APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

1884
December 3.

RUPA' JAGSHET (ORIGINAL DEFENDANT NO. 1), APPELLANT, *v.* KRISHNA'JI GOVIND (ORIGINAL PLAINTIFF), RESPONDENT.*

Religious endowment—Charity—Family idols—Sale of trust property in execution—Suit by trustee to recover the property—Limitation.

The Hindu law, unlike the English law with respect to charities, makes no distinction between a religious endowment having for its object the worship of a household idol and one which is for the benefit of the general public.

In execution of decrees against the plaintiff, as the representative of his deceased father and brother, certain lands were sold to the first defendant. The plaintiff sued to recover them, alleging that the former owner of the lands had assigned them to his (the plaintiff's) brother and himself (the plaintiff), and their descendants by a deed of gift to perpetuate the worship of the donor's household idol.

Held, that the plaintiff was entitled to recover the property. The gift was a valid one creating a religious endowment under the Hindu law, and that the plaintiff's suit was not to set aside the sale, but was one by the trustee of the endowment to recover the property to which the limitation of twelve years was applicable.

THIS was a second appeal from the decision of E. H. Moscardi, Assistant Judge of Thána, reversing the decree of Ráv Sáheb Narhar Gadhádhar Phadkê, Subordinate Judge of Alíbág.

The owner of certain lands by a deed of gift in 1870 assigned them to the plaintiff's brother and to the plaintiff, who was then a minor, and to their descendants in consideration of their performing the worship of the donor's family god. At three separate court sales—held, respectively, on the 31st of August 1874, 10th of September 1874, and the 12th of January 1875—the right and title and interest of the plaintiff's father and brother (deceased) were sold by auction in execution of money decrees obtained against the plaintiff as their representative.

On the 10th of June, 1881, the plaintiff brought this suit to recover the land from the first defendant, the purchaser at the auction sales, and the defendants Nos. 2 and 3, his tenants.

Defendant No. 1 contended that the maintenance of the suit was barred, as more than one year had elapsed from the date of

* Second Appeal, No. 538 of 1883.

1884

RUPÁ JAGSHET v. KRISHNÁJI GOVIND.

the sales which the plaintiff wished to set aside, and that the gift being made for a family idol was not for the benefit of the general public, and was not valid by the Hindu law. Defendants Nos. 2 and 3 did not appear.

The Subordinate Judge held the claim barred by the law of limitation, and rejected it. The Assistant Judge held that the gift to perpetuate the worship of a household idol was void, and that the sale was also void, and that this suit could be brought at any time within twelve years from the date of the plaintiff's dispossession. Defendant No. 1 appealed to the High Court.

Shivshankur Govindrám for the appellant.—The gift, the object of which is the performance of the worship of a family idol, is invalid—*Ashutosh Dutt* v. *Doorga Churn*(1); *Maharanee Brojo Coondery Debia* v. *Ranee Luchmee Kooawaree*(2).

Ganpat Sadáshiv Ráv for the respondent.—A gift for the worship of a family idol is valid under the Hindu law—West and Bühler's Hindu Law, page 201 (3rd ed.) This suit is not to set aside a sale, but to recover property under a gift creating a religious endowment to which the limitation of twelve years is applicable.

SARGENT, C. J.—In this case decrees had been obtained against the plaintiff as the representative of his father Govind and brother Vithal, deceased, on money claims against the latter. In execution of those decrees the right, title, and interest of Govind and Vithal in the lands in question were sold to the defendant. The plaintiff now sues to recover the lands on the ground that they had originally belonged to the Athavlé family, who sold them to the plaintiff's father as agent for Rámbhat Patábhirámbhat Telang, who, in 1870, by deed of gift, assigned them to Vithal and the plaintiff, who was then a minor. The Assistant Judge found the facts as alleged by the plaintiff, and also that the lands were assigned to Vithal Govind and the plaintiff and their descendants in perpetuity as trustees for a religious purpose; that the sale in execution was, therefore, void; and that the present suit was not barred until twelve years from dispossession, there being no necessity to set aside the sale.

(1) L. R., 6 I. A., 182. (2) 15 Beng. L. R., 176.

1884

RUPÁ JAGSHET v. KRISHNÁJI GOVIND.

The gift is in the following terms:—"As my eyesight has been somewhat impaired on account of the weak state of my health, I have been unable to perform the worship of god. In order that it may be performed daily, I hereby execute this deed of gift to you on condition that you should worship, &c., the gods which I have, and I give for the sustenance of both of you brothers the following out of my lands which are situated at Mauze Kurul and Belkada of the Alibág Táluka, and which stand in the name of your father in the Government records as *suti* * * * * .

"The lands as described above have been given in gift to you both. You may maintain yourselves on what may remain out of the profits of the lands in question after deducting Government dues therefrom. I retain no interest whatever in them; you, your sons, and posterity may enjoy them from generation to generation as stated above. You should neither mortgage, nor sell, nor in any way alienate them to any one. You should manage them, and subsist on their produce."

It was contended for the appellant (the defendant) that this was not a religious endowment to which the law would give effect, the object of it being the worship of a family god, and not for the benefit of the general public. This distinction, which obtains in English law with respect to charities, is not to be found in the Hindu text-writers. The idol itself, as is explained in West and Bühler's Hindu Law, p. 201, is looked on "as a kind of human entity," the religious services of which are allowed by Hindu law to be provided for in perpetuity. In *Ashutosh Dutt* v. *Doorga Churn*[1] no objection was taken to the alleged endowment being in favour of the household idol, but solely that the whole property was not *devasthán*. Again, in the case to which we have been referred in the footnote at 15 Bengal Law Reports, 176, the Privy Council held there was no endowment, not because it was for the benefit of the idol in the Mahárája's house, but because, as their Lordships say, "there was no endowment in perpetuity, there being no priest, no public, no one legally interested in the worship of the idol except the Mahárája himself,

(1) L. R., 6 I. A., 182.