APPELLATE CIVIL.

Before Dhavle and Agarwala, JJ.

1938.

September, 26, 27.

MUSAMMAT ANURAGH KUER

v.

PARMANAND PATHAK.*

Hindu Law—dedication for the worship of deity—succession to the office of shebait, whether governed by the law of inheritance—principles of inheritance—death of last shebait who succeeded as male owner—shebait's heirs, whether entitled to succeed—nature of interest inherited—shebaitship, when vests in the heirs of founder.

According to Hindu Law, when the worship of a deity has been founded, the shebaitship is 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 other circumstances to show a different mode of devolution.

The management and control of the endowed property besides the right of acting as ministrant to the deities—the two together constituting the shebaiti right—therefore follows the line of inheritance from the founder.

Gossami Sri Gridhariji v. *Ramanlalji Gossami*(1) and *Jagadindra Nath Roy* v. *Hemanta Kumari Debi*(2), followed.

The Hindu Law of inheritance makes a distinction between the sexes in that a male heir becomes full owner of the property inherited by him and transmits it on death to his own heirs, while a female heir (barring such Bombay exceptions as *gotraja* females) only takes as a limited owner, the property passing on her death not to her heirs but to the next heir of the last full owner.

This principle applies to the inheritance of the shebaiti interest also.

* Appeal from Appellate Decree no. 602 of 1936, from a decision of Mr. Nidheshwar Chandra Chandra, Additional District Judge of Gaya, dated the 13th August, 1936, modifying a decision of Babu Priya Lal Mukherjee, Munsif at Gaya, dated the 31st May, 1935.

(1) (1889) I. L. R. 17 Cal. 3, P. C.
(2) (1904) I. L. R. 32 Cal. 129, P. C.

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No shebait can alter the line of succession laid down by the founder but this again is far from inconsistent with a male who inherits a shebaiti interest taking as full owner as in the inheritance of immovable property of a secular character. The entire estate is vested in him, though his powers of alienation are qualified and restricted.

Prosunno Kumari Debya v. *Golab Chand Baboo*(1), *Ukoor Doss* v. *Chunder Sekhur Doss*(2), *Ramchandra Panda* v. *Ram Krishna Mahapatra*(3), *Rajeshwar Mullick* v. *Gopeshwar Mullick*(4), *Kunjamani Dasi* v. *Nikunja Behari Das*(5), *Panchanan Banerjee* v. *Surendra Nath Mukherjee*(6), *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram*(7), *Manohar Mukherji* v. *Bhupendranath Mukherji*(8) and *Ganesh Chunder Dhur* v. *Lal Behary Dhur*(9), reviewed.

Therefore, on the death of the last shebait, who succeeded as a male owner, the shebaiti right devolves on *his* heir.

Appeal by the defendant.

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

Dr. D. N. Mitter and *G. P. Singh*, for the appellants.

Sushil Madhab Mullick and *Kedar Nath Verma*, for the respondents.

DHAVLE, J.—This is an appeal by the defendant in a suit for the establishment of the plaintiffs' sebaiti right to certain temples founded by one Hanuman Pathak, brother of the great-grand-father of the plaintiffs. Plaintiffs' case was that Hanuman was a member of a joint Hindu family and established the temples from the income of the joint family among

(1) (1875) L. R. 2 Ind. App. 145.
(2) (1865) 3 W. R. 152.
(3) (1906) I. L. R. 33 Cal. 507.
(4) (1907) I. L. R. 35 Cal. 226.
(5) (1915) 22 Cal. L. J. 404.
(6) (1929) 50 Cal. L. J. 382.
(7) (1899) I. L. R. 23 Mad. 271, P. C.
(8) (1932) I. L. R. 60 Cal. 452, F. B.
(9) (1936) L. R. 63 Ind. App. 448.

other sources and dedicated certain self-acquired properties to them. Hanuman died in Aghan, 1318, leaving behind a widow named Rajbansi Kuar and a grand-son by a pre-deceased daughter, Mahabir Misser, besides one brother Debi, his son Madho, and Ragho, Debi's grandson by a predeceased son. Debi died shortly after, and apparently also Madho, leaving him surviving a son Sarju, father of the plaintiffs. In September, 1908, an ekrarnama, Ex. A, was executed by Ragho and Sarju on one hand and Rajbansi Kuar and Mahabir Missir on the other, according to which Rajbansi Kuar was to be sebait for life and was to be succeeded by Mahabir as "absolute proprietor" of the sebaiti interest, subject only to a right of pre-emption reserved in favour of the other executants and their heirs in case any pressing necessity of the temples compelled a transfer of any of the temple properties. According to the plaintiffs this ekrarnama was invalid and did not operate to confer upon Mahabir any powers other than those of a sebait appointed by the family. Rajbansi Kuar died about a year after the ekrarnama, and Mahabir succeeded her as sebait. In August, 1932, Mahabir executed a deed of gift in favour of the defendant in respect of the temples and their properties besides certain properties acquired by Mahabir himself and dedicated to the temples. Plaintiffs claimed that the temples were their family "deo-asthans", that Mahabir had no right to appoint the defendant to be sebait, and that they had the right themselves to work as sebaits or appoint others as such. Mahabir was not impleaded as a party to the suit, the reason apparently being that he died shortly after the deed of gift in favour of the defendant while the suit was instituted in May, 1934.

The trial court found that the temples and the temple properties were the self-acquired properties of Hanuman; and there has been no further dispute on this point. It held that the sebaiti right followed

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the line of inheritance from the founder and that Mahabir thus became absolutely entitled to it after the death of Rajbansi Kuar, so that the ekrarnama, Ex. A, merely acknowledged and ratified the existing right of Rajbansi Kuar and after her of Mahabir Missir in the sebaitship. Mahabir's gift in favour of the defendant was found by the learned Munsif to be no more than the appointment of the defendant as the next sebait after Mahabir for the worship of deities, and therefore valid under the ruling in *Khetter Chunder Ghose* v. *Haridas Bundopadhya*(1). Even if the gift were to be regarded as invalid, the plaintiffs were not, in the view of the learned Munsif, entitled to claim the sebaitship as heirs of the founder since the sebaiti right had vested in Mahabir as full owner. The plaintiffs had not even made any claim as heirs of Mahabir, and therefore, the learned Munsif dismissed the suit.

The plaintiffs appealed, and the Additional District Judge who heard the appeal allowed it, holding that Mahabir had only " a life interest " in the sebaiti right, that the ekrarnama, Ex. A, was not competent to convert that interest into an " absolute right " that Mahabir had no right by his deed of gift in favour of the defendant to alter the line of succession to the sebaitship " by reason of the existence of the plaintiffs who are the heirs of Hanuman as his collaterals after Mahabir ", that " on the extinction of Hanuman's direct line of succession with the death of Mahabir as the last sebait, the sebaiti right must be deemed to have reverted to the line of the founder Hanuman " and that " consequently the plaintiffs as collaterals and heirs of Hanuman are entitled to succeed to the sebaitship and the disputed property ".

It has been contended on behalf of the defendant appellant that the lower appellate court was wrong in holding that Mahabir had no more than a life estate

(1) (1890) I. L. R. 17 Cal. 557.

or life interest so that on his death the sebaiti right reverted to the line of the founder. In *Gossami Sri Gridhariji* v. *Romanlalji Gossami*(1) it was contended by Mr. Mayne for the respondent that neither by general law nor by special custom was it shown in the case that the sebaitship descended to the heirs of the founder. This contention was negatived by their Lordships of the Judicial Committee who held that "according to Hindu Law, when the worship of a Thakur has been founded, the sebaitship 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 other circumstances to show a different mode of devolution." In the present case the founder Hanuman acted as sebait during his life but made no disposition of the sebaitship to take effect after his death and there is no question of any usage, course of dealing or other circumstances to show a special mode of devolution. The management and control of the endowed property besides the right of acting as ministrant to the deities —the two together constituting the sebaiti right— therefore "follows the line of inheritance from the founder", as Sir Arthur Wilson said in *Jagadindra Nath Roy* v. *Hemanta Kumari Debi*(2). Now the Hindu law of inheritance makes a distinction between the sexes in that a male heir becomes full owner of the property inherited by him and transmits it on death to his own heirs, while a female heir (barring such Bombay exceptions as *gotraja* females) only takes as a limited owner, the property passing on her death not to her heirs but to the next heir of the last full owner. It may be safely assumed that this principle applied to Rajeshwar Kuar's inheritance of the sebaiti interest from Hanuman. But did Mahabir take a similarly limited interest or was he full owner of the sebaiti as a male heir? The powers of alienation possessed by him were no doubt restricted in much

(1) (1889) I. L. R. 17 Cal. 3, P. C.
(2) (1904) I. L. R. 32 Cal. 129, P. C.

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the same way as those of a female heir or the manager for an infant heir—*Prosunno Kumari Debya* v. *Golab Chand Baboo*(1)—but this does not bear directly on the nature of the interest taken by him as regards future devolution. It is also well settled that no sebait can alter the line of succession laid down by the founder, but this again is far from inconsistent with a male who inherits a sebaiti interest taking as full owner as in the inheritance of immovable property of a secular character. The way in which this right or interest devolves can be gathered from such cases as *Ukoor Doss* v. *Chunder Sekhur Doss*(2) and *Ram Chandra Panda* v. *Ram Krishna Mahapatra*(3). In the former of these cases it was held that the right of one member of a joint family to a turn of worship and other sebaiti privileges which he had assigned to a competent Brahmin "devolved", on his death without heirs, "to the other surviving members of the joint family." This was followed in the case of *Ram Chandra Panda* v. *Ram Krishna Mahapatra*(3) another Mitakshara case, in which it was held that the son became entitled by birth to a share "not only in the family property but also jointly as sebait of debottar property" and could, therefore, have an alienation by his father and uncle set aside as not for the benefit of the idol. A Mitakshara coparcener is not in these parts entitled to alienate his share in the joint family property at his pleasure, and far less to leave it by will. In *Rajeshwar Mullick* v. *Gopeshwar Mullick*(4) the question arose with reference to a sebaiti held by a Dayabhaga family, and it was ruled, as the placitum puts it, that "a sebait is a manager, or quasi trustee for the benefit of the idol, and therefore, has no power to alienate the hereditary office of sebaitship by will." There were certain observations made in this case to the effect that a sebait holds his office for life, but it

(1) (1875) L. R. 2 Ind. App. 145.
(2) (1865) 3 W. R. 152.
(3) (1906) I. L. R. 33 Cal. 507.
(4) (1907) I. L. R. 35 Cal. 226.

was pointed out in *Kunjamani Dasi* v. *Nikunja Behari Das*(1) that " this does not signify that he has a life interest in the office with the remainder presently vested in the next taker. The entire estate is vested in him, though his powers of alienation are qualified and restricted." It was further pointed out how when the last sebait, validly appointed by the founder, does not take the sebaitship *absolutely*, " the office vests in persons who at the time constitute the heirs of the founder, and when the office has so vested in them, upon the death of each member of the group, it passes by succession *to his heir*..... ". (The italics are mine.) This was followed in *Panchanan Banerjee* v. *Surendra Nath Mukerjee*(2) where Rankin, C.J. said that " consistently not only with the will in the case but also with the ordinary principle applicable to this matter ", the plaintiff was entitled to make out a right to be one of the sebaits of the Thakur by showing, not necessarily that he was an heir of the founder, but that he was an heir of Soshi Bhusan—a son of the founder, who had actually been the sebait for a long time, and who, under the will, was to have been a sebait during his life to be succeeded by his son absolutely. In *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram*(3) their Lordships of the Judicial Committee accepted Mr. Mayne's contention that it would be in contravention of the Hindu Law of inheritance to hold that an endowment of a heritable character should be held in a series of successive life estates by the heritors; the origin of the endowment was assumed to be a gift from the founder, the right to the management had been treated as hereditary, and Sir Richard Couch referred to the well-known Tagore case and said that " the Hindu Law of inheritance did not permit the creation of successive life estates in this endowment." In his order of reference to the Full Bench in *Manohar Mukherji* v. *Bhupendranath*

(1) (1915) 22 Cal. L. J. 404.
(2) (1929) 50 Cal. L. J. 382.
(3) (1899) I. L. R. 23 Mad. 271, P. C.

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Mukherji(1) Rankin, C.J. was inclined to question whether the application of the rules in the *Tagore* case(2) to sebaiti was not to be treated as an obiter and whether, unless the sebaiti right is regarded purely as an appointment to an office for life, there would not logically be an end of the founder's right to lay down rules of succession of any kind free from the restrictions laid down in the *Tagore* case(2). The Full Bench held that the founder has the right but " subject to the restriction that he cannot create any estate unknown or repugnant to Hindu law ". This was referred to, with evident approval, by the Judicial Committee in *Ganesh Chunder Dhur* v. *Lal Behary Dhur*(3) in which it was held that a testamentary disposition confining the sebaitship to the then next eldest male lineal descendant was invalid and that " the succession to the office of sebait and the income of the estate must be according to the ordinary Hindu law of succession ". The sebaiti in the present case must therefore have descended according to the ordinary Hindu law; and while Rajbansi Kuar only took a widow's limited " estate " in it, Hanuman the next heir at her death took as full owner. The view of the lower appellate court that though Mahabir was an heir of the founder he took only a life interest in the sebaiti cannot, therefore, be upheld. The learned District Judge proceeded to conclude that the ekrarnama of 1908 was invalid in so far as it converted Mahabir's life interest into an absolute right " which implies the creation of a fresh line of succession from Mahabir." Mahabir, however, as I have already said, took the sebaiti as full owner, even apart from the ekrarnama, and the trial court was right in holding that the ekrarnama only acknowledged and ratified the right of Mahabir. In fact the ekrarnama is only of value in the present case as showing how little the joint family, from which the plaintiffs are descended had to do with the temples and the endowed

(1) (1932) I. L. R. 60 Cal. 452, F. B.
(2) (1872) 18 W. R. 359.
(3) (1936) L. R. 63 Ind. App. 448.

property. This document makes it perfectly clear that the temples are not " the family deo-asthans of the plaintiffs ". Hanuman (who is called Sadhu Hanuman Saran Pathak in the ekrarnama) founded them after becoming a Baisnav, though without a formal separation from his brothers; the properties endowed by him had been acquired by him after his renunciation of the world (as the ekrarnama put it); and under the ekrarnama Hanuman's widow and daughter's son took nothing of the joint family property except 3 kathas of land for a residential house, while his brother's grandsons took the rest of the property of the joint family and renounced all claim to the sebaiti except a right of pre-emption. On the footing which was deliberately adopted in the ekrarnama the thakurbaris were the personal concern of Hanuman and Hanuman alone, and the joint family had really nothing to do with them. It is, therefore, idle for the plaintiffs to say, as they have done in the plaint, that Hanuman's brother's grandsons by the ekrarnama appointed Mahabir as sebait in their own place; and the finding of the lower appellate court that on the extinction of Hanuman's direct line of succession with the death of Mahabir as the last sebait, the sebaiti right must be deemed to have reverted to the line of the founder, is erroneous, because Mahabir, having taken the sebaiti as full owner, the sebaiti must next go to *his* heirs. There cannot be any question of reverter, properly so called, on the death of an heir who was full owner, though the sebaiti might perhaps somewhat loosely have been said to revert to the plaintiffs on Mahabir's death if the plaintiffs had been Mahabir's heirs. But a maternal grand-father's brother's great-grandsons do not stand very high in the list of Mitakshara heirs; being *bandhus*, they can only come in after all sapindas and samanodokas—*see* Mitakshara, Chap. II, section 6(10). The plaintiffs, moreover, did not claim as heirs of Mahabir at all. The lower appellate court seems to have fallen into some confusion on this

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question of reverter on the death of Mahabir, and to have mixed it up with the right of the heirs of the founder to nominate a sebait when the line of sebaits appointed by the founder becomes extinct—*Boidyo Gauranga Sahu* v. *Sudevi Mata*(1). There was no appointment by the founder in the present case, and Mahabir really took the sebaiti as the founder's daughter's son and heir.

It follows that the suit as framed ought to have been dismissed.

In this view it is not necessary to pronounce on the validity of the deed of gift executed by Mahabir in 1932. As a matter of fact this deed, though an exhibit in the case, has not been printed nor placed before us in any other way. The trial court found that it was in fact "not an alienation of the trust property, but a deed nominating the defendant as the next sebait after Mahabir Missir and the recitals are quite clear indicating that the defendant was to manage the trust properties and do the seva-puja of the Thakurjis". This does not seem to have been controverted in the lower appellate court; and it is not improbable that, as held by the trial court on the authority of *Khettar Chunder Ghose* v. *Haridas*(2), the deed is supportable as a deed of agreement for the worship of the idols, Mahabir having no family except himself at the time. But, in any case, the validity of the deed of gift can only arise between the donee and whoever may be Mahabir's heirs under the Hindu law. We have no right to assume, in the absence even of any assertion by the plaintiffs to that effect, that Mahabir left no agnatic relations at all who would of course come before the plaintiffs.

The result is that the appeal must be allowed, and the suit dismissed with costs in all courts.

AGARWALA, J.—I agree.

Appeal allowed.

S. A. K.

(1) (1917) I. L. R. 40 Mad. 612.
(2) (1890) I. L. R. 17 Cal. 557.