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She raised no plea of fraud in her plaint, nor is any such plea raised before us.

The suit has the appearance of being (far from a *bonâ fide* claim) an attempt to defeat Durga Shankar's creditors. The long delay in the claim is not free from suspicion. As for treating the claim as a suit for rent on the basis of a lease, that is an impossibility. There is no lease and it is not a suit for rent, and this is not the case that the defendants were asked to meet in the courts below.

Nor can the plaintiff obtain a personal decree against Durga Shankar. The contract being void she cannot enforce it, any more than he could have done if she had refused to give up her holding.

The appeal fails and is dismissed with costs.

The cross-objections have not been pressed and are dismissed with no order as to the costs thereof.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

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June, 11.

PURAN MAL AND OTHERS (DEFENDANTS) *v.* BIRJ LAL (PLAINTIFF).*

Partition—Suit for partition of rights of management of a temple—Joint Hindu family.

Held that no suit will lie by a member of a joint Hindu family for partition of the right of management and superintendence of worship in a temple, such rights being in respect of property with regard to which none of the parties claim to have any personal pecuniary interest. *Sri Raman Lalji Maharaj* v. *Sri Gopal Lalji Maharaj* (1) and *Ramanathan Chetty* v. *Murugappa Chetty* (2) referred to.

THE facts of the case are fully set forth in the judgement. Briefly stated for the purposes of this report they were as follows :—

The plaintiff sued his father and his two brothers for partition of certain joint family property entered in Schedule A, and for a declaration that the plaintiff was entitled to perform worship at and manage a certain temple and the property appertaining to it, entered in Schedule B, to the extent of his ¼th share by

* First Appeal No. 17 of 1916, from a decree of B. C. Forbes, Subordinate Judge of Muttra, dated the 22nd of December, 1915.

(1) (1897) I. L. R., 19 All., 428. (2) (1903) I. L. R., 27 Mad., 192, and in appeal (1906) I. L. R., 29 Mad., 283.

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rotation. It was found that the members of the joint family had a right to perform the said worship, to manage the said property and to take the offerings made by pilgrims at the temple. It was not claimed by the plaintiff that the income of the temple property belonged to the joint family or that he was entitled to a share in it. The claim was decreed in respect of certain items out of the property entered in the Schedule A, including the item of the *birt jajmani* books, symbolizing the pilgrims' offerings; a decree was also given to the plaintiff "for managing the temple and the property pertaining thereto, specified in Schedule B, one year in every four years." The defendants appealed to the High Court. Only that part of the arguments which related to the temple and the temple property is given below.

Mr. *Muhammad Yusuf*, for the appellants :—

The plaintiff does not claim any right of worship or any beneficial interest in the temple or the temple property. What he claims is his share by partition of the right merely to conduct the worship and to manage the property. He seeks partition of the office and the rights and duties of joint managing trustees. A suit to obtain such partition is not maintainable. I rely on the case of *Sri Raman Lalji Maharaj* v. *Sri Gopal Lalji Maharaj* (1) The plaintiff does not say that he has been prevented by the defendants from going to the temple and worshipping the deity or that he has been ousted by them from possession of the temple property. It is not a suit for joint possession of trust property, but for partition of the rights and duties of trustees who have no personal pecuniary interest in that property.

Mr. *A. H. C. Hamilton*, for the respondent :—

It was pointed out in *Ramanathan Chetty* v. *Murugappa Chetty* (2) that the case in I. L. R., 19 All., 428, relied upon by the appellants, proceeded upon a distinction between an office to which emoluments are attached and one to which none are attached. In the present case there exist such emoluments, namely, the offerings made by pilgrims, and the plaintiff claims his share thereof; that distinguishes this case from that in I. L. R., 19 All. It was observed in the case in I. L. R., 27 Mad., cited above, at page 200 of the report, that in a suit for

(1) (1897) I. L. R., 19 All., 428. (2) (1903) I. L. R., 27 Mad., 192 (201).

partition of the family property the courts do provide in the decree for management of religious and charitable institutions by different members of the family in rotation in accordance with their shares. Either there is a pre-existing scheme of rotation settled between and acted upon by the members of the family, or the court in a suit for partition formulates such a scheme in its decree. I rely upon the observations at pp. 201, 202 in favour of the court granting a claim for partition, in cases like the present, in the shape of formulating a scheme of rotation of management. The case in I. L. R., 27 Mad., was affirmed in appeal by the Privy Council in *Ramanathan Chetty* v. *Murugappa Chetty* (1). It was recognized by the Privy Council that a scheme of rotation of a management in such cases did not involve any improper delegation of duties of trustees, and was desirable in order to void confusion or an unseemly scramble. I rely also on the following authorities :—*Limba bin Krishna* v. *Rama bin Pimplu* (2), *Sri Sethuramaswamiar* v. *Sri Meruswamiar* (3).

There is no clear finding that the temple is the subject of a public trust or that the members of the family are merely trustees without any beneficial interest in the temple property. It has not been found that the temple is not a private family shrine of the parties. A finding on this question may be called for.

Mr. *Muhammad Yusuf* was not heard in reply.

PIGGOTT and WALSH, JJ. :—In this case Birj Lal sued his father Puran Mal and his brothers Budhua and Ram Chandar for partition. There were two schedules appended to the plaint. Schedule A purports to specify the property belonging to the joint family of which the parties are members. Schedule B is a list of property belonging to the deity (Sri Thakur Ganeshji Maharaj) as worshipped in a certain shrine in the district of Muttra, and in paragraph 4 of the plaint it is stated that the joint family of the parties has a right to perform worship at the temple aforesaid and to look after the property belonging to the said temple and entered in schedule B. The relief sought therefore with regard to this property was a declaration that the

(1) (1906) I. L. R., 29 Mad., 283. (2) (1888) I. L. R., 13 Bom., 548.

(3) (1909) I. L. R., 34 Mad., 470.

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plaintiff was entitled to perform worship at and manage the temple of Sri Thakur Ganeshji Maharaj and the property thereof to the extent of his ¼ share by turns. The suit was contested on various grounds, and it may be noted at once that to a considerable extent the suit has failed even on the decree passed by the court below. For instance, the first three items specified in schedule A consist of properties situated outside the limits of British India, and with regard to these the court below has dismissed the plaintiff's suit, not upon a finding that they were not the joint family property of the parties, but upon a finding that the court has no jurisdiction to partition property outside British India. Then again, with regard to most of the movable properties specified in schedule A, the plaintiff's suit has in substance been dismissed upon a finding that there is no satisfactory evidence as to the existence of the properties in question in the hands of the defendants, so that as far as the property in list A is concerned, the suit has been decreed in respect of two items only. One is described as a grant of Rs. 25 a year made by the Kashipur State. The decree declares the plaintiff's right to receive ¼ of this grant. Another part of the decree declares the plaintiff to be entitled to ¼ share in certain books known as *birt jajmani bahis*, which are as a matter of fact books containing lists of the names of clients who visit this temple and employ the services of members of this family for religious purposes. The decree of the court below gives the plaintiff a right to ¼ of the income derived by the joint family from this source, that is to say, from the offerings made by the pilgrims visiting the shrine. It purports to enforce the plaintiff's right by making over to him ¼ of the *birt jajmani bahis*. This is a point which may perhaps be considered further when the final decree for partition comes to be prepared. It must, however, be pointed out at once that, although the appeal before us purports to be an appeal against the whole decree of the court below, it can scarcely be said that any of the pleas taken definitely challenges any portion of the decree dealing with the property specified in schedule A. At any rate, after hearing the arguments in support of the appeal, we are satisfied that no cause has been shown for modifying that portion of the decree. Although the written statement of the

defendant did not in express terms admit the grant made by the Kashipur State and the income derived from the religious offerings of pilgrims to the shrine to be the property of the joint family and divisible as such, it by implication admitted this, and the defendant Puran Mal did so more definitely in his statement when examined by the court. He there tried to make out that he was taking no share in the *birt jajmani* offerings which his sons were as a matter of fact dividing amongst themselves. At any rate, so far as this appeal purports to be directed against that portion of the decree of the court below, it cannot be seriously supported.

The real dispute in this Court, as in the court below, is as to the property shown in schedule B. Now that schedule contains four items. The first of these is the temple itself, and the fourth refers to certain utensils and clothes appertaining to the worship of the idol. These at any rate are properties in respect of which it cannot be suggested that the trustees or managers of the shrine had any personal pecuniary interest.

There remain only two items, one of which is a grove appertaining to the temple. It is not suggested in the plaint that any particular income is derived from this grove, although it may of course be used for the accommodation of pilgrims visiting the shrine. Therefore, substantially, this item of property stands on the same footing as the other two.

There remains then in schedule B one item only, and this is a certain rent-free property in village Muraisi in the Muttra district, which is alleged to yield an annual profit of Rs. 1,765. Now if this income is shown to belong to the members of the joint family, in this sense that it forms their remuneration for looking after the shrine of Sri Thakur Ganeshji Maharaj and performing priestly services in connection therewith, then there seems to be no reason why this item of property should not have been included in list A and partition thereof claimed on the same footing. On the contrary, in the plaint itself a clear distinction is drawn between this item of property and the other properties already referred to. The property in village Muraisi is specified in the plaint as belonging to the deity to which the temple is dedicated and there is no suggestion that the plaintiff claims to

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be entitled to a share in the enjoyment of its income. What the plaintiff says he wants is a share in the right to perform worship at the temple and to look after the property belonging to the said temple entered in schedule B. On the pleadings, therefore, the list B property seems to come within the principle laid down by this Court in *Sri Raman Lalji Maharaj* v. *Sri Gopal Lalji Maharaj* (1) and the suit becomes, to this extent, merely a claim for the partition of the right of management and superintendence in respect of property with regard to which none of the parties claim to have any personal pecuniary interest. In the case above referred to it was held by this Court that such a suit is not maintainable. That decision has been discussed in more than one subsequent case in the Madras High Court; it is sufficient to refer to the case of *Ramanathan Chetty* v. *Murugappa Chetty* (2), in which the decision of the High Court was subsequently affirmed by the Privy Council on appeal, *vide Ramanathan Chetty* v. *Murugappa Chetty* (3). In that case the principle laid down by the Allahabad High Court was discussed and approved of so far as it went. No doubt there is a certain difficulty about the present case, in which the claim for partition is composite, one portion of it dealing with property admitted to be the property of the joint family and not of the temple, although some of it, not all of it, is obviously connected with the rights of the joint family as managers of the temple. The suit, however, can only be dealt with on the basis on which it has been brought, and the claim, so far as the right of superintendence and management of the schedule B property is concerned, is covered by the decision of this Court already referred to. I hold therefore that this appeal should be allowed to this extent, that the following words be removed from the decree of the court below; "*a preliminary decree for managing the temple of Ganeshji and other property appertaining thereto specified in list B attached to the plaint one year in every four years.*" These words must be struck out and in place of these words the decree of the court below should read, "as well as to ¼ of the property specified in list A at No. 4, namely, the grant made by

(1) (1896) I. L. R., 19 All., 428. (2) (1903) I. L. R., 27 Mad., 192.

(3) (1907) I. L. R., 29 Mad., 283.

the Kashipur State," and after these words the words, "*be also passed in the plaintiff's favour*" must be struck out and in the latter part of the decree the words "*and the years in which the plaintiff is to manage the temple*" will also be deleted. We leave undisturbed the order of the court below as to the costs in that court, and as regards the costs of this appeal we direct that the plaintiff respondent do bear his own costs and half of the costs of the defendants appellants.

Decree modified.

FULL BENCH.

Before Sir George Knox, Acting Chief Justice, Mr. Justice Piggott and Mr. Justice Walsh.

1917
June, 23.

CHIDDA LAL (OPPOSITE PARTY) *v.* BHAJAN LAL (APPLICANT).*

Criminal Procedure Code, section 195—*Sanction to prosecute—Sanction granted by a Court of Small Causes—Application to revoke sanction—Jurisdiction—District Judge.*

When an order granting or refusing sanction to prosecute is made by a Court of Small Causes under section 195 of the Code of Criminal Procedure, the court to which an application for the reversal of such order lies is the court of the District Judge. *Sundar Lal* v. *King-Emperor* (1), *Wazir Muhammad* v. *Hub Lal* (2), *In re Ram Prasad Malla* (3) and *Budhu Lal* v. *Chattu Gope* (4) referred to. *Ajudhia Prasad* v. *Ram Lal* (5) distinguished. *Ambica Tewari* v. *King-Emperor* (6) and *Sukhdeo Singh* v. *The District Magistrate of Muzaffarpur* (7) dissented from.

THE Judge of the Court of Small Causes at Agra granted sanction under section 195 of the Code of Criminal Procedure for the prosecution of one Chidda Lal for offences falling under sections 193 and 465 and 468 of the Indian Penal Code. Chidda Lal applied to the court of the District Judge of Agra for revocation of this sanction. The District Judge refused to entertain the matter on the ground that "no appeal lay" to his court. Chidda Lal applied in revision to the High Court.

The Hon'ble Munshi *Narayan Prasad Ashthana*, for the applicant:—

The District Judge has failed to exercise a jurisdiction vested in him by law. The application for revocation of the sanction

* Civil Revision No. 45 of 1917.

(1) (1909) 6 A. L. J., 796.
(2) (1909) I. L. R., 31 All., 313.
(3) (1909) I. L. R., 37 Calc., 13.
(4) (1915) I. L. R., 43 Calc., 597.
(5) (1911) I. L. R., 34 All., 197.
(6) (1916) 1 Patna L. J., 206.
(7) (1916) 2 Patna L. J., 1.