APPELLATE CIVIL

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

GULAB DASS (PLAINTIFF-APPELLANT) *v.* MANOHAR DASS AND ANOTHER (DEFENDANTS-RESPONDENTS)* 1937 *August*, 25.

Hindu law—Religious endowment—Shebaitship, *devolution of —Deed of endowment not providing for succession of office of* shebaitship—Shebaitship *vests in heirs of founder, if no usage to show a different mode of devolution.*

According to Hindu Law when the worship of a *Thakoor* has been founded, the *shebaitship* is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing of some circumstances to show a different mode of devolution. *Gossamee Sree Greedhareejee* v. *Rumanlolljee Gossamee* (1), followed. *Chandrika Bakhsh Singh* v. *Bhola Singh* (2), and *Ananda Chandra Chuckerbutty* v. *Braja Lal Singh* (3), relied on.

Where a deed of endowment lays down that "the *sarbarahkar* or manager of the temple has all the powers like myself as proprietor, but no sarbarahkar or manager has or will have the power of alienating the aforesaid property", *held,* that the powers referred to in the deed of endowment are the powers of management which have to be exercised by the manager, and the provision only means that the "sarbarahkar" and manager for the time being shall have all such powers of management as were possessed by the executant himself as proprietor without any reservation. There is nothing in the terms of the document which could be construed as disposing of the right of *shebaitship* after the death of the sarbarahkar and manager and *shebaitship* not having been disposed of otherwise must be held to be vested in the heirs of the founder.

Messrs. *Hyder Husain, Akhtar Husain* and *H. H. Zaidi,* for the appellant.

Mr. *Har Dhian Chandra,* for the respondents.

SRIVASTAVA, C. J. and SMITH, J.:—This is a first appeal by the plaintiff against the decree, dated the 12th of March 1935, of the learned Civil Judge of Gonda.

* First Civil Appeal no. 101 of 1935, against the decree of Pandit Hari Krishun Kaul, Additional Civil Judge of Gonda, dated the 12th of March 1935.

(1) (1889) L.R., 16 I.A., 137. (2) (1937) I.L.R., 13 Luck., 344.
(3) (1922) I.L.R., 50 Cal., 292.

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The admitted facts of the case are that on the 13th of July, 1912, Baldeo Dass dedicated certain property to the idol *Murlidharji,* and appointed one Vaishnodas as the *shebait,* sarbarahkar and manager. Vaishnodas acted as such till the 15th of August, 1933, on which date he was murdered. It is admitted before us that the plaintiff is the *chela* of Baldeo Dass, and as such his heir and legal representative, and that similarly Manohar Das, defendant no. 1, is the heir and legal representative of Vaishnodas. This defendant succeeded in getting mutation of the property from the revenue courts in his favour. The plaintiff has therefore instituted the present suit for possession of the property claiming title to the *shebaitship* as the representative of Baldeo Dass. The learned Civil Judge on an interpretation of the deed of trust (exhibit A-1) dated the 13th of July, 1912, held that the intention of the founder of the endowment was to make an absolute gift of the office of *shebaitship* to Vaishnodas, and that the defendant, and not the plaintiff, was therefore entitled to succeed to the said office after the death of Vaishnodas. He accordingly dismissed the suit.

The law on the subject has been clearly laid down by their Lordships of the Judicial Committee in *Gossamee Sree Greedharreejee* v. *Rumanlollijee Gossamee* (1) in the following words:

> "According to Hindu Law, when the worship of a *Thakoor* has been founded, the *shebaitship* is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing or some circumstances to show a different mode of devolution."

Relying on this ruling the principle has been followed by this Bench quite recently in *Chandrika Bakhsh Singh and others* v. *Bhola Singh and others* (2). The principle has also been recognized by a Bench of the Calcutta High Court in *Ananda Chandra Chuckerbutty* v. *Braja Lal Singh* (3). The simple question

(1) (1889) L.R., 16 I.A., 137, 144). (2) (1937) I.L.R., 13 Luck., 344.
(3) (1922) I.L.R., 50 Cal., 292.

therefore is whether in the present case the founder has disposed of the right of *shebaitship* after the death of Vaishnodas, or whether there is some usage or course of dealing which points to a different mode of devolution. It may be stated at once that no such course of dealing or usage has been set up in this case. The controversy is therefore confined to the question whether the terms of the deed of endowment (exhibit A-1), have the effect of disposing of the right of *shebaitship* absolutely to Vaishnodas so as to make it devolve after his death on his heirs. The relevant passage in the document exhibit A-1 may be translated as follows:

> "The sarbarahkar and manager of the temple has all the powers like myself as proprietor, but no sarbarahkar or manager has or will have the power of alienating the aforesaid property."

We agree with the learned Civil Judge that the last clause imposing restriction on the power of alienation has reference only to the dedicated property, and not to the office of *shebait*. But he seems to have been greatly impressed by the use of the words "all the powers like myself as proprietor". He is of opinion that these words indicate an absolute gift of the office of *shebait*. We regret we are unable to accept this interpretation. In our opinion, the powers referred to in the sentence quoted above are the powers of management which have to be exercised by the manager, and the sentence only means that the sarbarahkar and manager for the time being shall have all such powers of management as were possessed by the executant himself as proprietor without any reservation. They have not in our opinion any reference to the right of succession to the office of *shebait*. The learned counsel for the respondent is unable to refer to any other passage in the document which could be construed as having the effect of disposing of the right of *shebaitship*. We are therefore of opinion that there is nothing in the terms of this document which could be construed as disposing of the

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right of *shebaitship* after the death of Vaishnodas. In such circumstances we think that the case falls within the general rule, and the *shebaitship*, not having been disposed of otherwise, must be held to be vested in the heirs of the founder.

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Reliance has been placed by the learned counsel for the respondent on the decision of their Lordships of the Judicial Committee in *Tripurari Pal* v. *Jagat Tarini Das* (1), in support of the interpretation placed by the lower court. There is nothing in the report of this case to show that their Lordships in any way intended to modify the principle enunciated by them in the earlier case *Gossamee Sree Greedharreejee* v. *Rumonlolljee Gossamee* (2). The question therefore is merely one of the construction of the deed of endowment. The interpretation placed on one document can hardly be a guide in the interpretation of another document. In that particular case their Lordships interpreted the will before them as constituting an absolute gift of the *shebaitship*. We regret that bearing in mind the principles laid down in *Gossamee Sree Greedhareejee* v. *Rumanlolljee Gossamee* (2) we are unable to interpret the deed of endowment (exhibit A-1) before us as constituting such an absolute disposal of the right of *shebaitship*.

We therefore allow the appeal, set aside the decree of the lower court, and decree the plaintiff's suit, with costs in both the courts against Manohar Das, defendant no. 1, who alone contested the suit.

The amount of court-fee payable in the lower court and on the memorandum of appeal in this Court shall be recoverable by the Government from the defendant no. 1 and failing him from the plaintiff. Let the necessary note be made in the decree of this Court.

Appeal allowed.

(1) (1912) I.L.R., 40 Cal., 274. (2) (1889) L.R., 16 I.A., 137.