male relative of Muttuji both being descendants of two full brothers The idol in the temple was brought from his temple at Nathdwara, and the worship founded by Muttuji was an off-shoot of the worship at Nathdwara. The temple was also built on land belonging to the Tekait respondent with the permission of his ancestor who held the office of Tekait at the time. He had therefore a clear title according to the customs and usages of the Ballav *kul* to the sebaitship of the temple.

APPEAL from a judgement and decree (28th February, 1910) of the High Court at Allahabad, which affirmed a judgement and decree (5th August, 1907) of the Judge of the Small Cause Court at Agra, exercising the powers of a Subordinate Judge, dismissing the appellants' suit.

The facts of this case, which is an appeal from the decision of the High Court (RICHARDS and TUDBALL, JJ.) reported in Indian Law Reports, 32 Allahabad, 461, sufficiently appear from the judgement in that case, and are also stated in the judgement of their Lordships of the Judicial Committee.

On this appeal—

De Gruyther, K. C., and *Ross, K. C.*, for the appellants contended that the burden lay on the respondents to prove the custom they alleged of the exclusion of the sons of daughters of the founder by his male kinsmen, and that they had failed to discharge it. The High Court had wrongly placed the burden of proof on the appellants to show that they, the daughters' sons, were entitled to succeed. The question was on whom the *onus* lay. Did it lie on the appellants who alleged that the ordinary Hindu law was applicable, or on the respondents who set up a special custom (contrary to the Hindu law) which, they contended, applied and governed the present case? Reference was made to *Jagadindra Nath Roy* v. *Hemanta Kumari Debi* (1); *Gossamee Sree Greedharreejee* v. *Rumanlolljee Goswamee* (2); *Greedharee Doss* v. *Nundokissore Doss* (3); *Muttu Ramalniga Setupati* v. *Periannayagum Pillai* (4); *Genda Puri* v. *Chatar Puri* (5) and *Janoki Debi* v. *Gopal Acharjia Goswami* (6). On the

(1) (1904) I. R. L., 32 Calc., 129; L. R., 31 I. A., 203.
(2) (1889) I. R. L., 17 Calc., 3; L. R., 16 I. A., 137.
(3) (1867) 11 Moo. I. A., 405 (427, 428).
(4) (1874) L. R., 1 I. A., 209 (228).
(5) (1886) I. L. R., 9 All., 1 (8); L. R., 13 I. A., 100 (105).
(6) (1882) I. L. R., 9 Calc., 766 (771); L. R., 10. I A, 32 (37).

evidence it was submitted that it was proved that the daughters' sons do succeed to the office of sebait of a temple of the kind in suit. The High Court had found that Muttuji was the founder of the worship conducted in the temple; and, on the above authorities the appellants as his heirs-at-law were entitled to hold the office of sebait, and to obtain the custody of the idols, temple, and the properties appertaining thereto as superintendents and managers.

Sir *Erle Richards*, *K.C.*, and *B. Dube*, for the first respondent were not called upon.

1913, *March 17th.*—The judgement of their Lordships was delivered by Mr. AMEER ALI:—

The dispute in this case relates to the shebaitship of a Hindu temple belonging to the Ballavacharya Gossains situated at a place called Jatipura in the Muttra district of the United Provinces of India.

The Ballavacharya cult, in reality an offshoot of Vaishnavism, was founded in the 16th century of the Christian Era by one Ballavacharya, who is usually designated among his followers and disciples as Maha Pirbhuji. He and his descendants, who constitute the Ballavacharya Gossain *Kul*, are held in great veneration by the members of the sect and regarded as the incarnation of the famous and favourite Hindu deity Krishna, whom in common with other Vaishnavs (Vishnuvites) they worship. The cult established by Ballavacharya differed in several particulars from the practices in vogue among other votaries of Krishna, the principal point of difference consisting in the fact that he repudiated the practice of celibacy and asceticism practised by the other Gossains.

The Ballavacharya Gossains, in other words, the descendants of Ballav, possess several principal temples, each of which is presided over by a member of his *Kul* or family, who is styled a *Tikait*.

The defendant Gordhan Lalji is in possession of one of the most important of these temples, if not the most important, which is situated at Nathdwara in the Odeypore State.

In order to make the contentions of the parties intelligible, it is necessary to state in this connection certain admitted facts relating to the customs and usages in vogue among the Ballavacharya *Kul*.

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In the first place the Ballavacharyas do not intermarry in their own *Kul*, as the members belong to the same *gotra*. They take wives from among the Bhats, a well-known Brahmanical caste, and marry their daughters to Bhats.

In the Ballavacharya Gossain temples, besides the principal image, which is directly or indirectly a presentment of Krishna, there are subsidiary images not enjoying the same worship or veneration but nevertheless regarded as representations of Krishna. They are almost invariably images of one or other of the descendants of Maha Pirbhuji.

Another fact necessary to bear in mind is that the ministrations in the Ballavacharya temples are entirely in the hands of the direct descendants of the founder, and the Gossains of his *Kul* are the preceptors of the cult taught by him.

The temple which forms the subject-matter of dispute in the present case is stated to have been built about the time of the Indian Mutiny, by one Muttuji, a descendent of Ballav and thus a member of his *Kul*. The worship he set up in this new temple was of the image of Sri Madan Mohanji, which is proved to have been brought from the Tikait defendant's temples at Nathdwara. This was one of the subsidiary images that were worshipped there along with the principal deity.

Muttuji remained in possession of the temple built by him and of the worship performed there until his death in 1883. He left a widow, Satbinda Bahuji, and two daughters, Musammat Ganga Beti and Gordhana Beti. After the death of Muttuji, his widow, Satbinda, carried on the worship until 1888 when she died, and the charge of the temple devolved on Ganga and Gordhana. Ganga died in 1896 and Gordhana in 1902. Both Ganga and Gordhana were married, according to the custom of the sect, to Bhat husbands and their sons are accordingly called Bhats. The plaintiffs, Mohan Lalji and Gordhan Lalji, are the sons of Ganga, whilst the defendant, Madhusudan Lala, is the surviving son of Gordhana, and Damodar Lala is her husband.

On the death of Gordhana, these two, together with Anrudh Lala, another of her sons, who was alive at the time, appear to have taken possession of the temple. In 1904 a suit was instituted by the defendant Tikait Gordhan Lalji, against Damodar and

his two sons to establish his title to the shebaitship, and for possession of the temple. This suit was referred to arbitration, and an award was made in his favour under which he obtained possession.

During the pendency of that suit, the plaintiffs, the sons of Ganga, brought the present action against Damodar and his two sons for joint possession of the temple and its appurtenances. On the 25th of August, 1905, Tikait Gordhan Lalji was added as a defendant to the suit of Mumsamat Ganga's sons.

The plaintiffs' claim against Gordhan Lalji is for ejectment; whilst against the other defendants it is for joint possession. They allege that Muttuji, their maternal grandfather, was the owner of the temple with all its appurtenances; that on his death his widow came into possession of the same by right of inheritance; and that upon her death their mother and their aunt "became the owners of the temple." And they claim to be entitled on the death of Gordhana to joint possession with her husband and sons to an equal share as "owners." It will be noted that they based their right on the ordinary right of inheritance under the Hindu Law.

The Tikait, the real contesting defendant, denied the title put forward by the plaintiffs. He urged that the temple was not the personal property of Muttuji and that the right of inheritance did not attach to it. He further alleged that, according to the custom in force among the Ballavacharyas, daughter's sons did not belong to their *Kul* and were debarred from taking part in the ministrations at the temple for the benefit of the worshippers; and he claimed that, as a collateral relative of Muttuji in the male line, he was entitled to succeed him as shebait.

He also alleged that the temple was built by Muttuji on land belonging to his (the defendant's) father with his permission, and that on Muttuji's death without leaving any lawful heir the right to the possession devolved on him by virtue of an agreement executed by Muttuji.

On these respective allegations of the parties the Trial Judge framed a number of issues, only four of which need attention. The second and third put in issue the incapacity alleged by the defendant of daughter's sons succeeding to their maternal grandfathers or taking part in the worship at a Ballav temple. The fourth

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raised the question whether the property was *debuttur*. The fifth dealt with the claim of the defendant to succeed to the shebaitship by right of heirship to Muttuji.

The Subordinate Judge, on an exhaustive review of the evidence, held on all the issues against the plaintiffs and accordingly dismissed the suit. His decision has been affirmed on appeal by the High Court of Allahabad.

From the decree of the High Court the plaintiffs have appealed to His Majesty in Council. They, or rather their advisers, abandoned, if not in the first court, certainly in the High Court, their contention that the temple in suit with the appurtenances formed the private property of Muttuji subject to the ordinary law of inheritance. In the High Court the case was discussed and decided on the admission of the plaintiffs' counsel that the property in suit was *debuttur*. In fact, in their Lordships' judgement, the evidence left no room for the opposite contention, for, apart from positive testimony directly bearing on the point, the performance of the worship in accordance with the rites of the sect for whose benefit it was held may be treated as good evidence of dedication. That being so, the ordinary rule of Hindu Law relating to the descent of private property is not applicable to the particular right in controversy in this case.

Stress, however, is laid on the principle enunciated in *Gossamee Sree Greedharreejee* v. *Rumunlolljee Gossamee* (1), where Lord Hobhouse, delivering the judgement of this Board, said as follows :—

"According to Hindu Law, when the worship of a thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution."

This rule must, from the very nature of the right, be subject to the condition that the devolution in the ordinary line of descent is not inconsistent with or opposed to the purpose the founder had in view in establishing the worship. This qualification is in fact covered by the words used by Lord Hobhouse.

Starting from this point, the first question to determine is whether the plaintiffs suing for the joint exercise of the right of

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

shebaitship to the temple in suit, have established their competency for the office. The duties which are imposed on the person in charge of the temple and of its worship are to be found very comprehensively set forth in Professor Hayman Wilson's "Religious Sects of the Hindus." Both the courts in India have found that the plaintiffs, being Bhats, and not belonging to the Gossain *Kul*, cannot perform the diurnal rites for the deity worshipped by the sect; they cannot wash, dress or adorn the image or perform the *arti* (one of the most important rites) which seems to consist in waving the light before the image of the deity. They cannot touch the food offerings placed before the idols, which are afterwards distributed among the Vaishnav votaries. Nor can they communicate the *mantras* to the disciples for purposes of initiation. It is to be noted in this connection, that whilst the daughters of the Ballav Gossains married to Bhat husbands continue to live in their father's houses and remain within their father's *Kul*, their sons do not acquire that status; as sons of Bhats they are Bhats, and not Ballavacharya Gossains who are by virtue of their descent entitled to act as ministers of the cult established by Ballav Maha Pirbhuji.

Another fact is equally clear on the evidence that Bhat girls married into the Gossain *Kul* receive the *mantras* and become thenceforth members of the *Kul*. It is not surprising, therefore, that after Muttuji's death his widow and daughters remained in charge of the temple and its worship. But to allow the plaintiffs' claim to an admittedly Ballav temple, where the rites are performed according to Ballav ritual, which, it is clearly established, they cannot perform, would, in their Lordships' judgement, defeat the purpose for which the worship was established.

In an action of ejectment the conclusion at which their Lordships have arrived would be sufficient for the affirmance of the decree appealed against dismissing the plaintiffs' suit.

But their Lordships are of opinion that the Tikait defendant has succeeded in establishing an independent title of his own to the temple in suit. He appears to be the nearest male relative of Muttuji, both being descendants of two full brothers; there can be little doubt, also, that the image installed at Jatipura was brought from his temple at Nathdwara, and that the worship founded

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by Muttuji was an off-shoot of the worship in Nathdwara. The temple, again, was built on land belonging to the Tikait defendant, with the permission of his ancestor, who held the office of Tikait at the time.

It seems to their Lordships that, apart from the statements contained in Muttuji's letter, on which the defendant relied in his written statement, he has a clear title, according to the customs and usages of the Ballav *Kul*, to the shebaitship of the temple in suit.

On the whole their Lordships are of opinion that the judgement and decree of the High Court are right, and that this appeal must be dismissed. And they will humbly advise His Majesty accordingly.

The appellants will pay the costs.

Appeal dismissed.

Solicitors for the appellants:—*T. L. Wilson, & Co.*

Solicitor for the first respondent:—*Douglas Grant.*

J. V. W.

REVISIONAL CRIMINAL.

1913
February, 28.

Before Mr. Justice Tudball.

EMPEROR *v.* TULSHI RAM.*

Act No. II of 1899 *(Indian Stamp Act), sections* 2 *(*23*),* 62 *and* 63—Sarkhat—*Memorandum of account—Receipt—Several items of over Rs.* 20 *each—Each item to be stamped.*

Held that a memorandum of account between debtor and creditor, which was left in the possession of the debtor and consisted of items entered from time to time of money advanced and repaid, was a document which required a separate receipt stamp in respect of each item of over Rs. 20.

ONE Tulshi Ram was in the habit of borrowing money from time to time from a money-lender. The account of the sums of money borrowed and repaid was left in the hands of the debtor, and consisted of a paper upon which such sums were entered as occasion arose in opposite columns. When the account was finally closed, a balance of Rs. 50 odd was paid and one receipt stamp attached and signed by the creditor firm. The receipt stamp was not cancelled. The debtor Tulshi Ram was on these facts convicted under section 62 of the Stamp Act, 1899, on the finding

* Criminal Revision No. 82 of 1913 from an order of Ram Saran Das, Magistrate, first class, of Ballia, dated the 23rd of October, 1912.