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a legal marriage can be contracted between a Sudra and a Vaish. In this case the girl is undoubtedly a Vaish and the plaintiff is a Sudra. The authority which we follow is that of this High Court in the case of *Padam Kumari* v. *Suraj Kumari* (1) in which it was held that a Brahmin could not legally marry a Chhattri, and again in *Sespuri* v. *Dwarka Prasad* (2) where it was held that *a fortiori* a Thakur man could not legally marry a Brahmin woman. In our opinion this question has already been settled by authority and the view taken by the lower appellate court is correct. We dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Kanhaiya Lal and Mr. Justice Ashworth.

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May, 25.

TEJO BIBI (DEFENDANT) *v.* SRI THAKUR MURLIDHAR RAJ RAJESHWARI AND MAHADEOJI (PLAINTIFFS) AND LACHHMI AMMA (DEFENDANT).*

Religious endowment—Trust for religious purposes—Will—Construction of document.

A Hindu, who had installed three idols in a house owned by him in the city of Benares, thereafter executed a will in which, in respect of the house in question, it was declared as follows: The testator's two nephews as executors were to arrange for the carrying on of the worship of the deities installed therein, celebrate the customary festivals observed there and put up pilgrims in the house and attend to them. The executors were to reside in the house and look after its repairs, and whatever income was derived from the house should first be applied to the expenses of the worship of the said deities and the other religious ceremonies aforesaid and the balance was to be divided by the two executors between themselves in equal shares. The will further provided that neither of the executors should be entitled to transfer, mortgage or sell the house, and that, if they did so, the sale would be utterly null and void. It was also provided that if either of the executors or his heirs at any time proceeded to sell the said house the members of his community and

* First Appeal No. 12 of 1923, from a decree of Kauleshar Nath Rai, Subordinate Judge of Benares, dated the 18th of August, 1922.

(1) (1906) I.L.R., 28 All., 458. (2) (1912) 10 A.L.J., 181.

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every body shall be entitled, whenever they come to know of any such transfer, to make an application immediately and to get the transfer set aside.

Held, on a construction of this will, that a valid trust for religious purposes was thereby created, and that the house could not be sold in execution of a decree against the representative in interest of one of the executors.

Sonatun Bysack v. *Sreemutty Juggutsoondree Dossee* (1), *Ashutosh Dutt* v. *Doorga Churn Chatterjee* (2) and *Surja Kunwari* v. *Har Narain Ram* (3), distinguished.

THIS was a suit for a declaration that a certain house (or thakurdwara) situated in the city of Benares was not liable to be attached and sold in execution of a decree.

The facts were as follows :—

The house belonged originally to a Madrasi Brahman named Jaipuran Krishna Aiyar, who had installed these idols in his lifetime in these sections and allowed the house to be used for the accommodation of pilgrims visiting the place. On the 7th of September, 1886, he executed a will by which he disposed of all his property, movable and immovable, in Benares and Trichinopoly. A house situated in Benares city, not now in dispute, was bequeathed by him to his nephew Subba Rao, and a house and landed property situated in Trichinopoly were given to his two nephews, Ganpati and Subba Rao, in equal shares. In regard to the house in dispute, known as the Thakurdwara, he declared that his nephews Ganpati and Subba Rao shall as executors arrange to carry on the worship of the deities installed therein, celebrate the customary festivals periodically observed there and put up pilgrims in the house and attend to them. He further declared that the executors should reside in the house and look after its repairs and that whatever income was derived from the house or Thakurdwara should first be applied to the expenses

(1) (1859) 8 Moo. I.A., 66. (2) (1879) I.L.R., 5 Calc., 438.
(3) (1917) I.L.R., 39 All., 311.

of the worship of the said deities and the other religious ceremonials aforesaid and the balance was to be divided by the two executors between themselves in equal shares. He further stated that none of the executors shall in any way be entitled to transfer, mortgage, or sell the house, and that, if they did so, the sale would be utterly null and void. He then went on to declare that if either of those persons or his heirs at any time proceeded to sell the said house, *the members of his community and everybody shall be entitled, whenever they come to know of any such transfer, to make an application immediately and to get the transfer set aside.*

The testator died a few weeks later. On the 25th of August, 1892, Subba Rao transferred his rights and interest under the said will to his brother Ganpati. On the 8th of May, 1908, Ganpati mortgaged the house in favour of Mohan Lal for Rs. 4,000 and on the 20th of July, 1909, under the cover of a loan for Rs. 2,000 he made a subsequent mortgage in favour of the same individual. Mohan Lal died on the 26th of July, 1914, leaving a widow Musammat Tejo Bibi. Ganpati died leaving a widow Musammat Lachhmi Amma. On the 22nd of July, 1916 Musammat Lachhmi Amma mortgaged the house with Musammat Tejo Bibi for Rs. 130.

In 1920 a suit was filed by Musammat Tejo Bibi for the recovery of the money due on the said mortgages by the sale of the mortgaged property, making Lachhmi Amma, the widow of Ganpati and the three idols represented by their guardian *ad litem* Bishunath, parties to the suit. Musammat Tejo Bibi subsequently exempted the idols from the suit, and contented herself with taking an *ex parte* decree on those mortgages against Musammat Lachhmi Amma. In execution of that decree the

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house in dispute was proclaimed for sale. The present suit was then filed by the deities represented by the three idols for a declaration that the house in question was *waqf* property and not liable to sale in execution of the said decree.

The court below found that the house in dispute was *waqf* property dedicated to the idols installed therein, that Ganpati was only entitled to take the surplus of the profits, if any, during his life-time, and had no right to mortgage the same, and that Bishunath had been acting as Shebait of the Thakurdwara since December, 1909, and was entitled to institute the suit on behalf of the idols. The suit was therefore decreed.

The defendant Tejo Bibi appealed.

Sir *Tej Bahadur Sapru*, Mr. *P. N. Sapru* and Munshi *Gadadhar Prasad*, for the appellant.

Dr. *Surendra Nath Sen* and Babu *Surendra Nath Gupta*, for the respondents.

THE judgement of KANHAIYA LAL, J., after stating the facts as above, thus continued :—

The genuineness of the will executed by Krishna Aiyar on the 7th of September, 1886, is no longer disputed. The main question for consideration is whether by virtue of that will any trust was created in respect of the said property in favour of the deities represented by the idols or the public, or, in other words, whether Ganpati or Musammat Lachhmi Amma had any right to mortgage the same. The will contains no express words of dedication in favour of the idols or the public in respect of the corpus of the house in dispute but it indicates or directs the uses to which the house and its income were to be applied and the purposes for which the trust was to be maintained. It requires Ganpati and Subba Rao to act as executors and reside in the house, and put up pilgrims there.

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and attend to them, and from the income thereof to perform the daily worship of the deities installed in each section of the house, celebrate the customary religious observances and festivals there, and execute such repairs as may be necessary. It gives the executors a right to realize the income and to divide it after meeting the expenses of the worship and the ceremonies aforesaid between themselves. But it does not give them any right to transfer, mortgage, or sell the property, and, what is more important, empowers the members of the community of the testator, and in fact every member of the public, to interfere, if the executors transfer the house, to make an application to the proper authority and get the transfer set aside. In other words, the will clearly indicates an intent to dedicate the property for the purpose of the performance of worship of the deities installed in each of the three sections of the house, for the performance of the usual periodical ceremonies and for the accommodation of pilgrims visiting the place for worship. In fact there is evidence to show that even in the life-time of the testator pilgrims used to visit the place, and one of them hailing from Madras left an inscription recording that a certain idol had been installed by him in the temple and promising the payment of Rs. 65 per year for the performance of the worship of that idol generation after generation. In 1891 another gentleman from Madras visited the place and recorded a memorandum evidencing his visit at the time. There was another tablet recorded in 1893, referring to the visit of another person, who established an idol in the temple and promised to pay Rs. 60 per annum generation after generation for the expenses of the worship connected with the same.

There can be no doubt, therefore, that the object of the testator was to continue the maintenance of the

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worship in the said Thakurdwara after his death, to secure the performance of the periodical ceremonies and to arrange for the accommodation and comforts of the pilgrims visiting the place. The executors were required to attend to their comforts, and whether the division of the income, to be derived presumably from the presents made by the pilgrims or from the offerings, was to be enjoyed by them as remuneration for their labours or for their maintenance, they were not given any right in the corpus of the property and in fact restrained from dealing with it by way of transfer, mortgage or sale, and the public was given a right to have the said transfer set aside in order that the object of the trust created by the testator may not be disturbed.

It is argued on behalf of the defendant appellant that even if there was no devise as to the corpus of the estate in favour of Ganpati and Subba Rao, they were entitled as heirs of the deceased to inherit his property, and that the plaintiffs or the deities installed in the house had no interest to maintain the suit, but considering that the objects of the trust were the maintenance of worship of the said deities and the performance of the customary periodical ceremonies and to provide for the accommodation and comforts of pilgrims visiting the place, it is obvious that the plaintiffs, namely, the deities, represented by the idols installed in the house, had sufficient interest to have the trust maintained and the corpus of the trust property protected from an impending sale in execution of a decree obtained against the trustee or his heirs personally.

The learned counsel for the defendant appellant has referred to the decision in *Sonatun Bysack* v. *Sreemutty Juggutsoondree Dossee* (1) which was

(1) (1859) 8 Moo. I.A., 66.

followed in *Ashutosh Dutt* v. *Doorga Churn Chatterjee* (1) and *Surja Kunwari* v. *Har Narain Ram* (2). But in each of these cases the profits of the property, after meeting the expenses of the worship, were assigned for the maintenance of certain persons of the family of the testator or his heirs generation after generation and no interest was created in favour of the plaintiff, such as is evidenced by the will executed by the founder of the trust in this case. There is nothing in the will to suggest that the division of the surplus was to be continued after the death of the executors appointed by it. The testator knew what he was doing. He had given by way of an absolute devise a portion of his other property to his nephews; but he wanted that the house in dispute should be maintained as a Thakurdwara for the worship of the deities installed therein and for the performance of worship by the public and the celebration of the periodical ceremonies usual in such temples. He also wanted that the house should continue to be used for the accommodation and comforts of the public. The devise was intended to secure those objects and protect the trust property from being diverted to other purposes. The deities represented by the plaintiffs and the public for whose benefit the trust was created are entitled to step in to prevent the sale of the property in execution of a personal decree obtained against one of the trustees or his heir.

It appears that the house in dispute had been attached in execution of another decree obtained by Sheonandan Prasad against Ganpati in 1913, and was released from attachment on an objection filed by the present plaintiffs, Diwan Chand and Ishwar Das. The purchaser of that decree subsequently filed a suit for a declaration that the house in question was liable

(1) (1879) I.L.R., 5 Calc., 438. (2) (1917) I.L.R., 39 All., 311.

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to sale, but it was held by this Court in *Murlidhar* v. *Diwan Chand* (1) that the will of Krishna Aiyar of the 7th of September, 1886 created a trust, and that the only beneficial interest given under the will to the nephews, namely, Ganpati and Subba Rao, was the right of taking the surplus of the profits, if any, after the worship had been performed and the festivals duly observed. The arguments now addressed were urged in that case, and it was held by this Court that although the nephews were given the benefit of the offerings to be made by the pilgrims after meeting the expenses of the worship connected with the Thakurdwara, a trust was created by the will for the purposes specified therein, and that the property comprised in the trust was entitled to protection from attachment or sale in execution of a personal decree against the trustee. The appeal is, therefore, dismissed with costs.

ASHWORTH, J., in a brief judgement, agreed with the conclusions arrived at by Mr. Justice KANHAIYA LAL.

Appeal dismissed.

Before Mr. Justice Daniels and Mr. Justice King.

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AGHA HAIDAR AND OTHERS (DEFENDANTS) *v.* THE CITY BOARD, MUSSOORIE (PLAINTIFFS).*

Act (Local) No. II of 1916 *(United Provinces Municipalities Act), section* 149(2)*—Liability for taxes—"Lessor"—Purchaser of an undivided share in house property.*

Certain persons purchased in May, 1918, at an auction sale held in execution of a decree an undivided share in some

* Second Appeal No. 1463 of 1923 from a decree of M. F. P. Herschenroder, District Judge of Saharanpur, dated the 3rd of August, 1923, affirming a decree of Muhammad Shafi, Subordinate Judge of Dehra Dun, dated the 12th of April, 1923.

(1) (1916) I.L.R., 38 All., 214.