awarded in the case before them. It is by no means clear to their Lordships that there is any good ground for this suggestion.

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

The appellant will pay the costs of the appeal.

Appeal dismissed.

Solicitor for the appellant: *The Solicitor, India Office.*

Solicitors for the respondents: *Morgan Price & Co.*

I. V. W.

APPELLATE CIVIL.

Before Mr. Justice Stephen and Mr. Justice Vincent.

NIRAD MOHINI DASSI

v.

SHIBADAS PAL DEWASIN.*

1909
July 8.

Hindu Law—Shebaitship—Alienation of Shebaitship, inter vivos.

An alienation (*inter vivos*) of the office of *shebait*, by an *arpannamah*, to a closely connected member of the family who seems to have more interest in the worship of the idol than any one else, and without any idea of personal gain, is valid under the Hindu law.

Mancharam v. *Pranshankar* (1) followed.

Rajeshwar Mullick v. *Gopeshwar Mullick* (2) distinguished.

Khetter Chunder Ghose v. *Hari Das Bundopadhya* (3) and *Rajaram* v. *Gonesh* (4) referred to.

SECOND APPEAL by Srimati Nirad Mohini Dassi, the defendant No. 2.

The plaintiff, Shibadas Pal Dewasin, sued to establish his title and to recover possession of the land held in *khas* by partition, and of a certain share of the *pala* of the Billeshwar *Thakur's sheba.*

* Appeal from Appellate Decree, No. 1520 of 1907, against the decree of Aghore Chandra Hazra, Subordinate Judge of Burdwan, dated April 15, 1907, confirming the decree of Saroda Prasad Banerjee, Munsif of Katwa, dated July 30, 1906.

(1) (1882) I. L. R. 6 Bom. 298.
(2) (1907) I. L. R. 35 Calc. 226.
(3) (1890) I. L. R. 17 Calc. 557.
(4) (1898) I. L. R. 23 Bom. 131

1909

NIHAD MOHINI DASSI v. SHIBADAS PAL DEWASIN.

The facts are as follows:—The plaintiff was the owner of a certain share of the property in dispute and, as reversioner, was entitled to the shares in future upon the death of his co-sharers. The defendants, except the defendant No. 2, were joint *shebaits* with the plaintiff in succession to their predecessors in interest. Under a deed of *arpannamah* executed by the defendants Nos. 5, 6 and 7, who were residing at a distant place from the place of worship, in favour of their maternal uncle (the plaintiff), the plaintiff became further entitled to these defendants' shares in the *pala* of the said *Thakur's sheba*. Upon the defendants Nos. 1 and 2 resisting the plaintiff from getting possession of the said shares of the defendants Nos. 5, 6 and 7, the plaintiff brought this suit.

The defendant No. 2 contended, *inter alia*, that *debuttar* property and *sheba* were not partible by the Court, and that the *arpannamah* was collusive, fraudulent and illegal.

The Court of first instance decreed the suit in part declaring the plaintiff's title to the *sheba* of the *Thakur*; and on appeal, the learned Subordinate Judge affirmed the judgment of the first Court, holding that the office of *shebait* was alienable. The defendant No. 2 appealed to the High Court.

Babu Khetter Mohun Sen, for the appellant.

Babu Naliniranjan Chatterjee, for the respondents.

Cur. adv. vult.

STEPHEN AND VINCENT JJ. The plaintiff, respondent in this appeal, sued for certain shares in the *pala* of a *Thakur's sheba*, and in the property appertaining thereto. His claim is based on an *arpannamah* executed in his favour by three of the defendants Nos. 5, 6 and 7. He is at present an eight-anna owner of the property in dispute, has a reversionary interest in $\frac{8}{9}$th of the remainder, and is the maternal uncle of defendants Nos. 5 to 7. It is asserted in the plaint, and appears to be the case, that the plaintiff owing to his place of residence and other advantages could perform the *sheba* of the *Thakur* much better than defendants 5 to 7, and that this was a reason for the *arpannamah*. Under these circumstances

relying on the decision in *Mancharam* v. *Pranshankar* (1), the lower Appellate Court has held that the office of *shebait* was alienable by defendants 5 to 7 and that the plaintiff acquired a good title under the *arpannamah*. This decision was, in our opinion, correct. It is true, that the decision in *Mancharam* v. *Pranshankar* (1) has recently been disapproved of in this Court [see *Rajeshwar Mullick* v. *Gopeshwar Mullick* (2)], but that was on the ground that the alienation was by will. At the same time Maclean C.J. admits that there are authorities for such an alienation *inter vivos* under special circumstances. Such special circumstances seem to have existed in the case of *Khetter Chunder Ghose* v. *Hari Das Bundopadhya* (3) where a transfer *inter vivos* of an idol and the lands with which it was endowed was allowed on the ground that the arrangement was a beneficial one for the idol, because it tended to provide for the proper conduct of its worship. Further light is thrown on the case by the judgment in *Rajaram* v. *Gonesh* (4), where Ranade J., while affirming the general rule against alienation, indicates private voluntary alienations as possible exceptions to the rule. It is to be observed that in *Mancharam* v. *Pranshankar* (1), the fact that the alienation was to a person in the line of succession and capable of performing the worship of the idol was regarded as a justification for the alienation, and that in *Rajeshwar Mullick* v. *Gopeshwar Mullick* (2), Mitra J. treated "clear benefit to the *Thakur*" in the same way. In the present case, therefore, as the alienation was by an *arpannamah* to a closely connected member of the family who seems to have more interest in the worship of the idol than any one else, and as it seems to have been made without any idea of personal gain, in order to prevent the interference of the appellant who claims herself as an alienee of the interest of defendants 5 to 7, we consider that the case is governed by the special circumstances to which Maclean C.J. refers.

The result is that this appeal is dismissed with costs.

Appeal dismissed.

(1) (1882) I. L. R. 6 Bom. 298.
(2) (1907) I. L. R. 35 Calc. 226.
(3) (1890) I. L. R. 17 Calc. 557.
(4) (1898) I. L. R. 23 Bom. 131.

O. M.