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and that, consequently, his present application is not barred. It will, however, be necessary for him to certify those payments to the Court as was directed in the above case.

We reverse the order appealed from, and direct that, upon the applicant certifying the payments that have been made, he be allowed to execute the decree.

Order reversed.

Attorneys for the appellant:—Messrs. *Little, Smith, Frere, and Nicholson.*

Attorneys for the respondents:—*Thákurdás and Dharamsi.*

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

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TRIMBAKPURI GURU SITALPURI, (ORIGINAL PLAINTIFF), APPELLANT, *v.* GANGA'BA'I AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Gosávi—Succession to the estate of a gosávi in the Deccan—A gosávi's right to nominate his successor by a written instrument.

A *guru* in the Deccan has a right to nominate his successor from amongst his *chelás* (disciples) by a written declaration.

SECOND appeal from the decree of E. M. H. Fulton, Acting District Judge of Násik, in Appeal No. 115 of 1884.

The *devasthán* of Sitágumphá at Násik was founded by a *gosávi* named Lakshumanpuri. The management of this *devasthán* and the property appurtenant to it had descended from *guru* to *chelá* in succession until it came into the hands of one Sitalpuri, who appointed his brother Trimbakpuri, the plaintiff, as his *chelá* or disciple. A few years afterwards, having begotten a son, Sitalpuri took him also as a *chelá*. On the 26th May, 1882, Sitalpuri executed a document, purporting to be a will, by which he declared "his natural son Bahiravpuri Guru Sitalpuri" to be his sole heir and successor to the *devasthán* property. Sitalpuri died on the 12th June 1885. On the fourteenth day after his death a feast was given to the *gosávis*, and they all signed a *panchnámá* declaring the plaintiff to be *chelá* and successor to the *gádi*. The widows of Sitalpuri refused to sign the *panch-*

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námá, or to recognise the plaintiff's title. The plaintiff, therefore, brought this suit for a declaration that he, as the *chelá* of Sitalpuri, was entitled to the management and possession of the *devasthán* property, and for an injunction to restrain the son and widows of the deceased from obstructing him in the exercise and enjoyment of his rights.

The defendants alleged that the plaintiff was not a disciple of the deceased Sitalpuri, and had never been recognised as such, and that under the will of the 26th May, 1882, the defendant Bhairavpuri had been appointed by the deceased as his heir and successor, and had, therefore, the sole right to manage the *devasthán*.

Both the lower Courts found that the plaintiff as well as the defendant Bahiravpuri were the *chelás* of the deceased, but dismissed the suit, on the ground that the testator's son alone had the right of succession under the will.

Against this decision the plaintiff preferred a second appeal to the High Court.

Mahádev C. Apte for the appellant.

Shivrám V. Bhandárkar for the respondent.

WEST, J.:—The present case is one wherein a *gosávi* in the Násik District first accepted one person, the plaintiff, as a *chelá*, and afterwards, having begotten a son, took him also as a *chelá*. This adoption of a begotten son as a *chelá* is allowed by the custom of the class, equally with the adoption of a brother, which was the relation in which the plaintiff Trimbakpuri stood to his *guru* Sitalpuri.

Soon after taking his son (defendant Bahiravpuri) as *chelá*, Sitalpuri executed the document, exhibit 69. This is called a will, but it is rather a declaratory instrument of the character which wills had in England three centuries ago, than a true testamentary writing intended to speak only from the moment of Sitalpuri's death. Sitalpuri registered this document, and from that moment it was a written announcement of his intention to make Bahiravpuri successor to his property. It has been contended that he intended to make him successor only in his character of a son, not that of *shishya*, and that the document, exhibit 69, was really designed only to guard the estate by pro-

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viding for its management by Sitalpuri's widows during the son's infancy; and as the devise or the declaration has regard only to Bahiravpuri in his character of real and begotten son, Mr. Apte has urged, it cannot operate as a choice of him to be successor in his character of *chelá*. Thus the *guru*, not having made an effectual nomination, the declaration, exhibit 70, made by the *dasanámá* of *gosávis*, comes into operation, and gives the succession to Trimbakpuri. But, unless Sitalpuri intended to give his son some substantial benefit, it is not easy to conceive why he should have made him his *shishya*. The document (exhibit 69) executed and registered shortly afterwards, is properly to be construed with reference to the situation of the parties—see *Mussamat Bhagbutti Daee* v. *Chowdry Bholanáth Thákoor*(1), *Gulábdás Jagjivandás* v. *The Collector of Surat*(2)—and in it Sitalpuri plainly indicates that he, standing in the relation of *guru* to Bahiravpuri, recognizes and wishes to declare Bahiravpuri's proprietary right in succession to himself. Bahiravpuri is called son of Sitalpuri, but as thus described he is merely a *persona designata*; he is also designated "*guru* Sitalpuri," and there is nothing to suggest that the proposed benefit was intended to take effect only on account of Bahiravpuri's being a begotten son, and in so far as he held that position. This differentiates the case from *Fanindra Deb Raikat* v. *Rajeswar Dass*(3), *Seth Lukhmee Chand* v. *Seth Indra Mull*(4); and, according to the authorities cited at pp. 554, 556 of West and Bühler's Hindu Law, a *guru* in the Deccan has a right to nominate his successor from amongst his *chelás* by a written declaration. In the present case the plaintiff did not set up against this general local law any special custom of the institution or the community to which he belonged. He relied on his mere discipleship and his recognition by the *dasanámá* after Sitalpuri's death. These were insufficient grounds under the circumstances, and we must confirm the decree of the District Court with costs.

Decree confirmed.

(1) L. R., 2 Ind. Ap., p. 256.
(2) I. L. R., 3 Bom., p. 189. See Sugden's Vendors and Purchasers, Chap. IV, s. 9, para. 10.
(3) L. R., 12 Ind. Ap., 72, at p. 87.
(4) 13 Moo. Ind. Ap., 365.