a mortgage suit by a mortgagee. Under section 14(4) and (7) the learned Special Judge had complete discretion in the matter of allowing costs. He has allowed proportionate costs in his court to the claimant and we see no grounds either on the principle or on the facts of the present case to interfere with that order.

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The result is that the appeals are partly allowed, the decrees passed by the learned Special Judge are modified only to this extent that in place of Rs.60,000 Rs.56,230-2-6 will be substituted in them. The rest of the decrees shall stand.

As regards the costs of these appeals, we order that the appellants will get their costs in this Court, but the pleader's fee will be taxed only in one appeal, i.e. Appeal No. 82 of 1937 and not in the other appeal.

Thomas C.J. and Radha Krishna J.

Appeal partly allowed.

APPELLATE CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge, and Mr. Justice Radha Krishna Srivastava

MADHUBAN DAS, BABA (APPELLANT) *v.* AVADH BEHARI DAS, BABA AND OTHERS (RESPONDENTS)*

1939 *November* 30

Religious endowment—Definite scheme of management laid down in Endowment deed—Founder if precluded from interfering subsequently.

Where an express provision for the management in the shape of a definite scheme has been laid down in the deed of endowment by the founder, it must be held that the said founder intended to preclude himself from interfering with that scheme at a subsequent stage. Unless the power to change that scheme is reserved, the scheme of management is as irrevocable as the dedication itself.

Messrs. *Haider Husain* and *H. H. Zaidi,* for the appellant.

Messrs. M. *Wasim* and *Ali Hasan,* for the respondent No. 1.

*First Civil Appeal No. 33 of 1937, against the order of Mr. Maheshwar Prasad Asthana, Additional Civil Judge of Gonda, dated the 25th February, 1937.

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MADHUBAN DAS, BABA v. AVADH BEHARI DAS, BABA AND OTHERS

THOMAS, C.J. and RADHA KRISHNA, J.:—The facts which have given rise to this appeal are that one Baba Gyan Das dedicated his entire property to Sri Thakurji Maharaj temple situated at Nawabganj under a deed of endowment (Ex. 2) executed on the 26th January, 1926. By this deed he appointed the plaintiff as *sarpanch* and defendants Nos. 2, 3, 4 and 9 and one Ganesh Tewari as *panches,* and further provided that he would remain the *sarbarahkar* of the temple so long as he lived and after his death the *panches* and the *sarpanch* mentioned above would manage the property. Ganesh Tewari died in the lifetime of Gyan Das.

Baba Gyan Das on the 7th July, 1936, executed a will (Ex. A-2) under which he appointed the defendant No. 1, as *sarbarahkar* and defendants Nos. 2 to 8 as *panches* to manage the temple jointly. Baba Gyan Das died the same day.

The plaintiff brought the suit out of which this appeal has arisen for a declaration that he is the *sarpanch* and *sarbarahkar* and defendants Nos. 2 to 4 and 9 are the *panches* under the original deed of endowment dated the 26th January, 1926, and as such entitled to manage the temple in preference to the rest of the defendants.

The chief contesting defendant was defendant No. 1, who raised several defences, the chief of which was that the scheme of management laid down in the will executed on the 7th July, 1936, abrogated the original scheme laid down in the deed of endowment.

The plaintiff in reply contended that the deed executed by Baba Gyan Das on the 7th July, 1936, was invalid because the founder had no power left to interfere with the scheme of management laid down in the deed of endowment. We do not mention other points that arose for decision in the case because they were not agitated before us here in appeal.

The trial court decreed the suit holding that Baba Gyan Das could not alter the line of management and

the will relied upon by the defendant No. 1, was invalid in law.

The defendant No. 1, has come up in appeal to this Court against the decree of the lower court and the only point for decision is whether Baba Gyan Das could interfere afterwards with the scheme of management laid down by him in the deed of endowment.

Thomas C.J. and Radha Krishna J.

It is well settled that the management of the temple property remains with the founder and his heirs in the absence of any direction as to management. The right to manage the dedicated property remains with the founder and after his death descends to his heirs according to the personal law or usage governing the rules of inheritance. The founder has, however, complete power of disposing of that right and if he has once exercised his right of disposing of that right no further right of disposal, in the absence of any reservation, is left with him. In the present case when Baba Gyan Das executed the deed of endowment, he by the same deed disposed of the right of management and laid down that during his lifetime he will remain the *sarbarahkar* and after his death the *sarpanch* and the *panches* named by him in that deed would manage the property. He did not reserve any right to himself of changing that scheme. In Macnaughten's Principles of Hindu Law, Vol. II, page 305, it was stated that:

> "It is now settled law that the appointment and succession to the office of a *shebait* must follow the line laid down in the original grant and in the absence of special direction and usage the heirs of the donor succeed."

In Mulla's Hindu Law, 8th Edition, page 489, it is stated as follows:

> "But the founder is not entitled to alter the line of succession or to interfere in the management, unless he has, by the deed of endowment, reserved the right to do so."

The learned counsel for the appellant has strongly relied upon a case reported in *Sripati Chatterjee and*

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others v. *Khudiram Banerjee and others* (1). In this case this particular point did not directly arise. One of the learned Judges, i.e. CHAKRAVARTY, J., discussed the law at considerable length and laid down that the rule prohibiting a Hindu from creating a special line of succession unknown to Hindu Law did not apply to the case of an appointment of a *shebait* and in so holding he further observed that the donor could alter the appointment of a *shebait* provided he had not expressly precluded himself from doing so. At page 446 he referred to the case of *Gaurikumari Dasee* v. *Ramanimoyi Dasee* (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 did not overrule this case expressly.

In *Nagendra Nath Palit* v. *Rabindra Nath Deb* (3) and *Lalit Mohan Seal* v. *Brojendra Nath Seal and others* (4) another learned Judge of the same High Court expressed his dissent from the latter of the two views taken in *Sripati Chatterjee and others* v. *Khudiram Banerjee and others* (1) mentioned above.

In the case of *Manohar Mukherji* v. *Bhupendranath Mukherji* (5) that case was again overruled in respect of the view that the rule prohibiting a Hindu from creating a special line of succession unknown to Hindu Law did not apply to the appointment of a *shebait*.

In *Narayan Chandra Dutt and others* v. *Sm. Bhuban Mohini Basu Mallik*, (6) it was laid down that where a founder of a Hindu endowment divests himself of properties dedicated for *sheba* but appoints himself as the first *shebait* and lays down the line of succession of *shebaits*, he cannot alter the line, when once the gift takes effect, unless it be for the benefit of the deity or such power has been reserved and an express provision precluding himself from so acting is not necessary.

(1) (1925) A.I.R., Cal., 442.
(2) (1922) I.L.R., 50 Cal., 197.
(3) (1936) A.I.R., 490-I.L.R., 53 Cal., 132.
(4) (1926) A.I.R., Cal., 561.
(5) (1932) I.L.R., 60 Cal., 452.
(6) (1934) A.I.R., Cal., 244.

It is thus clear that the Calcutta view is opposed to the contention of the learned counsel for the appellant.

The Allahabad High Court has in a recent case taken the same view in *Bindraban v. Sri Godamji Maharani Birajman Mandir Sri Rangji Maharaj,* (1).

We for ourselves are of opinion that where an express provision for the management in the shape of a definite scheme has been laid down in the deed of endowment by the founder of the deed, it must be held that the said founder intended to preclude himself from interfering with that scheme at a subsequent stage. In the deed which we have got to deal with in the present case Baba Gyan Das expressed himself as follows:

> "I do covenant that I, the executant, shall remain during my lifetime the *sarbarahkar* and manager of the temples mentioned above and shall make management about the entitre property mentioned below, that after my death, for the purpose of future management to the temples mentioned above, I appoint Babu Ajudhya Prasad . . . as *panches* and I appoint Oudh Behari . . . as *sarpanch,* and the powers are bestowed (on them) as follows:"

On a proper interpretation of the above provision in the deed of endowment and the law bearing on the point, we are of opinion in agreement with the lower court that Baba Gyan Das was not entitled to interfere with the scheme of management laid down in Ex.. 2 and that the scheme of management laid down in the will dated the 7th July, 1936, was invalid and ineffective.

Lastly it was argued that the scheme of management laid down in the deed of endowment was of a testamentary character and that it must be deemed to have been revoked by the latter will dated the 7th July, 1936. In our opinion the scheme of management of the dedicated property is really part of the original dedication of property. It is inseparable from the dedication itself and cannot be considered to be of a

(1) (1937) A.I.R., All., 394-(1937) I.L.R., All., 555.

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testamentary character liable to be revoked later, and unless the power to change that scheme is reserved, the scheme of management is as irrevocable as the dedication itself.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice Radha Krishna Srivastava

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ANAND BEHARI LAL KHANDELWAL (PLAINTIFF-APPELLANT) *v.* DEPUTY COMMISSIONER, BARA BANKI, IN CHARGE OF ASDAMAU ESTATE (DEFENDANT-RESPONDENT)*

U. P. Encumbered Estates Act (XXV of 1934), sections 4, 8, 17 to 23 and 52—U. P. Court of Wards Act (IV of 1912), sections 19 and 21(3)—Admission of time-barred claim by applicant under Encumbered Estates Act, effect of—Acknowledgment of time-barred debt by Court of Wards—Court of Wards, whether justified in acknowledging time-barred debt—Notification of claim under section 17, Court of Wards Act, effect of—Creditor whether precluded from instituting suit or executing decree—Section 52, Court of Wards Act, applicability of.

Where the Court of Wards admits a claim under a decree as a subsisting claim in its application under section 4 and its written statement under section 8 of the Encumbered Estates Act but the application for execution of that decree had become barred much before the application under section 4, *held*, that the admission of the claim by the Court of Wards under sections 4 and 8 does not help the decree-holder and his name is to be deleted from the list of creditors.

There is no provision in the Court of Wards Act which would entitle the Court of Wards to acknowledge or pay off a time-barred debt of its ward.

*First Civil Appeal no. 109 of 1937, against the order of Pandit Brij Kishen Topal, Special Judge, 1st Grade, Bara Banki, dated the 10th September, 1937.