second para. of section 22. We cannot accede to the argument that we should read into the section "or his heirs" after the word "judgment-debtor" with the various consequential alterations which would have to be made in that paragraph. That would be, so far as I can see, entirely contrary to all canons of construction, and if the Legislature thinks that a creditor should have the remedy provided by section 22, paragraph 2, not only against the judgment-debtor, but also against his heirs, then it is for the Legislature to make the necessary amendments in the Act. The appeal will be dismissed.

Appeal dismissed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump.

RAGHUNATH VITHAL BHAT (ORIGINAL DEFENDANT), APPELLANT *v.* SHRIMANT PURNANAND SARASWATI SWAMI (ORIGINAL PLAINTIFF), RESPONDENT *.

1922. *November* 10.

Hereditary office—Surrender of the office by one of the grantees to the grantor—One grantee can surrender his share to other grantees—Alienation of the share to stranger not permitted.

The duties of a hereditary office and the emoluments appertaining thereto remain within the family of the original grantee. If one of the members of the family wishes to get rid of his duties as well as his rights, he can only do so in favour of the remaining members of the family. The alienation of a share by one member of the family to an outsider is invalid even if made in favour of the original grantor of the office.

Mancharam v. *Pranshankar*[1] and *Kuppa* v. *Dorasami*[2], considered.

* Second Appeal No. 630 of 1921.

(1) (1882) 6 Bom. 298 at p. 300. (2) (1882) 6 Mad. 76 at p. 79

1922.

RAGHUNATH VITHAL v. PURNANAND SARASWATI SWAMI.

SECOND appeal from the decision of V. M. Ferrers, District Judge of Kanara, confirming the decree passed by V. V. Wagh, First Class Subordinate Judge at Karwar.

Suit for declaration.

The father of the defendant was granted in heredity the right to worship in a temple by a predecessor of the plaintiff. The original grantee had two sons: Raghunath and Dattatraya. In 1918 Dattatraya surrendered his half share of the right to worship to the plaintiff.

The plaintiff thereupon sued for declaration of his right. The suit was decreed in the lower Courts.

The defendant appealed to the High Court.

G. S. Rao, for the appellant:—I submit that the alienation of the right to perform service made by my client's brother in favour of the Guru—who was a stranger to the family—was invalid. The right of performing service is in the nature of a religious office and religious offices are ordinarily held unalienable except when the alienation is made in favour of one in the lineal line of succession or where the office is held jointly in favour of co-sharers: *Mancharam* v. *Pranshankar*[1] and *Kuppa* v. *Dorasami*[2]. Where a religious office is held by a family hereditarily, all the members of the family may join in surrendering their right in favour of a stranger and when they so join they give up their entire right; but if there be any one member of the family willing to perform service the alienation would be invalid inasmuch as that member cannot be deprived of the emoluments of service. The right to perform service is a personal right and there cannot be any partial surrender of that right.

[1] (1882) 6 Bom. 298 at p. 300. [2] (1882) 6 Mad. 76 at p. 79.

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Coyajee with *S. S. Mulgaonkar*, for the respondent:—We submit that the alienation of a right in a Vrittl is not prohibited in all cases. The test is whether the alienation is in favour of a proper person. In *Mancharam* v. *Pranshankar*[1] the reason which is pointed out for not allowing attachment and sale of a religious office is that the purchaser might be Christian or Mahomedan, who would be both unwilling and incompetent to perform the service of the idol. Such is not the case here. The alienee in the case is the grantor of the office. He was not a stranger. Moreover he is a Brahmin by caste and in the absence of the Pujari could also perform service. The alienation made in his favour was therefore valid. Moreover it is held that the right in a Vritti shall be sold in execution of a decree : *Sadashiv Lalit* v. *Jayantibai*[2] ; and if that is so there ought to be no objection to the voluntary alienation of the Vritti, provided it is made in favour of a proper person.

MACLEOD, C. J. :—This appeal raises a question on which there does not appear to be any direct authority. The facts are simple. Fifty years ago a Guru owned a temple at Sadashivgad, and he appointed a certain person as a priest to perform "Puja" and other services to the deity on receipt of a certain quantity of paddy. The present plaintiff is the 3rd Guru in order of descent. The defendant is the son of the original Pujari who had two sons, the defendant and Dattatraya, the plaintiff's case being that Dattatraya having a half interest in the office of Pujari transferred or surrendered it to him. It has been held in this Court in *Mancharam* v. *Pranshankar*[1] that hereditary offices, whether religious or secular, are no doubt treated by the Hindu text writers as naturally indivisible ; but modern custom, whether or not it be strictly

(1) (1882) 6 Bom. 298 at p. 300. (2) (1883) 8 Bom. 185.

1922.

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in accordance with ancient law, has sanctioned such partition as can be had of such property by means of the performance of the duties of the office and the enjoyment of the emoluments by the different co-parceners in rotation. The Court said that "there was no reason why the alienation of a religious office to a person standing in the line of succession, and free from objections relating to the capacity of a particular individual to perform the worship of an idol or do any other necessary functions connected with it, should not be upheld". It was, therefore, in favour of alienations in the family of the original grantee of the office.

In *Kuppa* v. *Dorasami*[1], it was held that the sale of a religious office to a person not in the line of heirs, though otherwise qualified for the performance of the duties of the office, was illegal. *Mancharam* v. *Pranshankar*[2] was dicussed and the Court was not prepared to go so far as to say that a purchase by a person standing in the line of heirs or otherwise qualified should be upheld.

We have been referred to no decision which differs from those cases, and therefore, unless there is direct evidence of custom, it should be taken that the transfer by one member of the family entitled to an hereditary office to an outsider would be considered by the Courts invalid. The transfer by one member of his share to another member of the family could not be considered in any way objectionable. It would only reduce the number of members who were entitled to the office and a share in the emoluments.

The other question that arises is whether one member of the family entitled to an hereditary office can surrender his share to the original grantor. If all

(1) (1882) 6 Mad. 76. (2) (1882) 6 Bom. 298 at p. 300.

the members of the family agree to give up the duties of performing worship and receiving emoluments, then there could be no objection to their doing so. But there is a great difference between the whole group of members surrendering their rights to the grantor, and one member purporting to give up his rights to the grantor which would cause an interference with the rights amongst the remaining members of the family. It seems to us that the matter is entirely one of first impression, and it can only be decided in accordance with the principles which would be most consistent with the proper performance of an office of this nature. We do not propose to decide any thing which might cause disputes in future or interfere with the harmonious performance of the duties appertaining to the office. It seems to us that the duties of the office and the emoluments appertaining thereto remain within the family of the original grantee, and those members of the family, who wish to retain the office and share the emoluments, are entitled to do so, and if one of the members of the family wishes to get rid of his duties as well as his rights, he could only do so in favour of the remaining members of the family, and he cannot evade the ordinary rule as to alienations by purporting to surrender his share to the original grantor, or, put in other words, the alienation of a share by one member of the family is invalid whether it is made in favour of an outsider altogether or whether it is made in favour of the original grantor of the office.

It seems to us that this aspect of the case has not been considered by the lower Courts. The District Judge has treated the matter as a question of contract. No doubt every promisee may dispense with or remit the performance of any promise made to him. But we do not think that is a proper principle to apply to the decision of this case.

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Then it was argued that the plaintiff lay under an estoppel because Dattatraya, who was a plaintiff in a suit against the Guru, admitted that he had parted with his share in favour of his brother. There could be no case of estoppel. It would be a question of proof whether Dattatraya had, as a matter of fact, transferred his share to his brother, the present defendant, for it is difficult to say that in consequence of that statement the defendant altered his position for the worse. However that may be, it is hardly necessary for the purposes of this case to decide when sitting in second appeal, that as a matter of fact Dattatraya, when he purported to assign his share to the plaintiff, had already surrendered it to his brother. We decide the case on principles that are already recognized in this Court. Dattatraya, although he could have given up his share in the office to his brother, could not endeavour to alienate it either to a person outside the family or to the original grantor or a descendant from him. The appeal, therefore, must be allowed and the suit dismissed with costs throughout.

Appeal allowed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump.

1922. *November* 10.

GANGARAM BALKRISHNA SAWANT (ORIGINAL PLAINTIFF), APPELLANT *v.* VASUDEO DATTATRAYA KIRLOSKAR, AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

*Civil Procedure Code (Act V of 1908), section 11—Suit for partition—*Res judicata *as between co-defendants.*

* Second Appeal No. 794 of 1917.