

## APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

RAMCHANDRA SHANKARBA'VA DRAVID (ORIGINAL PLAINTIFF),  
APPELLANT, v. KA'SHINA'TH NA'RA'YAN DRAVID AND OTHERS  
(ORIGINAL DEFENDANTS), RESPONDENTS.\*

1894.

March 15.

*Religious endowments—Temple—Manager—Alienations by manager—Necessity.*

Grants of permanent under-tenures such as *mirasi*, *putni*, *mokurruri*, grants by managers of endowed temple lands, are not void if made for a necessary purpose. Where lands belonging to a temple were granted in *miras* by the manager of the temple, but not for a necessary purpose, and the successor of the grantor sued to eject the assignee of the grantee,

*Held*, that the effect of such a grant was to enable the grantee to hold the lands during the life-time of the grantor, but would not confer on him any title binding on the successor in the management of the temple lands.

SECOND appeal from the decision of J. W. Walker, District Judge of Sátará, confirming the decree of Ráo Sáheb S. B. Upásani, Joint Subordinate Judge of Sátará.

Suit to recover possession of lands and for declaration of title as manager.

The plaintiff's father Shankarbáva as manager of the temple of Yavteshvar granted the land in question for building sites at fixed rents to certain European residents about forty years before the date of this suit. Bungalows were built and occupied, and in the year 1867 the lands with the buildings thereon were sold to one Krishnáji Limáye, who in 1884 sold them to the defendants.

Meantime the original grantor Shankarbáva had died in 1880 and his son the plaintiff had succeeded him as manager of the temple. In 1886 the plaintiff brought this suit to recover possession of the lands and for mesne profits.

The defendant pleaded (*inter alia*) that he had the right of occupancy, that the plaintiff's only right was to the rents, and that the suit was barred by limitation.

The lower Courts rejected the plaintiff's claim, holding that the defendant had a right of perpetual tenancy.

The plaintiff preferred a second appeal.

\* Second Appeal, No. 699 of 1892.

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RÁMCHANDRA  
SHANKAR-  
BÁVA DRAVID  
v.  
KÁSHINÁTH  
NÁRÁYAN  
DRAVID.

*Dáji Ábáji Khare* for the appellant (plaintiff):—It is settled that a manager of temple property cannot permanently alienate it except in the case of absolute necessity—*Konwur Doorga Nath v. Rám Chunder*<sup>(1)</sup>; *Tahboonissa v. Koomar Sham*<sup>(2)</sup>. Here absolute necessity is not shown, nor is it even pleaded. Alienations of temple property by a manager stand good only during the life-time of the grantor, and after his death come to an end—West and Bühler (3rd Ed.), p. 557; *Bhágu v. Byrámjí*<sup>(3)</sup>. Further, the grant was made for the purpose of erecting buildings. The buildings which were erected have fallen, and the lands are now cultivated. The buildings having disappeared, the grant must be set aside.

*Mahádev B. Chaubal* for the respondent (defendant):—Shankar-báva, who made the grant, died in the year 1880, and since then plaintiff's management began. Most of the lands were brought under cultivation by us in 1884, and we have paid rent to the plaintiff. The plaintiff has confirmed the grant by accepting the rent from us, and he is now estopped from disputing its validity.

SARGENT, C. J.:—The authorities show that permanent under-tenures, such as *mirási*, *putni* and *mokurruri* grants, by managers of endowed temple lands, are not void if made for a necessary purpose—*Konwur Doorga Nath v. Rám Chunder*<sup>(4)</sup>; *Tahboonissa v. Koomar Sham*<sup>(2)</sup>. It is no part of the defendants' case that the *mirás* grant in question was for a necessary purpose, nor is there any evidence in the case which even points to this having been the cause of the grant, although it may establish that the rent reserved was a proper one.

The effect of such a grant according to the decisions in *Arruth Misser v. Juggurnáth*<sup>(5)</sup> and *Bhágu v. Byrámjí*<sup>(3)</sup> would be to enable the grantee to hold the lands during the life of the grantor Shankarbáva, but would not confer on him any title binding on his successor in the management of the temple lands.

As the District Judge held that the *mirás* granted was valid and binding on the plaintiff, we must reverse the decree and send

(1) L. R., 4 I. A. 52.

(3) P. J., 1892, p. 39.

(2) 15 Calc. W. R., 228.

(4) L. R., 4 I. A., 52 at p. 62.

(5) 18 Calc. W. R., 439.

back the case for a fresh decision, but we think it is necessary for a satisfactory decision on the rights of the parties, having regard to the manner in which the case has been tried, that an issue should be raised as to whether anything has occurred since the death of the previous manager which would give a legal right to the defendant to continue to hold the land during the plaintiff's life-time. Costs to follow the result.

*Decree reversed and case sent back.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

AMBA'SHANKAR HARPRASA'D, PLAINTIFF, *v.* SAYAD ALI RASUL,  
AND ANOTHER, DEFENDANTS.\*

*Mahomedan law—Money due by a deceased Mahomedan—Suit by a creditor against only one of the heirs of the deceased—Practice—Procedure.*

A suit for money due by a deceased Mahomedan lies against one of his heirs in respect of his share in the property left by the deceased, though it may not bind the share of another heir.

*Quære*—Whether, there having been no division of the estate, the share of the heir sued is liable for the whole debt of the deceased.

REFERENCE by Khán Bahádur B. E. Modi, Judge of the Court of Small Causes at Broach, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff sued in the Court of the Small Causes at Broach to recover the amount due on a bond executed in his favour by Rasul Karim and Jamiatrám Sobhárám. He sought to recover the amount from Jamiatrám personally and from the estate of Rasul Karim who was dead. The case came on for hearing on the 3rd October, 1893, and the defendant Sayad Ali, the son and heir of Rasul Karim, deceased, was examined as a witness, and admitted the bond. In his evidence he stated that the deceased had left behind him (among other relatives) a widow, who, according to Mahomedan law, being interested as a sharer in the property of the deceased, ought to have been joined as a co-defendant in the suit. As the cause of action had arisen on the

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\* Civil Reference, No. 13 of 1893.