Trimbak Bawa Alias Bhau Bawa Vs. Narayan Bawa

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SooperKanoon Citation : sooperkanoon.com/329663

Court : Mumbai

Decided On : Sep-18-1882

Reported in : (1883)ILR7Bom188

Judge : Charles Sargent, Kt., C.J. and ;Kemball, J.

Appellant : Trimbak Bawa Alias Bhau Bawa

Respondent : Narayan Bawa

Judgement :

Charles Sargent, Kt., C.J.

1. It is not in dispute between the parties that the lands in question were originally granted in 1815 to one Baloba Bawa and his descendants for the purpose of maintaining the worship of the God (Shri Vithoba Dev) of a temple. In 1866 a suit was brought by plaintiff's father, Vithoba, one of Baloba's sons, against Hari (another son of Baloba) and his son, the first defendant, to enforce his claim to one-third share of the management of the lands. In this suit Vithoba obtained a decree that he should have the exclusive management every third year, but he was ordered to pay costs. To enforce payment of his costs, Hari Bawa, in execution of the above decree, attached the one-third share of Vithoba in the management of the lands, which was sold at auction to a Marwadi in January, 1870, for 160 rupees, and afterwards re-sold to the second defendant, Trimbak, another son of Hari, in May, 1870, for 200 rupees. The 160 rupees were more than

sufficient to pay the costs, and the balance was paid to Vithoba. The object of the present suit, filed in August, 1879, by Vithoba's son, is to recover his share of the management of the land as against Trimbak and Ganu, another son of Hari, who claims the exclusive management. Now, it was scarcely disputed that the management of the property of the temple, in other words the 'trust' reposed in the judgment-debtor, could not be attached and sold in execution of a decree against him. But it was argued that as the sale to the Marwadi in January, 1870, was not set aside within a year, the right to treat it as void by the plaintiff was barred by Clause 12 of Act XV of 1877. Whether Vithoba himself could have got himself re-instated in the management without bringing a suit to set aside the sale within a year from the order confirming it, it is not necessary to decide, as we think that in endowments of this nature, where the founder has vested in a certain family the management of his endowment, each member of such family succeeds to the management, to use technical language, per formam doni, and that, therefore, on Vithoba's death the plaintiff's right to succeed to the management in this case was quite unaffected by any proceedings in execution against Vithoba during his life. The decree must, therefore, be confirmed with, costs of appeal on appellant.