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any knowlegde whatever of the sources from which the money came. It would be straining the doctrine of notice beyond all reasonable limits to hold that in such circumstances moneys received in absolute good faith should be earmarked with some independent ownership, because the debtor, who was also a servant of the company, committed a fraud in order to discharge his obligations.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitors for the appellants. Messrs. *William A. Crump & Son.*

Solicitors for the respondents: Messrs. *T. L. Wilson & Co.*

Appeal Dismissed.

J. V. W.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Hayward.

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April 11.

ASHARAM GANPATRAM GOR AND OTHERS (ORIGINAL APPLICANTS) APPELLANTS *v.* THE MANAGER OF THE DAKORE TEMPLE COMMITTEE AND OTHERS (ORIGINAL OPPONENTS AND ADDED RESPONDENT), RESPONDENTS.*

Hindu temple—Sanctuary of the temple—Admission of public to the sanctuary—Levy of fees for admission not permissible—Dakore temple—Gors, rights of.

Whilst the Shevaks were managing the affairs of the temple of Shri Ranchhod Raiji at Dakore, they issued in 1883 rules levying fees from devotees and Gors who entered the sanctuary of the temple, known as the Nij Mandir. In a litigation brought to test the validity of those rules, the rules were declared invalid; but they continued to subsist pending the framing of the scheme of management of the temple. When the scheme came to be framed

* First Appeals Nos. 75, 76, 78-80, 121, 122, 140, 206 and 223 of 1919.

the rules regarding levying of fees for admission into the Nij Mandir were incorporated in the rules under the scheme. The rules having been objected to as invalid :—

Held, that the rules prescribing the pass system were illegal and *ultra vires* in so far as they imposed fixed fees in payment for the passes, whether upon the Gors or the general public entitled to worship in the temple at Dakore.

APPEALS from the decision of B. C. Kennedy, District Judge of Ahmedabad.

These appeals and applications related to the litigation that had been pending for nearly 100 years between the parties interested in the temple of Shri Ranchhodraiji of Dakore. The idol was reputed to have been brought there seven hundred years ago from Dwarka and to have found a final resting place in the present temple which was built about 1778 and to which were assigned the revenues of the villages of Kanjeri and Dakore by the Gaikwar of Baroda. Early in the following century disputes arose between the custodians of the idol known as Shewaks, divided into the three classes Tapodhans, Khedawals and Shrigors, on the one hand and the guides of the pilgrims known as Gors on the other together with the family of the Tambekars entrusted with the management of the revenues of the villages of Kanjeri and Dakore. These disputes culminated in 1880 in a suit for settling a Scheme of Management brought against the Shevaks by some of the Gors and the representative of the family of the Tambekars of Dakore. The Shevaks replied in 1883 by issuing rules prohibiting, except upon payment for passes, entry into the inner sanctuary of the temple known as the Nij Mandir. This led to a second suit to set aside the rules brought in 1887 against the Shevaks by some of the Gors It did not however include the representative of the family of the Tambekars of Dakore. The suit of 1880 was dismissed by Mr. Phillpots, the District Judge of Ahmedabad, but was decreed against the Shevaks in

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1887 by the High Court. West and Birdwood JJ. held that the Shevaks were liable to account as trustees and directed the appointment of a Receiver and the preparation of a Scheme of Management in which due consideration was to be paid to the position of the Shevaks and other persons connected with the institution and to the established practice of the temple of Dakore. The judgment has been reported in I. L. R. 12 Bom. 247. The suit of 1887 was decreed against the Shevaks in 1888 by Mr. Dayaram Gidumal, the District Judge of Ahmedabad. He held that the Shevaks had no right to insist on payment for passes but that the Gors had the right to enter freely by themselves or with pilgrims known as their Yajmans into the Nij Mandir and had moreover the right to take whatever was put into their hands by their Yajmans in any part of the temple according to the established practice of this temple at Dakore. This decree was confirmed in 1890 by Birdwood and Parsons JJ. in the High Court. The judgment has been reported in I. L. R. 15 Bom. 311. Meanwhile the receiver Lallubhai appointed in the suit of 1880 had in 1888 reissued the rules prohibiting, except on payment for passes, entry into the Nij Mandir. The Gors objected that this was an infringement of their rights established in the second suit before Mr. Dayaram Gidumal, the District Judge of Ahmedabad, and recognised by the High Court. The objections, however, were overruled on the ground that the Receiver's action was unobjectionable pending the settlement of the Scheme of Management. This was decided in 1891 by Mr. McCorkell, the District Judge of Ahmedabad, and was confirmed in 1892 without reasons stated by the High Court. The succeeding Receiver Harderam submitted in 1893 a detailed report on the affairs of the temple and subsequent reports were submitted by subsequent Receivers but it was not till 1898 that a Commissioner was

appointed to examine their accounts by the District Judge of Ahmedabad. The decree passed in the main suit by the High Court was in 1899 confirmed by the Privy Council. The judgment is reported in I. L. R. 24 Bom. 50. The Commissioner submitted a detailed report in 1902 and thereon a detailed Scheme of Management was drawn up in 1903 by Mr. Batchelor, the District Judge of Ahmedabad. A fresh Scheme however was prepared in 1906 on behalf of the parties on appeal by Mr. Ratanlal, pleader, representing the Advocate General and was in the same year sanctioned subject to some modifications by Jenkins C. J. and Aston J. in this High Court. The Scheme was confirmed subject to some minor modifications in 1912 by the Privy Council. The judgment is reported in 15 Bom. L. R. 13.

The Scheme of Management as settled by the Privy Council is printed at 15 Bom. L. R. at page 15. Under clause 12 of the Scheme, the Dakore Temple Committee were empowered to make rules for detailed working of the management of the temple. These rules were framed, and submitted to the District Court at Ahmedabad for sanction. The District Judge after hearing all the parties affected by the rules, confirmed the rules subject to certain modifications. The sanctioned rules embodied the pass rules also.

The parties affected by the rules preferred appeals to the High Court. They also presented applications against the rules by way of caution.

G. S. Rao, for the Gor appellants.

B. G. Rao, for certain Gors.

H. V. Divatia, for one set of Gors.

G. N. Thakor, for another set of Gors.

G. S. Rao, for Tambekar.

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Setalvad with *M. K. Metha*, for Tapodhan Shevaks.

Inverarity with *M. W. Pradhan*, for Shrigor Shevaks.

N. K. Mehta, for Khedaval Shevaks.

Jayakar with *Ratanlal Ranchhoddas*, for the Dakore Temple Committee.

Strangman with *G. N. Thakor*, for the General Public.

The judgment of their Lordships, of which the following is the portion dealing with the question of the validity of the rules, was delivered by

HAYWARD, J. :—These appeals and applications relate to the rules which have been framed under clause 12 of this Scheme and sanctioned in 1914 by Mr. Kennedy, the District Judge of Ahmedabad. The appeals have been filed as appeals from orders in execution passed under clause 12 (7) of the Scheme by the District Judge of Ahmedabad. We think we ought to deal with them as such as no objection has been taken. No orders need therefore be passed on the applications filed '*Ex majore cautela*' as applications under clause 20 of the Scheme reserving general power of interference to the High Court. We have heard Sir Chimanlal Setalvad on behalf of the Tapodhan Shevaks in appeal No. 80 of 1915, Mr. Mehta on behalf of the Khedaval Shevaks in appeal No. 79 of 1915 and Mr. Inverarity on behalf of the Shrigor Shevaks in appeal No. 78 of 1915. We have heard Diwan Bahadur Rao on behalf of the Tarwadi Mewada Gors, represented in the second suit, in appeal No. 122 of 1915, Mr. B. G. Rao for other Tarwadi Mewada Gors, so represented but by mistake struck out of these proceedings by the District Judge, in appeal No. 206 of 1915, Mr. Divatia on behalf of other Tarwadi Mewada Gors, not so represented, in appeal No. 75 of 1915 and Mr. Thakor on behalf apparently of an altogether different

group of Gors in appeal No. 76 of 1915. We have heard Diwan Bahadur Rao again on behalf of the representative of the family of Tambekar in appeal No. 121 of 1915. We have on behalf of the Temple Committee heard Mr. Jayakar and finally on behalf of the general public the Advocate General. The contest has been mainly over the rules restricting by payment for passes entry into the inner sanctuary of the temple known as the Nij Mandir. But this was the very dispute between the Shevaks and the Tarwadi Mewada Gors decided in the other suit by Mr. Dayaram Gidumal, District Judge of Ahmedabad. He observed in his judgment: "We have almost unanimous evidence to the effect that before the Shevaks made their rules in 1883, their permission for entering the Nij Mandir was only taken at the time of the Sakribhog Darshan and at no other and even at Sakribhog time no fixed fee was ever demanded or paid" and again "But although every one could go into the Nij Mandir every one could not go up on the Sinhasan. The idol wears ornaments worth about a lakh ..... It stands to reason therefore that permission should be taken for mounting the platform. It is needed by those who want to do Panchamrit or Kesar Snan or Charana Sparsh. The regulation of these must in the nature of things be done by the Shevaks in attendance..... The condition regarding cleanliness does not appear to have been rigorously enforced but there is no doubt that Shevaks are entitled to refuse permission to anyone not following the usual rules regarding personal cleanliness..... The Shevaks are to see to decency in worship but this power does not mean that they can make a sweeping rule demanding tickets and fees for entrance. I therefore hold that according to the established practice of the institution the Gors were not prevented from entering the Nij Mandir whenever it was open or doing any Dharma

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Kriya in the said Mandir but that whenever such Kriya had to be performed on the Sinhasan permission, express or implied, used to be taken from the Shevaks in attendance, which permission was never refused to decent worshippers." He then proceeded to show that the Gors were before the rules free also to enter for Darshan or Dharma Kriya with their Yajmans and that before 1883 the Shevaks had no right to demand money from them as entrance fee for the Nij Mandir. He next discussed the question whether the Gors could take whatever was given to them by their Yajmans in the Nij Mandir and came to the conclusion that they could whether given inside or outside the Nij Mandir and he remarked that "it could appear from some of the witnesses that they consider it a matter of conscience to pay the Gor in the Nij Mandir." He also stated generally: "There is therefore not the least doubt that before 1883 every Hindu (excepting certain low caste people like Mochis, &c.) could go freely into the Nij Mandir." He then considered whether the Shevaks had any right to change the old practice of the institution and frame the rules of 1883 for fixed fees and wrote: "All I can say is that nothing can be more scandalous, nothing more unjustifiable.....They have promulgated these novel rules which would make the hair of any Hindu loving his country's institution to stand on end. Such open sale of Darshan tickets has never been practised anywhere and not a single witness except the 3 or 4 infatuated ones, who said the Shevaks were owners..... could say a word in favour of the Shevaks' power to frame such rules." These conclusions were confirmed and even extended by the exclusion of the exception in favour of the Sakribhog Darshan by the High Court. Birdwood J. observed: "the Shevaks are not the owners of the temple..... they are liable as trustees to render

an account of their management. This was the position assigned to them by the judgment in *Manohar Ganesh Tambekar* v. *Lakhmiram Govindram*[1]. And we do not think that by virtue of their office, as defined in that case, they have this authority to levy fees in respect of any public religious services held in the temple"[2] and Parsons J. remarked: "Such of the rules which forbid admission into the Mandirs, except on the production of a pass to be obtained on payment of a fee, are undoubtedly illegal and *ultra vires*. Rules can be made and enforced by the Shevaks to ensure good order and decency of worship and to prevent overcrowding in the temple, but subject to these rules the right of entrance into a public temple, such as the present, for the purposes of worship of the members of a caste entitled there to worship is a free right and cannot be prohibited or sold"[3]. No appeal was made from this decree of the High Court to the Privy Council. It has however been argued on behalf of the Shevaks with the support of the Temple Committee that the rules have been validated by having been in force since 1883 and by having been revived in 1888 by the Receiver in the present suit *Manohar Ganesh Tambekar* v. *Lakhmiram Govindram*[1] with the approval of Mr. McCorkell, the District Judge of Ahmedabad, and in 1892 of the High Court and by having been continued in force pending the framing of fresh rules under clause 12 (4) by the provisions of clause 13 of the Scheme of Management prepared in 1906 by the High Court and finally sanctioned in 1912 by the Privy Council. It seems to us however that these arguments have no solid foundation as urged on behalf of the Gors and the general public. The radical objections to the rules have been repeated by Mr. Kennedy, the District Judge of Ahmedabad, thus: "The first question then as regards

(1) (1887) 12 Bom. 247. (2) (1890) 15 Bom. 309 at p. 318.

(3) Ibid, p. 321.

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these rules is the pass system. There is no objection to the pass system itself by which only pass holders are admitted with certain exceptions into the Nij Mandir and where special passes are issued for particular acts of devotion. But a great deal of objection is raised to the levy of fees for the passes. It does seem to me somewhat of a scandal that the opportunity of acquiring religious merit should be sold in this way formally and nakedly. I do not suppose any other temple in India does anything of the sort. There are fees no doubt levied at other temples *ad valorem* of the religious benefit but these are secular taxes imposed by the Government." He did not consider the levy of fees necessary to prevent overcrowding but did not press his objections in view of the fact that the levy had been practised for at least 30 years and was strongly favoured by the Temple Committee. He failed however to notice that this practice had been questioned from the very outset and had been declared illegal and *ultra vires* in the other suit by his predecessor Mr. Dayaram Gidumal and in 1888 and in 1890 by the High Court. Its revival or rather survival under the Receiver from 1888 in the present suit was a temporary arrangement pending the settlement of the Scheme of Management and was so sanctioned by Mr. Dayaram Gidumal's successor Mr. McCorkell in 1891 and in 1892 by the High Court. It was similarly permitted as a temporary arrangement only pending the framing of regular rules under clauses 12 (4) and 13 and Schedule 5 of the Scheme in 1906 by the High Court and in 1912 by the Privy Council. It seems to us, therefore, that the rules prescribing the pass system have been shown to be illegal and *ultra vires* in so far as they have imposed fixed fees in payment for the passes, whether upon the Gors or the general public entitled to worship in the temple at Dakore. It has to

be remembered that the rules when sanctioned become a part of the Scheme of Management under clause 12 (7) subject under clause 20 to the control of the High Court and that it was provided that the Scheme should be in accordance with the established practice of the institution by the preliminary judgments both of the High Court and of the Privy Council. [His Lordship then proceeded to discuss the rules in detail.]

Order accordingly.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Hayward.

EMPEROR *v.* NASIR WAZIR.*

1919. *July* 14.

Prevention of Cruelty to Animals Act (XI of 1890), section 3 (a)—Owner of a horse—Owner turning out the horse on a street—Horse found in a starving condition—Cruelty to animals.

The accused who owned a horse abandoned it by turning it out on the street. Some days afterwards the horse was found on a street in a starving condition. The accused was thereupon charged with the offence of ill-treating the horse, under section 3 (*a*) of the Prevention of Cruelty to Animals Act, 1890 :—

Held, that the accused could not be convicted of ill-treatment under section 3 (*a*) of the Prevention of Cruelty to Animals Act, 1890, for it was essential under the section that in fact the accused should be in a position to exercise control over the animal at the time of the ill-treatment.

THIS was an application in revision against conviction and sentence passed by a Bench of Honorary Presidency Magistrates in Bombay.

The accused who was a hack-victoria driver owned a horse. He abandoned the horse by turning it out on the street on the 1st May 1919. The horse roamed about the streets in a starving condition till the 25th

* Criminal Application for Revision No. 164 of 1919.