find, moreover, that our view is in accordance with that expressed by this Court in *Surjya Narain Singh, In re* (1).

S. K. B. *Rule discharged*

(1) (1900) 5 C. W. N. 110, 112.

## APPELLATE CIVIL.

*Before Mr. Justice Coxe and Mr. Justice Imam.*



JHARULA DAS

*v.*

JALANDHAR THAKUR.*

*Shebait—Res judicata—Successor of a shebait, when bound by a decree passed against the shebait—Limitation Act (XV of 1877), Sch. II, Art. 124—Hereditary office of a shebait—Adverse possession of the office.*

The widow of a *shebait* of a certain temple, who succeeded her deceased husband in that office, mortgaged some land, as also her interest in the temple income, to one J, who obtained a decree on his mortgage on the 24th of September 1880. In execution thereof he put up the temple income for sale, purchased it himself and obtained delivery of possession in 1892. The widow and the next reversioner then brought a suit to set aside the sale on the ground that the property sold was not saleable. That suit was withdrawn with liberty to bring a fresh suit. The widow alone then brought another suit which was dismissed on the ground that it was barred by section 244 of the Code of Civil Procedure (Act XIV of 1882). She having died, the reversioner brought a suit against the said J, on the 3rd of January 1910, for a declaration that he was entitled to the temple income inasmuch as it was not saleable. On objections taken by the defendant that the suit in so far as it related to the temple income was barred by the rule of *res judicata* and by limitation :

*Held*, that, inasmuch as there was no collusion or dishonesty about the former suits, and as in one of them the plaintiff himself was a party,

* Appeal from Original Decree, No. 152 of 1911, against the decree of Kishori Mohan Sikdar, Subordinate Judge of Bhagalpur, dated April 3, 1911.

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the decree passed in the suit against the *shebait* (widow) would bind her successor (the plaintiff), and that therefore the present suit was barred by the rule of *res judicata*.

*Held*, further, that Art. 124 of Sch. II of the Limitation Act applied to the case, and that as the suit was brought more than twelve years after the date when the defendant obtained possession of the hereditary office by receipt of the temple income, it was barred by limitation.

APPEAL by the defendant, Jharula Das.

One Pratipal Thakur was one of the *shebaits* of a temple, called Singheswarji temple, in the district of Bhagalpur, and had 3½-anna share in the offerings given by the public to the idol of the said temple. He died childless, leaving behind him his widow, Musammat Girimoni, as his sole heiress. She succeeded to the 3½-anna share of the *shebaitship* and to other properties of her deceased husband, including 11½ bighas of *lakheraj* land in mouza Kumarkhand, and 21 bighas of *lakherai* land in mouza Khoksi. On the 29th of Assar 1281 F. S. she executed a mortgage bond in favour of one Jharula Das, by which she mortgaged the aforesaid 21 bighas of *lakherai* land, as also her right to receive the offerings of the temple. On the 11th of Falgoon 1282 F. S. she sold 11 bighas of *lakherai* land in mouza Kumarkhand to the father of the said Jharula Das by a registered *kobala*. On the 24th of September, 1885, Jharula Das obtained a decree on his mortgage bond, and in execution thereof he prayed for the sale of the right of the Musammat to the 3½-anna share of the offerings of the temple. The sale took place on the 20th of November, 1891, and the decree-holder, who was the purchaser, obtained delivery of possession on the 30th of March, 1892. The Musammat and one Bhaiji Thakur then instituted a suit for setting aside the sale on the ground of fraud, and also on the ground that the right to the offerings was not saleable. This suit was withdrawn by them

with liberty to bring a fresh suit. Subsequently, the Musammat bought another suit in which Bhaiji Thakur did not join, and it was dismissed on the ground that it was barred by section 244 of the Code of Civil Procedure. On the death of the Musammat, Bhaiji Thakur instituted the present suit against Jharula Das for recovery of possession of the 11 bighas *lakheraj* land in mouza Kumarkhand, and for the right to receive 3½-anna share of the offerings of the temple as reversionary heir of Pratipal Thakur, deceased. Bhaiji Thakur died after the institution of the suit, and his heirs were substituted in his place. The plaintiff alleged that the aforesaid mortgage bond, the decree, and the sale were all fraudulent transactions, that the Musammat had no legal necessity for executing the bond and for selling the *lakheraj* lands, and that the right to receive the offerings of the temple was not saleable.

The defendant contended, *inter alia*, that the suit was barred by limitation and by the rule of *res judicata*, that the plaintiff was not the next reversionary heir of Pratipal Thakur, that there was legal necessity for the mortgage and the sale, that there was no fraud or collusion, and that the right to receive the offerings was saleable.

The Court of first instance decreed the plaintiff's suit. Against this decision defendant appealed to the High Court.

*Dr. Rashbehary Ghose* (*Babu Surendra Nath Ghoshal* with him), for the appellant. The *onus* is upon the plaintiff to prove that he brought the suit within 12 years of the death of Musammat Girimoni. He is also to establish his relationship with the deceased lady, as also the non-existence of any preferential heir: see *Kedar Nauth Doss* v. *Protab Chunder*

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*Doss* (1). The suit is barred by limitation. The plaintiff brought the suit on the basis that the office of the *shebait* was hereditary and he inherited that office. Article 124 of Schedule II of the Limitation Act is applicable to this case: see *Pydigantam Jagannadha Row* v. *Rama Doss Patnaik* (2), *Veerabhadra Varaprasada Row* v. *Velanki Venkatadri* (3) and *Radhabai* v. *Anantrao Bhagvant Deshpande* (4). If the office be not hereditary, the suit must fail on the ground that the plaintiff has no title. The adverse possession of the defendant began when he obtained possession of the hereditary office by receipt of the temple income. The suit is also barred by the rule of *res judicata*. The widow fully represented the estate, as she succeeded her deceased husband as *shebait*. The former suit having been dismissed, the widow could not bring another suit claiming the same relief. The *shebaits* with their predecessors and successors formed one continuous representation of the idol. Therefore, in the absence of fraud or collusion, decrees against the *shebaits* would bind their successors: see *Prosunno Kumari Debya* v. *Golab Chand Baboo* (5). The interest of the widow in the hereditary office was sold on the 20th of November, 1891, and was purchased by the defendant who took delivery of possession on the 30th of March, 1892; and the present suit was brought on the 28th of January, 1910, *i.e.*, more than twelve years after the adverse possession had begun; therefore the suit is barred by limitation.

*Babu Jogesh Chandra Roy* (*Babu Kulwant Shahay* with him), for the respondent. The plaintiff's suit is barred neither by the principle of *res judicata* nor by the law of limitation. The question of the plaintiff's

(1) (1881) I. L. R. 6 Calc. 626, 629.
(2) (1904) I. L. R. 28 Mad. 197.
(3) (1899) 10 Mad. L. J. 114.
(4) (1885) I. L. R. 9 Bom. 198.
(5) (1875) 14 B. L. R. 450; L. R. 2 I. A. 145.

right was not adjudicated upon in the previous suit. Whether a decision between a *shebait* and an outsider is binding on the succeeding *shebait* would depend upon the facts of each case. The plaintiff claims the hereditary office carrying certain emoluments, and here in the case of *Prosunno Kumari Debya* v. *Golab Chand Baboo* (1) differs from the present case. The fact that the plaintiff withdrew the previous suit and his predecessor in that suit prayed for setting aside the sale, is no bar to a subsequent suit for a declaration that by the sale defendant did not acquire any title to the income of the temple. The subject matter of the present suit being distinct from that of the previous suit, the principle of *res judicata* does not apply: see *Sarkum Abu Torab Abdul Waheb* v. *Rahaman Buksh* (2). It is a gross case of fraud. What was purchased by the defendant was only a widow's interest and not trust property. The decree obtained by the defendant was a money decree, and by the sale in execution thereof, the right, title and interest only of the widow passed. The widow had only a personal right of enjoyment to income derived from the temple; see *Mohunt Burm Suroop Dass* v. *Khashee Jha* (3). She had only a life-interest in it. The cause of action arose in this case on the death of the widow, and the suit having been brought within twelve years of her death is not barred by limitation.

*Babu Surendra Nath Ghoshal*, in reply.

*Cur. adv. vult.*

COXE AND IMAM JJ. This was a suit brought by one Bhaiji Thakur for recovery of 11 bighas of *lakheraj* land and an interest of 3½ annas in the income derived from offerings in a certain temple. The property

(1) (1875) 14 B. L. R. 450; L. R. 2 I. A. 145.

(2) (1896) I. L. R. 24 Calc. 83.

(3) (1873) 20 W. R. 471.

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originally belonged to one Pratipal who was a *shebait* of the temple, and was succeeded in that office by his widow, Girimoni. Girimoni sold the land to the defendant, Jharula Das, in 1282. Previously in 1281 she had mortgaged some other land and her interest in the temple income to the defendant. He sued on the mortgage and obtained a decree on the 24th September 1880. This was before the Transfer of Property Act, and seems to have been no more than an ordinary decree for money. In execution he put up the temple income for sale and bought it himself. He obtained delivery of possession in 1892. Girimoni and the present plaintiff then sued to have the sale set aside on the ground, among others, that the property was not alienable, and in the alternative for a declaration that it would not bind the present plaintiff after Girimoni's death. That suit was ultimately withdrawn with liberty to sue again. Girimoni then sued again, and that suit was dismissed, being held to be barred by section 244 of the then Code. Girimoni then died, and this suit has now been brought by the present plaintiff. It was decreed by the learned Subordinate Judge, and the defendant appeals.

As regards the *lakheraj* land, we have no hesitation in maintaining the decision of the learned Subordinate Judge. That was voluntarily alienated by Girimoni, and the view of the learned Subordinate Judge that there was no legal necessity for any of these transactions has not been contested before us. With respect to this property Girimoni had the ordinary interest of a Hindu widow and not that of a *shebait*, and the land was not the subject of the former suits. The only question therefore that has been argued before us with respect to the land is whether the evidence justifies the findings of the learned Subordinate Judge, that Girimoni died within 12 years

of the suit, and that the present plaintiff is the next reversioner. After reading the evidence we have no doubt at all that the decision of the court below on these two points is correct.

The main question in the appeal is whether the suit, so far as it relates to the temple income, is barred by (*i*) limitation and (*ii*) the rule of *res judicata*. It appears to us that both these questions turn on the point whether Girimoni fully represented the estate, and this point appears to us to be concluded by authority. It cannot be contended for a moment that there was any collusion or dishonesty about the former suits. In one of them the plaintiff himself was a party. And that the decision of a suit, fairly conducted, against a widow binds the reversioners is now well settled (see the cases quoted on page 631 of the 6th volume of the C. L. J.) And when the widow occupies the position of a *shebait*, as in this case, it appears that her sex makes no difference. This was held in *Pydigantam Jagannadha Row* v. *Rama Doss Patnaik* (1) which was followed in *Lilabati Misrain* v. *Bishun Chobey* (2).

There is also authority that decrees against *shebaits* in honest suits bind their successors. The reason of this is explained in *Prosunno Kumari Debya* v. *Golab Chand Baboo* (3), *Gora Chand Lurki* v. *Makhan Lal Chakravarti* (4) and *Lilabati Misrain* v. *Bishun Chobey* (2) quoted above. That reason is that *shebaits* with their predecessors and successors form one continuous representation of the idol, and consequently subsequent *shebaits* are regarded as the same persons in law as their predecessors. If that is so, it seems clear that the plaintiff is bound by the decree passed

(1) (1904) I. L. R. 28 Mad. 197.
(2) (1907) 6 C. L. J. 621.
(3) (1875) 14 B. L. R. 450, L. R. 2 I. A. 145.
(4) (1907) 6 C. L. J. 404.

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against the predecessor Girimoni. It is argued that the validity of the defendant's purchase was not decided in that case, which was dismissed on the ground that it was barred by section 244 of the then Code. But if the plaintiff is regarded as the same person in law as Girimoni, this argument must fail. Girimoni, if she liked, could have attacked the sale under section 244 of the Code, and in that event would very probably have won her case. But she advisedly preferred to abandon that line of attack and to rely on a regular suit in which course she was aided and assisted by the plaintiff. Naturally it was held that the suit was barred. But when she had taken this unsuccessful course with her eyes open, she certainly could not thereafter have pleaded that her right to recover the property had not been decided—and that she was entitled to bring another suit for the purpose of recovering it. And if the plaintiff is regarded by the eye of the law as the same as Girimoni, it is evident that he cannot do so either, more especially perhaps when he aided Girimoni to bring the unsuccessful suit. It appears to us that the right of the *shebaits* generally to recover the property was finally extinguished by the decision in the former suit.

It is clear also that the adverse possession runs from the delivery of possession to the defendant, and that the suit is long barred. The case clearly comes under Article 124 of the Schedule to the Limitation Act: see *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram* (1). In that case the contention that a subsequent *shebait* obtained a fresh start in the calculation of adverse possession was distinctly overruled. The case of *Pydigantam Jagannadha Row* v. *Rama Doss Patnaik* (2), quoted above, which was followed in

(1) (1899) I. L. R. 23 Mad. 271; L. R. 27 I. A. 69.

(2) (1904) I. L. R. 28 Mad. 197.

*Lilabati Misrain* v. *Bishun Chowbey* (1), seems to us quite indistinguishable from this case, and is a clear authority that the suit is barred by Article 124. We have been referred also to *Veerabhadra Varaprasada Row* v. *Vellanki Venkatadri* (2), in which it was held following the Full Bench decision in *Radhabai* v. *Anantrao Bhagvant Deshpande* (3) that in a suit for the income of a hereditary office a preceding holder fully represents his successors in matters of *res judicata* and limitation.

We need not go into the question how the rights of the plaintiff are affected by the fact that his own suit was withdrawn. It appears to us that when it is clearly proved that the defendant has been in possession of the property in suit since 1892, and that a suit by the then trustee of the property for recovery was finally dismissed in 1898, the present suit, so far as it affects the 3½ annas of the *shebaiti*, is barred both by limitation and by the principle of *res judicata*. Accordingly the appeal will be allowed in part. The decree of the Subordinate Judge so far as it directs the recovery of possession of the 11 bighas with mesne profits from the date of the suit, to be hereafter ascertained, is affirmed; and so far as it relates to the *shebaiti* and the profits arising therefrom, is set aside.

Costs of both Courts will be awarded to the respective parties in proportion to their success, the calculation being based on the valuation of the relief sought in the plaint.

S. C. G. *Appeal allowed in part.*

(1) (1907) 6 C. L. J. 621. (2) (1899) 10 Mad. L. J. 114.
(3) (1885) I. L. R. 9 Bom. 198.