

## APPELLATE CIVIL

Before Mr. Justice Bhagwati and Mr. Justice Chainani.

SHREE MAHADoba DEVASTHAN (ORIGINAL PLAINTIFF), APPELLANT  
v. MAHADBA RAMJI BIDKAR AND OTHERS (ORIGINAL DEFENDANTS),  
RESPONDENTS.\*

1951  
Dec. 19

*Hindu idol—Shebait himself not in a position to file suit as next friend of idol—Right of another person to file suit in name of idol acting as its next friend—Grant of inam for carrying on worship, Naivedya and festival of god—Grantee, his sons and grandsons enjoined that they should go on spending Akar of lands for expenses—Nature of grant—“Akar,” meaning of.*

Where the manager or the shebait himself is not in a position to file a suit as the next friend of an image or an idol, it is competent to another person next in succession to the office of the manager or the shebait, to file a suit in the name of the image or the idol acting as its next friend.

A Hindu image or idol is a juridical person capable of holding property and also capable of suing or being sued in regard thereto. If the suit is filed in the name of the image or idol, the image or the idol would be a proper plaintiff, though of necessity it would have to be represented in the suit by its manager or shebait. If the manager or the shebait on the other hand, chooses in vindication of his right to sue for the protection of the properties to file a suit in his own name, he may do so. But that would be no bar to the right of the image or the idol to file such a suit if it chose to do so. These rights can be exercised only by the one or the other and not by both; so that if the cause of action was prosecuted to judgment by one of them, it would be merged in a decree properly passed in favour of the plaintiff and the defendant cannot be proceeded against any more in respect of the same cause of action.

*Kazi Hassan v. Sagun Balkrishna*,<sup>(1)</sup> followed.

*Jagadindra v. Hemanta*,<sup>(2)</sup> distinguished.

*Sri Iswar Sridhar v. Johar Lal*,<sup>(3)</sup> referred to.

In 1930, Waman the then Vahivatdar of Shri Mahadoba Devasthan Mauje Theur, Kasbe Poona, alienated some of the lands granted in inam to the Devasthan by the Peshwas. The grant was originally made in the name of one Ganoji for the purpose of carrying on the worship, Naivedya and the festival of the god, and the grantee, his sons and grandsons were enjoined that they should go on spending the Akar of the lands for the expenses connected therewith. In 1946, Waman's son Keshav, describing himself as the Vahivatdar of the Devasthan, brought a suit in the name of the idol against the alienees (defendants Nos. 1 and 2) and Waman (defendant No. 3) challenging the alienation and asking for a declaration that the lands were of the ownership of the

\* First Appeal No. 434 of 1948.

<sup>(1)</sup> (1899) 24 Bom. 170.

<sup>(2)</sup> (1904) 32 Cal. 129.

<sup>(3)</sup> [1945] A. I. R. Cal. 268.

1951

SHREE  
MAHADoba  
DEVASTHAN  
v.  
MAHADBA  
RAMAJI

Devasthan and that the plaintiff was entitled to recover their possession from the defendants. The trial Court holding that Waman and not Keshav was the Vahivatdar dismissed the suit on the ground that Keshav was not entitled to bring it. On appeal questions having been raised as regards the maintainability of the suit and the nature of the grant:

*Held*, (i) that the suit was properly filed in the name of Shri Mahadoba Devasthan—the image or idol—by its Vahivatdar Keshav;

(ii) that Waman being the person who was alleged to have unauthorisedly alienated the suit properties, could not be appointed the next friend of the plaintiff, and therefore, Keshav the next Vahivatdar after Waman rightly acted as the next friend of the plaintiff in the matter of the institution and prosecution of the suit;

(iii) that the grant was primarily a grant to the religious foundation, that is, Shri Mahadoba and not a grant to Ganoji for his own benefit or for the benefit of his sons, grandsons etc. with only a charge in favour of the idol.

(iv) that, therefore, the suit was wrongly dismissed.

*Maharaja Jagadindra v. Rani Hemalata*,<sup>(1)</sup> *Shri Ganesh Dharnidhar v. Keshavrao*,<sup>(2)</sup> referred to.

FIRST APPEAL from the decision of B. K. Khade, Esquire, Joint Civil Judge (Senior Division) at Poona in Civil Suit No. 36 of 1946.

Suit for declaration.

Certain lands situate in the villages of Lohagaon and Kesnand in taluka Haveli of district Poona were granted in Inam in 1772 by Shrimant Madhavrao Peshawa to the Devasthan of Shree Mahadoba Mauje Theur, Kasbe Poona. The sanad was issued in the name of Ganoji bin Rakhamoji Waghule as the devotee of Shree Mahadoba god. It ran as follows:—

“.....Thus in all two chawars land measuring in all two hundred and forty bighas with the aforesaid boundaries together with twofold Sardeshmukhi rights both in Swaraj and Mongalai and one-third Inam together with Kulbab and Kulkanu (customary rights and rules), with the existing taxes and those that will be levied in future, together with water, trees, timber, stone and treasuretrove excluding the rights of Hakdars, has been given to you for the expenses of Puja of Shree, Naivedya and festivals by creating a new grant or agreement from the Government. Therefore you, as stated above, should get the two Chawars of land transferred to your ownership, and you, your sons and grandsons should go on spending the Akar of the aforesaid lands for the expenses in connection with the worship, Naivedya and festival of the Shree.”

Ganoji and after him his descendants made vahivat of the lands as trustees in accordance with the sanad, but on January 29, 1930, Waman (defendant No. 3) who was the then

<sup>(1)</sup> (1904) L. R. 31 I. A. 203.

<sup>(2)</sup> (1890) 15 Bom. 625.

Vahivatdar of the Devasthan sold some of the lands to Mahadu and Gunaji (defendants Nos. 1 and 2) as though the lands were of his ownership. All the alienated lands excepting Survey No. 245 were later on requisitioned by the Government for Military purposes.

On June 6, 1946, while Waman was alive his son Keshav, describing himself as the Vahivatdar of the Devasthan, brought a suit in the name of the idol challenging the sale and asking for a declaration that the lands were of the ownership of Shree Mahadoba Devasthan and that the plaintiff was entitled to recover possession and mesne profits of the requisitioned lands from the Government and of Survey No. 245 from the defendants. The title of the plaintiff was as follows:

“Shree Mahadoba Devasthan Mauje Theur Kasbe Poonā by its Vahivatdar—Keshav Waman Waghule.”

The defendants *inter alia* pleaded that Keshav was not the Vahivatdar, Waman being the Vahivatdar of Shree Mahadoba Devasthan, that the suit properties were not the Devasthan properties, that the alienation was valid and binding on the plaintiff and that the suit was barred by limitation.

The trial Judge held the existence of the Shree Mahadoba Devasthan and the grant of the suit properties to the said Devasthan proved. He also held proved that Ganoji *bin* Rakhamoji, the ancestor of the defendant No. 3, was a trustee and his trusteeship was hereditary. He, however, came to the conclusion that Keshav was not the Vahivatdar and was not entitled to bring the suit on behalf of Shree Mahadoba Devasthan. He, therefore, dismissed the suit without going into the remaining issues regarding the validity of the alienation, limitation, etc. He observed in his judgment as follows:—

“The possession and management of the property belonging to the Deity must be in the nature of things be entrusted to some person as Shebait or manager. A Shebait is, by virtue of his office, the administrator of the property attached to the temple of which he is a Shebait. The devolution of the office of Shebait depends upon the terms of the deed by which it is created. Where there is no provision in the deed as for the succession, the title to the property or to the management and control of the property as the case may be, follows the line of his inheritance from the founder. The instrument of grant ex. 81 shows that the Office of Shebaitship and manager was bestowed upon defendant No. 3's ancestor Ganoji Rakhamaji by Shreemant Madhavrao Peshwa from generation to generation. Defendant No. 3's father Chimnaji Ravji was a Shebait and manager till his death. Defendant No. 3 is

1951

SHREE  
MAHADoba  
DEVASTHAN  
v.  
MAHADBA  
RAMAJI

1951  
 ———  
 SHREE  
 MAHADoba  
 DEVASTHAN  
 v.  
 MAHADBA  
 RAMAJI  
 ———  
 Bhagwati J.

the Shebait and manager since 1910. The evidence shows that he is still the manager and Vahivatdar of the property of the Devasthan. So long as he holds the office of Shebait and is alive, his son is not entitled to bring a suit as Vahivatdar of the Devasthan and challenge the alienations of the property belonging to the Devasthan. The suit brought by Keshav as the manager and Vahivatdar of the plaintiff Devasthan for a declaration that the alienations are not binding upon the Devasthan and to recover possession of the alienated property is not competent. Keshav is entitled to bring a suit to recover possession of the property after the demise of his father. This is of course subject to the law of Limitation. So far as this suit is concerned, it is not competent. The next question, therefore, whether the alienations are valid or not does not survive."

The plaintiff appealed to the High Court.

*S. H. Lulla* with *R. N. Bhalerao*, for the appellant.

*Y. V. Chandrachud*, for the respondents Nos. 1 and 2.

BHAGWATI J. This is a first appeal from the decision of the learned Joint Civil Judge (S. D.) at Poona who dismissed the plaintiff's suit. The plaintiff is the Shree Mahadoba Devasthan, Mouje Theur, Kasbe Poona, by its vahivatdar Keshav Waman Waghule, and the suit was filed by the plaintiff thus described against the original defendant No. 3 who was the then vahivatdar and the father of Keshav Waman Waghule and defendants Nos. 1 and 2 who were alienees of certain properties alleged to belong to the plaintiff for two declarations, one that the sale deeds of the suit lands were void and the lands were of the ownership of Shree Mahadoba Devasthan, and two, that the plaintiff was entitled to recover possession of S. Nos. 240A, 242, 243 and 244 from the Government and recover possession of S. No. 245 from the defendants and costs of the suit. The defences which were taken up were that Keshav Waman Waghule was not the vahivatdar, defendant No. 3 being the vahivatdar of Shree Mahadoba Devasthan, that the suit properties were not the Devasthan properties, that the alienations were valid and binding on the plaintiff and that the suit was barred by limitation, the defendants having been in adverse possession of the properties for more than the prescriptive period. The learned trial Judge held the existence of the Shree Mahadoba Devasthan and the grant of the suit properties to the said Devasthan proved. He also held proved that Ganoji bin Rakhamoji, the ancestor of original defendant No. 3, was a trustee and his trusteeship was hereditary. He, however, came to the conclusion that Keshav Waman Waghule was not entitled to bring the suit on behalf

of Shree Mahadoba Devasthan. He, therefore, dismissed the plaintiff's suit without recording his findings in regard to issues Nos. 5, 6, 8, 9 and 10. This appeal has been filed by the plaintiff against that decision of the learned trial Judge.

The main question which has been agitated by Mr. Lulla for the plaintiff is that even if the lower Court came to the conclusion that Keshav Waman Waghule was not the vahivatdar of the Shree Mahadoba Devasthan, the order of dismissal was not justified because the plaintiff was Shree Mahadoba Devasthan to whom the suit properties belonged, and the mere fact of the suit having been filed in the name of Shree Mahadoba Devasthan by Keshav Waman Waghule describing himself as its vahivatdar did not vitiate the suit. Shree Mahadoba Devasthan is a description of the institution where the image of Shree Mahadoba has been installed and is worshipped. The image of Shree Mahadoba is, as has been held by the Privy Council, a juridical person and capable of holding property and also capable of suing or being sued. The contention, however, which was urged by the defendants and which found favour with the learned trial Judge was that even though the image of Shree Mahadoba was a juridical person the whole management of the properties belonging to the image could be and was carried on by its shebait or its vahivatdar and the right to sue for the protection of the properties belonging to the image of Shree Mahadoba was vested in the shebait and not in the image or the idol. Reliance was placed in support of this contention on the observations of their Lordships of the Privy Council in *Jagadindra Nath Roy v. Hemanta Kumari Debi*,<sup>(1)</sup> where Sir Arthur Wilson observed (p. 141):

"But assuming the religious dedication to have been of the strictest character, it still remains that the possession and management of the dedicated property belongs to the shebait. And this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the shebait, not in the idol. And in the present case the right to sue accrued to the plaintiff when he was under age. The case therefore falls within the clear language of s. 7 of the Limitation Act...."

These observations were particularly relied on for the purpose of showing that the suit for setting aside the alienations complained of could not be filed in the name of Shree Mahadoba Devasthan at all but could only be filed in the name of the shebait for the time being who was Waman Chimnaji

<sup>(1)</sup> (1904) 32 Cal. 129, s. c. L. R. 31 I. A. 203, s. c. 6 Bom. L. R. 765.

1951

SHREE  
MAHADIBA  
DEVASTHAN  
v.  
MAHADIBA  
RAMAJI

Bhagwati J.

Waghule, original defendant No. 3. These observations of their Lordships of the Privy Council were, however, made in a suit which was a suit for recovering possession of the property belonging to the idol against the persons who had dispossessed the idol of the same. The shebait of the idol was then a minor. The idol was no doubt a juridical person and capable of suing or being sued, but even there the suit could be brought in the name of the idol by the shebait and the shebait was a minor with the result that their Lordships of the Privy Council held that the right of possession and management of the dedicated property having belonged to the shebait whatever suits were necessary for the protection of the property could also be brought by the shebait. There is no doubt that the words "not in the idol" are a part of the sentence which was used by their Lordships: "Every such right is vested in the shebait, not in the idol." Their Lordships of the Privy Council were, however, concerned with a case where even if the idol being a juridical person capable of holding the property could have filed the suit for recovering possession of the property of which it was dispossessed, that suit could only have been filed though in the name of the idol by its shebait and the shebait being a minor, they had got to consider what the position would be if the shebait was the person who could and should have filed the suit in the name of the idol for recovering possession of the property. We are of the opinion that their Lordships had not their attention focussed on this aspect of the question, namely, whether a suit could have been filed in the name of the idol by the shebait apart from the shebait vindicating his right of possession and management of the dedicated property and filing a suit for the protection of the same. This dictum of their Lordships of the Privy Council was considered by a Division Bench of the Calcutta High Court in the case of *Jyoti Prasad v. Jahor Lal*.<sup>(1)</sup> In the course of the judgment Biswas J. observed as follows (p. 277):

"On the first point, the appellants' sheet anchor is the dictum of Sir Arthur Wilson in the Privy Council case in *Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi*,<sup>(2)</sup> that the right of suit is vested in the shebait, and not in the idol, but as has been explained in various decisions this does not and cannot mean that a Hindu idol is incapable of suing. The power of suing (as also being sued) undoubtedly resides in the idol, though *ex necessitate rei* the power must be

<sup>(1)</sup> [1945] A. I. R. Cal. 268.

<sup>(2)</sup> (1904) L. R. 31 I. A. 203, s. c. 6  
Bom. L. R. 765.

exercised by and through a sentient being representing the idol. As was pointed out by Pal J. in *Tarit Bhusan Ray v. Sree Sree Iswar Sridhar Salgram Sila Thakur*,<sup>(1)</sup> where this question is discussed, the suit in *Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi*<sup>(2)</sup> was not by the idol represented by its shebait but by the shebait himself as such to enforce the proprietary right of the idol in certain properties. The High Court had dismissed the suit as barred by limitation on the ground that as the interest was admitted to be in the idol, there was nothing to prevent a suit being brought on behalf of the idol by the plaintiff's mother during his minority, but the Judicial Committee reversed the decision, holding that as the possession and management of the dedicated property belonged to the shebait, and this carried with it the right to bring whatever suits were necessary for the protection of the property, the right to sue accrued to the plaintiff, and as he was a minor at the time, he could bring the suit within three years after he attained majority under s. 7 of Act 15 of 1877 (corresponding to s. 6 of the present Limitation Act.). It is in this connection that Sir Arthur Wilson made the observation on which the appellants rely."

The learned Judge then proceeded to quote the observations of Lord Shaw in *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*<sup>(3)</sup> where their Lordships of the Privy Council dwelling on the nature of a Hindu idol expressly recognised it as a juristic entity and observed that it has a juridical status with the power of suing and being sued; and also the observations of the Judicial Committee in *Radha Binode Mandal v. Gopal Jiu Thakur*,<sup>(4)</sup> where a clear distinction was drawn between a suit in which the idol itself was the plaintiff and the suit in which the plaintiffs were shebait of the idol. The learned Judge then observed (p. 277):

"...It is quite true that a Hindu idol is a juridical person capable of holding legal rights only in an ideal sense, and it may also be, as was indicated by Sir George Rankin in the Privy Council decision in *Masjid Shahid Ganj Mosque v. Shiromani Gurudwara Parbandhak Committee, Amristar*,<sup>(5)</sup> that the procedure of our Courts only allows for a suit in the name of an idol, but nevertheless the position remains incontestable that a Hindu idol may be a competent plaintiff in a suit in respect of property held or claimed by it, and that this is a right quite distinct from that which belongs to its shebait or shebait to sue on its behalf."

Normally speaking a manager or an agent would not be competent to file a suit in his own name in regard to the affairs of his principal and such a suit even if brought by the manager would have to be in the name of the principal. The principal in the case of an image or idol is not an entity

<sup>(1)</sup> [1941] 2 Cal 477, 531.

<sup>(2)</sup> (1904) L. R. 31 I. A. 203 s. c. 6.  
Bom. L. R. 768.

<sup>(3)</sup> [1925] L. R. 52 I. A. 245, s. c.  
Bom. L. R. 1064.

<sup>(4)</sup> (1927) L. R. 54 I. A. 238, s. c.  
29 Bom. L. R. 961.

<sup>(5)</sup> (1940) L. R. 67 I. A. 251, 264,  
s. c. 42 Bom. L. R. 1100.

1951

SHREE  
MAHADOBA  
DEVASTHAN  
v.

MAHADBA  
RAMAJI

Bhagwati J.

1951

SHREE  
MAHADOBA  
DEVASTHAN  
v.  
MAHADBA  
RAMAJI

Bhagwati J.

capable of acting on its own, with the result that it has of necessity got to act through its manager or an accredited agent, who under the circumstances is the only person capable of performing these functions in the name of the idol. The shebait is in possession and management of the property belonging to the image or idol, and having such possession and management vested in him, it is only an extension of the principle of responsibility from the image or idol to the manager or to use the other words from the principal to the agent to vest the right of protection of the property which is incidental to the right of possession and management thereof by way of filing a suit in connection with the same, in the shebait. The extension of the right in the shebait, however, does not mean that the right which the image or the idol as a juridical person has by virtue of its holding the property to file a suit in regard thereto is by any process eliminated. Both these rights can exist simultaneously, so that if the suit is filed in the name of the image or idol, the image or the idol would be a proper plaintiff, though, as observed before, of necessity it would have to be represented in the suit by its manager or shebait. If the manager or the shebait on the other hand chooses in vindication of his right to sue for the protection of the properties to file a suit in his own name, he may just as well do so. But that would be no bar to the right of the image or the idol to file such a suit if it had chosen to do so. Of course these rights either by the image or the idol or by the manager or by the shebait could be exercised only by the one or the other and not by both; so that if the cause of action was prosecuted to judgment, it would be merged in a decree properly passed in favour of the plaintiff and the defendant could not be proceeded against any more in respect of that very cause of action. We are, therefore, of the opinion that the suit was properly filed in the name of Shri Mahadoba Devasthan the image or idol by its vahivatdar Keshav Waman Waghule. It was, however, urged by Mr. Chandrachud that Keshav Waman Waghule was not in fact the vahivatdar. The vahivatdar for the time being was his father Waman Chimnaji Waghule, original defendant No. 3. Normally speaking again this would be the correct position and we have the analogy of suits filed on behalf of the minors and lunatics by their next friends. Where there is a testamentary guardian or a certificated guardian, no body except such guardian could be the next friend of a minor plaintiff. But if the

interests of that guardian were adverse to those of the minor, he certainly could not be appointed the next friend for the purpose of the suit. Applying that analogy so far it is possible to do so in the circumstances of the present case, no Court would appoint the manager or the shebait who was himself a party to an unauthorised alienation as the next friend of the image or the idol where the alienation was being challenged. The next friend would of necessity be some person other than the manager or the shebait of the image or the idol, and what better person could ever be found than the person next in order of succession of the shebaitship? In the case before us Waman Chimnaji Waghule was the person who was alleged to have unauthorisedly alienated some of the suit properties. He could certainly not be appointed the next friend of the plaintiff for the purpose of instituting and prosecuting this suit. Keshav Waman Waghule, the son of original defendant No. 3, was the next vahivatdar after Waman Chimnaji Waghule. It was therefore in the fitness of things that he acted as the next friend of the plaintiff in the matter of the institution and prosecution of this suit.

This is a commonsense point of view. If any authority was, however, needed in support of it, it is to be found in a decision of our appeal Court in *Kazi Hassan v. Sagun Balakrishna*.<sup>(1)</sup> In that case, the plaintiffs sued to recover possession of certain lands alleging that they had been granted in wakf to their ancestor and his lineal descendants to defray the expenses for, or connected with, the service of certain mosque. Their father and cousins who were impleaded as defendant No. 3 and defendants Nos. 4 and 5 respectively were *mutawalis* in charge of the said properties and were alleged to have illegally alienated some of these lands and also ceased to render any service to the mosque, whereupon the plaintiffs alleged that they had been acting as *mutawalis* in their stead. The plaintiffs, therefore, claimed to be entitled as such to the management and enjoyment of the lands in dispute. It was contended *inter alia* on behalf of the defendants that the plaintiffs could not sue in the lifetime of their father, defendant No. 3, he not having transferred his rights to them. And the Court held:

“that the plaintiffs were entitled to sue to have the alienation made by their father and cousins set aside and the wakf property restored to the service of the mosque. They were not merely beneficiaries, but

1951

SHREE  
MAHADOBA  
DEVASTHAN  
v.  
MAHADBA  
RAMAJI

Bhagwati J.

<sup>(1)</sup> (1899) 24 Bom. 170.

1951

SHREE  
MAHADoba  
DEVASTHAN  
v.  
MAHADBA  
RAMAJI

Bhagwati J.

members of the family of the mutawallis, and were the persons on whom, on the death of the existing mutawallis, the office of the mutawalli would fall by descent, if, indeed, it had not already fallen upon them, as alleged in the plaint, by abandonment and resignation”...

This case is authority for the proposition that in the absence of the manager or the shebait himself being in a position to file a suit as the next friend of the image or the idol, it would be competent to another person even the beneficiary apart from his being the next in succession to the office of the manager or the shebait to file a suit in the name of the image or the idol acting as its next friend. We are, therefore, of the opinion that the suit was properly filed and the learned Judge below was wrong in dismissing the suit on this ground as he did.

Mr. Chandrachud, however, urged before us that the order of dismissal could be maintained by him on the ground that the properties which were the subject-matter of the suit were not in fact Devasthan properties but were properties which had been given to the Waghules impressed with a charge for the worship of the image or the idol of Shree Mahadoba. He made a distinction between a complete dedication and a partial dedication. Even though in the case of complete dedication the properties would really vest in the Devasthan or the idol and the Devasthan or the idol would be entitled to maintain the suit, he urged that in the case of a partial dedication the properties belonged to the grantees and the grantees were entitled to alienate the same, though in the hands of the grantees or their alienees the properties would retain the character of partially dedicated properties and would be subject to a charge for the worship of the idol or the image. He relied upon the relevant passages in Mayne's Hindu Law, p. 922, s. 792, and Mulla's Hindu Law, p. 493, and s. 408 and p. 494, s. 408A. He also relied upon the observations of the Privy Council in *Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi*.<sup>(1)</sup> p. (209):

“There is no doubt that an idol may be regarded as a juridical person capable as such of holding property, though it is only in an ideal sense that property is so held. And probably this is the true legal view when the dedication is of the completest kind known to the law. But there may be religious dedications of a less complete character. The cases of *Sonatun Bysack v. Sreemutty Juggutsoondree Dossee*<sup>(2)</sup> and *Ashutosh Dutt v. Doorga Churn Chatterjee*<sup>(3)</sup> are instances of less complete dedications, in which, notwithstanding a religious dedication, property

<sup>(1)</sup> (1904) L. R. 31 I. A. 203.

<sup>(2)</sup> (1859) 8 Moo I. A. 66.

<sup>(3)</sup> (1879) L. R. 6 I. A. 182.

descends (and descends beneficially), to heirs, subject to a trust or charge for the purposes of religion. Their Lordships desire to speak with caution, but it seems possible that there may be other cases of partial or qualified dedication not quite so simple as those to which reference has been made".

Relying upon these observations he drew our attention to the terms of the grant exh. 81 in the suit. This was a grant of certain lands comprising in the aggregate 2 chawars and measuring in all 240 bighas for the worship, Naivedya and expenses of the festival of God Shree Mahadoba Devasthan at Mouje Theur, Kasba Pooná. The lands were granted with two-fold Sardeshmukhi rights both in Swaraj and Mogalai and  $\frac{1}{3}$ rd Inam together Kulbab and Kulkanu (customary rights and rules) with the existing taxes and those that would be levied in future together with water, trees, timber, stone and treasure-trove excluding the rights of hakdars to the grantee Ganoji bin Rakhmaji Sali Waghule for the expenses of the Puja of Shree and Naivedya and festivals by creating a new grant or agreement from the government and the grantee was enjoyed that he should get the 2 chawars of land transferred to his Dumala and he, his sons and grandsons should go on spending the *akar* of the aforesaid lands for the expenses in connection with the worship, Naivedya and festival of the Shri. The grantee was thus to get transferred all these lands and the *akar* of the lands was to be devoted by him for the expenses of the puja, Naivedya and festivals. It was urged by Mr. Chandrachud that this was an absolute grant of the said lands to Ganoji bin Rakhmaji Waghule, that the lands were impressed with a charge, to the extent of the *akar* or the assessment thereof for performing the worship, Naivedya and the festival of the Shri and there was, therefore, a partial dedication of the said lands in favour of Shree Mahadoba Devasthan. The word "Akar" is defined in Molesworth's dictionary *inter alia* as "a roughly framed statement or estimate (of expenses profits, produce, revenue)." It also means assessment but does not necessarily mean that. What connotation to give to this word "Akar" would depend upon the context in which this word is used. We are of the opinion that having regard to the context in which it has been used in this grant, exh. 81, it only means the produce or the income and not merely the assessment of these lands. The express purpose of the grant of these lands was to provide for the performance of the worship, Naivedya and the expenses of the festivals of the God Shree Mahadoba at Mouje Theur,

1951

SHREE  
MAHADIBA  
DEVASTHAN

v.

MAHADIBA  
RAMAJI

Bhagwati J..

1951

SHREE  
MAHADoba  
DEVASTHAN  
v.  
MAHADoba  
RAMAJI

Bhagwati J.

Kasba Poonā. These lands were set apart after the orders were sent to the subordinate officers by R. R. Madhavrao Pandit Prime Minister and they were granted to Ganoji bin Rakhamaji Waghule who was described as the devotee of Shree Mahadoba God for the purpose of performing worship, Naivedya and the festivals of Shree. Ganoji bin Rakhamaji Waghule had been carrying on the worship, Naivedya and the festival of the Shri and he, his sons and grandsons were granted these lands so that they may from generation to generation continue to perform the Puja, Naivedya and the festival of Shri. If anything can be culled out of the terms of the grant, it is this that there was not the remotest idea of these lands being capable of alienation by the grantee or his successors in interest. The intention of the grantor was that these lands should continue in the family of Waghule from generation to generation so that the worship, Naivedya and the festival of the Shri be performed properly. No doubt the intention was that the Waghules should perform this Puja, Naivedya and the festival and that the shebaitship of Shree Mahadoba should continue in the family of the Waghules. That was in effect the creation of a hereditary shebaitship in the Waghule family, but it is a far cry from that to say that the Waghules were constituted the absolute owners of these lands which were the subject-matter of the grant. Nothing was farther from the imagination of the grantor than this alienability which has been urged upon us by Mr. Chandrachud.

The question in such cases which falls to be decided by the Court is in the words of Telang J. at p. 634 in the case of *Shri Ganesh Dharnidhar Maharajdev v. Keshavrao Govind Kulgavkar*<sup>(1)</sup>

"...on the true construction of that document, the grant may fairly be taken to have been made primarily as a grant to the religious foundation, and not to the particular individuals named for their own benefit".

Looking to the terms of the grant, exh. 81, from this point of view it is abundantly clear that the grant, was primarily a grant to the religious foundations, that is, Shree Mahadoba and not to Ganoji bin Rakhamaji Waghule for his own benefit or for the benefit of his sons, grandsons and so on. This contention of Mr. Chandrachud, therefore, cannot be sustained.

<sup>(1)</sup> (1890) 15 Bom. 625.

In view of the above, we are of the opinion that the learned Judge below was wrong in dismissing the plaintiff's suit as he did. The appeal must, therefore, be allowed and the suit remanded to the Court below for disposal according to law.

While remanding the suit, however, we are asked by Mr. Chandrachud to reserve to his client the right to contend that S. Nos. 244 and 245 have not been identified with any of the lands which formed the subject-matter of the grant exh. 81. No issue was specifically raised in this behalf in the Court below, though on the evidence recorded before him, the learned trial Judge appears to have come to the conclusion that these two S. Nos. 244 and 245 were sufficiently identified. While remanding the case, therefore, we do reserve liberty to both the parties to adduce such further evidence as they may be advised on the issues which the learned Judge has not decided, namely, issues Nos. 5, 6, 8, 9 and 10. It would be open also to the defendants to raise a specific issue in regard to the identity of the properties S. Nos. 244 and 245, both the parties being at liberty to adduce such evidence in that behalf as they may be advised. The respondents will pay the appellant's costs of this appeal. The costs of the lower Court will be costs in the suit.

*Appeal allowed.*

M. W. P.

1951

SHREE  
MAHADOBA  
DEVASTHAN  
v.  
MAHADBA  
RAMAJI

*Bhagwati J.*

### APPELLATE CIVIL

*The Hon'ble Mr. M. C. Chagla, Chief Justice and Mr. Justice Gajendragadkar.*

CANARA BANK LIMITED, BOMBAY v. THE WARDEN INSURANCE COMPANY, LTD., BOMBAY.\*

1952  
Jan. 14

*Indian Limitation Act (IX of 1908), ss. 5, 29 (2)—Bombay Land Requisition Act (Bom. XXXIII of 1948), s. 8 (3)—Appeal to High Court against order for payment of compensation passed by Special Officer under latter Act—Delay in filing appeal—Whether delay can be excused for sufficient cause.*

Section 5 of the Indian Limitation Act, 1908, not having been made expressly applicable to an appeal provided under s. 8 (3) of the Bombay Land Requisition Act, 1948, the Court has no power to condone any delay on the part of the appellant even for sufficient cause.

\*Civil Application No. 1484 of 1951.