PRIVY COUNCIL.

P.C.*
1899.
April 28.

CHOTALAL LAKHMIRAM AND OTHERS, APPELLANTS, AND MANOHAR GANESH TAMBEKAR AND OTHERS, RESPONDENTS.

On appeal from the High Court at Bombay.

Charitable trust—Decree, form of—Account to be taken first—Matters to be considered in framing scheme.

The plaintiffs sued as persons interested in the maintenance of a religious and charitable institution, and prayed that the defendants, as recipients of the offerings at the idol's shrine, should be made accountable, as trustees, for the right disposal of the property thus acquired. They also prayed for an account, a receiver, for the removal of the shevaks, the defendants, from their office, and for the settlement of a scheme for future management. The High Court directed the District Judge (1) to take steps either by appointing a receiver, or otherwise, in his discretion, for guarding the property of the temple; (2) to take an account of the property and of the receipts and disbursements of the temple; (3) to make the requisite orders for recovering property appropriated by the shevaks; and (4) to draw up a scheme for the future management of the temple and its funds, regard being had to the established practice of the institution and to the position of the shevaks and of other persons connected with it.

Held, that the decree was right, no further directions being necessary; the first thing to be done being to take an account of the trust property.

APPEAL from a decree (3rd May, 1887)[1] of the High Court, reversing a decree (28th November, 1882) of the District Judge of Ahmedabad.

This suit was brought on the 3rd May, 1880, by the late Manohar Ganesh Tambekar and four other plaintiffs, under section 539 of the Civil Procedure Code, with the consent of the Advocate General, the first claiming as hereditary patron and manager of the temple Sri Ranchod Raiji, an institution of the Vaishnava Hindus in the Dákor District, and the other plaintiffs claiming as residents on the temple property entitled to secure its trust. The defendants, now appellants, were the shevaks, or hereditary ministering priests, who conducted the rites and ceremonies for, and on behalf of, the numerous worshippers, who made offerings of money and valuables at the shrine.

The first plaintiff having died was now represented by Gopal Manohar, a minor, who proceeded by his guardian, the Tálukdári

* Present: LORD MACNAGHTEN, LORD HOBHOUSE AND SIR RICHARD COUCH.

(1) (1887) 12 Bom., 247.

Settlement Officer of Ahmedabad. The first defendant also having died, was represented on the record by his son and heir, Chotalal Lakhmiram, a minor, appearing by his mother and guardian, Bai Diwali.

The foundation was an ancient one, dating, according to tradition, from the 12th century. Bráhmans having ministered there, the office became hereditary in their families, and the name of "shevak" was taken. About the middle of the 18th century two villages were assigned by the then ruling power for the benefit of the temple. Both ináms were stated in the appellants' case to have been granted in the name of the head of a family spoken of as the Tambekar, now represented by the first plaintiff, respondent. Until 1841, when the Government disconnected themselves from religious institutions, these were in the care of the revenue officers. By an order of 3rd June, 1841, the management of them was handed over to Ganpatrav Manohar of that family. The rights of the Tambekar and those of the shevaks were involved in much litigation down to 1870.

The principal question on this appeal was whether the absolute ownership of the shevaks as to the offerings made to the deity, and other moveables, should have been determined before the making of any decree for an account, or for a scheme of future management of the trust.

In the suit, the main subject of dispute had been the rights of the shevaks in respect of this property offered by the worshippers, and a large amount of evidence was on the record relating to the question of their ownership in this respect.

The plaint alleged that the shevaks were paid wages out of the temple funds, and that they had no right to appropriate, as they had done in violation of an agreement of 1772, articles offered to the deity, and that they had no right to refuse to the plaintiff inspection of the accounts. The prayer was for an account, payment into Court of any balance found due, removal, if necessary, of the shevaks, an injunction, a receiver, and the preparation of a scheme for the management of the trust.

The defendants in their answer set up that they were the owners of the whole institution, and of all its property, including the offerings of worshippers and donors generally.

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The principal issues fixed by the first Court were whether the plaintiffs had an interest entitling them to sue, and whether they had shown any breach of trust by the defendants. Whether the latter had been shown to be bound to render accounts; and whether they were owners to any, and what extent of the temple property, and offerings made.

The District Judge dismissed the suit. He went upon the short ground that only the first plaintiff had a direct interest in the suit, within the meaning of section 539 of the Civil Procedure Code, and that, therefore, the suit was not rightly brought.

That decree was reversed by the High Court (West and Birdwood, JJ.) whose judgment is reported at length in Indian Law Reports, 12 Bom., 247, where the reasons for the decree herein stated are fully given, as well as all material details.

The Judges were of opinion that all the plaintiffs had a sufficient interest, and that there was a trust which the Court had jurisdiction to enforce.

The conclusion of their judgment was as follows:—

"For the reasons we have given, we must reverse the decree of the District Court, and order that the costs of the suit and appeal be borne by the defendants. The District Judge will take steps, either by appointing a receiver, or otherwise in his discretion, for guarding the property of the temple without disturbance of its services. He will take an account of the property and of the receipts and disbursements of the temple, such latter account being carried back to the year 1872 and beginning with such property as can be ascertained to have been then in existence. He will make the requisite orders for recovering property misappropriated and sums due to the foundation as well from others as from the shevaks or any of them. He will draw up a scheme for the future management of the temple and its funds, giving due consideration to the established practice of the institution and to the position of the shevaks and of other persons connected with it. Lastly, should there appear to be a surplus of revenue that may reasonably be counted on as durable, he will frame a scheme for the disposal of such surplus, or a part thereof, consistently with the general purpose of the foundation and com-

plementary to the arrangements made under this Court's orders in *Manohar* v. *Kesharram*[1] on the appeal in the suit brought by the shevaks against Ganesh Manohar as defendant."

The decree followed the terms of the judgment.

On this appeal,

J. D. Mayne and *A. K. Donald,* for the appellants, argued that there was error in the judgment of the High Court. The evidence, taken as a whole, had been to the effect that by the custom and practice of the religious institution the shevaks had power to deal with the offerings of the worshippers, and had, to a considerable degree, the ownership of the moveables. There could hardly be a decree for an account until the question raised by the issue whether they were owners or not should have been decided. This applied also to the direction for the settlement of a scheme of management. The ancient custom of the temple should have been regarded. The decree should have declared that, subject to the obligation upon the shevaks to perform the religious ceremonies and apply all the offerings suitable for the worship and the service of the deity, all the moveable property belonged to them. The nature of the scheme of management depended upon the rights of the appellants having been previously determined. Moreover, to render the direction for that scheme justifiable, it should have been accompanied by distinct findings for the guidance of the lower Court as to the immemorial customs alleged to regulate the present practices. It was also to be observed that any relief upon an account dating from so far back as 1872 would be, to some extent, barred by limitation. It was the fact that a receiver had been appointed twelve years ago. But it was hardly the case that the whole of the subordinate questions between the parties would range themselves under the decree which had been made for an account and a scheme.

J. Jardine, Q. C., and *A. V. Frere,* who appeared for the respondents, were not called upon.

Their Lordships' judgment was then delivered by

LORD MACNAGHTEN :—The suit in which this appeal has been brought was a suit for the administration of a trust for religious

(1) (1887) 12 Bom, p. 267 (*n*).

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purposes in connection with the temple of Sri Ranchod Raiji, in the district of Dákor.

The plaintiffs claimed to have a sufficient interest to support the suit. The defendants originally disputed the plaintiffs' title to sue and denied that there was any trust. They alleged that they were "owners of the god, and of all his property."

The Judge of first instance dismissed the suit on technical grounds, but on appeal to the High Court a decree was made directing that a scheme should be settled for the administration of the trust. An account was to be taken "of the property, and of the receipts and disbursements of the temple, such latter account being carried back to the year 1872, and beginning with such property as can be ascertained to have been then in existence." Then the learned Judge was directed to "draw up a scheme for the future management of the temple and its funds, giving due consideration to the established practice of the institution, and to the position of the shevaks, and of other persons connected with it."

From that decree the appeal has been brought. In their printed case the same claim was made by the appellants which was set up by them as defendants in the suit. They submitted that the suit ought to be dismissed with costs. Mr. Mayne, who opened the case very fairly, was compelled to admit in the course of the discussion that he could not maintain that position. He admitted that there was a religious foundation, and that there must be a scheme. He desired, however, that certain questions should be determined before entering upon the consideration of the scheme.

It appears to their Lordships that that decree is perfectly right, and that the first thing to be done is to take an account of the trust property. Much must depend upon the result of that account. Until the trust funds are ascertained, it seems impossible that any scheme can be settled. The decree does not prejudge anything. It directs that due consideration is to be given to the established practice of the institution and to the position of the shevaks. It appears to their Lordships that the appellants cannot ask for any direction more in their favour.

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The result is that their Lordships think that the appeal must be dismissed, and they will humbly advise Her Majesty to that effect; the appellants must pay the costs of the appeal.

Appeal dismissed.

Solicitor for the appellants:—Mr. *Arthur Cheese.*

Solicitors for the respondents:—Messrs. *Ranken, Ford, Ford, and Chester.*

ADMIRALTY JURISDICTION.

Before Mr. Justice Russell.

1899. *April* 20.

THE BOMBAY AND PERSIA STEAM NAVIGATION COMPANY AND ANOTHER, PLAINTIFFS, *v.* THE S. S. "CASHMERE," HER CARGO AND FREIGHT, DEFENDANTS;*

AND

RAFFIN AND OTHERS, PLAINTIFFS, *v.* THE S. S. "CASHMERE," HER CARGO AND FREIGHT, DEFENDANTS.†

Shipping—Salvage—Amount of salvage awarded—Mode of estimating salvage services—Allocation of salvage amongst officers and crew—Bail—Costs.

On the 13th August, 1898, the S. S. "Cashmere," being (as found by the Court) in a position of risk and hazard, which by a change in the weather might have at once become one of danger, was in need of assistance which the "Naseri" afforded her. The services, however, rendered by the "Naseri were not of an extraordinary or protracted character. The owners of the "Naseri" sued claiming Rs. 1,00,000 for salvage services and the master and crew of the "Naseri" filed a second suit claiming Rs. 50,000. The defendant ship paid into Court Rs. 5,000 for the owners of the "Naseri" in the first suit, and Rs. 2,257 for the crew in the second suit. The value of the S. S. "Cashmere" was Rs. 78,000 and that of the cargo on board was Rs. 53,510.

Held, that the amount paid into Court by the defendant ship was sufficient for the salvage services rendered.

Held, also, that the cargo was liable in the same proportion.

Principles regarding (*a*) salvage generally, (*b*) allocation of salvage amongst officers and crew, (*c*) costs, and (*d*) bail discussed.

SUITS for salvage. The first suit was by the owners of the "Naseri" claiming Rs. 1,00,000 for services rendered by the

* Admiralty Suit, No. 1 of 1898. † Admiralty Suit, No. 2 of 1898.