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DHAVLE, J.

was only in 1920 that the Provincial Insolvency Act released the insolvent on his discharge from all debts *provable* in the insolvency proceedings. But the protection given to the landholder of Chota Nagpur by the Act of 1876 was based on other considerations than those that arise in ordinary insolvencies and was much more thorough.

The appellant's contention that the sixth paragraph of section 12 of the Act was by a beneficial construction applied in *Lalu Mathura Prasad's* case(1) to a case not strictly coming within that paragraph is, in my opinion, untenable. But even if it were otherwise, the intention of the Act does not seem to be different from its letter in the matter of debts not notified to the manager of an estate released under the first or the third clause of section 12.

S. A. K.

Appeal dismissed.

APPELLATE CIVIL.

1937.

March, 31.
April, 1, 2, 14.

Before Agarwala and Madan, JJ.

MAHANTH RAMDHAN PURI

v.

MUSAMMAT PARBATI KUER.*

Hindu Law—Math—Mahanth, power of, to alienate math property—unavoidable necessity—alienation by compromise, whether permissible—suit by succeeding Mahanth to set aside compromise decree, whether barred.

Under Hindu law a mahanth is in no sense a trustee in the English sense of the term, but he is a mere manager or custodian of the *math* property on behalf of the deity who is

*Appeal from Appellate Decree no. 611 of 1934, from a decision of Babu Saudagar Singh, Additional District Judge of Patna, dated the 5th May, 1934, affirming a decision of Rai Saheb Bhuvaneshwar Prasad Pande, Subordinate Judge of Patna, dated the 10th October, 1931.

(1) (1926) I. L. R. 5 Pat. 404.

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a juristic entity. The property is not vested in the mahanth who is in the position of a life-tenant.

Therefore, the power of a mahanth to create an interest in *math* property so as to enure beyond his own term of office is limited to cases of unavoidable necessity.

Even if a lease created by a mahanth and valid for his life-time be adopted by his successor, the effect will be the creation of a new lease valid only during the successor's term of office.

Palaniappa Chetty v. *Sreemath Devasikamony Pandara Sannadhi*(1) and *Vidya Varuthi Thirtha* v. *Balusami Ayyar*(2), followed.

Likewise, a mahanth cannot by compromise alienate lands for debts not incurred for legal necessity and merely to avoid the expense and trouble of proceeding with a suit which had been brought for setting aside the alienation.

Kusodhaj Bhakta v. *Brojo Mohan Bhakta*(3) and *Anandi Lal* v. *Jagarnath Das*(4), followed.

Niladri Sahu v. *Mahanth Chaturbhuj Das*(5) and *Prosunno Kumari Debya* v. *Golab Chand Baboo*(6), distinguished.

While in such cases the actual pressure on the estate at the time of the loan is a matter to be considered, the case where the danger arises from misconduct to which the lender himself has been a party, is to be excluded.

Prosunno Kumari Debya v. *Golab Chand Baboo*(6), referred to.

A suit by the succeeding mahanth to set aside such a compromise, embodied in a decree of the court, and for recovery of the *math* property brought within twelve years of his succession to the *math*, is not, therefore, barred.

Appeal by the plaintiff.

The facts of the case material to this report are set out in the judgment of Madan, J.

(1) (1917) I. L. R. 40 Mad. 709, P. C.
(2) (1921) I. L. R. 44 Mad. 831, P. C.
(3) (1915) 19 Cal. W. N. 1228.
(4) (1927) 9 Pat. L. T. 214.
(5) (1926) I. L. R. 6 Pat. 139, P. C.
(6) (1875) 23 W. R. 253, P. C.; L. R. 2 Ind. App. 145.

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Manohar Lall (with him *N. K. Prasad II* and *Chowdhry Mathura Prasad*), for the appellant.

Dr. P. K. Sen and *B. C. Sinha*, for the respondents.

MADAN, J.—This second appeal is concerned with the indebtedness of a math known as the Islampur Math, situated in the Bihar subdivision of the Patna district. The original debt amounting to the sum of Rs. 3,000 was contracted by Mahanth Madho Puri who died in the year 1912. His successor Mahanth Mahabir Puri brought the total indebtedness up to the sum of Rs. 12,000. In 1917 this Mahanth for the satisfaction of this debt executed a permanent mokarrari of village Chak Barai, being one of the math properties, for a premium of Rs. 12,000 and an annual rental of Rs. 5. Eight annas of the mokarrari was in favour of defendants nos. 1 to 4 or their predecessors in interest, four annas in favour of defendants nos. 5 to 7 and the remaining four annas was in favour of certain Mahtos. Mahanth Mahabir Puri abdicated in 1919, and on the 1st April, 1920, his successor Mahanth Bed Narain Puri brought title suit no. 87 of 1920 in the court of the second Subordinate Judge of Patna for cancellation of the mokarrari and recovery of possession over the property. On the 12th May, 1921, this suit ended in a compromise whereby Bed Narain recovered an eight annas share and left the remaining eight annas in possession of the three sets of mokarraridars on a rental of Rs. 2-8-0. Out of the debt of Rs. 12,000 the sum of Rs. 569 had been paid in cash and Rs. 580 had been paid as Government revenue, while the balance of Rs. 10,851, which appears to have been mostly covered by usufructuary mortgages, had not been paid. Out of this balance Bed Narain contracted to pay the sum of Rs. 3,551 and the mokarraridars were to pay the balance of Rs. 7,301. There is some dispute as to whether the mokarraridars did pay this balance or whether Bed Narain paid it,

but this matter was not put in issue between the parties and has not been decided by the lower courts. In the year 1926 Bed Narain abdicated and was succeeded by the present plaintiff Mahanth Ramdhan Puri. The plaintiff's case is that he approached the mokarraridars and represented that their mokarrari was illegal with the result that the Mahtos gave up the two annas share which had been left to them after the compromise. In the year 1929 he brought the present suit against defendants nos. 1 to 7 in respect of the remaining six annas share on the ground that the loans if really taken by the Mahanths were not for justifiable necessity and were not binding on the math properties. Defendants nos. 1 to 7 contested the suit on the ground that the loans were for legal necessity and for the benefit of the math. The Subordinate Judge who tried the case held that only Rs. 1,200 out of the debts contracted by Mahabir and the sum of Rs. 580 paid as Government revenue had been proved to be for legal necessity. The Additional District Judge on appeal held that the sum of Rs. 3,000 borrowed by Madho and the sum of Rs. 580 Government revenue were for legal necessity, but not the balance of the debt. Both courts, however, dismissed the suit on the ground that the plaintiff was bound by the compromise entered into by Bed Narain. The plaintiff has, therefore, appealed to this Court.

In *Vidya Varuthi Thirtha* v. *Balusami Ayyar*(1) the Privy Council has dealt with the legal position of a Mahanth in regard to the Math property. Their Lordships while reviewing the various authorities on the point observed that under Hindu law a Mahanth is in no sense a trustee in the English sense of the term, but that he is a manager or custodian of the Math property on behalf of the deity who is a juristic entity vested with the capacity of receiving gifts and holding property. The property is not vested in the

(1) (1921) I. L. R. 44 Mad. 831, P. C.

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Mahanth who is in the position of a life tenant. In these circumstances the power of a Mahanth to create an interest in math property so as to enure beyond his own life-time or, to be more accurate, his own term of office is limited to cases of unavoidable necessity. The Mahanth's personal enjoyment of the property is limited to such portion of the usufruct as accrues to him according to the custom and usage of the math. Even if a lease created by a Mahanth and valid for his life-time be adopted by his successor the effect will be the creation of a new lease valid only during the successor's term of office. In that case the suit which was brought by the transferees for recovery of possession over math property conveyed to them under a permanent lease was dismissed. In *Palaniappa Chetty* v. *Sreemath Devasikamony Pandara Sannadhi*(1) their Lordships had observed that it was a breach of duty by a Mahanth, unless constrained by an unavoidable necessity, to grant a lease in perpetuity of debottar lands even at a rental which was adequate at the time. Their Lordships while declining to give a precise definition had given, as instances of such necessity, the preservation of the estate from extinction by sequestration, and its defence against hostile litigation or from injury or deterioration by inundation. In the present case both courts have held that the alienation was not for legal necessity or for the benefit of the math, and the only question that arises before us is what was the effect of the compromise entered into in 1921 by Mahanth Bed Narain, the predecessor of the present plaintiff.

Now this compromise which was recorded in the decree states that the plaintiff had filed the suit on the ground that the lease was without consideration and illegal and that the defendants had claimed that the lease was valid and for consideration and had also denied that the property leased was debottar land. Some witnesses had been examined for the plaintiff,

(1) (1917) I. L. R. 40 Mad. 709, P. C.

and then owing to the uncertainty as to the result of the suit and the loss and harassment involved in the litigation, and after consultation with a local Mahanth, the parties had decided to compromise. It was accordingly agreed that the alienation should be held to be valid and that each side should take one half of the property and satisfy an agreed proportion of the debt. The compromise does not recite that the plaintiff had satisfied himself that the debts were in fact incurred for legal necessity nor does it recite the necessities for the debts, and in this litigation both courts have found that the debts were not for legal necessity. It would appear therefore that the alienation agreed to by Bed Narain by means of this compromise was contrary to Hindu law. Mr. Manohar Lal for the plaintiff referred to the case *Kusodhaj Bhakta* v. *Brojo Mohan Bhakta*(1) where it is observed with reference to a compromise decree that it is well-settled that a contract between parties is nonetheless a contract because there is superadded to it a command of a Judge. Again in *Anandi Lal* v. *Jagarnath Das*(2) it was held that the court was right in refusing to record a compromise whereby a Mahanth agreed to alienate math property without legal and justifying necessity. In my opinion the principle of this ruling applies to the present case, and the compromise is not binding on the present plaintiff. The defendants also in that suit must be taken to have known that math property could not be permanently transferred except for unavoidable necessity to be proved by them, and by entering into the compromise without such proof they took the risk that the debt might not be satisfied during the tenure of the office by Bed Narain or that the arrangement might not be accepted by his successor. The present plaintiff has now sued for recovery of possession over the property conveyed, and in my opinion he was entitled to do so.

(1) (1915) 19 Cal. W. N. 1228.

(2) (1927) 9 Pat. L. T. 214.

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Dr. Sen for the defendants referred us to *Niladri Sahu* v. *Mahanth Chaturbhuj Das*(1). In that case a Mahanth had borrowed from various sources at a high rate of interest, namely, 24 per cent., with the result that an original debt of about Rs. 9,000 had increased to Rs. 25,000. In these circumstances, in order to relieve the pressure on the resources of the math, he had reborrowed Rs. 25,000 from the plaintiff at 12 per cent. interest. The High Court dismissed the suit on the ground that the debts were not incurred for legal necessity, but the Privy Council held that even if the borrowing was unjustified, which it did not consider in that case to have been proved, still the immediate cause for the borrowing from the plaintiff was the math's necessity for obtaining relief from the burden which the heavy rate of interest had imposed. In this view of the case the plaintiff was held to be entitled to a decree. It is noticeable, however, that the order passed by their Lordships in that case was that a personal decree should be passed against the Mahanth, and that in default enquiry should be held as to the amount legitimately attributable to the endowment under a Hindu, and that a receiver should be appointed to manage the estate and make over the Mahanth's share to the plaintiff after payment of a maintenance allowance to the Mahanth. The decree was therefore a personal decree against the Mahanth, and no question of alienating the math properties appears to have arisen. In that case their Lordships referred to the earlier decision in *Prosunno Kumari Debya* v. *Golab Chand Baboo*(2) in which case two decrees had been passed against a former Mahanth in respect of a debt held to have been legitimately incurred, and those decrees were held to be binding on his successor. In that case also the Privy Council pointed out that decree had been passed, and in their opinion had rightly been passed, against the rents and profits of

(1) (1926) I. L. R. 6 Pat. 139, P. C.
(2) (1875) 23 W. R. 253, P. C.; L. R. 2 Ind. App. 145.

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the debottar lands, and that the question had not been raised whether the lands could be sold under the decrees. Neither of these cases give support to the proposition that a Mahanth can by compromise alienate lands for debts not incurred for legal necessity, and merely to avoid the expense and trouble of proceeding with a suit which had been brought for setting aside the alienation. It is not recited in the compromise that in fact the Mahanth was unable to raise the funds necessary for carrying on a suit brought for recovery of a valuable property of the math. The compromise may have had the effect of postponing the issue so far as the parties to the compromise were concerned, but it could not operate to prevent the ultimate investigation into the nature of the original transaction, which issue has now been raised in a suit brought by the succeeding Mahanth within twelve years of his succession to the math. I must hold that the compromise entered into by Bed Narain is no bar to such a suit.

Another circumstance adverse to defendants is that a large proportion of the debt payable under the compromise was the debt of the defendants themselves or their predecessors in interest. In *Prosunno Kumari Debya* v. *Golab Chand Baboo*(1) the Privy Council while observing that actual pressure on the estate at the time of the loan is the matter to be considered excluded the case where the danger arises from misconduct to which the lender himself has been a party. On this ground also the defendants, in my opinion, are unable to take advantage from the compromise, and the plaintiff's suit must succeed. As has already been observed, the learned Additional District Judge held that legal necessity had been proved for the sums of Rs. 3,000 and Rs. 580 only out of the total debt. In the case of Rs. 3,000 he held that necessity had been proved merely because the debt had been ratified by two succeeding Mahanths

(1) (1875) 23 W. R. 253, P. C.; L. R. 2 Ind. App. 145.

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and on no other evidence. However this may be, it is reasonable to hold that these debts have been satisfied from the usufruct enjoyed by the defendants up to the year 1926, and no case arises for granting them an equitable relief in respect of these amounts. The result is that this appeal must be allowed and the plaintiff's suit must be decreed. The mokarrari is set aside, and the plaintiff is entitled to recover possession of the property in suit with costs throughout.

AGARWALA, J.—I agree.

S. A. K.

Appeal allowed.

APPELLATE CIVIL.

Before Agarwala and Madan, JJ.

1937.

March 1, 2.
April, 2.

SHEIKH AMIRUDDIN

v.

SONELAL JHA.*

Ghairmazrua am land—landlord, whether can settle.

A landlord has no right to settle ghairmazrua am land even if the settlement does not interfere with the rights of the public.

Muhammad Waliul Haq v. *Ludpud Upadhya*(1), followed.

Ram Das Sah v. *Damodar Prasad*(2), not followed.

Appeal by the defendants.

The facts of the case material to this report are set out in the judgment of Madan, J.

* Appeal from Appellate Decree no. 894 of 1934, from a decision of Babu Sachindra Nath Ganguli, Subordinate Judge of Darbhanga, dated the 7th February, 1934, reversing a decision of Babu Satya Narayan Chaudhuri, Munsif of Darbhanga, dated the 6th June, 1932.

(1) (1937) I. L. R. 16 Pat. 389.

(2) (1923) 4 Pat. L. T. 223.