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against Baldeo Narain. The assignment by the latter of his own decree would not, having regard to the provisions of section 49, affect such equity in favour of Manmohan Das. In our opinion there is no inconsistency between order XXI, rule 18 of the Civil Procedure Code and section 49, but if there be any, section 49 will prevail. If Shiam Sundar has any grievance in consequence of the equity in favour of Manmohan Das being enforced against him, he has his remedy against his assignor, but the equity in favour of Manmohan Das, which as already stated existed for five years, cannot be extinguished by the assignment in favour of Shiam Sundar.

For these reasons we hold that the order passed by the lower court is right. The appeal is accordingly dismissed with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

BRINDABAN (DEFENDANT) *v.* SRI GODAMAJI (PLAINTIFF)*

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Religious endowment—Trust—Dedication—Rule of succession of shebaits laid down in deed of endowment—Binding even on donor himself—Donor can not alter unless he had reserved a right to do so.

Where property has been dedicated to an endowment or trust by a donor and he has thereby divested himself of all interest in the property, then the line of succession of shebaits or managers laid down by him in the deed of endowment is binding even on him and he can not afterwards alter that rule of succession, unless in the deed of endowment he had reserved to himself a right to do so.

Mr. *B. Mukerji,* for the appellant.

Dr. *N. P. Asthana,* for the respondent.

SULAIMAN, C.J., and BENNET, J.:—This is a Letters Patent appeal arising out of a suit for recovery of possession brought by the plaintiff as trustee of the trust property against the defendant appellant who also claimed to be the trustee. One Brij Lal was the original

*Appeal No. 11 of 1934, under section 10 of the Letters Patent.

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owner of these properties, and on the 17th of November, 1914, he made a gift of these properties in favour of Sri Godamaji Maharani installed in a certain temple and by that deed declared that he himself would remain the manager of the properties during his lifetime but after his death the trustees of that temple would manage these properties also. Later, on the 1st of February, 1915, he executed another document in the form of a will under which he directed that after his death the management of the dedicated properties should pass to the present appellant, Brindaban. On Brij Lal's death Brindaban obtained possession as the trustee, which gave occasion for the suit by the trustee of the temple.

In the deed Brij Lal had not reserved to himself the right of changing the trustees or managers but had distinctly provided that he himself would be the manager during his lifetime and after his death the trustees of the temple of Sri Rangji Maharaj would manage the property. The sole question which arose for consideration was whether Brij Lal had any power to alter the succession of the trusteeship of this *debattar* property. The courts below took the view that there was such authority left in him, but on appeal a learned Judge of this Court has come to a contrary conclusion. We think that his opinion is right.

The learned counsel for the defendant relies solely on a Calcutta case which has not been followed even in Calcutta in later cases.

In the case of *Gaurikumari Dasee* v. *Ramanimoyi Dasee* (1), the question arose before WOODROFFE and CUMING, JJ., and the learned Judges distinctly laid down that the creator of a *debattar* is not entitled to make a change in the order of succession of *shebaits* unless he made a reservation to that effect in the deed of gift. In that case the donor had provided that after his death his wives in order of seniority would be the *shebaits* and that after their deaths if a son was born,

(1) (1922) I.L.R., 50 Cal., 197.

he would be the *shebait*, or an adopted son, and in the case of failure of any such son, the *shebait* or *shebaits* would be selected by him by a will or other document. Even then it was held that the donor could not make any change in the order of succession of *shebaits* and accordingly he could not appoint his second wife as *shebait* in preference to the eldest.

In *Sripati Chatterjee* v. *Khudiram Banerjee* (1) the point did not directly arise but one of the learned Judges discussed the law at considerable length. On page 445 the learned Judge, after quoting various authorities, concluded that the rule laid down for the appointment of *shebaits* and their succession in the deed of endowment is binding. On page 446 he referred to *Gaurikumari Dasee's* case (2), and pointed out that the learned Judges had held that even the creator could not make a change in the order of succession unless he had made a reservation to that effect in the deed; but he remarked that on principles and some authorities he was inclined to think that the power should be presumed to exist unless expressly given up. He however did not expressly dissent from the previous ruling of that court, and inasmuch as in the deed in that case the donor had precluded himself from making any further change, it was held that the rule of succession could not be validly altered. That case is therefore no real authority in support of the defendant's contention.

In two cases, *Nagendra Nath Palit* v. *Rabindra Nath Deb* (3), and *Lalit Mohan Seal* v. *Brojendra Nath Seal* (4), another learned Judge of the Calcutta High Court clearly expressed his dissent from *Sripati Chatterjee's* case (1). It is thus clear that even the Calcutta view is definitely against the appellant.

In this Court it was remarked by BANERJI and RYVES, JJ., in *Siddhan Lal* v. *Gauri Shankar* (5), that it is not open to the creator of the trust, after the trust

(1) A.I.R., 1925 Cal., 442. (2) (1922) I.L.R., 50 Cal., 197.
(3) (1925) I.L.R., 53 Cal., 132. (4) (1925) I.L.R., 53 Cal., 251.
(5) (1917) 40 Indian Cases, 165.

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has been created, to nominate new managers who were to take his place after his death, because subsequently to the creation of the trust his position is merely that of a manager and he is not competent to revoke the trust or to alter it or to appoint new managers. No doubt in that case, inasmuch as the newly appointed trustees had taken possession of the trust property as such, they were treated as trustees *de son tort* who could along with the real trustee sue under section 92 of the Code of Civil Procedure. In that way it may be said that the observation was an *obiter dictum*, but it is entitled to weight.

It seems to us that when the property has been dedicated by a donor and he had thereby divested himself of all interest in the property, then unless he reserves to himself a right of changing the line of succession laid down by him in the deed of trust, that rule must be binding even on him. The rule of succession to the office of *Shebait* is of considerable importance in the case of trust, and if laid down by the donor at the time of the dedication must be deemed to be a part of the rules governing the management of the trust, and in the absence of any reservation the rule is not capable of being altered by the donor at his will. We therefore think that the view taken by the learned Judge of this Court is sound. The appeal is dismissed with costs.

MISCELLANEOUS CIVIL

Before Mr. Justice Thom and Mr. Justice Rachhpal Singh

1937 *January*, 15

LAKHI NARAIN RAM (JUDGMENT-DEBTOR) *v.* ADJAI COAL COMPANY (DECREE-HOLDER)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 5—"Court whose business has been transferred to it"—Decree transferred for execution to another court—Whether such execution court can act under section 5 and convert the decree into an instalment decree—Jurisdiction—Court executing decree can not modify it.

*Miscellaneous Case No. 155 of 1936.