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The whole object of the provision in the decree giving the plaintiff thirty days after the decree had become final was to obviate the plaintiff having unnecessarily to bring money into court and allow it to remain there idle during all the time that an appeal against the decree would be pending. The object, therefore, of the provision would be defeated if the plaintiff was obliged to bring his money into court before the time had expired within which the defendant might prefer an appeal. We dismiss the appeal with costs.

Appeal dismissed.

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November, 23.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

SUKH LAL (DEFENDANT). *v.* BISHAMBHAR (PLAINTIFF).*

Act No. IV of 1882 (*Transfer of Property Act*), *sections* 6 *and* 58—*Maha Brahmin —Mortgage by—of right to receive dues of office.*

There is nothing in the law to prevent a *Maha Brahmin* mortgaging his right to offerings receiveable by him in his professional capacity. *Raghoo Pandey* v. *Kassy Parey* (1) referred to.

THIS was an appeal under section 10 of the Letters Patent from the judgement of a single Judge of the Court. The facts of the case sufficiently appear from the judgement under appeal, which was as follows :—

"This case has been very thoroughly argued. It is admitted by Mr. *Haidar* for the appellant that the case turns upon a single question, whether this mortgage is valid or not, which again turns upon a single question whether it is a mortgage of immovable property and therefore recognizable by law under section 58 of the Transfer of Property Act. It is usufructuary mortgage by one *Maha Brahmin* in favour of another *Maha Brahmin* of a certain share or shares in the *birt jijmani*, that is to say, his pecuniary interest receiveable by way of voluntary donation, under his right of, or enjoyment of, the function of officiating as priest at certain Hindu funeral ceremonies. It is desirable to make it perfectly clear that the question here is as between two such priests, as to whether the right and interest of the one to receive fees actually earned, or which he may qualify himself to receive, can or cannot be transferred to the other. It has been held by a Bench of two Judges in *Raghoo Pandey* v. *Kassy Parey* (1), that a right to officiate as priest at such ceremonies is by law immovable property. I understand that authority, which has not been subsequently questioned, to lay down two propositions: (1) that the nature and quality of the property involved in the

* Appeal No. 50 of 1916, under section 10 of the Letters Patent.

(1) (1883) I. L. R., 10 Calc., 73.

suit which was a suit in respect of a share of the *birt jijmani* can only be determined by Hindu Law because it is not recognized as property in any other system of law ; and (2) that by Hindu Law the right ranks as immovable property. The only question I have to decide, assuming that decision to be right, is whether the fees receivable in respect of the performance of right or the function are also immovable property. In my opinion they are. I cannot think of a closer analogy than the fees receivable by a barrister practising in court which are receivable by him not by virtue of an office but in respect of a capacity conferred upon him by the court giving him special privileges. It is a matter of pure chance in the ordinary sense of the word as to how many cases he may conduct in any week, who his clients may be, and what the amount of his fees may be. But it would be a strange thing if he could not, if he saw fit, transfer all his interest in it. That would be a transfer of immovable property ; and in my opinion the same principle is applicable to moneys payable to priests. I therefore agree with the judgement of the court below Mr. *Haidar* pressed upon me very strongly the undoubted fact that the case on which I am relying was decided before the Transfer of Property Act. To my mind that fact rather confirms the view that the principles laid down in that authority are still the law. The definition of immovable property given in the Transfer of Property Act is of a negative character, that is to say, it merely excludes certain kinds of property. The definition in the General Clauses Act of 1897, includes certain limited kinds of property. The fact that at the time those Acts were passed the law in this country was that the right in question in this suit was immovable property and that by neither of those Acts was this right excluded leads to the strong inference that the Legislature did not intend to interfere with the existing law. The result is that this appeal must be dismissed with costs."

The defendant appealed.

Mr. *Agha Haidar*, for the appellant.

Munshi *Benode Behari*, for the respondent.

RICHARDS, C. J., and BANERJI, J. —This appeal arises out of a suit brought on foot of an alleged mortgage. The mortgagor and mortgagee were both *Maha Brahmins*. This is a sect which perform certain ceremonies and duties at funerals of Hindus. They generally carry out their duties at some place frequented for the purpose of cremations and other funeral ceremonies. It frequently happens that the *Maha Brahmins* between themselves arrive at some arrangement by which certain *Maha Brahmins* are allowed the exclusive right of taking offerings and remunerations on particular days. The mortgage in the present case took the form of a mortgage of the right to the dues and offerings on six days every two months. The defendants are the collateral heirs of the deceased mortgagors, but they themselves claim to have

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succeeded to the very rights (such as they are) which belonged to Niadar, the mortgagor. The court of first instance dismissed the claim. The lower appellate court decreed the plaintiff's claim in part. The learned Judge of this Court confirmed the decree of the lower appellate court. The contention at both hearings in this Court, and apparently also in the lower appellate court, on behalf of the defendants, is that the mortgage itself is absolutely null and void, that it did not operate to transfer any right, nor had Niadar any right which he was capable of transferring by mortgage or otherwise. It has been fairly and properly admitted here that our decision in the present appeal ought to be exactly the same as if the suit was one between the original mortgagee and the original mortgagor. Section 6 of the Transfer of Property Act has been quoted to us, and it is said that this so-called right of Niadar was at best a "mere possibility" within the meaning of clause (*a*) of that section, and that the "mere possibility" was incapable of being transferred. It cannot be disputed that certain offices are performed by *Maha Brahmins* at the funerals of Hindus, nor can it be disputed that *Maha Brahmins* receive for those duties certain remunerations. The amount largely depends upon the surrounding circumstances, the generosity of the relative carrying out the funeral, and, very probably, the wealth and position of the deceased. The offerings in this sense are not purely voluntary. No doubt there is no obligation upon any person to employ any particular *Maha Brahmin*. No *Maha Brahmin* could bring a suit to compel any person carrying out the funeral to employ him, and it is probable that in the absence of a special agreement a *Maha Brahmin* could not bring a suit against another *Maha Brahmin* for fees received. That the right to receive the dues at funerals is looked upon by the *Maha Brahmins* themselves as an existing right is to some extent illustrated by this very case. The mortgage was made as far back as the year 1906, and the defendants themselves consider that they have succeeded to the rights of Niadar as his heirs. A very similar question arose in the case of *Raghoo Pandey* v. *Kassy Parey* (1). That was a suit to redeem a mortgage of these very rights. There the plaintiff

(1) (1883) I. L. R., 10 Calc., 73.

was seeking to pay back money in order that he might be restored to rights which had been transferred by way of mortgage. The defendants were actually resisting redemption, considering that they had acquired rights which they would rather keep than receive the plaintiff's money. This case was decided in the year 1883, and we refer to it at the present moment as showing to what an extent these rights have been recognized by the *Maha Brahmins* themselves. We have already pointed out that they consider the rights of so substantial a nature that they frequently enter into arrangements between themselves specifying particular periods when different *Maha Brahmins* may be present at the cremation grounds to perform the offices and receive dues. We have been referred to several cases—amongst others, the case of *Puncha Thakur* v. *Bindesri Thakur* (1). There the plaintiffs, the sons of a deceased priest, brought a suit to be restored to a three-anna share in the offerings at a certain temple. Their father had made a mortgage of the three-anna share. The court of first instance had given the plaintiffs a decree for possession, and this decree was affirmed by the Calcutta High Court. The learned Judges considered that the offerings at the temple were not a class of property which could be transferred by way of mortgage and that accordingly the mortgage was null and void. We may remark that the offerings at a temple do not stand on the same basis as remuneration which *Maha Brahmins* receive for the services they perform at Hindu funerals. Furthermore, in that case whilst the learned Ju lges held that neither the mortgage nor the sale conveyed any rights, nevertheless the plaintiff appears to have been successful in getting a decree for possession of these very rights. On the whole we see no reason to disagree with the decision of the lower appellate court and the learned Judge of this Court. We accordingly dismiss the appeal with costs.

Appeal dismissed.

(1) (1915) 28 Indian Cases, 675.