

THIS was an action instituted by the respondents in the Zillah Court of 24-Pergunnahs, against the appellants, to recover a sum of 1,720 rupees, 7 annas, on account of a loan advanced to the appellants, on deposit of an opium lot. The defendants pleaded that, as the transaction did not take place in the 24-Pergunnahs, the jurisdiction of that Court was barred. The Principal Sudder Ameen and Zillah Judge gave judgment in favor of the plaintiffs on the merits of the case without entering into the plea advanced by the defendants in regard to the jurisdiction of the Court.

A special appeal was admitted by the Sudder Dewanny Adawlut.

Mr. D. C. Smyth:—The plaintiff says that the transaction occurred within the jurisdiction of the 24-Pergunnahs. On the other hand the defendants plead that it occurred within the town of Calcutta. There is strong presumption that the statement of the defendants is the correct one. The defendants moreover reside in the Hooghly district. It is therefore of importance that evidence should be taken specially as to the place where the debt was contracted. If it should appear that the transaction did not [5] take place within the 24-Pergunnahs, the Courts of that district have no jurisdiction. The case must be returned for that purpose.

Order accordingly.

MCHUNT SHEO SUHYE DOSS, *Appellant* v. MCHUNT SOOKH DEO DOSS,
Respondent. (1841. January 25th.)

Claim preferred by the respondent, to set aside an assignment executed by himself of certain religiously endowed property of which he had the management, on the alleged ground of failure on the part of the assignee to abide by the conditions of the assignment, dismissed for want of proof of the alleged conditions.

THIS was an action instituted by the respondent *in forma pauperis*, in the Zillah Court of Behar, against the appellant, to set aside a *tumleeknameh*, or deed of assignment, executed by the respondent, and to recover the property forming the subject of assignment. The suit was laid at 20,000 rupees, the alleged value of the property.

The plaint set forth that in consequence of sickness and inability to attend to his affairs, the plaintiff, at the suggestion of the defendant, assigned to him certain property (to wit, some buildings attached to a religious establishment called Katra Rajah Khyalee Ram, trees of various kinds, a garden in Sahibgunge, 25 beegahs of lands in a village called Sumroorputtee, certain villages held in farm and mortgage, and all his personal property consisting of cash, jewels, bonds, deeds of various kinds, &c.) under a deed of assignment dated 25th November, 1832, corresponding with the 17th *Aghun* 1240 F. S. The assignment was made under the assurance that, in the event of the plaintiff's recovery, the property should still be considered as his and entirely at his disposal, and with the verbal condition that the defendant should pay to the plaintiff annually the sum of 300 rupees, by monthly instalments of 25 rupees, for his support, and that he should maintain the necessary servants for the entertainment of travellers, and provide for the repairs of the buildings of the religious establishment to which the lands appertained.

The plaint further stated that the defendant had paid to the plaintiff the sum of 400 rupees at various times under the verbal stipulation between the parties; but that he had afterwards stopped the payments entirely. The plaintiff therefore sought the interference of the Court to enforce payment of the stipulated stipend, or, on failure of that, to recover the property assigned, [6] the defendant having failed to conform to the conditions of the assignment.

The defendant denied the claim, pleading that the assignment was unconditional. He further urged that the claim for the 25 beegahs of land in the village of Sumroorputtee, was illegally included in the present action, as it had been transferred by the plaintiff, to the defendant, for the purposes of idol-worship at another establishment at a place called Rajgeer, under a separate deed; mention of which, to that effect, was made in the *tumleeknameh* or deed of assignment of the rest of the property.

The following is an abstract of the deed of assignment, and of the conveyance of the 25 beegahs pleaded by the defendant.

Deed of Assignment.—I, Sookh Deo Doss, *chela* or disciple of Jyram Doss, deceased, fakeer or religious mendicant of the sect called Nanuckshye; inhabitant of Sahibgunge, being of sound mind, do of my own free will and consent execute this deed of assignment. The following property, *viz.*, buildings attached to the establishment of Katra Rajah Khyalee Ram, with the premises thereto appertaining, trees of various kinds, a garden in Sahibgunge, 25 beegahs in Sumroorputtee, certain villages in farm and mortgage, cash, jewels, bonds, &c., descended from Bulbhuddur Doss to Jyram Doss, and from Jyram Doss to me. Of the above, I have given the 25 beegahs in Sumroorputtee, under a deed executed on the 29th Sawun 1237, to Sheo Suhye Doss, for the purposes of carrying on the idol-worship at the establishment at Rajgeer. The rest of the property I have held possession of by right of inheritance up to this date. I now assign it over to Mohunt Sheo Suhye Doss, and I withdraw from all claim whatsoever to the property assigned by this deed.

Dated 25th November, 1832, or 17th Aghun 1240 F.S.

Deed of transfer of the 25 beegahs in Sumroorputtee.—I, Sookh Deo Doss, *chela* of Jyram Doss, fakeer of the sect called Nanuckshye, execute this deed. Whereas there is a parcel of land to the extent of 25 beegahs in Mouzah Sumroorputtee, originally granted as *bishunpercet* to Bulbhuddur Doss by Koonwur Ramnarain Roy, which from the date of the grant to the present period has been in the possession of Bulbhuddur and his descendants successively, *viz.*, Jyram and myself; I now of my own free will give the land to Mohunt Sheo Suhye Doss, for the purposes of idol-worship at the shrine at Rajgeer. The Mohunt and his [7] heirs shall annually cultivate the lands, and lay out the proceeds in the expenses of the shrine. Neither I nor my heirs shall henceforth have any claim whatsoever to the land or to the proceeds thereof. Dated 29th Sawun 1237 F.S.

The case was referred to Futteh Allee Khan, the Principal Sudder Ameen of Behar, who gave judgment in favour of the plaintiff, on the general ground that endowed property cannot be privately alienated, and of this nature he

considered the evidence in the case clearly established the property in question to be. The Principal Sudder Ameen excepted from his decree the parcel of 25 beegahs in Mouzah Sumroorputtee, which, having formed the subject of a transfer, he considered ought not to have been included in the present action.

The defendant appealed from the above decision to the Sudder Dewanny Adawlut, still resting his case on the unconditional nature of the assignment executed by the plaintiff.

The case was first heard by Mr. Biscoe, who considered that the decision must rest upon the determination of the right or otherwise of the superintendent of the establishment to alienate the property. It appeared to him, that the assignment to the appellant was a diversion of the property from the original object of the endowment, and, under the precedent of the case (*Bhowanee Pershad Chowdree, &c. v. Ranee Jugudumbha*) at page 343, new ed., p. 437, Vol. IV of Sudder Dewanny Reports, could not be maintained. Mr. Biscoe therefore proposed to give a decree in favour of the respondent for the whole of the property sued for, amending that part of the Principal Sudder Ameen's decision which excepted the parcel of 25 beegahs in the village of Sumroorputtee.

Mr. E. Lee Warner, who next heard the case, expressed his opinion that the assignment, as stated to have occurred between the parties, was an unauthorized transaction on the part of the plaintiff; for the property, being a religious endowment, could not be diverted or alienated from the purposes for which it was originally granted. Mr. Lee Warner, however, considered that the plaintiff could not sue to set aside the deed of assignment, for he had voluntarily executed it, and had transferred possession of the property, and could not now recede from his own acts. He was also of opinion that the appellant could not be permitted to hold the property under an illegal conveyance. It appeared to him therefore that the sunyasees or devotees of the particular sect to [8] which the parties belonged, should elect a person to officiate for the respondent as superintendent of the establishment, should there be no *chela* or disciple of the respondent entitled to succeed; or that, in default of this course of proceeding, the local agent appointed under Regulation XIX, 1810, should take the endowment under their charge.

The case next came to a hearing before Mr. D. C. Smith, who differed with both the Judges who had preceded him. He was of opinion that the case cited by Mr. Biscoe, in which there was a sale and total alienation of endowed lands could not form any precedent for the decision of the present case, in which the plaintiff must be considered as having merely transferred to the defendant whatever rights were possessed by him in the endowment. Mr. Smyth further differed from Mr. Lee Warner observing that the Court was not required to make any provision for the management of the property, but to decide upon the particular points at issue between the parties.

Previously to passing judgment in the case, Mr. Smyth called in the pundit of the Court to sit with him. In answer to questions put by the Court, the pundit replied that it was competent to the plaintiff to execute the deed of assignment pleaded by the defendant, by which the former had transferred to

the latter whatever right or power he possessed over the Sungut or shrine, that such a document was perfectly valid, and also that if one Hindoo execute to another Hindoo a deed of assignment, without any stipulation or condition, the assigner cannot revoke such deed. The pundit further gave it as his opinion that the transfer by gift of the 25 beegahs in Sumroorputtje (which had been originally given to Bulbhuddur Doss as Bishenpereet, and descended by right of inheritance to the (plaintiff) to the defendant for the purpose set forth in the deed dated the 29th Sawan 1237, viz., for the worship of idols at the shrine of Rajgeer, was quite legal. Mr. Smyth then passed judgment to the following effect:—

The respondent admits the deed of assignment, but states that there was a verbal condition connected with it, to the effect that the appellant should pay him annually the sum of 300 rupees, besides maintaining an establishment of servants, &c., as set forth in his plaint. He now sues to enforce payment of the stipulated sum, or to set aside the deed of assignment on the ground of failure of the condition. The appellant denies the condition. [9] The deed of assignment was duly registered; it is altogether unconditional; nor is there any sufficient evidence upon which to found a decree in favour of the plaintiff, for the annual payment of the sum claimed by him.

There remains for consideration whether the deed of assignment and the deed of gift, pleaded by the defendant, can now be set aside upon the suit of the respondent. The replies of the pundit fully meet this point, and clearly show that they cannot be cancelled on the suit of the party who executed the deeds, and upon whom they must be held to be binding.

For these reasons Mr. Smyth proposed to reverse the decision of the lower Court, and to dismiss the respondent's claim.

Mr. Tucker concurred in the view of the case taken by Mr. Smyth, and made final the judgment proposed by him.*

SHEIK SUFDAR ALLEE AND OTHERS, *Appellants v. DUTTNERAIN AND
REET LALL, Respondents.* (1841. January 30th.)

A mere application for permission to sue *in forma pauperis* is not a "preferring of a claim" within the meaning of the rule of limitation laid down by Section 14, Reg. III, 1793.

THE respondents instituted this action on the 2nd December 1834 in the City Court of Patna, for the recovery of $5\frac{1}{2}$ annās share of Mouzah Sumbulpore Chittra, Pergunnah Phoolwaree, to which they laid claim as entitled by right of inheritance to that portion of the village, which they alleged had been originally acquired by one Choonee Lall, the son of a cousin-german of the paternal grandfather of the plaintiffs.

[9] * It is to be observed that this decision does not in any way affect the previously published decisions of the Court, founded on the established principle that endowed lands cannot be privately alienated. The plaintiff in the present action rested his claim on a certain condition, on failure of proof of which the suit was dismissed, it further appearing to the Court that the terms of the assignment did not necessarily involve a diversion of the property from the original purposes of the endowment.