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pre-emption the vendee should not be allowed to defeat the plaintiff's claim by becoming a proprietor in the village by acquiring a preferential right to purchase the property after the date of the institution of the suit is sound. I am in entire agreement with the view of SHAH DIN, J. propounded in that case. The case has been so ably put and exhaustively dealt by him that I do not think it would serve any useful purpose to repeat his arguments.

Misra, J.

My answer, therefore, to the reference before us is in the negative. A vendee who at the date of the sale was not a co-sharer should not be allowed to defeat the suit by a pre-emptor by acquiring the position of a co-sharer during the pendency of the suit.

BY THE COURT:—The reference is returned to the Bench concerned with the judgments delivered by the members of the Full Bench.

APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra and Mr. Justice Muhammad Raza.

GAYA DIN (PLAINTIFF-APPELLANT) *v.* GUR DIN AND OTHERS (DEFENDANTS-RESPONDENTS).*

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February, 12.

Mahabrahmani rights, whether capable of partition—Offerings from jajmans, whether immoveable property—Partition of Birt Mahabrahmani among the heirs—Adverse possession among co-sharers, possibility of.

Under Hindu law the right to receive offerings from Jajmans is considered as immoveable property and is, therefore capable of passing by inheritance to the heirs of the person in enjoyment of such rights and is divisible among

*Second Civil Appeal No. 343 of 1928, against the decree of Ali Hamid, Subordinate Judge of Bara Banki, dated the 2nd of July, 1928, modifying the decree of Pandit Bansi Dhar, Misra, Munsif of Fatehpur at Bara Banki, dated the 9th of January, 1928, decreeing the plaintiff's claim.

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the heirs. *Sita Ram* v. *Sheodas* (1), *Bhagwandin* v. *Mani Ram* (2), *Baddu* v. *Babu Lal* (3), distinguished. *Badri* v. *Mulloo* (4), *Musammat Rachhpali* v. *Musammat Chandresar Dei* (5), *Lokya* v. *Sulli* (6), *Ghelabhai Gavrishanakar* v. *Hargowan Ramji* (7), *Girjashankar Daji Bhat* v. *Murli Dhar Narayan Chaudhri* (8), *Ragghoo Pandey* v. *Kassy Parey* (9), *Krishna Bhat* v. *Kapabhat* (10), *Balvantrav* v. *Purshotam Sidheshvar* (11), and *Sukh Lal* v. *Bishambhar* (12), relied upon. *Mahesh Prasad* v. *Bharath* (13), *Raghubar* v. *Musammat Rukmin* (14), *Beni Madho Pragwal* v. *Hira Lal* (15), *Ram Chunder* v. *Chhabbu Lal* (16), *Narayan Lal Gupta* v. *Chulhan Lal Gupta* (17), and *Maharana Fatteh Sangji Jaswant Sangji* v. *Dessai Kallian Raiji Hekoomut Raiji* (18), referred to.

Held, therefore, that *Birt Mahabrahmani* is capable of being divided among the members of a joint Hindu family. The division can be conveniently made by allotting particular days or periods to the parties according to their share.

Where after the death of a certain person the plaintiff and the defendants became owners of particular shares in the properties left by him they became co-sharers in those properties and the mere fact that the plaintiff did not take actual possession of the property as he resided elsewhere would not make the possession of the other co-sharers adverse. *Corea* v. *Appuhamy* (19), *Mahipal Singh* v. *Sarju Prasad* (20), *Jogendranath Rai* v. *Baldeo Das* (21), and *Mahadeo Prasad* v. *Ram Lal* (22), relied on.

Messrs. *Ram Bharose Lal* and *Raj Narain Shukla*, for the appellant.

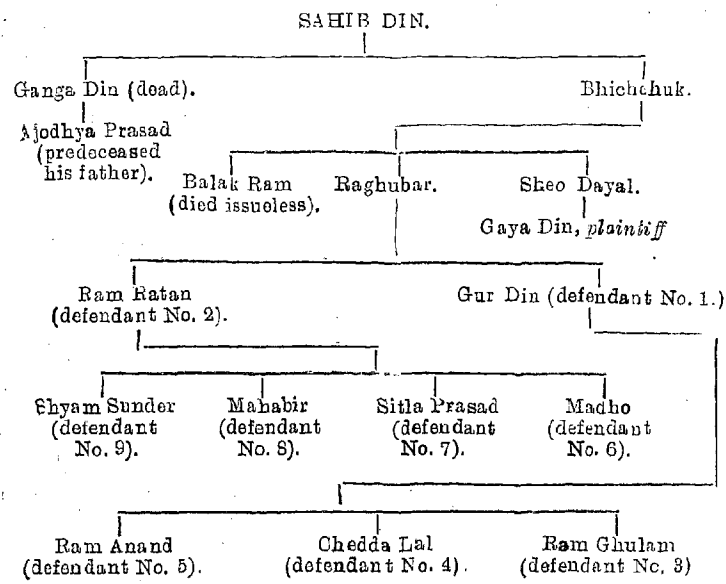
Mr. *Ali Zaheer*, for the respondents.

MISRA and RAZA, JJ. :—This is a second appeal arising out of a partition suit, which was partially decreed by the learned Munsif of Fatehpur, district

(1) (1860) Jwala Prasad's Rulings, Appendix p. 1.
(2) (1902) 5 O.C., 225.
(3) (1908) 11 O.C., 212.
(4) (1905) 8 O.C., 339.
(5) (1923) 10 O.L.J., 595.
(6) (1920) I.L.R., 43 All., 35.
(7) (1920) I.L.R., 36 Bom., 94.
(8) (1920) I.L.R., 45 Bom., 234.
(9) (1883) I.L.R., 10 Calc., 73.
(10) (1869) 6 Bom., H.C. 137.
(11) (1872) 9 Bom., H. C., 99.
(12) (1916) I.L.R., 39 All., 196,
(13) (1920) 23 O.C., 252.
(14) (1917) 20 O.C., 265.
(15) (1920) 18 A.L.J., 679.
(16) (1923) 21 A.L.J., 358.
(17) (1911) 15 C.L.J., 376.
(18) (1873) L.R., 1 I.A., 34.
(19) (1912) A.C., 230.
(20) (1925) 3 O.W.N., 100.
(21) (1907) I.L.R., 35 Calc., 961.
(22) (1925) 3 O.W.N., 186.

Bara Banki, but has been totally dismissed by the learned Subordinate Judge of Bara Banki.

The facts of the case are that the parties to this suit are descendants of one Sahib Din as will appear from the following pedigree :—



They constituted a joint family and the plaintiff Gaya Din, who is the son of Sheo Dayal in Bhichchuk's branch, claims by partition a half share in the properties in suit against the defendants, who are descended from Raghubar, brother of Sheo Dayal in the same branch.

The properties sought to be partitioned are detailed below :—

(1) the grove standing on plot No. 518, situate in village Barethi, district Bara Banki;

(2) the grove standing on plot No. 632, situate in village Tanda, district Bara Banki;

(3) the grove standing on plot No. 499, situate in the same village Tanda:

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(4) the *muafi* plots Nos. 140, 384, 908, also situate in village Tanda;

(5) the house standing on plots Nos. 117 and 118, also situate in village Tanda;

(6) the *ahata* (compound), which is now a *phulwari* (orchard), also situate in village Tanda; and

(7) the *Birt Mahabrahmani* relating to villages Tanda and Mohammadpur and exercisable for the full month of *Katik*, the latter halves of the months of *Phagun* and *Asaarh* and the first half of the month of *Sawan*.

The case for the plaintiffs shortly stated was that the descendants of Sahib Din never separated from each other and that the properties mentioned above were their joint family properties, and therefore liable to partition. The share claimed by the plaintiff as stated above was a moiety in the said properties.

The suit was mainly contested by defendant No. 1, Gur Din, whose contention was that Ganga Din and Bhichchuk, the sons of Sahib Din, had separated from each other, that properties Nos. 1, 2, 3 and 5 belonged exclusively to his father Raghubar and that properties Nos. 4 and 6 belonged to Ganga Din and after his death had come exclusively in the possession of his father, and that therefore the plaintiffs were not entitled to any share in these properties. Regarding property No. 7 it was contended that it could not be partitioned in law because it consisted merely of such fee as the *jajmans* (clients) gave at the time of the funeral ceremonies performed on the occasion of deaths in their families. There were other contentions raised in the case, but it is not necessary to mention them for the purpose of this appeal.

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The learned Munsif of Fatehpur, who tried the suit, we should like to state with great care and attention, found that property No. 1 was the ancestral property of the parties, having been recorded at the time of the first regular settlement in the name of Bhichchuk; that Ganga Din and Bhichchuk had separated from each other; that Ganga Din was the owner of the properties Nos. 4, 5 and 6 and that property No. 2 was acquired by Raghubar, father of the defendant, out of the income of *Birt Mahabrahmani* and was, therefore, the joint property of the family. Regarding property No. 7 which, as stated above, was the *Birt Mahabrahmani* he found that as the parties were *Mahabrahmans* it belonged to them and their family from times immemorial, and was liable to be partitioned amongst them. As to property No. 3 he found that it never belonged to the parties' family, nor could it be considered to belong to it even now. The result was that he decreed the plaintiff's suit for partition in respect of all the properties in suit except property No. 3.

The defendants appealed to the learned Subordinate Judge of Bara Banki and he agreed with the finding of the learned Munsif relating to property No. 1 but disagreed with regard to other items of property in respect of which the suit had been decreed by the learned Munsif. Regarding properties Nos. 4 and 5 he came to the conclusion that they were properties of Ganga Din and although Sheo Dayal, father of the plaintiff, was an heir to Ganga Din, yet because he and the plaintiff had gone away to Sikandrabad (Deccan) they had never been in possession of the said properties and the plaintiff's claim in regard thereto could not be maintained. As to item No. 6 he further found that it was an *ahata* or compound, which Raghubar, the father of the defendants, had purchased at an

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auction sale and it was consequently his own property. As to item No. 2 he took the same view that because it had been acquired by Raghubar, father of the defendants, it was also his exclusive property and could not be considered to be the joint family property. The view which he took regarding the income of *Mahabrahmani* dues was that it was the personal property of Mahabrahman to whom it was offered. Lastly, he held regarding property No. 7 that it was not such as could be partitioned in law. The result was that except item No. 1 he accepted the appeal and dismissed the plaintiff's claim in regard to all the items in suit.

The plaintiff-appellant has now appealed to this Court and in second appeal it is contended by the learned Advocate on his behalf—

firstly that regarding properties Nos. 4 and 5 which had been found to be the properties of Ganga Din it was admitted that they passed by inheritance in equal shares to Raghubar, the ancestor of the defendants and Sheo Dayal, father of the plaintiff, and the mere fact that Raghubar alone was in possession of the said properties would not make him exclusive owner thereof;

secondly that regarding items Nos. 2 and 6 it having been found by the courts below that they were built or acquired out of the *Mahabrahmani* income which was admittedly the joint family income of the parties, the said properties must also be deemed to be the properties belonging to the joint family and, therefore, liable to partition;

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thirdly that the *Birt Mahabrahmani* ought to be treated as property capable of partition among the members of the family belonging to the parties.

The case was argued at great length and we have taken time to consider our judgment. We now proceed to give our findings regarding each of these points.

Misra and Raza, JJ.

First point.—As regards the first point it appears to us that the learned Subordinate Judge has taken an erroneous view. It is admitted by the parties that properties Nos. 4 and 5 belonged to Ganga Din and that after his death they passed by inheritance in equal shares to Raghubar and Sheo Dayal. Half the property would, therefore, go to Raghubar and his descendants and the other half would go to Sheo Dayal and his son the plaintiff. This means that Raghubar and Sheo Dayal became co-sharers in these properties and the mere fact, that Sheo Dayal, father of the plaintiff, or that the plaintiff himself did not take actual possession of the property, since they were absent from the village and resided in Sikandrabad, would not make the possession of the other co-sharer named Raghubar adverse. This has been held in a large number of cases both by their Lordships of the Privy Council as well as by this Court and other High Courts. We would only refer to a few decisions on the point, because in our opinion the rule is so settled that it is not necessary for us to quote many authorities in support of the proposition or to discuss it in detail. We would mention. *Corea* v. *Appuhamy* (1); *Jogendranath Rai* v. *Baldeo Das* (2); *Mahipal Singh* v. *Sarju Prasad* (3) and *Mahadeo Prasad* v. *Ram Lal* (4).

(1) (1912) A.C., 230.
(2) (1907) I.L.R., 35 Calc., 961.
(3) (1925) 3 O.W.N., 100.
(4) (1925) 3 O.W.N., 186.

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We, therefore, hold that the plaintiff-appellant is entitled to a decree for a half share in properties Nos. 4 and 5.

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Second point.—The second point relates to items Nos. 2 and 6. Item No. 2 is a grove situate in village Tanda and item No. 6 is an *ahata* (compound) in which now stands a *phulwari* (orchard). It was admitted by the parties before us that these items were acquired by Raghubar, father of defendant-respondent No. 1, out of the income of the joint family consisting of *Mahabrahmani* dues. It was admitted by the parties that the *Birt Mahabrahmani* was their ancestral property since they are *Mahabrahmans* and that the income derived therefrom went to support the entire family. Under these circumstances it appears to us to be clear that the properties Nos. 2 and 6, which were either acquired or built out of joint funds should also constitute joint family property. We are unable to treat the Mahabrahmani income as the exclusive property of Raghubar, father of the defendants. We, therefore, cannot accept the finding of the learned Subordinate Judge on this point and must hold that properties Nos. 2 and 6 also constitute joint family property and the plaintiff appellant is entitled to a half share therein.

Third point.—The next point that was argued before us was that *Birt Mahabrahmani* was "property" capable of partition among the members of the family, to which the said *birt* appertained. This was the position taken up by the learned Advocate for the plaintiff-appellant, whereas the argument of the learned Counsel for the defendants-respondents was to the effect that the *birt* could not be considered as "property" since it was at the option of *jajmans* (clients) to give or not to the defendants offerings on

the occasion of funeral ceremonies occurring in their family.

The learned Advocate for the appellant relied upon the following rulings :—*Three cases decided by the late Court of the Judicial Commissioner of Oudh* : *Badri* v. *Mulloo* (1), decided by Messrs. RYVES and WELLS; *Raghubar* v. *Musammat Rukmin* (2), decided by Pandit KANHAIYA LAL and *Musammat Rachhpali* v. *Musammat Chandresar Dei* (3), decided by Saiyed WAZIR HASAN, (now Mr. Justice WAZIR HASAN) and Mr. NEAVE, A. J. C; *three cases decided by the Allahabad High Court*: *Beni Madho Pragwal* v. *Hira Lal* (4), decided by PIGGOT (now Sir THEODORE PIGGOT) and KANHAIYA LAL, JJ.; *Ram Chander* v. *Chhabbu Lal* (5), decided by RYVES and DANIELS, JJ., and *Lokya* v. *Sulli* (6), decided by TUDBALL and KANHAIYA LAL, JJ.; *one case decided by the Calcutta High Court* : *Narayan Lal Gupta* v. *Chulhan Lal Gupta* (7), decided by MOOKERJEE and CARNDUFF, JJ., and *two cases decided by the Bombay High Court*: *Ghelabhai Gaurishankar* v. *Hargowan Ramji* (8), decided by CHANDRAVARKAR and HAYWARD, JJ., and *Girjashankar Daji Bhat* v. *Murli Dhar Narayan Chaudhri* (9), decided by Sir NORMAN MACLEOD, KT., C.J., and FAWCETT, J.

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The learned Counsel for the defendants-respondents relied upon the following rulings :—*Seeta Ram* v. *Sheodas* reported in Jwala Prasad's Rulings Appendix, page 1, decided by CAMPBELL, J.C.; *Bhagwan Din* v. *Mani Ram* (10), decided by Mr. MACLEOD, O.J.C.; *Baddu* v. *Babu Lal* (11), decided by Messrs.

(1) (1905) 8 O.C., 339.
(2) (1917) 20 O.C., 265.
(3) (1923) 10 O.L.J., 595.
(4) (1920) 18 A.L.J., 679.
(5) (1923) 21 A.L.J., 358 : s. c. I.L.R., 45 All., 445.
(6) (1920) I.L.R., 43 All., 35
(7) (1911) 15 C.L.J., 376.
(8) (1911) I.L.R., 36 Bom., 94.
(9) (1920) I.L.R., 45 Bom., 234.
(10) (1902) 5 O.C., 225.
(11) (1908) 11 O.C., 212.

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EVANS and GREEVEN and *Mahesh Prasad* v. *Bharath* (1), decided by Mr. LINDSAY (now Sir B. LINDSAY).

We first proceed to discuss the authorities quoted on behalf of the respondents.

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In *Seeta Ram* v. *Sheodas* (2), it was held by Mr. CAMPBELL, the Judicial Commissioner, that no one was entitled to a monopoly to make certain collections or from certain classes, and that the *jajmans* who paid the fee were perfectly free to employ whom they liked. There is no doubt as to the correctness of this proposition. Nobody can compel a particular person to make offerings on a particular occasion to him and him alone. The matter must be left to the pleasure of the person making the offerings. This does not, however, touch the point, since what we have to decide is whether the right to receive such offerings can be considered as "property" or not. We do not agree with the argument advanced by the learned Counsel for the respondents that since it is optional with the *jajmans* to pay the fee, it should not be considered to be any valuable right whatsoever. The right may not be capable of being enforced against strangers against their will, but there can be no doubt that so far as the members of a particular family are concerned the right to receive such offerings must be a right and a very valuable one. Indeed it is within our experience that in pursuance of the exercise of such a right a large income is made by families whose profession is to deal with *jajmans* (clients).

In *Bhagwan Din* v. *Mani Ram* (3), the point to be decided in the case was whether in a case, where a third person had made a voluntary offering to one of the parties, it was not open to the other party to claim a share in it unless an agreement to that effect between

(1) (1920) 23 O.C., 252.
(2) (1860) Jwala Prasad's Rulings, Appendix, p. 1.
(3) (1902) 5 O.C., 225.

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the parties had been established. The view of law taken in that case was to the effect that no suit would lie by one *Mahabrahman* against another for recovery of the whole or a portion of such offerings unless on the basis of an agreement between the parties. We are not called upon to discuss the accuracy or otherwise of this proposition. It is enough for us to observe that when the right to receive *Mahabrahmani* dues is enjoyed by a *Mahabrahman* and after his death if the right devolves, in case such right is held to be capable of devolving, upon his sons, there would be impliedly an agreement between them to participate in that right in equal shares. The point decided in this case does not, therefore, touch the point, which is actually before us for decision.

In *Baddu* v. *Babu Lal* (1), the point decided was that a contract amongst *Mahabrahmans* with respect to the distribution of alms to be received in the future by exercise of voluntary charge is not enforcible against the heirs or representatives of the parties to the agreement. If the right to receive alms be considered to be included within the definition of the word "property" the view taken in this case would be open to grave doubt.

It would thus appear that except the last case the other two cases referred to by the learned Advocate for the defendants-respondents do not touch the point. As to the third case though the question for decision now before us was not directly in question in that case, yet the view of law propounded in that case would certainly support the contention raised by the learned Counsel for the defendants.

In *Mahesh Prasad* v. *Bharath and others* (2), it was held by Mr. LINDSAY, J. C., that no contract for the division of money or other articles received by

(1) (1908) 11 O.C., 212. (2) (1902) 28 O.C., 252.

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Mahabrahmans in the way of charity could be enforced except as between the immediate parties to the agreement. He followed the case quoted above namely *Baddu* v. *Babu Lal* (1).

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We now turn to discuss the rulings relied upon by the learned Advocate for the plaintiff-appellant.

In *Badri* v. *Mulloo* (2), it was held that the right to receive offerings as *malis* (gardeners) attached to a particular temple situate in the city of Lucknow was a right of property and a suit for declaration and perpetual injunction with respect thereto would lie in a civil court. This case no doubt supports the view urged by the learned Advocate for the plaintiff-appellant.

In *Raghubar* v. *Musammat Rukmin* (3), the view taken was to the effect that an arrangement among *Mahabrahmans* of the place regulating the terms in which they should act or the method in which the offerings should be collected or divided and which does not control or restrict the discretion of the persons, to whom the services are to be rendered or by whom the offerings or gifts are to be made, is valid and binding between the parties to that agreement.

In *Rachhpali* v. *Chandresar Dei* (4), the "*chaukis at Ajudhya*" were the subject matter of partition. These *chaukis* are well understood spots on the banks of the river Sarju, where one or the other member of the family of *pandas* sits, receives his clients, and helps them in the observance of their religious ceremonies connected with the river such as bathing, offering flowers, etc. for which services remuneration is usually paid by the clients, who choose to avail themselves of those services. It was held that such a right constituted property in law and a suit for a share

(1) (1908) 11 O.C., 212.
(2) (1905) 8 O.C., 339.
(3) (1917) 20 O.C., 265.
(4) (1923) 10 O.L.J., 595.

in the business resulting in such gains was maintainable. This case also supports the view urged before us by the learned Advocate for the appellant to a great extent.

In *Beni Madho Pragwal* v. *Hira Lal* (1) it was held that the rights of a Pragwal who used a particular kind of flag to attract the notice of pilgrims, who wanted to find him out, could devolve by a right of inheritance to his widow and if any other person put up a flag similar to the one used by him so as to mislead the pilgrims into the belief that he was the representative of the Pragwal, an action could be maintained by the widow to prevent such persons from using the flag since his action in doing so was unlawful. It was observed in that case by PIGGOT, J., that in such a case the question to be determined was whether the plaintiff had or had not a right to carry on certain business in or about a particular locality and if any stranger interfered with such exercises of the right, it was to be considered as an unlawful interference with the conduct of that business. It would thus appear that in the opinion of their Lordships the right to carry on the business as a Pragwal in a particular locality was a right which could be enforced in the court of law.

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In *Ram Chander* v. *Chhabbu Lal* (2) it was held that where the *Birt Jajmani* consisted of offerings given to a Pragwal by pilgrims when they came to bathe in the Ganges the division of the *birt* could not be carried out by allotting clients to one party or the other, but only by the division of the books in which pilgrims entered their names. We are unable to follow this ruling. If *Birt Jajmani* is divisible the division can take place by allotting clients or allotting localities. The division so made, it is obvious, would

(1) (1920) 18 A.L.J., 679.

(2) (1923) I.L.R., 45 All., 445, s. c. 21 A.L.J., 358.

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not be any ground for the person in whose share a particular *jajman* (client) had fallen to compel that *jajman* to make offerings to him. The effect of such an allotment would only be that if offerings were willingly made by such *jajmans* they would go to one member of the family in preference to another.

In *Lokya* v. *Sulli* (1) it was held that the rights known as *Birt Jajmani* are heritable. The head-note says that they are also transferable, but the judgment itself does not go to that extent. This case is no doubt in favour of the contention put forward by the plaintiff appellant.

In *Narayan Lal Gupta* v. *Chulhan Lal Gupta* (2) it was held by their Lordships of the Calcutta High Court that although *prima facie* when a gift is made to a priest by a pilgrim the money belongs to him in his personal capacity, yet members of the family may agree amongst themselves that whoever amongst them may earn anything by officiating as a priest, the income is to be brought into a common fund and divided in certain proportions amongst them. This was also a suit for partition and the parties to the case were members of a family of Gayawals. The partition of *Birt Jajmani* was allowed by allotting books to the different members of the family, which indicated that the persons to whom such books were allotted could approach the clients whose names were entered therein. It was indicated by their Lordships that where such a property was saleable and did not admit of a physical division partition could be effected by declaring that the enjoyment of the property was to be in turns as in a case of right to worship. It was also observed in that case that no court should be inclined to accede to the contention that the property was indivisible or impartible unless it could be shown that

(1) (1920) I.L.R., 43 All., 35. (2) (1911) 15 Calc. L.J., 376.

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the division thereof would be against public right or policy or would tend to impair some paramount right existing in a stranger to the co-tenancy or would outrage the public sense of propriety, decency and good morals. We need not state that the partition of *Birt Mahabrahmani* cannot in any case be considered to be against the public right or policy or against the good sense of propriety, decency and good morals.

In *Ghelabhai Gavrishankar* v. *Hargowan Ramji* (1), it was held that under Hindu law the office of the hereditary priest (*Yajman vritti*) was a *nibandha* and ranked among the hereditary rights of the immovable property. The argument advanced by the learned Advocate for the plaintiff-appellant was that *Birt Mahabrahmani* was also similarly to be considered as immovable property under the Hindu Law and therefore capable of inheritance and partition by the descendants of a particular Hindu in enjoyment thereof.

In *Girjashankar Daji Bhat* v. *Murlidhar Narayan Chaudhari* (2) it was again held that an hereditary office of a priest was in the nature of immovable property and a plaintiff would ordinarily be entitled to an injunction restraining the defendants from interfering with that immovable property. The case quoted above, namely I. L. R., 36 Bom., 94 was relied upon.

It would appear from the two rulings of the Bombay High Court quoted above that a *Jajmani Birt* (right to receive offerings) is considered in Hindu law as immovable property and if this is the case, it would clearly be heritable and partible. We do not enter into the vexed question whether such a right is transferable or not. It is not necessary for us to do so in the present case. The point which we have to decide is

(1) (1911) I.L.R., 36 Bom., 94. (2) (1920) I.L.R., 45 Bom., 234.

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whether this right can be considered to be included within the definition of the word "property" as understood in Hindu law.

Misra and Raza, JJ.

In *Ragghoo Pandey* v. *Kassy Parey* (1) MITTER and TOTTENHAM, JJ., held that a right to officiate as a priest at funeral ceremonies of Hindus was in the nature of immovable property. Two previous decisions of the Bombay High Court *Krishna Bhat* v. *Kapabhat* (2) and *Balvantrav* v. *Purshotam Sidheshvar* (3) were relied upon by their Lordships in support of the decision. The texts of the Hindu law appearing upon this question, it was observed by their Lordships, are all collected in these two judgments of the Bombay High Court. A decision of their Lordships of the Privy Council reported in *Maharana Fatteh Sangji Jaswant Sangji* v. *Dessai Kallian Raiji Hekoomut Raiji* (4) was also relied upon where their Lordships had held that an hereditary right to receive certain payments payable by an Inamdar out of rents of a village was to be considered as an interest in the immovable property.

In *Sukh Lal* v. *Bishambhar* (5) their Lordships of the Allahabad High Court consisting of RICHARDS, C. J., and BANERJI, J., approved of the ruling of the Calcutta High Court reported in *Ragghoo Pandey* v. *Kassy Parey* (6) and held that *Mahabrahmani* dues could be considered as property capable of being transferred and that a mortgage of the same was permissible. We do not see, as stated above, the necessity to decide the question of transferability of such rights, since it is not at all necessary to do so for our purposes. It is sufficient for us to decide that the right is considered by the Hindu law as immovable property and if so it would be clearly heritable and partible..

(1) (1883) I.L.R., 10 Calc., 73.
(2) (1869) 6 Bom., H.C., 137.
(3) (1872) 9 Bom., H.C., 99.
(4) (1873) L.R., 1 I.A., 34.
(5) (1916) I.L.R., 39 All., 196.
(6) (1883) I.L.R., 10 Calc., 73.

In Elberling's Treatise on inheritance, section 206, page 96, the rule is quoted as follows:—

> "The right of performing the religious ceremonies of certain classes of people as Poorohit, is by *custom* considered analogous to real property. The ancestral priest, that is, he who has been honoured by former generations with the employment of officiating priest, and the priest *appointed* by the party himself, cannot be discarded without good and sufficient cause; but there is no legal authority for establishing the right of the heirs to officiate the *male* heir of an *hereditary* Poorohit is however *by custom* considered entitled thereto, but not the heirs of an appointed priest. A female cannot succeed to such right and perform the ceremonies by a substitute, because she can appoint a substitute only for *worldly* affairs, not for solemn acts for the performance of which she herself is disqualified. Several male heirs share the fees according to their respective portions, and if they have divided the *jajmans* among them, each one will take the fees from his respective *jajmans*."

On a review of the authorities quoted above we have come to the conclusion that under Hindu law the right to receive offerings from *jajmans* is considered as immovable property and, therefore, capable of passing by inheritance to the heirs of the person in enjoyment of such rights and is, therefore, divisible among the heirs.

We would, therefore, declare that property No. 7 which consists of *Birt Mahabrahmani* should also be declared as capable of being divided among the parties

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to this case and the plaintiff should be allowed a half share therein. This division can be conveniently made by allotting particular days or periods to the parties according to their shares.

Misra and Raza, JJ.

The result is that the plaintiff will be entitled to a decree in respect of the properties Nos. 1, 2, 4, 5, 6 and 7. There is no dispute regarding property No. 3 in respect of which the plaintiff's claim has been dismissed by the two courts below.

Another point was raised on behalf of the defendants-respondents in the cross-objections. It was to the effect that the suit brought by the plaintiff-appellant for partition should be dismissed since he had not brought into hotch-pot the property acquired by him and his father at Sikandrabad (Deccan). The defendants, however, did not file any list showing such properties and the objection raised by them is under the circumstances a futile one.

We, therefore, allow the appeal, set aside the decree of the Subordinate Judge, and restore the decree passed by the learned Munsif with costs in this and the courts below. The cross-objections filed by the defendants-respondents will also stand dismissed with costs.

Appeal allowed.