

[682] APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice and Mr. Justice F. D. Melvill.

1880
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APPRE-
LATE
CIVIL.
5 B. 682.

GOSAIN RAMBHARTI JAGRUPBHARTI (Original Defendant), Appellant v. MAHANT SURAJBHARTI HARIBHARTI (Original Plaintiff), Respondent.*

GOSAVISHVARBHARTI HARIBHARTI (Original Defendant), Appellant v. MAHANT SURAJBHARTI HARIBHARTI (Original Plaintiff), Respondent.* [17th November, 1880.]

Hindu law—Gosains—Inheritance—Office of Mahant—Marriage—Evidence—Forfeiture—Burden of proof.

Among the Gosains of the Deccan and certain other places marriage does not work a forfeiture of the office of Mahant and the rights and property appendant to it.

Where the plaintiff proved his right of succession to a *math* on the death of its Mahant, the burden of proving that his subsequent marriage worked a forfeiture of his office and his appendant property and rights, lay upon the defendant who impugned the plaintiff's right on account of the marriage.

THESE were appeals from the decision of Rao Bahadur Makundrai Manirai, First Class Subordinate Judge of Ahmedabad, in original suit No. 2384 of 1876.

The plaintiff Surajbharti sued for a declaration of his right that he was the *chela* (disciple) and heir of one Haribharti, deceased, and entitled to the whole moveable and immoveable property left by his Guru. Haribharti was the Mahant of a *math* in Ahmedabad, called Dudhadari, and held an inam village attached to the *math*. He died in 1875, when the plaintiff succeeded to the *math* and the inam village as his *chela* (disciple). The plaintiff subsequently married, and was disturbed in the enjoyment of the property by the defendant Rambharti, who claimed the inheritance on the ground that he was declared Mahant by the Panch of his sect, as the plaintiff, by his marriage, had lost his right to the Mahantship. The plaintiff thereon applied for a certificate of his heirship to the District Judge, who refused to grant it, and referred the plaintiff to a regular suit. He, therefore, instituted the present suit for a declaration of his right as Mahant of Dudhadari and entitled to the estate of the deceased Haribharti.

The defendant Rambharti, *inter alia*, alleged that although the plaintiff was the deceased Haribharti's *chela*, he had lost his [683] right to the estate in consequence of his marriage; that no married Gosain could be a Mahant, according to the usage and custom of his sect; that he was made Mahant by the panch (headmen) of his sect, and, therefore, entitled to the *math* and property. The defendant Ishvarbharti alleged, among other things, that he was the senior *chela* of the deceased, and entitled to the property in dispute, in preference to the plaintiff or the defendant Ishvarbharti; that the plaintiff had lost his right to the estate by his marriage.

The Subordinate Judge found on the evidence that on the death of Haribharti the plaintiff succeeded to the *math* and the other property; that his subsequent marriage did not deprive him of his right to the pro-

* Appeal No. 11 of 1880.

† Appeal No. 12 of 1880.

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perty as successor of his Guru ; that the defendant Ishvarbharti failed to prove himself to be a *chela* (disciple) of Haribharti ; that the defendant Rambharti was not appointed Mahant by the panch, and not entitled to succeed to the inheritance. He accordingly made a decree in favour of the plaintiff.

Against that decision the defendants preferred separate appeals to the High Court.

The appeals were heard together. The principal points in argument were, whether the plaintiff had lost his right to the inheritance by reason of his marriage, and whether on the evidence either of the defendants was entitled to it, to the exclusion of the other and the plaintiff.

Farran (with him *Pandurang Balibhadra*) appeared for the defendant Rambharti in Appeal No. 11.

Telang (with him *Shantaram Narayan*) appeared for the defendant Ishvarbharti in Appeal No. 12.

Jardine (with him *Bhaishankar*) appeared for the plaintiff in both the appeals.

The following is the judgment of the Court:—

JUDGMENT.

WESTROPP, C.J.—We agree with the Subordinate Judge in thinking that Ishvarbharti has failed to show that he was a *chela* of Haribharti, the deceased Mathdar or Mahant of Dudhadari. The defendant Rambharti does not deny that the plaintiff was [684] *chela* of Haribharti and as such succeeded Haribharti as Mahant of the *math*, but contends that the marriage of the plaintiff worked a forfeiture of his Mahantship and of the rights and property appendant to that office. In paragraph 6 of Appendix B, the Essay of Mr. Warden on Gosains, annexed to Mr. Steele's work on Caste, p. 434 (2nd ed.), it is, in substance, said that Gosains wandered so far from the road (asceticism, celibacy, chastity) they professed to follow as to their matrimonial connexions, and became in every respect as worldly as their neighbours, but are not acknowledged as Gosains except in the Deccan. The evidence in this case, however, shows that the exception made by the author must be extended to other places than the Deccan also. It has been proved that the Bharti sect of Gosains, in the locality whence this appeal comes, very generally marry; and although it has not been proved that there has been within the memory of the witnesses in this case any instance of a Mahant of the *math* of Dudhadari being married, yet it has been established that the Mahants of several adjacent *maths* are so, and there is one, if not two instances (see Exs. 133 and 113) of a married member of the Bharti sect being a Mahant of a *math*.

The plaintiff having established his succession as Mahant of Dudhadari on the death of Haribharti, we think that the burden of proving that the plaintiff's subsequent marriage worked a forfeiture of his office, and its appendant property and rights, lay upon the defendants. This, we think, they have completely failed to do, and we, therefore, affirm, with costs, the decree of the First Class Subordinate Judge.

Decree affirmed.