5 B. 393.

1881
FEB. 22.

APPELLATE CIVIL.

5 B. 393

[393] APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice Birdwood.

NARAYAN, SON AND HEIR OF SADANAND RAMCHANDRA, DECEASED (*The Original Judgment-debtor*), *Appellant v.* CHINTAMAN AND MORESHVAR, SONS AND HEIRS OF BALAJI NARAYAN NATU, DECEASED (*The Original Judgment-creditor*), *Respondents.** [22nd February, 1881.]

Religious endowments—Alienation—Pledge—Hereditary turstee—Bombay Act II of 1863, s. 8, cl. 3—Common law of the country.

Religious endowments in this country, whether they are Hindu or Mahomedan, are not alienable; though the annual revenues of such endowments, as distinguished from the *corpus*, may occasionally, when it is necessary to do so in order to raise money for purposes essential to the temple or other institution endowed, but not further or otherwise, be pledged.

Bombay Act II of 1863, s. 8, cl. 3, contained no new law, but merely declared the pre-existing common law of this country.

Prosunno Kumari Dubija v. *Golabchand Baboo* (1) referred to and distinguished.

[F., 37 C. 179=11 C.L.J. 317=14 C.W.N. 535=3 Ind.Cas. 353; 27 M. 465 (F.B.)=14 M.L.J. 81; R., 6 B. 546 (552); 8 B. 432; 15 B. 625 (635); 20 B. 495 (501); 22 B. 475; 27 M. 435 (439)=14 M.L.J. 105; 34 M. 535=9 Ind. Cas. 281=20 M.L.J. 969=9 M.L.T. 83=(1911) 2 M.W.N. 154 (156); D., 25 A. 296=23 A.W.N. 50.]

THIS was an appeal in an execution proceeding against the order of W. H. Newnham, the Governor's Agent for Sardars in the Deccan, dated the 2nd January, 1880.

The following are the material facts of the case:—On the 23rd October, 1851, Balaji Narayan Natu (deceased), father of the respondents, Chintaman and Moreshvar, obtained a decree, giving effect to a previous award, for Rs. 12,000 (being the amount due for principal and interest on various loans) against Sadanand Ramchandra Gosavi, father of the appellant, Narayan, in the Court of the Governor's Agent for Sardars in the Deccan. The decree further declared the said amount to be a charge upon two *inam* villages, Dehu and Kinhai, granted many years previously by the Satara Government for the support of a Hindu temple, of which Sadanand was, at the time of the transactions alluded to, hereditary trustee and manager. In so doing, the decree purported to give effect to various mortgages of the said villages which Sadanand had given to the said Balaji to secure the sums of money from time to time lent by him to the said [394] Sadanand. The decree further directed payment of the money by half-yearly instalments of Rs. 400 each, and allowed interest at 9 per cent. on any instalment due and not paid. It was executed from time to time against the revenues of the two *inam* villages, the last application for execution being made on the 23rd August, 1878. The amount which the respondents sought to recover by that application was Rs. 3,772-5-0, being the aggregate amount of interest accrued due in respect of instalments which had been allowed to get in arrear. The appellant, Narayan, objected—(1) that the application was time-barred,

* Miscellaneous Appeal No. 15 of 1880.

(1) 11 B.L.R. 332; 2 I.A. 145=14 B.L.R. 450 (P.C.)

1881
FEB. 22.
APPELLATE CIVIL.
5 B. 393.

and (2) that the property, being *devasthan*, was not liable for the debts of Sadanand. He also disputed the correctness of the amount claimed by the respondents. The Agent granted execution for the whole amount claimed, holding that the decree was not barred, and that the property was liable. The following are his reasons regarding the second objection:—

"As to the second objection, it is based upon s. 8, cl. 3 of Bombay Act II of 1863, and the words relied on are, that lands held on behalf of religious or charitable institutions shall not be transferable by sale,—judicial, public, or private,—gift, decree or otherwise howsoever.

"But in the present case there is no question of any permanent transfer of the land or its revenue. The decree which was passed on the award merely provides for the payment of a certain debt by instalments from the revenue, and there is no question of sale. Moreover, the decree continued to be executed against the revenue for eleven years before the passing of the above Act, and for no less than sixteen years after it, without any objection being raised by the judgment-debtor on this point, and I do not think that he can fairly raise this objection after so long a time."

Narayan appealed to the High Court.

The remaining material facts of the case appear from the judgment of the High Court.

Manekshah Jehangirshah, for the appellant.—The property in dispute having been dedicated to the worship of a Hindu deity, Sadanand, as manager for the time being, had no right to mortgage [395] it. At all events, any mortgage by him could not bind the property in the hands of his successor. The learned pleader cited the following cases in support of his argument:—*Raja Varma Valia* v. *Kottayath Kiyaki* (1), *Konwar* v. *Ramchandra* (2), *Dubo Misser* v. *Shrinivas Misser* (3), *Goluck Chundar* v. *Raghunath* (4), *Prosunno Kumari Dubija* v. *Golobchand Baboo* (5), *Motisha* v. *Hiresha* (6).

M. C. Apte and *G. R. Kirloskar*, for the respondents.

JUDGMENT.

The following is the judgment of the Court delivered by—

WESTROPP, C.J.—The three *sanads*, respectively bearing dates equivalent to the Christian years 1703, 1725 and 1738, show, in terms as distinct as possible, that the villages Dehu and Kinhai were granted by the Satara Government for the support of the temple of the Hindu deities Vithoba and Rakhmadevi, and not for any mere family idol. The decree, which is the subject of the *darkhast* (application) upon which the learned Agent for Sardars made the order in execution now under appeal, is alleged by the respondents to be duly charged upon the revenues of those villages. It was a decree for Rs. 12,000 of the 23rd October, 1851, or rather an award of that date entered, according to the Civil Procedure of that time, as a decree of the Agent for Sardars. The award was made by Moro Trimbak Sahasrabudhe, as arbitrator between the late Balaji Narayan Natu, the father of the present respondents, and the late Sadananda Ramchandra Gosavi, the father of the present appellant. That appellant, who is the present hereditary trustee of the villages, and who has been so since his father's death, was not a party to the submission

(1) 7 M.H.C.R. 210; 1 M. 235=4 I.A. 76.
(2) 2 C. 341; 4 I.A. 52.
(3) 5 B.L.R. 617.
(4) 11 B.L.R. 337, note.
(5) 11 B.L.R. 332; 2 I.A. 145=14 B.L.R. 450 (P.C.)
(6) See Printed Judgments for 1877, p. 3.

to arbitration or to the proceedings thereupon, or to the award, or the decree into which it was converted. The arbitrator, so far as we can perceive from his award, does not appear to have raised any issue as to the nature or purpose of the loans to the late Gosavi Sadanand Ramchandra, which were the subject of the arbitration; or to have considered whether, or called **[396]** for evidence to show that, those loans, or any of them, were made for the benefit of the temple or its service; or that there was any necessity to raise loans for the repair of the temple; or that the full revenues arising from the villages were not adequate for the due support of the temple and its services. So far, then, as the award and decree are concerned, this case does not coincide in its circumstances with *Prosunno Kumari Dubija* v. *Golabchand Baboo* (1), and the award and decree are not such as can bind the villages or their revenue in the hands of the present hereditary trustee.

Religious endowments in this country, whether they be Hindu (*devasthan*) (2), or (*sevasthan*)(3), or Mahomedan (*wakf*), are not alienable, though the annual revenues of such endowments, as distinguished from the corpus, may, for purposes essential to the temple or other institution endowed, be occasionally pledged: *ex. gr.*, "for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks, and other like objects. The power, however, to incur such debts must be measured by the existing necessity for incurring them" (4). Amongst the authorities as to the general rule against the alienability of religious or charitable endowments, and as to the exceptions to that rule, are those collected in 4 Bom. H. C. Rep., pp. 7, 8, A.C.J.; 1 Morley Dig., pp. 550, 553, 554; and Morley Dig., N.S., 351, 353, and *Mir Sadrudin Khan* v. *Kazi Mirun* (5); *Khusalchand* v. *Mahaddevgiri* (6); *Motisha* v. *Hiresha* (7); *Konwar* v. *Ramchandra* (8); *Raja Varma Valia* v. *Kottayath Kiyaki* (9); *Tayabunissa* v. *Kuwar* (10); *Dubo Misser* v. *Shriniwas Misser* (11); *Kalicharan* v. *Bangshi Mohandas* (12); *Goluck Chander* v. *Ragunath* (13); *Prosunno* **[397]** *Moyee* v. *Koonjo Behari* (14); *Maharani Shibessawree Debea* v. *Mothooranath Acharjo* (15); *Mohunt Burm* v. *Kashee Jha* (16); *Syud Asheeroodin* v. *Sreemutty Drobo Moyee* (17); *Rumonee Debea* v. *Baluck Doss* (18); *Goluck Chander Bhose* v. *Rughoonath Sri Chandan Roy* (19); *Arruth* v. *Juggurnath* (20); *Fegredo* v. *Mahomed Mudessur* (21); *Juggut Mohini Dossee* v. *Mussamat Sokheemoney Dossee* (22). Under the award and decree the sum of Rs. 12,000 was payable in half-yearly instalments of Rs. 400, and, in the event of any instalment being in arrear, interest at 9 per cent. *per annum* was payable upon such instalment. It is admitted that the whole sum of Rs. 12,000 has been paid, and the present *darkhast* was presented to recover Rs. 3,772-5-0 in respect of accumulations of interest

(1) 11 B.L.R. 332; 2 I.A. 145=14 B.L.R. 450 (P.C.).
(2) Etymol. "Deva"; *vide* Wilson's Gloss. 133; Elph. Rep. on the Dekkhan, Appx., p. xxv, ed. of 1872.
(3) Etymol. "Seva" worship, service. Wilson's Gloss. 475; Elph. Rep. on the Dekkhan, Appx., p. xxv, ed. of 1872, corruptly "suwasthan."
(4) *Per* Sir M. Smith for the P.C. in 2 I.A. 151.
(5) 2 Borr. 741 reprint of 1863.
(6) 12 B.H.C.R. 214.
(7) Printed Judgments of 1877, p. 3.
(8) 4 I.A. 52.
(9) 7 M.H.C.R. 210; affd. 4 I.A. 76.
(10) 7 B.L.R. 621.
(11) 5 B.L.R. 617.
(12) 6 B.L.R. 727.
(13) 11 B.L.R. 337, note.
(14) W.R. Sup. Vol. for 1864, p. 157.
(15) 13 M.I.A. 270=13 W.R. 18.
(16) 20 W.R. 471.
(17) 25 W.R. 557.
(18) 14 W.R. 101.
(19) 17 W.R. 444.
(20) 18 W.R. 439.
(21) 15 W.R. 75.
(22) 14 M.I.A. 289.

1881
FEB. 22.
APPELLATE CIVIL.
5 B. 393.

which are said to have accrued due upon the instalments when in arrear. The Agent for Sardars has made an order allowing the levy of that interest from the revenue of the villages, against which order the present appeal has been preferred. It appears that the original transaction between Sadanand the plaintiffs' father, Balaji Natu, was a mortgage (dated the 27th June, 1833), by Sadanand to Balaji Natu, of the above mentioned two village for Rs. 10,000 at interest of 12 per cent. *per annum*. That mortgage contained a recital that the Rs. 10,000 were borrowed for the purpose of paying off two prior mortgages of these villages made to other persons. It may be that these prior mortgages were for purposes necessary for the temple. There is not any evidence that such was the fact; but we are, for the purposes of this application, willing to assume that such was the fact. There were thirteen other loans made between the years 1834 and 1841 by Balaji Natu to Sadanand, amounting in the whole to Rs. 4,227, of which sums all, except the last (which was for Rs. 35) were made (so far as Sadanand could make them) further charges on the two villages; but there is not any evidence whatever to show that those sums, or any one of them, were required for or applied to purposes necessary for or **[398]** beneficial to the temple. The point that the *sevasthan—i.e.*, the two villages and their revenue constituting the religious endowment of the temple—could not lawfully be taken in execution for the private debts of Sadanand, the late incumbent, as trustee and manager of the temple, was made before the Agent for Sardars; but it does not seem to have been very well argued before him, as that objection appears to have been based merely upon Bombay Act II of 1863, s. 8, cl. 3, which was not passed until many years after the latest of the loans by Balaji to Sadanand. The learned Agent for Sardars, moreover, appears to have thought that a mortgage or mortgages would not fall within the scope of the prohibition of alienation contained in that enactment, but in that opinion we cannot concur. However, unless that enactment were clearly made retrospective, it could not affect alienations made prior to it; so, if this case rested on that enactment alone, it would not invalidate the mortgage and further charges. But, in fact, that enactment contained no new law, and it was merely declaratory of the pre-existing common law of this country which (as established by the authorities already mentioned) does not ordinarily permit the alienation of religious or charitable endowments. And, in furtherance of that common law, Bombay Reg. XVII of 1827, s. 38, cl. 2 (since repealed) enacted that "all land held exempt from the payment of public revenue, if such exemption was granted in consideration of service to be performed, or for the support of religious or other establishments, or for other special purposes, shall be liable to be assessed, if the conditions of the grant are not fulfilled." That Regulation applied to the Deccan (Bom. Reg. XXIX of 1827, ss. 2 and 6) with certain exceptions not affecting the present question. In the plaintiff's memorandum of appeal, as at first framed, the objection as to the validity of Sadanand's alienations was not taken; but, with the permission of this Court, it was added afterwards. Hence, in order to prevent any surprise of the plaintiffs, we offered to their pleaders to direct an inquiry or issue as to whether or not the loans, granted by Balaji to Sadanand subsequently to the mortgage of 1833 for Rs. 10,000, were made for purposes essentially requisite for the temple. Those learned pleaders declined the offer, as they stated that they would be unable to produce evidence **[399]** in the Court below upon such an inquiry or issue to show that these loans had been granted for such purposes. From the kabulayat signed

1881 FEB. 22. APPELLATE CIVIL. 5 B. 393.

by the village officers (endorsed upon and of even date with the mortgage of 1833 for Rs. 10,000), and from the recitals in the award itself, it appears that Balaji Natu, immediately upon the execution of the mortgage, entered into the management (*vyvhat*) of the villages, and so remained in the receipt of their revenues at least until 1841, if not much later. Those revenues were stated by the pleader for the respondents, in reply to a question from this Court, to be mentioned in the evidence as amounting to about Rs. 3,700 *per annum*, so that, in the eight years extending from 1833 to 1841 alone, the plaintiffs' father, Balaji, might, at that rate, have received Rs. 29,600. It is admitted that, since the making of the decree, the plaintiffs or Balaji have received Rs. 12,000 upon it. It is, therefore, quite clear to us, that, even assuming that the mortgage of 1833 for Rs. 10,000 was for purposes essential for the temple, that amount and all interest in respect of it must have been, at the least, more than fully paid off long ago. And, under the circumstances already mentioned, the award and decree not being binding on the appellant in his capacity of hereditary trustee of the villages, and it being impossible for us to hold that the further alleged loans amounting to Rs. 4,227 constitute any valid incumbrance on the villages or their revenues, it is evident that we cannot permit the amount of interest sought by the present *darkhast* to be levied from the villages constituting the endowment of the temple or their revenues.

However, the decree of 1851 was binding on Sadanand in his individual capacity, as distinguished from his capacity as trustee of the temple; and his heir, the defendant, is liable in respect of any property of Sadanand which has come into his possession, other than the villages or other property held by him as trustee of the temple, to pay his debts: Colebrooke's Dig., Bk. I, cap. v, pl. clxvii, clxix, ccxxix; *Girdharlall* v. *Kantoolall* (1); and Mr. White's Act (Bombay Act VII of 1866).

For the reasons above given, we vary the order of the Agent for Sardars of the 2nd January, 1880, by directing that none of **[400]** the amount thereby awarded is to be levied from the villages, or either of them, above mentioned, or from the revenues thereof; but that the said amount may be levied from the other property (if any), whether ancestral or self-acquired, of the defendant's father Sadanand which may have come into the possession of the defendant. The parties must respectively bear their own costs of the application and of this appeal.

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5 B. 400=5 Ind. Jur. 650.

APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice Birdwood.

NAGU (*Plaintiff*) *v.* YEKNATH (*Defendant*).* [22nd March, 1881.]

Written statement—Court fee—The Code of Civil Procedure, Act VIII of 1859, s. 120—Act X of 1877, s. 110—Court Fees Act VII of 1870, s. 19.

A written statement of his case, tendered by a party to a suit at any time before or at the first hearing of the suit, is not liable to any Court fee, and may be written on plain paper (s. 110 of Act X of 1877).

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* Civil Reference No. 8 of 1881.

(1) 1 I.A. 321; and see 11 B.H.C.R. at pp. 83, 84.