

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith

1936
August 25

BHAGWAN DEEN (DEFENDANT-APPELLANT) *v.* BILLESUR
alias SUTTOO AND ANOTHER, PLAINTIFFS AND OTHERS,
DEFENDANTS (RESPONDENTS)*

Transfer of Property Act (IV of 1882), section 6(a)—Right to receive offerings made at a temple—Right not attached to priestly office nor dependent on performance of service of personal character, whether transferable.

A right to receive offerings made at a temple is a definite and fixed right and does not depend on any possibility of the nature referred to in section 6(a), Transfer of Property Act. and where, therefore, there is nothing to show that the right is attached to any priestly office, or is dependent on the performance of any service of a personal character, the right is validly transferable. *Ganpat Prasad v. The Kashmiri Bank, Ltd., Fyzabad (1)*, *Puncha Thakur v. Bindeshwari Thakur (2)*, and *Puncha Thakur v. Bindeshwari Thakur (3)*, distinguished. *Balmakund v. Tula Ram (4)*, followed. *Gaya Din v. Gur Din (5)*, referred to.

Messrs. *R. B. Lal and Suraj Sahai*, for the appellant.

Messrs. *Behari Lal Nigam and Salig Ram*, for the respondents.

SRIVASTAVA, C.J. and SMITH, J.:—The admitted facts of the case are that there is a temple of Billeshur Mahadeoji in Qasba Rama Himmat in Ranjitpurwa in the district of Unao. The offerings made are divided in equal moieties between the Goshains and the Malis. As amongst the Malis they are further sub-divided in equal shares between the Malis of Qasba Rama Himmat and the Malis of Qasba Pachhim. The plaintiffs are two

*Second Civil Appeal No. 33 of 1933, against the decree of Pandit Krishna Nand Pande, Additional Subordinate Judge of Unao, dated the 23rd of December, 1932, upholding the decree of Babu Girish Chandra Munsif of Purwa at Unao, dated the 21st of January, 1932.

(1) (1929) I.L.R., 5 Luck., 206.

(2) (1916) I.L.R., 43 Cal., 28.

(3) (1916) 37 I.C., 960.

(4) (1928) A.I.R., All., 721.

(5) (1929) I.L.R., 5 Luck., 31.

Malis of Qasba Pachhim. Their father owned a six pies share in the offerings, which was mortgaged by him in favour of two Malis of Qasba Rama Himmat, who foreclosed the mortgage. But it was subsequently reconveyed to the plaintiffs under a sale-deed, dated the 4th of April, 1930. The plaintiff No. 1 also purchased a three pies share from one of the Goshains of Qasba Rama Himmat, whose mother had acquired the said share from one of the Malis of Qasba Pachhim. The plaintiffs' case was that they had been realising their nine pies share in the offerings of the temple till November, 1930, when the defendants stopped giving them their share. They accordingly claimed a decree for Rs.50 for their share of the offerings from November, 1930, to 24th July, 1931, the suit having been instituted on the 25th of July, 1931. The only plea raised in defence with which we are concerned in the appeal, and which has been disallowed by both the lower Courts, is that the transfers in favour of the plaintiffs were invalid.

It was held by a Bench of this Court of which one of us was a member, in *Ganpat Prasad v. The Kashmiri Bank Ltd., Fyzabad* (1), that the right of a Gangaputra to receive offerings is merely a right of personal service, and as such cannot be sold in execution of a money-decree. In the present case there is nothing to show that the right to receive the offerings in question is attached to any priestly office, or is dependent upon the Malis rendering any services of a personal nature. In fact the lower appellate Court, on a consideration of the facts and circumstances of the case, has found that the transfers in question are not transfers of emoluments attached to a priestly office, and the learned Counsel for the appellant has not questioned the validity of the transfers on the ground of the right to receive the offerings being dependent on the performance of any service of a personal character. The only ground urged by him

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is that the transfers are void under section 6, clause (a) of the Transfer of Property Act on the ground of their being transfers of a mere possibility of the nature contemplated by that clause. It has been argued that the making of offerings by votaries of the temple is a matter of volition with them, and therefore the transfer of the right to realise a share in such offerings offends the provisions of section 6, clause (a) of the Transfer of Property Act. A similar argument was raised in the case of *Bal Mukund and another v. Tula Ram and others* (1). The dispute in that case also related to a certain share of the offerings made at a temple. Dealing with this contention their Lordships of the Allahabad High Court observed as follows:

"The right to receive the offerings when made is a definite and fixed right and does not depend on any possibility of the nature referred to in section 6(a), Transfer of Property Act. The moment the offerings are made, the persons clothed with the right are entitled to appropriate the same. In short the right to receive the offerings is not so uncertain, variable and limited as to pass out of the conception of law."

"It is true that the amount of the offerings largely depends upon the surrounding circumstances, viz., the number of votaries, their generosity and their charitable disposition but the fact that offerings large or small are bound to be made is a certainty and not a mere possibility of the nature referred to in section 6(a), Transfer of Property Act, and, therefore, we are unable to hold that the transfer of a right to receive the offerings is prohibited by section 6(a), Transfer of Property Act."

With due respect, we are of the same opinion. In this connection we might refer also to a decision of a Bench of this Court in *Gaya Din v. Gur Din and others* (2) which was a case relating to "*birt Mahabrahmani*" and it was held that the right to receive offerings from

(1) (1928) A.I.R., All., 721.

(2) (1929) I.L.R., 5 Luck., 31.

"*jajmans*" was immovable property, and therefore capable of passing by inheritance to the heirs of the person in enjoyment of such rights. Whether this be so or not, it seems clear that a right of such a nature was not treated as a mere possibility such as is contemplated by section 6(a) of the Transfer of Property Act. The learned Counsel for the appellant has relied strongly on a decision of the Calcutta High Court in *Puncha Thakur v. Bindeswari Thakur* (1), in which it was held that a right to receive offerings from pilgrims resorting to a temple or shrine is inalienable. It was observed in that case that the chance that future worshippers will give offerings to the temple is a mere possibility within the meaning of section 6, clause (a) of the Transfer of Property Act. But the observations made at page 32 of the report, as well as the observations contained in the report of the same case when it came up on review before a Bench of the Patna High Court in *Puncha Thakur and another v. Bindeswari Thakur and others* (2), show that the right to receive offerings which was in question in that case was not altogether dissociated from a sacerdotal office. At page 32, their Lordships observed as follows:

"In the present case the duty of a *pujari* seems to have been assigned to Brahmans who make *pujas* to the idol Bhairo Nath. To my mind the performance of *puja* or *sheba* of the idol creates a right to receive the offerings made to it. If it be assumed for a moment that a right to receive offerings is alienable or transferable, then it is clear that an alienation of such right can be made even in favour of a Mahomedan or person of another caste who would obviously be incompetent to perform the *puja*."

The case looked at from this aspect is quite distinguishable from the present case. It might also be mentioned that the question here is not of a right to enforce the giving of offerings against the worshippers, but relates

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only to the division of offerings made at the temple. There is no justice in the defendants appropriating the whole of the offerings to themselves, and refusing to give the plaintiffs their proper share therein.

*Srivastava,
C. J. and
Smith, J.*

In the circumstances we are of opinion that no case has been made out for interference with the decision of the lower appellate Court. We accordingly dismiss the appeal with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith*

1936
August 27

THAKURAIN GAJRAJ KUER (APPELLANT) *v.* THAKURAIN
CHABRAJ KUER (RESPONDENT)*

*Civil Procedure Code (Act V of 1908), Order XLIII, rule 1(w)
and Order XLVII, rule 7—United Provinces Land Revenue
Act (III of 1901), section 111(c)—Order of Assistant Collec-
tor under section 111(c), Land Revenue Act—Application
for review—Order granting review, if appealable.*

The provisions of Order XLIII, rule 1(w), C. P. C., must be read with the provisions of Order XLVII, rule 7, C. P. C., with the result that no appeal can be entertained against an order of an Assistant Collector granting an application for review of an order passed under section 111(c), Land Revenue Act, except on one of the grounds mentioned in Order XLVII, rule 7(1), C. P. C.

Mr. Radha Krishna Srivas'ava, for the appellant.

Messrs. Zahur Ahmad, S. M. Hafeez and Girja Shankar, for the respondent.

SRIVASTAVA, C.J. and SMITH, J.:—This is an appeal under Order XLIII, rule 1(w) of the Code of Civil Procedure against an order of an Assistant Collector of the First Class of Partabgarh District, granting an application for review.

*Miscellaneous Appeal No. 5 of 1935, against the decree of Shah Fakher Alam, Assistant Collector, First Class of Partabgarh District, dated the 11th of October, 1934.