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Before Mr. Justice Bayley.

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GOSWAMI SHRI GIRDHARJI MAHARAJ SHRI GOVINDRAJI MAHARAJ  
TIKAIT (*Plaintiff*) v. MADHOWDAS PREMJI and GOSWAMI SHRI  
GOVARDHANLALJI GIRDHARJI MAHARAJ (*Defendants*)\*  
[28th and 29th March, 4th April and 12th June, 1893.]

*Idol—Property bequeathed to an idol—Owner of shrine—Act of State—Deposition of owner from his position by an act of State of foreign power—Effect of deposition on right to property in Bombay—Trustee—Will—Power of appointment.*

Under a power given to her by the will of her husband, one Custur had the right to bequeath a certain house situate in Bombay. She died in 1873, and by her will she bequeathed the house in question to trustees, their heirs, &c., in trust to pay and apply the rents thereof to the shrine or *gadi* of Shri Nathji for ever, and she gave the trustees and their heirs, &c., the right to reside for life in the first [601] storey of the said house free of rent. The shrine of Shri Nathji is situate at Nathdwara in the territory of H. H. the Maharana of Oodeypore. It is held in great veneration by the Vaishnava sect of Hindus and is extremely wealthy. The plaintiff held the position of Maharaja of Nathdwara (Tikait Maharaja) up to the year 1876, and as such sat on the *gadi* and managed the property of the said shrine. In that year, however, he was deposed from his position by the principal authorities of Oodeypore and deported from Nathdwara, and his son the second defendant was raised to the *gadi* in his place. Since that time the plaintiff had never been permitted to go back, nor had he had anything to do with the shrine. The second defendant (his son) had since his elevation performed the worship and managed the property belonging to the shrine. The plaintiff, however, claimed in this suit to be still the legal owner and representative of the shrine, and as such entitled to the house in question and to the rents and profits thereof since the death of Custur. The first defendant was one of the trustees named in the will of Custur to whom the house was bequeathed in trust. The plaintiff in his plaint also contended that the clause in Custur's will giving the said trustees a right to reside in the house free of rent was *ultra vires* of the power of appointment given to her by the will of her husband.

The defendants denied that since his deposition the plaintiff was the legal owner and representative of the shrine of Shri Nathji. They contended that having been deposed and deported from Nathdwara, he could no longer apply the rents to the support of the shrine, and that if the house were given to him, the trusts of Custur's will would be defeated. They contended that the second defendant in virtue of his position was entitled to receive the rents, and that this suit should be dismissed.

*Held*, that the plaintiff was entitled to the said house. The house was validly bequeathed to the *gadi*. At the date of the bequest the plaintiff was *de facto* as well as *de jure* in possession of the shrine and of its property. His deposition from the *gadi* was an act of a foreign State and did not affect his right to property in Bombay. If he was regarded as owner of that property he had not lost his right as such to the said property in consequence of his deposition, and if he was merely a trustee he had not been removed from his office by any competent tribunal.

*Held*, also, that under the will of Custur the first defendant was entitled to reside rent free in the first storey of the house in question during his life-time.

In this suit the plaintiff alleged that he was the legal owner and representative of the *gadi* or shrine of Shri Nathji at Nathdwara in the territory of H. H. the Maharana of Oodeypore—a shrine held in great veneration by the Vaishnava sect of Hindus—and as such he claimed a house situate in Bombay, which had been bequeathed in 1873 to the

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*gadi*. On the other hand, the defendants (the second defendant being the plaintiff's son) denied that the plaintiff was now the legal owner or representative of the shrine. They stated that he had been deposed from that office in 1876 by the political authorities of Oodeypore and had been [602] 'deported from Nathdwara and was in consequence no longer competent to discharge the duties of the office: that on his deposition his son (the second defendant) had been raised to the *gadi* in his place and had ever since managed the property of the shrine: that he could not now apply the rent to the *gadi*, and that, if the house were given to the plaintiff, the trusts created by the above bequest would be wholly defeated. The following were the facts of the case.

One Bhanji Bhimji, of Bombay, died in 1864. By his will he devised a certain house situate in Narayan Dhooroo Street to two wives and the survivor of them for life and after the death of the survivor to such person or persons as they or the survivor of them should appoint, and in default of such appointment he directed that the house should be held by the heirs, executors or administrators of the survivor in trust to pay and apply the rents thereof to the *gadi* or throne of Shri Nathji for ever. The words of the will were as follows:—

"I give, devise and bequeath, the dwelling-house in which I now reside situate at the corner of Narayan Dhooroo Street, otherwise called Barbhoy Moholla, on the Mandvi Road, assessed under No. 31, unto my said wives Vajibai and Custur otherwise Navibai and to the survivor of them for and during their respective lives, and direct that my said wives and the survivor of them may reside in the said house and receive the rents and profits thereof and apply the same to their own use and benefit; and direct that from and after the decease of the survivor of them, my said wives, the said dwelling-house and premises shall go to such person or persons as they, my said wives, shall by writing under their own hands jointly appoint or as the survivor of them shall by deed or will appoint, and in default of any such appointment I direct that the said house and premises shall be held by the heirs, executors or administrators of the survivor of them, my said wives, upon and subject to the trust aforesaid (1); and I further will and declare that the person or persons in whom the said house and premises may, on the death of the survivor of them, my said wives, become vested, shall stand possessed thereof in trust to collect and get in the monthly rent, issues and profits thereof, and to pay and apply the same (after payment of all expenses of repairing the said premises and paying all ground-rent, assessment and other bills payable in respect thereof), to the *gadi* or throne of Shri Nathji for ever, and I hereby declare that the said house and premises shall not at any time hereafter be sold, mortgaged, charged or otherwise encumbered, and I declare that if the [603] said house and premises shall be sold, mortgaged, or charged, such sale, mortgage or charge shall be null and void."

Of the two wives above mentioned, Custur was the survivor. She died on the 31st May, 1873, leaving a will dated 4th January, 1871, which was duly proved by two of the executors named therein, *viz.*, the first defendant Madhoydas Premji and one Purbhudas Tulsidas. By her will she left the said house to trustees in trust to collect the rents and to pay the same to the throne or *gadi* of Shri Nathji for ever and she gave the

(1) The word "aforesaid" was probably a mistake, the testator meaning "hereinafter mentioned." See *infra* 17 B. 615.

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trustees and their heirs, &c., the right to reside in the first storey of the said house free of rent. The will ran as follows:—

"I give, devise and bequeath the dwelling-house in which I reside, situate at the corner of Narayan Dhooroo Street, otherwise called Barbhoy Moholla, on the Mandvi Road, assessed under No. 31, unto the said Sha Tulsidas Premji, Sha Madhowdas Premji and Sha Purbhudas Tulsidas, their heirs and assigns, upon trust to let the same and to collect and receive the monthly rent, issues and profits thereof, and to pay the same (after payment of all taxes and expenses in repairing or rebuilding the said premises) to the throne or *gadi* of Shri Nathji for ever; but I direct that it shall be lawful for my said trustees and trustee or survivors or survivor of them, or their or his heirs, legal personal representatives or assigns during their lives, to reside in the first storey of the said house and premises hereinafter lastly given and devised free of rent. I hereby declare that the said Sha Tulsidas Premji, Sha Madhowdas Premji and Sha Purbhudas Tulsidas or survivors or the survivor of them or the heirs, executors or administrators of such survivor or other the trustees or trustee for the time being of this my will shall not sell, mortgage, charge or in any wise incumber the said hereditaments and premises hereinbefore given and devised or intended so to be or any part thereof, and any sale or mortgage thereof or any part thereof shall be absolutely null and void."

Purbhudas Tulsidas, the second executor of the said will, subsequently died. The first defendant (also an executor) was at the date of this suit, and had been since Custur's death, in possession of the house and in receipt of the rents and profits thereof.

The plaintiff in his plaint alleged that he was the legal owner and representative of the *gadi* of Shri Nathji, and, as such, he claimed to be entitled under Custur's will to the house in question and to the rents or profits thereof since her death. He further contended that the direction contained in her will, to the effect that it should be lawful for her trustees or trustee or the [604] survivors or survivor of them, their or his heirs, legal personal representatives or assigns, during their lives to reside in the first storey of the said house free of rent, was *ultra vires* of the said Custur. He prayed for a declaration that as owner and representative of the shrine and *gadi* of Shri Nathji he was absolutely entitled to the said dwelling-house; that it might be made over to him by the first defendant, and that an account might be taken of the rents and profits of the said house since the death of Custur, and that such rents and profits might be paid over to him by the first defendant.

The first defendant filed a written statement. He did not admit that the plaintiff was the present legal owner and representative of the *gadi* of Shri Nathji, and alleged as follows:—

3. "The defendant says that there have been disputes and differences for years between the plaintiff and his son as to who is entitled to sit on the *gadi* and manage the property of Shri Nathji. The plaintiff's said son has now for many years sat on the *gadi* of Shri Nathji at Nathdwara and is in charge of, and manages the property of the shrine. The defendant submits that the plaintiff's said son ought to have been made a party to the present suit.

4. "The defendant says that under the wills in the plaint referred to he has a right to reside in the house in the plaint referred to in the manner in which he is residing there, and that the plaintiff is not entitled to eject him therefrom.

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5. "The defendant says that the net rents are, under the provision of the said wills, to be paid to the shrine of *gadi* of Shri Nathji to be used for defraying the expenses of worship, and not to be appropriated for the personal benefit of any manager of the shrine or other person."

The plaintiff's son was subsequently made the second defendant to this suit.

He filed a written statement in which he said that he and not the plaintiff was the owner and representative of the *gadi* of Shri Nathji. The following clauses of his written statement set forth his case :—

2. "This defendant says that, independently of the question of ownership of the said *gadi* of Shri Nathji, the plaintiff is not entitled to the relief claimed in this suit. Ever since the year 1876, when the plaintiff was deposed from his position of Maharaja of Nathdwara by the authorities at Meywar and by the British Government, he has had nothing to do with the said *gadi* of Shri Nathji or with Shri Nathji, and he has not been since that date nor is he now or ever can be in a position to receive or to expend the rents of the premises in the plaint mentioned as the representative of the *gadi* of Shri Nathji.

[605] 3. "This defendant since the date aforesaid has been the *de facto* representative of the said *gadi* of Shri Nathji and in possession thereof, and this defendant says that he has also been since the date aforesaid the *de jure* representative of such *gadi* and that the rents of the premises in the plaint mentioned ought to be paid to this defendant for the use of the said *gadi* of Shri Nathji.

4. "This defendant says that, if the premises in the plaint mentioned are made over to the plaintiff, the same will be wholly lost to the *gadi* of Shri Nathji, and the trusts created by the will of the said Bhanji Bhimji in favour of the said *gadi* will be wholly defeated."

At the hearing it was contended that the house belonged to the *gadi* and that the plaintiff was not entitled to sue. The following issues were raised :—

(1) Whether the plaintiff is the present owner and representative of the *gadi* of Shri Nathji?

(2) If not, whether he is entitled to the house claimed in the plaint and the rents and profits thereof?

(3) Whether, having regard to the fact that the plaintiff has been deposed from his position of holder of the *gadi* and has been deported from Nathdwara, as in the written statement of the second defendant alleged, he is entitled to the possession of the house claimed and to the rents and profits thereof?

(4) Whether the house has been validly bequeathed to the *gadi* of Shri Nathji?

(5) Whether, having regard to the circumstances in the written statement of the second defendant alleged, the plaintiff has any claim to the house or to the management thereof?

(6) Whether under the terms of the wills, in the plaint referred to, the first defendant has any legal right to reside in a portion of the house as he is now doing?

(7) Whether, if he has not, the plaintiff has any right to eject him?

(8) (Raised by plaintiff). Whether issue No. 1 is not *res judicata*?

A witness (Chatturbhuj Morarji) was called for the defence, who stated that he belonged to the Vaishnava community and had been twice to Nathdwara. He said:—

"I went there after plaintiff was deported. . . I went to pay my homage to the idol and to see the Maharaja, the second defendant. The idol is still there. The second defendant performs the worship. He has done so since the plaintiff was deported. [606] He manages all the affairs of the idol and the property. The treasury of the God is in charge of the second defendant. The *gadi* of Shri Nathji is at Nathdwara. Nothing is sent now by plaintiff for the worship of the idol. He has not contributed anything towards the worship since he was deported. He does not take any part in the worship or the management. He does not go there at all, and has no agents there. It would not be possible for him to carry on the worship or manage the affairs of the idol unless he went there. I have seen plaintiff in Bombay, since he was deported, frequently. I went to see him as Maharaja. He is not the Tikait Maharaja. He who is on the *gadi* is the Tikait Maharaja. He who performs the worship of Shri Nathji is called the Tikait. All the Maharajas—there are 50 or 52 in the world—are called Acharias. It was an unjust act removing him from Nathdwara. We still hold him in veneration. But the Tikait is the only man who performs the worship : . . . I was one of the persons that disapproved of the deportation. I would have been glad if he had been allowed to go back to Nathdwara to manage the *gadi*. Since he has not been allowed to go back, I have recognized his son as the Tikait Maharaja . . . The worship of the idol by the Tikait Maharaja is eight times a day. The Tikait goes to the idol and performs the worship of the idol himself. The idol is fixed in the temple and never removed. The Tikait Maharaja, if well, is bound to worship the idol eight times a day. If unwell, some of his servants worship for him."

*Macpherson, Russell and Sethna*, for plaintiff:—The plaintiff is entitled to the property. He has, no doubt, been deposed from his position of Tikait Maharaja, but that was the act of a foreign state which cannot be recognized by this Court. His title to property within the jurisdiction remains unaffected by the act of a foreign power. That point has been already decided. See *Shriman Goswami v. Goswami Shri Girdharlalji* (1) and *Nanabhai v. Shriman Goswami Girdharaji* (2); *Gossamee Sree Gredhareejee v. Rumanloljee* (3). By these decisions the plaintiff's right to the property is *res judicata*.

We contend that Custur had no power to give a right of residence in this house. The power conferred on her was merely a power of nominating trustees or persons to receive rents, and nothing more. A gift of the rents and profits, to the *gadi* of Shri Nathji for ever is a gift to the person who has a right to the *gadi*, and that person is the plaintiff, although, no doubt, he has been deposed by a foreign State. It is like a gift to the Crown. See Wharton's Law Dictionary, title "Crown." They cited Tagore Law Lectures for 1887, p. 216.

[607] *Lang*, (Acting Advocate General), *Kirkpatrick* and *Inverarity*, for the defendants:—The trustees appointed by Custur's will are trustees to send the rents and profits of the house to the shrine at Nathdwara. The bequest is to the *gadi* of Shri Nathji. That *gadi* is at Nathdwara, where the idol is. The trustees have no authority to send the rents and profits to the plaintiff, who is elsewhere. This is a gift to an idol and not

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to any person—Mayne's Hindu Law, para. 395 (5th Ed.) ; *Rupa Jagshet v. Krishnaji Govind* (1). The plaintiff is not in a position to apply the money in the proper manner, and is therefore not entitled to the rents. He is, in any case, only a trustee for the idol, and since 1876 he has been disqualified by his deposition. In the cases which have been cited, the plaintiff had had possession, but here he has never had possession. It is admitted that the first defendant has been in possession ever since Custur's death. This is a gift to the *gadi*, which the plaintiff does not now represent. As to the will of Custur, she was given a power of appointment which she has properly exercised.

*Cur. adv. vult.*

12th June, 1893. BAYLEY, J.—In this suit, which was brought in the first instance against the defendant Madhowdas Premji, the plaintiff prays for a declaration that he, as the owner and representative of the shrine or *gadi* of Shri Nathji in the territories of the Rana of Oodeypore, is absolutely entitled to a certain dwelling-house situated in Barbhoy Moholla on the Mandvi Road in the native town of Bombay; that the defendant may be directed to convey and make over the same to the plaintiff, and to do and execute all acts, deeds and assurances necessary for completing and effectually vesting the same in the plaintiff; that accounts may be taken of the rents and profits of the said house since the death of one Custur *alias* Navibai, on the 31st May, 1873, and the defendant ordered to pay over the same to the plaintiff after deducting all necessary and proper outgoings, and that the plaintiff's costs of the suit may be provided for. He also prays for such further and other relief as the nature of the case may require.

[608] Madhowdas Premji, by his written statement, denied that the plaintiff was entitled to the relief prayed, or any part thereof. He did not admit that the plaintiff is the present legal owner and representative of the *gadi* of Shri Nathji as alleged. He stated that there had been disputes and differences for years between the plaintiff and his son as to who is entitled to sit on the *gadi* and manage the property of Shri Nathji; that the plaintiff's said son had for many years sat on the *gadi* of Shri Nathji at Nathdwara and was in charge of and managed the property of the shrine, and he submitted that the plaintiff's said son ought to have been made a party to the present suit. The defendant further said that, under the will of Bhanji Bhimji, who died on or about the 22nd September, 1864, and the will of the said Custur *alias* Navibai, in the plaint referred to, he had a right to reside in the house in question, in which he was then residing, and that the plaintiff was not entitled to eject him therefrom. He contended that the net rents, were, under the provisions of the said will, to be paid to the shrine or *gadi* of Shri Nathji to be used for defraying the expenses of worship, and not to be appropriated for the personal benefit of any manager of the shrine or other person, and he submitted that, under the foregoing circumstances, this suit should be dismissed with costs.

Pursuant to a Judge's order, the plaint was, on the 7th April, 1892, amended, and the plaintiff's son was made a defendant. On the 15th July, 1892, he declared at Nathdwara a written statement, which was filed on the 3rd August following. In it he said that he was the owner and representative of the *gadi* of Shri Nathji; that, independently of

the question of the ownership of the said *gadi*, the plaintiff was not entitled to the relief claimed; that ever since the year 1876, when the plaintiff was deposed from his position of Maharaja of Nathdwara by the authorities at Meywar and by the British Government, he had had nothing to do with the said *gadi* of Shri Nathji or with Shri Nathji, and he has not been since that date, nor was he then, nor ever can be, in a position to receive or to expend the rents of the premises as the representative of the *gadi*; that the second defendant since the date aforesaid has been the *de facto* representative of the said *gadi* and in possession thereof, and [609] also the *de jure* representative of such *gadi*, and that the rents of the premises ought to be paid to him (the second defendant) for the use of the said *gadi*. He lastly said that, if the premises were made over to the plaintiff, the same would be wholly lost to the *gadi* of Shri Nathji, and the trusts created by the will of Bhanji Bhimji in favour of the *gadi* would be wholly defeated.

The suit came on for hearing on the 28th March last, Mr. Russell, with others, appearing for the plaintiff, and the Advocate-General, with others, appearing for both the defendants. The following issues were raised on behalf of both defendants (His Lordship stated the issues as above (1) and continued)—

The conflicting claims of the plaintiff and of his son, the second defendant, to property belonging to the shrine and *gadi* of Shri Nathji at Nathdwara, but situate outside the territory of the Rana of Oodeypore, have been considered and decided by the High Court of Bombay in two suits, in which the plaintiff and his son were parties. The first suit (*Shriman Goswami v. Goswami Shri Girधारlalji*) (2) was brought on the original side of this Court by the present plaintiff's son (the present second defendant) against his father, and he alleged in his plaint that he was high-priest of the shrine of Shri Nathji at Nathdwara and was entitled to all the property dedicated to the shrine, and he prayed that he might be declared entitled to all the moneys and moveable property of the firm of Navnitdas Purshotamdas in the town of Bombay, and that the then defendant might be directed to pay the same to him. In para. 5 of the plaint in that case it was stated that up to the year 1876 the then defendant was the high-priest of the shrine and the manager of all its property; that on the 8th May, 1876, the defendant, in consequence of misconduct in his office, was deposed and deported from Nathdwara by order of the Political Agent of Meywar and the Rana of Oodeypore; that the plaintiff, his son, was thereupon placed on the *gadi* as high-priest; that he had taken possession of the shrine and had ever since been recognised by the Vaishnava sect as their high-priest.

[610] On the day the plaint in that suit was presented, *viz.*, on the 22nd April, 1878, a rule *nisi* for an injunction and receiver was obtained. Very numerous and voluminous affidavits were filed on both sides, and the whole history of the shrine, from its foundation in the reign of the Emperor Aurungzebe, was fully set forth. The plaintiff in that suit had ample time to produce all documents relevant to his case, and affidavits in reply were made on his behalf by the prime minister and by several of the members of the Privy Council of the Oodeypore Darbar, and by others, and copies of translations of grants by former Ranas of Oodeypore and of other documents were annexed to some of such affidavits. It was stated in the affidavits that the annual revenue of the shrine from the

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1893 rents of villages, the offerings of the faithful in the various parts of  
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On the 5th December, 1878, cause was shown against the rule before me, and the arguments extended over eight days. Council stated that the suit presented questions which had never previously come before a Court in India. The Court on the 29th April, 1879, gave its decision, and held that the plaintiff, having brought his suit in the High Court to recover property situated in Bombay, must take the law as he found it there, and that whatever might be his rights as to property situated within the territories of Oodeypore, he must, before he could oust the defendant from the possession of property in Bombay by means of the then present suit, show that, according to the principles of law or equity administered in this Court, he had a better title thereto than the defendant: that, if the deposition was to be regarded as an act of State, no case had been cited to show that an act of State could be the groundwork of such an action in an English Court of law or equity: that such deposition could not be looked at as or at all analogous to a foreign judgment: that the parties were not the same there as in the suit then before the Court, such suit being brought by a son against his father, by the then alleged possessor of the *gadi* against the former possessor, who had been forcibly turned out by the Darbar with the sanction of the Political Agent of the Government of India: that there was no Court which had given any decision at Oodeypore: that the [611] Darbar was a party to the suit, if what took place there could be looked on as a suit, and that the decision, if there had been a decision, was wanting in natural justice, as the Darbar had made itself a judge in its own cause: that the documents annexed to the affidavits tended to show that the allegation, that the defendant was deposed in consequence of misconduct in his office, was disproved: that the deposition was not in accordance with the usage of the family, and that he was really deposed and banished for not acknowledging the jurisdiction of the Darbar, which rightly or wrongly he contested, relying in support of such contention upon various grants and *sanads* executed to his predecessors on the *gadi* by previous Ranas of Oodeypore; that the Political Agent suggested to the Darbar (the Rana of Oodeypore being then a minor) that it should depose the defendant, and it did so, and, taking troops necessary for that purpose, and having taken the plaintiff out of his father's *palki* it banished the latter from Oodeypore, and so holding, the Court being of opinion that the plaintiff could not recover if the case went to trial, discharged the rule with costs.

The plaintiff in that suit appealed against the above order on the grounds: (1) that the Judge ought to have held that the plaintiff had made out his claim to a receiver and injunction; (2) that he ought to have held that the plaintiff had made out a *prima facie* title to the property, the subject-matter of the suit; (3) that he ought to have held that there was danger of the property being wasted, expended or removed by the defendant from the jurisdiction of the Court before the hearing of the suit; (4) that the Judge erred both in law and in fact in discharging the rule *nisi*, with costs; that, (5) at all events, the costs of defendant ought to have been made costs in the cause and ought not to have been ordered to be paid by the plaintiff. The appeal came on for hearing on the 2nd August, 1879, before Sir M. Westropp, C. J., and Sir Charles Sargent, when they

confirmed the order of the 29th April, 1879, and dismissed the appeal with costs.

The second suit, in which similar points arose, was brought by the present plaintiff in the Court of the Subordinate Judge at Poona, in respect of certain property belonging to the Oodeypore [612] shrine of Shri Nathji, which was situated at Poona, which the first four defendants in that suit had been employed by the present plaintiff to manage, to receive the rents, and transmit them to him at Nathdwara. After the deposition and banishment of the plaintiff in 1876, they had ceased to pay over the rents of the Poona property to him, and in 1880 he filed the suit against them to recover possession of the property (suit No. 1916 of 1880). The claim was valued at Rs. 10,000. The plaintiff's son, Shri Goverdhanlalji, was made a co-defendant on his own application and denied the plaintiff's right to recover, on the ground that he had been deposed and banished by the Rana of Oodeypore, who had made over the property to him (the fifth defendant). The Subordinate Judge of Poona having, on the 21st January, 1885, made a decree in favour of the plaintiff with costs, the defendants appealed to the High Court. The appeal (No. 27 of 1885) was heard in 1888 by Nanabhoy Haridas and Jardine, JJ., who confirmed the decree and dismissed the appeal with costs—*Nanabhai v. Shriman Goswami Girdharji*(1). The Court of appeal, in delivering its judgment, which was a written one, say (His Lordship read the judgment, page 333, and continued) :

Although the learned Judges who decided that case in the High Court did not refer in their judgment to the previous suit on the original side (*Shriman Goswami v. Goswami Shri Girdharlali* (2),) Mr. M. N. Nanavati, the Subordinate Judge of Poona, stated at the commencement of his judgment that he was greatly influenced by the decision of the Court of first instance in the previous suit, confirmed as it was on appeal.

Now, the deposition of the plaintiff having been based purely upon political and administrative grounds, as was proved by the affidavits and exhibits annexed thereto, filed in *Shriman Goswami v. Goswami Shri Girdharlali* (2), this Court has no power or desire to enquire into the expediency or propriety of such action on the part of the Oodeypore Darbar. I may, however, remark that it appears, from the evidence given in the present suit, that the deposition and banishment of the plaintiff were not regarded with approval by many of the Vaishnavas, who [613] venerated the shrine of Shri Nathji and its occupant. The only witness called on behalf of the defendants at the recent hearing before me was Mr. Chutturbhuj Murarji, a well-known merchant in Bombay, and who belongs to the Vaishnava community. He stated, in cross-examination, that it was an unjust act removing the plaintiff from Nathdwara, and that he and the Vaishnava community still hold him in veneration.

An affidavit had been made by Mr. Chutturbhuj Murarji and others in suit No. 218 of 1878, and on its being shown to him he said that the statements made in such affidavit were correct. The affidavit was put in evidence at the hearing and marked as Ex. F. In paragraph 3 of that affidavit is the following passage:—"And we say that notwithstanding the forcible removal of the said defendant from Nathdwara, which most of the Vaishnavas, as we are informed and verily believe, consider to be most unjust, arbitrary, and unwarranted, they as well as almost all the

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followers of Shri Vullubhacharya, including the Gossains at Bombay, still pay the defendant the same respect and hold him in the same veneration as before his said removal, and, as we believe, still consider and treat him as the acharya or high-priest and entitled to their respect as the representative of Shri Vullubhacharya."

In the present case, it was argued on behalf of the second defendant that the plaintiff was only a trustee, and that, owing to the action of the Oodeypore State, he could no longer carry on the duties of a trustee. The same point was urged in the Poona case, but the High Court disposed of such contention by saying that, if the plaintiff was merely a trustee, he had not yet been removed from his office by any competent tribunal. I may here remark that at the time of the death of the two devisors in the present case, *i.e.*, on the 22nd September, 1864, and 31st May, 1873, the plaintiff was *de facto* as well as *de jure* in possession of the shrine and property of Shri Nathji, as he was not deposed and deported until the 8th May, 1876. The learned Advocate General suggested that the Poona case differed from the present one, as there the plaintiff had been in possession of the Poona property before his deposition and was in possession by his managers, the first four defendants in that suit. That no [614] doubt was so, but such fact formed no ground of the Court's decision, which was that the plaintiff, if regarded as the owner of the property at Poona, had not, in law, lost his right as such in consequence of the act of the Rana of Oodeypore, and that, if he was merely a trustee, he had not been removed from his office by any competent tribunal.

The main point raised in the present case in the written statements of the two defendants, *viz.*, that in regard to property of the shrine situate in the Presidency of Bombay the plaintiff's rights as Tikait Maharaja of the *gadi* of Shri Nathji had since his deposition in May, 1876, been transferred to and vested in his son, was directly and substantially in issue in the two former suits between the plaintiff and his son, and was heard and finally decided by the High Court in each of them. I may here mention that the records of this Court show that after the decision of the Court of appeal on the second August, 1879 (1), *viz.*, on the 20th November, 1879, Mr. Starling, counsel for the then plaintiff, moved before the late Mr. Justice Green to withdraw the suit with liberty to the plaintiff to bring a fresh suit for the same matter; and on hearing Mr. Latham, counsel for the defendant, who opposed the same, the Court ordered that the plaintiff be, and he was thereby, permitted to withdraw from the suit, and it was further ordered that the plaintiff do pay to the defendant all his costs of the suit so far as the same had not been already ordered to be paid. No permission was given, under s. 373 of the Civil Procedure Code then in force (Act X of 1877), to bring a fresh suit for the same subject-matter, and consequently he was by that section precluded from bringing a fresh suit for the same matter.

I will next consider the point raised by the fourth issue whether the said house has been validly bequeathed to the *gadi* of Shri Nathji. The will of Bhanji Bhimji, which was in the English language, executed on the 15th May, 1858, more than six years before his death and attested by the late Mr. C. E. Stanger Leathes, a solicitor of the Supreme Court, and by his clerk, and interpreted by the late Narayan Dinnanathji, one of the principal interpreters of that Court, after (*inter alia*) directing that his

(1) See 17 B. 620.

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funeral ceremonies should be performed by Sha. Naratam Parmanund, [615] the son of his cousin, bequeathed his dwelling-house, the one in dispute, to his two wives Vajibai and Custur, *alias* Navibai, and to the survivor of them during their respective lives, with liberty to reside in it, receive the rents and profits thereof, and apply the same to their own use and benefit. He then says: "And I direct that from and after the decease of the survivor of them, my said wives, the said dwelling-house and premises shall go to such person or persons as they, my said wives, shall by writing under their hands jointly appoint, or as the survivor of them shall by deed or will appoint. And in default of any such appointment I direct that the said house and premises shall be held by the heirs' executors, or administrators of the survivor of them, my said wives, upon and subject to the trusts aforesaid." The word "aforesaid" would seem to be a mistake for "hereinafter mentioned." The word "aforesaid" has, so far as I can discover, little, if any meaning. Then follows a provision that after the death of the survivor of his wives, the rents and profits of the house are to be paid and applied (after payment of all expenses of repairing and the ground rent, assessment, and other bills in respect thereof) to the *gadi* (or throne) of Shri Nathji for ever.

The widows do not appear to have made any joint appointment, but the survivor Custur, *alias* Navibai, by her will, dated the 4th January, 1871, which was also in English, and was attested by Mr. Leslie Crawford, then a partner in the firm of Messrs. Leathes and Crawford, and their clerk, and duly interpreted, disposed of the house in dispute in the following words:—"I give, devise, and bequeath the dwelling-house in which I now reside (describing it) unto the said Sha. Tulsidas Premji, Sha. Madhowdas Premji, and Sha. Purbhudas Tulsidas, their heirs and assigns upon trust to let the same and collect and receive the monthly rents, issues and profits thereof, and to pay the same (after payment of all taxes and expenses in repairing or rebuilding the said premises) to the throne or *gadi* of Shri Nathji for ever, but I direct that it shall be lawful for my said trustees and trustee or the survivors or survivor of them or their or his heirs, legal personal representatives or assigns during their lives to reside in the first storey of the said house and premises hereinbefore lastly given and [616] devised free of rent." She then declares that the above-named persons are not to sell, mortgage, charge, or in anywise incumber the said hereditaments and premises. The will of Bhanji Bhimji gives his two widows power to give the dwelling-house and premises to such person or persons as they should by writing under their hands jointly appoint, or as the survivor of them should by deed or will appoint. What Custur, the survivor of the two widows, did by her will was, in my opinion, in conformity with the power given her by her husband's will, and I, therefore, think that by the joint operation of those two wills the house, subject to the right of the three trustees to reside in the first storey, was validly bequeathed to the *gadi* of Shri Nathji. It was not denied that a devise of the income of an estate passes the fee—*Mannox v. Greener* (1). Such rule has been adopted in the Indian Succession Act (X of 1865), s. 159, illustration (c). "A bequeaths to B the rents of his lands at X. B is entitled to the lands."

Next as to right of the defendant Madhowdas Premji to reside in the house. It is suggested in paragraph 7 of the plaint that the direction in Custur's will, that it should be lawful for her three trustees or the

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survivor of them or their or his heirs, legal personal representatives or assigns during their lives to reside in the first storey of the house and premises free of rent, was *ultra vires* of the said Custur. As, however, in the events which happened, she had power under her husband's will to appoint by deed or will to any person or persons she thought fit, I think that the right to reside in the house is good during the lifetime of the three named persons and the survivor of them, and as Madhowdas Premji, the first defendant, is one of those three named persons, I think that he is entitled to reside during his life in the first storey of the house and premises rent free. I collect that the two other trustees are dead.

The operation and effect of a power of appointment in a Hindu will was considered in a recent case on the original side of this Court which came before the Court of appeal (*Javerbai v. Kablibai* (1)). There was a bequest to such person or persons as [617] the testator's brother Jamnadas should by deed or writing appoint. The learned Judge, who tried the suit, considered that it was impossible to find a place for power of appointment in the Hindu system of law (see p. 497). Sir Charles Sargent, C.J., in delivering the judgment of the Appeal Court said (p. 497): "But it remains to consider the more difficult question as to the validity and effect of such a devise, supposing the devise had been (as in the event it has become) to the ladies and the survivor of them, and after the death of the survivor of them to such person as Jamnadas should by deed or writing appoint. Such a devise has never, we believe, come under the consideration of any of the High Courts or of their Lordships of the Privy Council." Then after pointing out that the Hindu law recognizes the existence of "powers" over definite objects, as distinct from the ownership in them, such as powers of management, or *vahivat*, and the all-important power given to a widow to adopt, he proceeds: "There are also other powers such as those which experience shows are frequently found in Hindu wills. Can it then be said that there is any general principle of Hindu law which forbids a testamentary power to appoint the person to succeed in a certain event being recognized and effect being given to it according to its terms? Such powers are undoubtedly of great convenience in practice, a consideration which it is to be remarked distinctly weighed with the Privy Council in *Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick* (2). After the best consideration we have been able to give to the question, we have arrived at the conclusion that there is no clear principle of Hindu law which forbids our construing such a bequest as the one under consideration according to its plain and literal terms, subject, however—and this is of importance—to the same restrictions as the Hindu testamentary law imposes on the testator himself, *viz.*, that the appointment should be made during the life of the tenant for life, so that the appointee may be ascertained when the event arises on which he is to take, and also that he should be a person who was alive at the death of the testator."

The three trustees of Custur's will, who are allowed by that will to reside in the first storey of the house in dispute during [618] their lives, are described in that will—Tulsidas Premji and Madhowdas Premji (the first defendant) as her brothers and Purbhudas Premji is described as her nephew. It was not suggested that they were not alive at the death of Bhanji Bhimji in September, 1861. I am, therefore, of opinion that the

(1) 16 B. 492.

(2) 9 M.I.A. 123 (135).

plaintiff is entitled to possession of the house and premises in dispute, whether as owner or as trustee it is unnecessary to decide, subject to the right of the first defendant to reside in the first storey during his life.

Upon the issues raised I record the following findings :—On issue 1, I find that the plaintiff is the present owner and representative of the *gadi* of Nathji so far as regards the property claimed in this suit. On issue 2—That, subject to the point decided on the sixth issue, the plaintiff is entitled to the house claimed and the rents and profits thereof. On issue 3—That notwithstanding the fact that the plaintiff has been deposed from his position of holder of the *gadi*, and has been deported from Nathdwara, as in the written statement of the second defendant alleged, he is entitled to possession of the house claimed and to the rents and profits thereof, subject to the point decided on the sixth issue. On issue 4—That the said house has been validly bequeathed to the *gadi* of Shri Nathji. On issue 5—That, having regard to the circumstances in the written statement of the second defendant alleged, the plaintiff has a valid claim to the said house, or to the management thereof, subject to the right of the first defendant to reside in the first storey during his life. On issue 6—That under the terms of the wills in the plaint referred to, the first defendant has a legal right to reside during his life in the first storey only in the said house, free of rent, but not in any other part thereof. On issue 7—That the plaintiff has a right to eject him from all portions of the said house other than the first storey. On issue 8—That issue No. 1 is *res judicata* so far as regards property of the *gadi* situate within the Presidency of Bombay. And I pass a decree for the plaintiff.

Declare that the plaintiff as the owner and representative of the shrine or *gadi* of Shri Nathji is entitled to the possession of the house claimed in the plaint, subject to the right of [619] Madhowdas Premji, the first defendant, to reside in the first storey thereof during his life, rent free. Order that the defendants do convey and make over to the plaintiff the said dwelling-house, other than the first storey thereof, and do and execute all acts, deeds, and assurances necessary for completely and effectually vesting the said house and premises in the plaintiff and also hand over all title-deeds, documents, and papers in their or either of their possession, power or control relating to the said dwelling-house, such deeds and assurances in the case of dispute to be settled by the sitting Judge in Chambers. Order that it be referred to the Commissioner of this Court to take an account of the rents and profits of the said house, other than the rents and profits of the first storey thereof, from the 31st May, 1873, after deducting all necessary and proper outgoings, and that when so ascertained, the defendants, or whichever of them has received the same, do pay over the same to the plaintiff.

As to costs. The plaintiff denied the right of the first defendant to reside in the first storey of the house during his life and has failed on that point. The first defendant, in his written statement, denied the right of the plaintiff to any relief whatever and asked that the suit should be dismissed with costs. As each of those parties has partly won and partly lost, it seems, I think, fair that as between those parties each should bear his own costs of this suit. With regard to the second defendant the main point at issue between him and the plaintiff had previously been decided against him twice and was *res judicata*. I order that the second defendant do pay the plaintiff his (the plaintiff's) costs of this suit, including any costs reserved as between the plaintiff and the second defendant, and that

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1893 the second defendant do bear his own costs thereof. Further directions  
 JUNE 12. and further costs reserved. Leave to all the parties to apply as advised.  
 — Attorney for the plaintiff:—Mr. *Khanderao Moroji*.  
 ORIGINAL Attorneys for the first defendant:—Messrs. *Crawford, Burder & Co.*  
 CIVIL. Attorneys for the second defendant:—Messrs. *Bhaisankar and*  
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[620] NOTE:—

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*Before Mr. Justice Bayley.*

SHRIMAN GOSWAMI SHRI 108 SHRI GOVARDHONLALJI GIRDHARLALJI (Plaintiff)  
 v. GOSWAMI SHRI GIRDHARLALJI GOVINDRAJI (Defendant)\*  
 [5th December, 1878 and 29th April, 1879..]

*Act of State of foreign power—Effect of such act on title to property outside foreign State—  
 Idol—Property of idol—High priest and manager of shrine—Deposition of high-  
 priest by act of State—Appointment of new high-priest—Suit by latter for property  
 belonging to shrine.*

For thirty years prior to 1876 the defendant had been the high-priest of the shrine of Shri Nathji at Nathdwara in the territory of His Highness, the Maharana of Oodeypore, and as such was manager of the property of the shrine. This shrine is held in great veneration by the Vaisnava sect of Hindus, and large bequests and offerings of money, land, &c., are made to it by members of that sect. To facilitate the collection of such offerings and the employment of the funds belonging to the shrine, *pedhis* or firms are established in various parts of India, including Bombay. The firm in Bombay was carried on under the name of Navnitdas Purshottam, and the house in which it was carried on was built with monies belonging to the shrine. On the 8th May, 1876, by order of the Political Agent of Meywar and the Maharana of Oodeypore, he was deposed from that office for alleged misconduct and deported from Nathdwara. In his place his son, the plaintiff, was placed on the *gadi* as high-priest. In 1878 the plaintiff brought this suit praying for a declaration that as high-priest of the shrine he was entitled to the property in Bombay belonging thereto, and for delivery of the same to him, and for an injunction against the defendant, and for a receiver, &c. He obtained a rule  *nisi* calling on the defendant to show cause why he should not be restrained from receiving or dealing with the monies of the said firm of Navnitdas Purshottam and from tampering with books, &c.

*Held*, discharging the rule, that the plaintiff had shown no title to the property in question. The defendant was in possession and had been for many years in possession of the property. His deposition by a foreign power and the election of the plaintiff to the *gadi* in the place of the defendant did not transfer the title to property in Bombay from the defendant to the plaintiff. As an act of State, it could not be made the basis of an action, and it could not be regarded as a foreign judgment.

[R., 17 B. 600 ; D., 20 B. 495 (500).]

THE plaintiff sued for a declaration that he was entitled to all the monies and moveable property of the firm of Navnitdas Purshottam, which carried on business in Bhoiwada in Bombay.

The plaintiff was the son of the defendant, and he claimed the possession and management of the property in question in right of his being high-priest of the shrine of Shri Nathji at Nathdwara in Meywar, in the territory of His Highness the Maharana of Oodeypore.

The plaintiff alleged that the said shrine was held in general esteem and veneration by the Vaisnava sect of Hindus, and large bequests and presents of land, money and other things were made from time to time to the said shrine by members of that sect in various parts of India and the adjoining countries; and offerings called *logas* and *bheyts* were made by Hindus to the shrine. In order that the said *logas* and *bheyts* might be more easily collected and the said bequests and presents received, and in order that the funds of the shrine might be properly [621] employed, *pedhis* or firms were established in various parts of India including Bombay. The firm in Bombay was carried on