APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kemball.

1882
March 13.

MANCHARAM (ORIGINAL PLAINTIFF), APPELLANT, *v.* PRANSHANKAR (ORIGINAL DEFENDANT), RESPONDENT.*

Hindu law—Hereditary secular and religious office, alienation of, when valid—Partibility of such offices—Partition—Mode of partition of such offices.

Hereditary offices, whether religious or secular, are no doubt treated by the Hindu text writers as naturally indivisible; but modern custom, whether or not it be strictly in accordance with ancient law, has sanctioned such partition as can be had of such property by means of a performance of the duties of the office and the enjoyment of the emoluments by the different co-parceners in rotation.

There is no reason why the alienation of a religious office to a person standing in the line of succession, and free from objections relating to the capacity of a particular individual to perform the worship of an idol or do any other necessary functions connected with it, should not be upheld. The alienation, therefore, by a divided member of a Hindu family to his sister's son, of the right of worshipping a goddess and receiving a share of the offerings was upheld.

THIS was an appeal from the decision of S. Hammick, Assistant Judge of Surat, confirming the decree of the Subordinate Judge of Bulsar.

The facts of the case were as follows :—

There was a temple of the goddess Ashapuri in the village of Vejalpor. It was founded by two brothers, Bhulabat and Bhagvanbhat. Bhagvanbhat died, leaving behind him two sons, the defendant Mancharam and Devshankar. Devshankar died, leaving him surviving a son named Ganpatram. Ganpatram died on the 9th of February, 1873, leaving behind him a widow. On the 12th of August, 1875, Ganpatram made a will, bequeathing all his estate, including the right of worshipping the goddess and receiving his share of the offerings, to his nephew, the plaintiff Pranshankar (a son of Ganpatram's sister). Pranshankar obtained a probate of the will from the District Court of Surat.

The plaintiff sued for a declaration of his right to worship the goddess and receive his share of the offerings, and for a perpetual injunction restraining the defendant from interfering with the exercise of his right. The plaintiff further sought

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to recover Rs. 120 on account of the offerings received wrongfully by the defendant (his mother's uncle).

The defendant, *inter alia*, contended that the right claimed was not partible, and could not be alienated to any person not in the male line of succession of the founders; that the family was united; and that, in fact, Ganpatram never made the will set up by the plaintiff; and that, even if he did, it was invalid.

Both the Courts below found on these points in favour of the plaintiff, and gave him a decree. The defendant appealed to the High Court.

Shantaram Narayan for the appellant.

Nanabhai Haridas, Government Pleader, for the respondent.

MELVILL, J.—The first objection taken to the decree appealed against is that a religious office and its endowment, or the fees connected with it, are impartible; that they cannot lose their character of joint property; and that, consequently, in accordance with the rule in force in this Presidency, viz., that a co-parcener cannot give or devise by will his share in the undivided estate, the bequest by Ganpatram to the plaintiff must be treated as null and void.

No doubt, hereditary offices, whether religious, or secular, are treated by the Hindu text writers as naturally indivisible; but modern custom, whether or not it be strictly in accordance with ancient law, has sanctioned such partition as can be had of such property, by means of a performance of the duties of the office, and the enjoyment of the emoluments, by the different co-parceners in rotation. One of the most recent cases on the subject is that of *Mitta Kunth Audhicarry* v. *Neerunjun Audhicarry and others* (1), in which it was held that the reasons for which one of several joint owners is entitled to a partition of the joint property apply also to the case of a joint right of performing the worship of an idol; and that the joint owners of such a right are entitled to a decree for the performance of the worship by turns.

The next objection to the Assistant Judge's decree is that a religious office, and particularly one which involves the worship

(1) 14 Beng. L. R. 166.

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of an idol, is by its nature inalienable. Among the cases cited upon this point were several in which it has been held that the right of a *sebait*, to perform the worship of an idol, cannot be sold in execution of a decree. The reasons on which these decisions were based, must commend themselves to every mind as necessarily consonant with Hindu law and sentiment. In the cases of *Juggurnath Roy Chowdhry* v. *Kishen Pershad Surmah alias Rajah Baboo and another* (1), and *Kali Charan Gir Gossain* v. *Bangshi Mohan Das Baboo* (2), it was said, that, if such property were subject to attachment and sale, the purchaser might be a Mahomedan or a Christian, who would be both unwilling and incompetent to perform the service of the idol; and in the case of *Dubo Misser* v. *Srinibas Misser* (3), Mr. Justice Mitter further observed that he might be unfit to prepare food for the idol. The same reasons would militate against an unrestricted right of alienation by private sale or gift. Such an alienation to an improper person would defeat the object of the endowment, and in some cases, as in the Privy Council case *Rajah Vurmah Valia* v. *Ravi Vurmah Kunhi Kutty* (4), it might be inconsistent with the presumed intention of the founder of the endowment. It may be admitted, also, that it would not be desirable to lay down any such rule regarding such alienations as would involve the Courts in nice questions of caste distinctions, bearing upon the capacity of a particular individual to perform the worship of, and prepare food for, a Hindu idol. But there may be alienations which are free from any of these objections; and in such cases there would appear to be no reason why any restriction should be placed upon the exercise of the ordinary rights of property. Assuming that, for the reasons which we have stated, the alienation of a priestly office to a stranger would be invalid, it does not follow that an alienation to a member of the founder's family, standing in the line of succession, would be open to objection. In *Sitarambhat* v. *Sitaram Ganesh* (5), the sale of an hereditary priestly office was upheld, where the purchasers were the next in succession to the office. In that case it was said: "It is not

(1) 7 Calc. W. R. 266.
(2) 6 Beng. L. R. 727.
(3) 5 Beng. L. R. 617.
(4) I. L. R. 1 Mad. 235.
(5) 6 Bom. H. C. Rep. 250, A. C. J.

necessary to decide the question as to whether such offices can be sold to strangers. In this case the purchasers were grand-children, 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." We do not think that there is much difference, in principle, between the case just cited and that now before us, though the endowment in the present case is of too recent a foundation to render any evidence of usage possible. In both cases the purchasers are persons standing in the line of succession, and claiming through females : and though in the present case the purchaser is not the next heir, but only a possible heir—for he is Ganpatram's sisters' son, and, therefore, a *bandhu*, if not a *sapinda* : *Srinivasa Ayyangar* v. *Rengasami Ayyangar* (1)—yet the next heir, Ganpatram's widow, has expressed her acquiescence in the bequest to the plaintiff. If the alienation of a priestly office is open to objection only on the grounds that it would be contrary to the founder's intention that the office should pass out of his family, and that it would be incompatible with the due performance of the duties of the office that it should be held by a person of a different religion or caste, then, (in the absence of any restriction to a particular class of heirs, imposed either by the founder or by usage,) there would appear to be no reason why an alienation should not be upheld, which is made in favour of any person standing in the line of succession, and not disqualified by any personal unfitness.

For these reasons we confirm the decrees of the Courts below with costs.

Decrees confirmed.

(1) I. L. R. 2 Mad., 304.