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Dec. 21.

Special Appeal No. 368 of 1869.

Sitarambhat, et al *... Appellants.*

Sitaram Ganesh and Kashiraj

Nanabhat by his father Nanabhat *... Respondents.*

Hindu law—Inheritance—Hereditary priestly office—Alienation—Fees attached to office—Father suing on behalf of his son Certificate of administration—Act. XX, of 1864, Sec. 2.

Where a priest wrongfully officiates for another, and receives fees, he is bound to account for them to the rightful priest, where such fees are by custom attached to the office.

The sale of an hereditary priestly office will be upheld where the purchasers are the next in succession from the vendor to such office.

Semlis, that an hereditary priestly office descends in default of males through females.

A father, suing on behalf of his minor son entitled to property in his own right, must obtain a certificate of administration under Sec. 2 of Act XX, of 1864.

This was a Special Appeal from the decision of A. Richardson, Judge of the Ahmednagar district, in Appeal Suit No, 11 of 1869, reversing the decree of the Munsif of Siner.

Sitaram Ganesh, and Nanabhat, on behalf of his minor son Kashiraj, brought this suit for one-third share of the emoluments and office of *mule joshi* in the village of Vadgam which they claimed to have purchased under a deed of sale from Lakshuman Ganesh on the 21st of February 1868.

Lakshuman Ganesh, the vendor of the plaintiffs, was proprietor of a one-third share of the office, being separate in interest from the three defendants, who were owners of the remaining two-thirds. The plaintiffs were themselves sons of the daughter of Lakshuman Ganesh, the vendor, and his only heirs; and as the office was held in rotation by each of the three sharers, they now sued to restrain the defendants from obstructing their enjoyment of the *vatan* during their turn of office.

The defendants answered that the obstructions complained of was caused by the villagers generally, and that the defendants were not concerned in it; and, secondly, that it was not competent, according to Hindu law, for a person to sell an hereditary priestly office. They further pleaded

that one of the plaintiffs was a minor, and could not be represented for the purposes of the suit by his father without a certificate of guardianship.

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The Munsif of Sinner rejected the plaintiffs' claim, on the ground that Lakshuman Ganesh, the vendor of the plaintiffs, was incompetent to sell his share of an hereditary priestly office.

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The plaintiffs appealed from this decision to the Court of the District Judge, who, in reversing the Munsif's decree, delivered the following judgment:—

“It appears that Sitaram, plaintiff, on his own behalf, and Nanabhat, on behalf of his son Kashiraj, purchased for 500 Rupees from Lakshuman Ganesh, the owner, one-third of the office of *joshi* and *mule* at Wadgam, under a deed of sale dated 21st February 1868.

“It is admitted clearly in evidence that Rambhat, defendant No. 2, owns one share, Lakshuman Ganesh owned another, and defendants Nos. 1 and 3 own the remaining third of the office of *mule joshi*.

“Defendant's plea is, that while male relations survive the sons of daughters do not succeed; and that a sale of an hereditary office is altogether opposed to Hindu law. Lakshuman Ganesh is admitted by defendant No. 2, Rambhat, his second cousin, to be separated from his co-heirs. If separated from his co-heirs, the property of a Hindu dying without male issue descends to his wife, and after her to his daughter and thence to the daughter's sons. According to the evidence given by Lakshuman Ganesh, plaintiff would succeed to any property he may be possessed of. Defendants are not in a position to plead incompetency in a separated co-sharer to sell his share, for defendants Nos. 1 and 3 obtained their share of the office by sale from its owner, who was a relative four times removed from the other defendants. In this case the office was sold to the grandsons by the daughter, who alone could succeed to Lakshuman Ganesh's share.

“My finding on the first issue therefore is, that it does

1869 appear that sharers who are separated from their co-heirs, and without male issue, are competent to sell their shares in an hereditary priestly office to a connection."

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The Judge accordingly decreed the claim as stated in the
plaint.
The appeal was heard before COUCH, C. J., and WARDEN, J.

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his father
Nanabhat.

Pandurang Balibhadra for the appellants: I.—Kashiraj, one of the plaintiffs in the original suit, being a minor, his father, Nanabhat, could not sue without obtaining a certificate of administration, under Sec. 2 of Act XX. of 1864. II.—In the case of *Pandoorung Succaram v. Balumbhut* (a), the subject of the suit was the *joshi haks* in the village of Newassa in the Ahmednagar district, and the plaintiffs, as *joshis*, sued the defendants, at whose houses they claimed a right to officiate on marriage occasions, for fees paid by the defendants to their own family priests. It was there held that it was optional with parties to adopt the ceremonies for which the *haks* were due, and that the amount of the fees, being a voluntary contribution, depended on the will or ability of the donor. This case must be governed by the same principles. III.—The plaintiffs in this case are not descended from the vendor in the male line; they are grandsons by the daughter, and from the nature of the priestly office, daughters cannot officiate, neither can their sons succeed to the office. IV.—This is a question for the caste, and the Courts of law will not compel the caste people to accept a priest whom they are unwilling to acknowledge: *Murar Daya v. Nagria Ganeshia* (b).

Bhairavanath Mangesh for the respondents:—The right to officiate as a priest is like other rights descendible in the ordinary way, and daughter's sons can inherit such an office. In *Nurbheram Tooljaram v. Bhaedas* (c) the claim of the plaintiff was for the office of head priest of the caste. In that case the alienation of the office by one Bai to the grandson of her own sister was held binding; but the deci-

(a) Cases decided by S. D. A., 1820-1840, p. 196.

(b) 6 Bom. H. C. Rep. A. C. J. 17.

(c) 2 Borr. 183 (ed. of 1863).

sion rested on the ground of acquiescence. In Steele's Summary it is said, p. 89-90, that the office of a *vyavahar joshi* may be alienated and farmed out.

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COUCH, C. J.:—It is settled law that if a person usurps the office of another, and receives the fees of the office, he is bound to account to the rightful owner for them. Where the payments are merely voluntary the case is different, and no suit can be brought. The persons who paid the fees were before the Court as defendants in the case cited, and that decision does not apply. It is contrary to equity to make the *yajmans*, in this case the villagers generally, pay twice. The parties who have wrongfully received the fees are properly liable to pay them over to the parties entitled to them.

With regard to the other point, whether there was a valid sale, it is not necessary in this case to decide the question as to whether such offices can be sold to strangers. In this case the purchasers were grandchildren, who would eventually succeed to the office as heirs, and the grandfather did nothing more than relinquish his right in their favour. There have been previous dealings with this office of a somewhat similar nature, which is some evidence of a usage justifying the alienation in the present case.

Upon the third point, as to whether Kashiraj, the minor plaintiff, could be properly represented by his father for the purpose of instituting this suit, it is to be observed that the language of the Act is general, and includes the case of a minor having become entitled to property whilst his father is living, and it is therefore necessary that the minor's father should obtain a certificate of administration before instituting or defending a suit connected with the minor's estate.

The decree of the District Court is wrong on this point, as the minor plaintiff is without a certificated administrator of his property. The claim of the plaintiff is accordingly thrown out without prejudice to the plaintiff's right to sue by a properly appointed administrator of the property.

WARDEN J., concurred.

Decree reversed.