

[APPELLATE CIVIL.]

Before Mr. Justice Bayley and Mr. Justice Mitter

MUSSAMAT JAI BAN-SI KUNWAR (ONE OF THE DEFENDANTS)

v. CHATTAR DHARI SING (PLAINTIFF)*

1870
April 26.

Hindu Law—Gift—Religious Endowment—Trustee with Power of Appointment—Deed of Endowment—Failure to appoint new Trustee—Reversion to the Heirs of the Endower.

A., a Hindu, by a deed of *wukfnama* (deed of endowment), after reciting that he had “erected and prepared a *thakurbari* (temple) and the image of *thakar* (idol) and also a *sadavart* (alms-house) and had, in way of *wukf* (endowed property) dedicated certain property for the performance of the *puja* (worship) of the said *thakur* and repairing of the house, flower garden and *thakurbari*, and appointed his sister B., the manager and *matwali* (trustee) of the same, authorised B. to spend the profits in the performance of the *puja*, &c. As for the future she (B.) should appoint such person to be the manager and *matwali* as may be found by her to be fit, &c. and in like manner all successive *matwalis* should have right of appointing successively *imatwalis*. To these his heirs should not have right to prefer any claim, &c.” B. died without having appointed any *matwali* (trustee) to succeed her in the management of the trust. On a suit by the heir of B. to obtain possession of the property covered by the deed against the heirs of A., *Held*, that the managership, on failure of appointment of a trustee, reverted to the heirs of the person who endowed the property.

ONE Baboo Harprasad Sing, by the following deed of *wukfnama*, dated 14th March 1851, conveyed to his sister Mussamat Deojani Kunwar certain parcels of property for certain religious and charitable purposes:—

“I am Baboo Harprasad Sing, son of Baboo Bunyad Sing, by caste Brahmin, zemindar, inhabitant and owner, mokurraridar of Mauza Amuna, Pergunna Arwal, Zilla Behar.

“Where as there is no certainty in the life of man, I, therefore, having, with the view of obtaining the blessings of the future world, erected and prepared a *thakurbari* in the said mauza and the image of Thakur Jankinathji and also

* Special Appeal, No. 2426, from the decree of the Officiating Judge of Gya, dated the 21st June 1869, reversing the decree of the Principal Sudder Ameen of that district, dated the 20th August 1867.

1870
 MUSSAMAT
 JAI BANSI
 KUNWAR
 v.
 CHATTAR
 DHARI SING.

“ a *sadavart*, have (in the way of *wukf*) dedicated the whole
 “ and entire 6-anna odd share of the *milkiat* (proprietary)
 “ and Mokurrari land out of the whole 16 anna of Mauza
 “ Dindirmani and hamlet, the Nizamats land in Pergunna Arwal,
 “ appropriated and held by me, with all rights, &c., everything
 “ connected with it, with the exception of those exempted by
 “ law, from 1259 F. (1852) for the performance of the *puja* of
 “ the said *thakur* and repairing of the house, flower garden, and
 “ *thakurbari*, and appointed Mussamat Deojani Kunwar, daughter
 “ of Baboo Bunyad Sing, and the sister of mine, as a manager
 “ and *matwali* of the same. It is necessary that the said
 “ Mussamat having remained in possession of the said share of
 “ the mauza, shall, after paying the Government revenue and the
 “ expenses of the village, &c., spend the profits in the performance
 “ of the *puja* of the *thakurbari* and repairing of the temple,
 “ and payment, defraying of the expenses of the same, together
 “ with the salaries of the servants and *pujari* (priest). As for
 “ the future she should appoint such person to be the manager
 “ and *matwali* as may be found by her to be fit, intelligent, and
 “ honest, and in the like manner all the successive *matwalis*
 “ shall have the right of appointing successively *matwalis*. To
 “ these my heirs and representatives have not, and shall not have
 “ the right to prefer any claim, objection and dispute, and accord-
 “ ingly these few words have been executed in the way of a
 “ *wakfnama*, so that it may be of use at the time of need. The
 “ 14th March 1851.”

He also executed, on the same date, a deed of *bakhshishnama*, or deed of gift, absolutely conveying certain parcels of property to Deojani. Deojani died, and Chattardhari Sing, the brother of Deojani's husband, sued the widows of Harprasad, for possession amongst others of the property covered by the said deed, as the heir and legal representative of Deojani under the Hindu law, and which had been withheld from him by the defendant.

The defence set up was (*inter alia*) that the endowed property was not the *stridhan* of Deojani, and was not therefore subject to the law of inheritance.

The Subordinate Judge held, that the law of inheritance did not apply to the lands endowed for charitable purposes, and that

the heirs of the donor were entitled to act as the managers thereof. He, accordingly, dismissed the claim for the property covered by the deed of endowment.

On appeal, the Judge found, from the circumstances of the case, and the terms of the deed, that Harprasad meant to make over the property to Deojani absolutely, with the service attached to it of performing certain worship, and keeping up certain temples. He, accordingly, passed a decree in favor of the plaintiff.

The defendants appealed to the High Court.

Baboos Anukul Chandra Mookerjee and Chandra Madhab Ghose, for the appellants, contended that, as Deojani had died, without having made an appointment in terms of the deed, the office of *sebait* would go to the heirs of the donor, and not to the heirs of the first *sebait*. There was no absolute gift to Deojani. She was merely a manager or trustee, with power to appoint future trustees. She has failed to carry out the power. The trust reverts to the donor or his heirs.

Mr. *Twidale* (Mr. *Gregory* with him) for the respondent contended that failure to make an appointment could not go against Deojani's heirs. There was an absolute appointment under the deed.

BAYLEY, J.—In these cases one Harprasad is admittedly the original owner of the property. The plaintiff, Chattar Dhari Sing, is the brother of the husband of Deojani, a sister of the said Harprasad, and sues as her heir, on the ground that she (Deojani) had derived the properties in suit from her brother, the said Harprasad. The defendants, special appellants, before us, Jaibansi Kunwar and Pit Kunwar, are widows of the said Harprasad.

It appears that Harprasad executed two deeds; one a *bakhshishnama*, and the other a *wukfnama*, dated the 14th March 1857, passing certain properties to Deojani. In regard to the *bakhshishnama*, both the Courts below have decreed the plaintiff's suit, and the defendant, Jaibansi Kunwar, special appellant, in case No. 2426, does not take any objection to this part of the lower Appellate Court's judgment.

1870

MUSSAMAT
JAI BANSI
KUNWAR

v.

CHATTAR
DHARI SING.

1870

MUSSAMAT
JAI BANSI
KUNWAR
v.
CHATTAR
DHARI SING.

We now come to the deed of *wukfnama* of the same date. That is a deed which makes Deojani *matwali* (trustee) of certain properties allotted for the maintenance of the worship of *thakur* (idol), and *thakurbari* (its temple). One of the conditions in that deed is, that each successive *matwali* shall have the power of appointing each his successor, but it makes no provision, in case there should be failure in such nomination. It so happens in this case that Deojani died without nominating any successor, and the plaintiff sues, as heir of Deojani, to enforce his right of succession.

Now the real test of the plaintiff's right in this matter is to see how Deojani received the property. Now Deojani did not receive the property by any right of inheritance, purchase, or co-parcenary; but as the property of the idol, endowed by Harprasad, of which she was by the terms of the deed and the nature of the endowment, simply made a *matwali*. As before observed, one of the provisions of the trust failed, so far as it regarded the nomination by Deojani as *matwali* of a successor to that office, but the property is always the property of the idol under the management of the *matwali*; and in that view, the managership must revert to the heirs of the person who endowed the property.

In this view we hold that, as regards so much of the property, as is concerned by the *wukfnama*, the judgment of the lower Appellate Court must be reversed, and the plaintiff's suit dismissed.

Before Mr. Justice L. S. Jackson and Mr. Justice Glover.

1870
March 7.

TARINI PRASAD GHOSE (DEPENDANT) v. KHUDUMANI
DEBI (PLAINTIFF).*

Act VIII of 1859, s. 7—Cause of Action.

At a sale for arrears of rent, A. became the purchaser of a certain patni talook. B., whose patni right had been sold, sued for and obtained a decree for reversal of the sale on the ground of irregularity. In the meantime, A. had committed default, and the patni was again sold for arrears of rent. The zemindar drew out from the Collectorate the amount due to him. C., who had bought B.'s

* Regular Appeal, No. 87 of 1869, from a decree of the Subordinate Judge of Nudden, dated the 25th February 1869.