

that in the present case the proceeding which has been taken now was taken in the period of three years, because it was taken within three years after the order of the Principal Sudder Ameen of the 29th of November, 1862, was made. We, therefore, will humbly recommend to Her Majesty that the order should be reversed, and that the appellant should have his costs of the appeal.

1870
 MAHARAJA
 DHIRAJ
 MAHTAB
 CHAND
 BAHADUR,
 MAHARAJA
 OF BURDWAN
 v.
 BULRAM SING
 BABOO.

Appeal allowed.

Agent for appellant : Mr. *Wilson*.

[APPELLATE CIVIL.]

Before Mr. Justice L. S. Jackson, and Mr. Justice Mitter.

DUBO MISSER (DEFENDANT) v. SRINIBAS MISSER AND OTHERS
 (PLAINTIFFS.)*

1870
 August 18.

Shebait of Hindu Idol Right of a Shebait not Transferable.

The right of a shebait of a Hindu idol to perform the services and receive the customary remuneration is not transferable, and cannot be sold in satisfaction of a decree against the shebait.

THIS was a suit to have the proprietary right of the *sheba* of certain idols in Shashan Damudarpur declared by setting aside a sale whereby the right, title, and interest of the defendants, Ram Panda and Ganga Panda, as shebaits, had been sold and purchased by the defendant, Dubo Misser. The plaint stated that the plaintiffs were the proprietors of the sheba, and that Ram Panda and Ganga Panda had no proprietary right, but were mere shebaits appointed by the plaintiffs.

The defence set up by Dubo Misser was that Ram Panda and Ganga Panda were hereditary shebaits ; that the right of the sheba was vested in them ; that they had pledged this right to Dubo Misser, in consideration of a sum of money advanced by him ; that he had obtained a decree whereby it was

Special Appeal, No. 182 of 1870, from a decree of the Judge of Cuttack, dated, the 14th December 1869, affirming a decree of the Officiating Moonsiff of that district, dated the 26th August 1869.

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declared that the right was liable to sale in satisfaction of the loan ; and that accordingly the right had been sold in execution, and had been purchased by him.

The Moonsiff held that the proprietary right to the sheba was in the plaintiffs, and that the right to worship (shebaitship) was not (citing *Juggurnath Roy Chowdry v. Kishen Pershad Surmah*) (1) a saleable one. He accordingly passed a decree in favor of the plaintiffs.

On appeal by Dubo Misser, the Judge confirmed the decree of the lower Court.

Dubo Misser appealed to the High Court.

Baboos Abhai Charan Bose and Mahendra Lal Mitter for the appellant.

Baboo Chandra Madhab Ghose for the respondents.

MITTER J.—We are of opinion that the conclusion arrived at by the lower Courts in this case is correct. There can be no doubt whatever that the right which the defendant, special appellant, alleges to have purchased was one which could not be sold in execution of a decree. The shebait of a Hindu idol has to perform services for the idol, that is to say, to perform the worship of the idol, and to prepare food for it ; and such a right cannot be sold at a public sale in execution of a decree. The special appellant has failed to give us any authority in support of his contention, and we do not therefore find any reason for disturbing the judgment of the lower Appellate Court.

The plaintiffs have established, to the satisfaction of the lower Appellate Court, that they had a right to maintain this suit ; and on this point, no objection has been taken before us in special appeal.

The special appeal is dismissed with costs.

Appeal dismissed.