

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and
Mr. Justice Nánabhái Haridás.

LAKSHMANDA'S PARASHRAM (ORIGINAL DEFENDANT), APPELLANT, v.
GANPATRA'V KRISHNA (ORIGINAL PLAINTIFF), RESPONDENT.*

1884
March 13.

Practice--Part. as to charity suits--Advocate General--Dedication of lands for charitable use--Illegal sale--Suit to set aside sale and recover trust property--Code of Civil Procedure, XIV of 1882, Sec. 539.

The plaintiff's grandfather dedicated certain lands in a village, of which he was the *jághirdár*, to the expenses of celebrating an annual fair in honour of a saint, and of lighting a lamp at his shrine. He reserved the paramount authority over, and management of the said lands to his family, of which the plaintiff was the representative. The plaintiff alleged that the lands were sold illegally to the defendant at an auction in execution of a decree obtained against one Námsháh, who with his father and grandfather had been employed to worship at the shrine. The plaintiff accordingly sought to have the sale set aside, and to be put into possession of the lands.

Held that the object of the suit being merely to recover the trust property from outsiders, the suit did not fall within section 539 of the Code of Civil Procedure (XIV of 1882), and could be proceeded with without making the Advocate General a party to it.

THIS was a second appeal from the decision of M. H. Scott, Judge of Ahmednagar, amending the decree of Ráv Sáheb Vithal V. Vágle, Subordinate Judge (Second Class) of Shevgaon.

The plaintiff alleged that he was the *jághirdár* of the village of Susare; that certain lands situated there were dedicated, fifty years ago, by his grandfather towards the expenses (to be made under the orders of the *jághirdár*) of celebrating an '*urus*', or annual fair, in honour of a Mahomedan saint called Mallan-sháh, whose tomb was erected on the said land; that one Murád Alisháh was appointed by the dedicator to worship at the shrine and to look after and collect the produce of the trees planted on the lands; that the said Murád Alisháh was provided with a house to reside in on the premises; that at the survey of the village the *jághirdár* caused the lands to be entered in the name of Murád Alisháh, who paid the assessment from the produce, and applied the rest to the expenses of the celebration of the fair under the orders of the *jághirdár*; that this state of things continued down to 30th October, 1871, Murád Alisháh

* Second Appeal, No. 637 of 1882.

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having been succeeded by his disciple Bálásháh, and Bálásháh by his disciple Námsháh, the lands also having successively been transferred from Murád Alisháh to Bálásháh and from Bálásháh to Námsháh; that Namsháh contracted private debts, and was sued by his creditors, who in execution of their decree got these lands sold at an auction; and that the defendant became the purchaser and was put into possession of the lands and premises on the 31st of October, 1871. The plaintiff sued to have the sale set aside, and to recover possession of the trust property, subject to the conditions upon which the dedication was made.

The defendant denied the proprietary right of the plaintiff, and asserted that his judgment-debtor Námsháh and his mother Tarábái were the owners, and that the plaintiff could not maintain the suit in his own name.

The Subordinate Judge held that the suit could be maintained, that the dedication took place as alleged by the plaintiff, and that the plaintiff was entitled to recover possession as prayed for.

The District Judge was of opinion that the plaintiff was entitled to sue in his own name, not as a trustee, but as one interested in maintaining the pious uses to which the lands were dedicated. He considered the suit analogous to that of *Rádhábái v. Ohimnáji*⁽¹⁾ and not falling within the scope of section 539 of the Code of Civil Procedure (XIV of 1882). He held "that this grant to Murád Alisháh was for a specified purpose, and that so long as that purpose was fulfilled, the holder of the property could deal with it, appropriating to himself a maintenance, and liable to be checked only by those interested in the object of the endowment. Námsháh had then a life-interest in the property subject to the pious uses for which it was dedicated; and this life-interest so burdened is what the appellant purchased at the decree sale. I find that the lower Court was wrong in awarding possession to the respondent, and amend its decree by declaring that the respondent is entitled to his life-interest in the property in the suit of Námsháh, but must duly provide for the 'urus' and other matters connected with the tomb and memory of Mallansháh. Should any dis-

(1) I. L. R., 3 Bom., 27.

putes arise as to the duties to be performed, or the amount to be spent in connection with them, it shall be determined by a *panch* to be chosen by appellant or respondent or their representatives."

The defendant appealed to the High Court.

Shántáram Náráyan for the appellant.—The evidence in the case showed that the lands in dispute were given in gift to Murád Alisháh. The suit in its present form is barred by section 539 of the Code of Civil Procedure (XIV of 1882), the Advocate General not having been made a party.

Ghanashám Nilkanth Nádkarni for the respondent.—The original deed of dedication has been lost, but there is ample evidence to show that the dedication was as the plaintiff alleges. The suit is not to obtain a decree for any of the purposes mentioned in section 539, which does not apply to this case.

The judgment of the Court was delivered by

SARGENT, C. J.—We think the District Judge was right in holding that the plaintiff could bring this suit without making the Advocate General a party to it. The plaintiff's case is that the lands in question were dedicated by his grandfather Ganpatráv to the expenses of celebrating the *urus* in honour of a certain *pir*, and lighting the lamp at his shrine; that the paramount authority over, and management of, the said lands so dedicated, are vested in his family, of which he is now the representative; that the lands have been illegally sold to defendant at an auction in execution of a decree obtained against one Námsháh, who with his father and grandfather had been employed to worship at the shrine, and he seeks to have the said sale set aside, and to be put into possession of the lands. The object of the plaint is, therefore, merely to recover the trust property from outsiders, and does not, in our opinion, fall within section 539 of the Civil Procedure Code.

Decree reversed.

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