

indebtedness, an account must be taken, and the case must go back to the Judge for that purpose.

We therefore allow the present appeal, set aside the order of the Judge, and remand the case to him under s. 562, with directions to try and determine the issue what sum of money, if any, remains due by the defendant to the plaintiff on foot of the agreement of the 10th February, 1879, and otherwise; and for such purpose to have an accurate and detailed account of all pecuniary transactions between the parties taken before himself, a balance struck, and the merits of the case decided by him accordingly. The appellants are entitled to the costs of this appeal.

*Cause remanded.*

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Duhoit.*

DURGA BIBI AND ANOTHER (DEFENDANT) v. CHANCHAL RAM (PLAINTIFF)\*

*Religious endowment—Right to officiate in Temple—Alienation—Execution of decree.*

The right of managing a temple, which is a religious endowment, of officiating at the worship conducted in it, and of receiving the offerings at the shrine, cannot, in default of proof to the contrary, pass outside the family of the trustee, until absolute failure of succession in his family, and such rights are therefore not saleable in execution of decree. The principle laid down by the Privy Council in *Rajah Vurmah Valia v. Ravi Vurmah Mutha* (1) followed.

THIS was a suit for a declaration that certain property was liable to attachment and sale in execution of a decree held by the plaintiff, as the property of one Saktidat, deceased. One Sital Misr, son of Sadhu Misr, priest of the temple of Sankata Debi at Benares, died leaving two sons, Sukhdeo and Saktidat, and two daughters, Durga Bibi and Sohni Bibi, defendants in this suit. Saktidat died leaving no issue, but a widow named Sobhni Kuar. On the 1st May, 1878, the plaintiff in this suit, Chanchal Ram, obtained a decree in the Court of the Subordinate Judge of Benares against Sobhni Bibi as the legal representative of her deceased husband, Saktidat, for Rs. 3,500. Chanchal Ram subsequently assigned a moiety of this decree to a person represented by one Ganga Ram. In execution of this decree the decree-holders caused a moiety of a certain lull-

\* First Appeal, No. 10 of 1881, from a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Benares, dated the 18th September, 1880.

(1) L. R., 4 Ind. App. 76.

1881

BHAGGU LAL  
v.  
DEGREY-  
THEE.

1881  
July 18.

1881

DURGA BIBI  
v.  
CHANCHAL  
RAM.

ding at Benares and of the moveable property contained therein, and of the right to preside at the worship of, and to take the offerings made to the idol of Sankata Debi, to be attached and proclaimed for sale, alleging that such property formed the estate of Saktidat, and had descended to his widow, their judgment-debtor. Durga Bibi and Sohni Bibi, the daughters of Sital Misr, objected to the attachment and sale of such property, on the ground that it formed part of a religious endowment, which, by the death of Saktidat and a surrender of his rights in their favour by Sukhdeo, had passed to them as heirs to their father. On the 17th March, 1879, the Subordinate Judge made an order allowing this objection and releasing the property from attachment. Thereupon Chanchal Ram instituted the present suit against Durga Bibi and Sohni Bibi for the cancellation of that order and to have such property declared liable to be sold in execution of his decree. The defendants set up as a defence to the suit that the building in question constituted the temple of Sankata Debi and was endowed property, and no portion of it formed the private property of Saktidat; that a portion of the moveable property in question was also the property of the temple, and the remainder of such property had belonged exclusively to Sukhdeo, who had made a gift of it to them before it had been attached in execution of the plaintiff's decree; and that the income derived from the offerings made to the idol of Sankata Debi was also the property of the temple, and no portion of such income was the private property of Saktidat. The Subordinate Judge held that the building in question did not constitute the temple of Sankata Debi, but was the private property of Sital Misr, and one moiety thereof had devolved by inheritance on Saktidat, and was liable for his debts; that Saktidat had no interest in the moveable property in question; and that the right of presiding at the worship of Sankata Debi and of taking the offerings made to the idol was the private property of Sital Misr, and Saktidat had succeeded to one moiety of such right, and such moiety was liable for his debts. The Subordinate Judge accordingly gave the plaintiff a decree declaring that a moiety of the building in question, and of the right to officiate at the worship of Sankata Debi and to take the offerings made to the idol, was liable to be sold in execution of the plaintiff's decree as the property of

Saktidat, deceased. The defendants appealed to the High Court. On their behalf it was contended that the building in dispute formed the temple of Sankata Debi and was endowed property, and was therefore not liable to be sold for the private debts of Saktidat; and that the right to officiate at the worship of an idol and to take the offerings made to it was a right which was not saleable in execution of decree.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji) and Paudits *Ajudhia Nath* and *Bishambhar Nath*, for the appellants.

The *Senior Government Pleader* (Lala Juala Prasad) and Munsis *Hanuman Prasad* and *Sukh Ram*, for the respondent.

The judgment of the Court (STUART, C. J., and DUTHOIT, J.), so far as it is material for the purposes of this report, was as follows:—

DUTHOIT, J. (after holding, on the evidence, that the building in question was a religious endowment, and that it was not saleable in execution of the plaintiff's decree, continued:—) We are also of opinion, in default of any proof to the contrary, that the right of managing the temple, of officiating at the worship conducted in it, and of receiving the offerings at the shrine, legally cannot pass outside the family of the trustee Sádhu Misr, until absolute failure of succession in his family. The principle that rights of the kind under reference are by the Common Law of India inalienable has been affirmed by their Lordships of the Privy Council in *Rajah Vurmañ Valia v. Ravi Vurmañ Mutha* (1). With reference to the above remarks, we decree the appeal and dismiss the respondent's objection with costs.

Before Mr. Justice Straight and Mr. Justice Duthoit.

UGRAH NATH (JUDGMENT-DEBTOR) v. LAGANMANI (DECREE-HOLDER).\*

*Execution of decree—Application for execution—Decree directing payment to be made at a certain date—Act XV of 1877 (Limitation Act), sch. ii, Nos. 75, 179 (6).*

*L* obtained a decree against *U*, dated the 24th September, 1867, for possession of a certain estate subject to this provision, viz., that if *U* paid in cash into the treasury

\* Second Appeal, No 1 of 1881, from an order of W. Kaye, Esq., Judge of Gorakhpur, dated the 25th September 1880, affirming an order of Sayyid Nazar Ali, Munsif of Bansi, dated the 7th August, 1880.

1881

DURGA BIBI  
v  
CHANCHAL  
RAM.

1881

July 19.