

Puncha Thakur and anr. Vs. Bindesri Thakur and ors.

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Court : Kolkata

Decided On : Mar-12-1915

Reported in : 28Ind.Cas.675

Judge : Sharfuddin and; Coxe, JJ.

Appellant : Puncha Thakur and anr.

Respondent : Bindesri Thakur and ors.

Judgement :

Sharfuddin, J.

1. The suit out of which this second appeal arises was instituted by the plaintiffs for recovery of possession of a 3-annas share in the offerings made to the temple of Sri Bhairo Nath on establishment of their title thereto. The plaintiffs and the defendant third party form a joint Hindu family. It is alleged that out of the 16-annas offerings, they owned and possessed a 3-annas share and to that extent they used to get charhawa(offering's) offered by the people. The defendant second party, it appears, in execution of a decree put up that share to sale and himself purchased it. Thereafter he sold it to the defendant first party. The defendant third party, father of plaintiffs Nos. 1 to 4, and the father of plaintiff No. 5 had executed a mortgage-bond with respect to the above share in favour of the defendant second party and it was in execution of the mortgage-decree obtained on the strength of the above mortgage that the defendant No. 2 sold and purchased that share which

he afterwards sold to the defendant first party.

2. In the plaint it is urged that the right in the share of the offerings is inalienable and so the father of the defendant No. 5 and the third party defendant, father of plaintiffs Nos. 1 to 4, had no right to mortgage it and that, therefore, the defendant second party and his vendee the defendant first party acquired no valid title as the whole transaction from mortgage to sale was invalid.

3. The suit was contested only by the defendants Nos. 1 and 2 of the first party and by the defendant No. 4 of the second party. Their contention is that the suit is barred by-limitation and that the right in the offerings is transferable.

4. The first Court gave a modified decree in favour of the plaintiffs and the defendant third party jointly. The defendants Nos. 1 and 2 of the first party, therefore, appealed to the lower Appellate Court which affirmed the judgment and decree of the first Court and dismissed the appeal. The decree passed by the first Court which was affirmed on appeal is in the following terms: 'That the suit be decreed modifiedly with full costs, that the plaintiffs' title be declared, that they jointly with the defendant third party do recover possession over 2-annas 16-gundas 1-kara share of charhawa interest and that permanent injunction be issued on the defendants first and second parties restraining them from receiving the charhawa offerings for the aforesaid share'.

5. The defendants Nos. 1 and 2 now appeal to this Court.

6. Two grounds were urged on their behalf, first, that of estoppel and second, that the right to offerings was transferable. The first question to be decided is whether such a right as is claimed by the plaintiffs is transferable or not. I am of opinion that such a right, is not transferable.

7. There are certain rights that cannot be transferred; they are termed *res extra commercium*, for instance sacerdotal office which belongs to the priest of a particular temple. It was so held in *Lakshmanaswami Naidu v. Rangamma* 26 M. 31. Similarly a right to receive offerings from pilgrims resorting to a temple or shrine is inalienable and no suit can be maintained for the recovery of *wasilat* in

respect of properties derived from a turn of worship which from its very nature is voluntary. It was so held in the case of Kashi Chandra Chuckerbutty v. Kailash Chandra Bandopadhyaya 26 C. 356 : 3 C.W.N. 279. Indeed, no man can compel another to make voluntary offerings. Offerings are, according to true significance, made to the deity of which the image is its visual symbol and their appropriation by the officiating priest is not a right with which he is entitled to traffic. This was held to be so in the case of Dino Nath Ghuckerbutty v. Pratap Chandra Goswami 27 C. 30 : 4 C.W.N. 79.

8. A very strong reason has been given by the lower Appellate Court that such a right is not transferable. It says: 'In the present case the duty of a pujari seems to have been assigned to Brahmans who make pujas to the idol Bhaironath. To my mind the performance of puja or sheba of the idol creates a right to receive the offerings made to it if it be assumed for a moment that a right to receive offerings is alienable or transferable, then it is clear that an alienation of such right can be made in favour of Muhammadans or persons of another caste who would obviously be incompetent to perform the puja.' Offerings are voluntary presents to the deity to which, no doubt, the shebait is entitled. They are nothing but voluntary payments. The income arising from them is uncertain and indefinite and an income from such a right is not transferable under the Transfer of Property Act.

9. For the above reasons, I am of opinion that the mortgage of that right and the purchase of it in execution of the mortgage-decree are invalid and that the judgment of the lower Appellate Court cannot be assailed on that point.

10. It is somewhat difficult to reconcile the decree given with the character of the property which is clearly not transferable, but this point is not raised in the grounds of appeal and need not be considered.

11. As to estoppel I think the statutory provisions being against transfer, no question of estoppel can arise.

12. The appeal is dismissed with costs.

Coxe, J.

13. I agree. It appears to me that the chance that future worshippers will give offerings to the temple is a mere possibility within the meaning of Section 6, Clause (a), of the Transfer of Property Act. Such a possibility cannot be transferred and, in my opinion, this being a statutory provision, no question of estoppel can arise.

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