[APPELLATE CIVIL JURISDICTION.]

1875. September 28.

Miscellaneous Special Appeal No. 12 *of* 1875

KHUSA'LCHAND, heir of deceased AMARCHAND (*Original Plaintiff*) ..... } *Appellant.*

MA'HA'DEVGIRI, heir of deceased RAJENDRAGIRI (*Original Defendant*) ..... } *Respondent.*

Grant to a Gosávi and his disciples—Life interest.

A grant to a *Gosávi* and his disciples in perpetual succession, coupled with directions which practically make it an endowment of a *math* with a limitation of the enjoyment to a particular line of celebrants of the worship therein, does not entitle an individual *Gosávi* to incumber the endowment beyond his own life.

The English law relating to superstitious uses does not apply in the case of Hindu religious endowments.

THIS was an appeal from the decision of A. Bosanquet, Judge of the District of Ahmednagar, reversing on remand from the High Court the decree of Purushotam Binewále, 1st Class Subordinate Judge of Ahmednagar, who decided in favour of the plaintiff.

The facts of this case are briefly these:—On the 14th of January 1862 the plaintiff obtained a decree against the defendant, directing the latter to pay from his mortgaged *mokásá* allowance a debt due to the former. In 1867 the plaintiff applied for execution, and under the order of the Court attached the allowance and received the proceeds of it from year to year until 1871. The defendant having subsequently died, the plaintiff got the present respondent entered on the record in his stead as his heir, and got also a guardian appointed to him, the respondent himself being a minor. To the further execution of the plaintiff's decree it was objected, on the respondent's behalf, that the deceased defendant ceased to have any interest in the *mokásá* allowance after his death, and it could not, therefore, be attached. This objection was

disallowed by the Subordinate and District Judge, but was allowed by the High Court in special appeal, and the case was remanded to determine the nature of the allowance sought to be attached. On remand the District Judge found that the grant was by H. H. Jánkojiráv Scindia to Rajendragiri, the defendant, in 1838, and confirmed an older grant made by the Peishwá. The grant declared that the allowance was to be enjoyed by Rajendragiri and his disciples and successors from generation to generation. The purpose for which the grant was made, was not expressly stated in the documents, but in a letter by the Rájáh of Satára to Govind Gosávi the allowance is stated to have been given for the worship of the goddess of wealth and for feeding and otherwise supporting poor and deserving people. The District Judge held that the interest of Rajendragiri under the circumstances did not extend beyond his life, and he, consequently, decreed against the plaintiff.

Against this order the appeal was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ.

Dhirájlál Mathurádás (Government Pleader) for the appellant.—The *mokásá* allowance was the absolute property of Rajendragiri. It was granted to him and his disciples for ever, and resembles in every respect a grant to a man and his heirs for ever. There is no restriction whatever placed on the grantee's ownership.

No one appeared for the respondent.

Per Curiam:—We cannot accede to the argument urged for the appellant in this case, that a grant by a sovereign to a *gosávi* and his disciples in perpetual succession, being equivalent to a grant to a man and his heirs, and the latter conveying a title of which the grantee may immediately dispose, each *gosávi* also in succession has a right to sell or incumber the property granted to him and his disciples. A grant to a *gosávi* and his disciples is intended by a Hindu grantor to be a perpetual fountain of merit producing benefit to himself, and this intention would be entirely defeated

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by the diversion of the gift at the will of any unprincipled successor of the original grantee to purely secular uses. In the particular case before us, the *gosávis* are the ministers of a *math*, and the Peishwá in making the grant enjoined on the grantee, in words sufficient to constitute a trust, the celebration of worship to the goddess ("Shri"), the recitation of prayers, and the entertainment of the poor. Such objects, however some of them might, according to English notions, be deemed superstitious uses, are allowable and commendable according to the Hindu law. See Jagannath's Commentary, Col. Dig. Bk. II., C. IV., T. 33. Even of the property belonging to a family it is prescribed by Katyayana (Vyav. Mayukh, Ch. IV., Sec. VII., Pl. 23) that any portion once assigned for purposes of religion shall be excepted from partition so as to be kept available for its intended object. In Bengal it has been held, in the case of *Mohant Burm Suroop Dass* v. *Khashee Jha and others* (*a*), that a *Mohant* in charge of an endowment cannot, except distinctly for its benefit, incumber it beyond his own life, and we think that the case of the *gosávis* holding under the grant we are now considering, falls within the same principle. The grant was to the *gosávis* and their disciples, but coupled with directions which practically made it an endowment of the *math* with a limitation of the enjoyment to a particular line of celebrants of the worship therein. This being so, an individual *gosávi* was, in our opinion, no more at liberty to sell the endowment than a *vatandár* the endowment of his office. We, therefore, confirm the order of the District Judge with costs.

Decree confirmed.

(*a*) 20 Calc. W. R. 471, Civ. Rul.