

*Judgement of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Gossamee Sree Greedharreejee v. Rumanlolljee Gossamee (Son and Representative of Poorooshottum Gossamee), and others, and a Cross Appeal of Rumanlolljee Gossamee, from the High Court of Judicature at Fort William, in Bengal; delivered 3rd April 1889.*

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Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

In this suit the Plaintiff, who is Appellant in the first appeal, claims to be the rightful shebait of a consecrated picture or idol, to which peculiar sanctity is attached by the Bullav Acharjee sect or community of Vishnuvites; and as incident thereto he claims the things which have been offered to the idol, and the possession of a temple in Calcutta in which the idol has for some years been located. His claim is disputed by Poorooshottum the principal Defendant, whose son and representative is the Appellant in the cross appeal. The controversy, as usual in such cases, has ranged over a wide field, and has given occasion to a great amount of difference in judicial opinion. But their Lordships think that the matters of fact on which the decision should be rested are either undisputed or proved beyond

reasonable doubt; and that when they have been ascertained the legal conclusions are plain enough.

The Plaintiff is the representative by primogeniture of the founder of the Bullav Acharjee community. Poorooshottum is a cadet of the same family. All the male members of the family are in their lifetime esteemed by their community as partaking of the Divine essence, and as entitled to veneration and worship; but the head of the family has the precedence, and is styled the Tickut. The Plaintiff is the present Tickut. His principal seat, apparently the principal seat of the community, was Sree Nath Dwar in Oodeypore, but in the year 1876 he was expelled from thence, for some cause not now appearing in evidence.

The Plaintiff's grandfather was named Dowjee, who was Tickut in his day. In the year 1825 he paid a visit to Calcutta and presented to his disciples there a consecrated portrait of himself, which has ever since been worshipped, and which is now the subject of contention. It is known as the Thakoor Dowjee, is one of the very numerous presentments of Krishna, and is shown by the evidence to attract many worshippers. Dowjee the mortal died in the year 1826, and he is worshipped in many places through other consecrated portraits, or images of some kind. But thenceforward for many years the connection of the Tickut, or of any of the chiefs of his family, with the worship of the Thakoor in Calcutta is very obscure.

We learn from the evidence that for some time prior to 1860 one Tikumjee was mookhea or ordinary officiating priest. On his death, apparently in 1860 or 1861, his brother Govindram entered on the duties of that post, which he held till his death in 1877. Then, after a short interregnum, Sewloll the son of Govindram was

appointed, and he apparently holds the post still. By whom these two persons were appointed, and whose servants they were, are matters of controversy.

In the year 1865 Poorooshottum, who is described as an inhabitant of Mothoora, and whose principal place of worship was at Patna, came to Calcutta, with which place he had no previous connection. He appears to have been invited there by Govindram, who in Patna had been his disciple. He then took a prominent part in the worship of the Thakoor Dowjee, as indeed by his family and spiritual position he was entitled to do.

In the next year arrangements were made for the worship of the Thakoor either on a grander scale or in a more decorous fashion. Before that time he was placed in a house in Shama Bye's Lane, which had then fallen into disrepair. An old and devout lady, named Munnee Bibi, was then moved to provide a better habitation for him. She was a disciple of Poorooshottum, and to him she addressed a deed of gift conveying a new house to Dowjee and to her family Thakoor Beharyjee, who is another presentment of Krishna.

The deed bears date the 30th August 1866, and the material passages are as follows:—

“To the auspicious lotus feet of the most worshipful Sreeloo Sreejoot Poorooshottumjee Moharaj, inhabitant of Mothoora.”

She then described a house in Hanspookur Street, and continued:—

“I by this *Orpunnamah* make *debutter* and give to Sree Sree Issur Beharyjee and Sree Sree Issur Damoojee, Thakoors; the aforesaid Sree Sree Issur Beharyjee and Sree Sree Issur Damoojee, Thakurs, shall be located in the said house; you and your heirs whoever shall be here shall absolutely have charge of the pro-



perty, the subject of this gift, and perform all necessary *sheva* or worship, &c., of the Sree Sree Issur Jeeos without having any concern with me or my heirs; you shall engage Sreejoot Gobind Mookhea as long as he shall live Poojaree to carry on the *sheva* of the Sree Sree Issur Jeeos; upon the death of the said Gobind Mookhea you shall have absolute power to appoint (any one) Poojaree during the existence of this *Orpunnamah* granted by me.

“Should I or any heirs or any other Gossamee of the Bullav family set up any claim to the said house or land or to the said *sheva* or worship of the Sree Sree Issur Jeeo’s, the same shall be void and inadmissible. By this *Orponnamah*, I merely give the said house and land and *sheva* (interview) to you and your heirs; you or any of your heirs shall have no power at any future time to sell this house and land. It simply remains for the location of the Sree Sree Issur Jeeo’s.”

The Thakoors Dowjee and Beharyjee were removed to the house so granted, and in the course of a few years Dowjee’s worshippers desired still further to exalt his worship by building a new temple on the site of the house. A large sum of money, about Rs. 16,000, was collected for that purpose; the temple was built, other accommodation being got for the Thakoors in the meantime; and in the year 1878 they were brought back and installed in the temple. There they remained up to the final decree of the High Court in this suit. There are also some other Thakoors, all presentments of Krishna, in the temple, but it is clear from the evidence that the principal object of worship is Dowjee.

In the month of February 1881 the Plaintiff for the first time visited Calcutta. He was received with great ceremony by a large number of Vishnuvite worshippers, and was taken to the

temple on the following day, when he performed the solemn, apparently the most solemn, ceremony of Arutty. Sewloll, who was mookhea, paid him great veneration, and for the next three months regularly brought to him part of the proshad or offerings made to Dowjee. On the 24th April the Plaintiff went to the temple and inspected the valuables belonging to Dowjee which were produced to him by Sewloll. The Plaintiff ordered that a list of the articles should be made, and he caused some of them, and also the money in hand, to be locked up, and the keys to be given to Sookloll, who describes himself as having been the Plaintiff's jemadar for eight years in Oodeypore and for 16 years in Calcutta.

The Plaintiff then demanded of Sewloll an account of the money received by him while in charge. It is not very clear what was said or done upon this demand, except that no accounts were rendered, and that soon afterwards quarrels broke out, which culminated on the 19th May in a riot. The Plaintiff's people were then forcibly turned out of the temple. On the 16th September the Plaintiff brought this suit.

The case was heard in the first instance before Mr. Justice Cunningham, then on appeal by a Division Court consisting of Mr. Justice Wilson and Chief Justice Garth, and on further appeal by a Full Bench consisting of Mr. Justice Pigot, Mr. Justice Mitter, and Mr. Justice Norris. The two last-named learned Judges agreed in opinion that the Plaintiff is entitled to succeed in his claim to the portrait and the valuables, but must fail in his claim to the temple. To that effect therefore is the decree of the High Court, from which both parties appeal.

Their Lordships will first address themselves to the Plaintiff's claim to the portrait. The principal points taken in the elaborate

argument of Mr. Mayne, who is Counsel for Poorooshottum and his heir, may be briefly summarized as follows:—Neither by general law nor by special custom is it shown that the shebaitship descends to the heirs of the founder; there is no document or trustworthy evidence to show that, between the mortal Dowjee's visit in 1825 and the Plaintiff's in 1881, such heirs ever intervened in the affairs of the Thakoor Dowjee. The reception given to the Plaintiff in 1881 was no more than was due to his great position and sacred character, which all admit. It is true that Poorooshottum did not appoint Govindram or Sewloll; but the Thakoor Dowjee was given by the mortal Dowjee to the community of worshippers; it was their business to tend the Thakoor and to appoint mookheas; and the evidence shows that a committee of them did appoint Sewloll. Finally, the suit is not a suit on behalf of Dowjee the Thakoor, but a personal claim by the Plaintiff to moveable chattels, and is barred under Article 49 of the Limitation Act of 1877.

According to Hindoo law, when the worship of a Thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution. This principle is illustrated by the decision in the case of *Peet Koonwur v. Chutter Daree Singh*, reported in 13 W. R., p. 396, and in the present case some of the learned Judges of the High Court have affirmed it, while none has expressed dissent from it. One learned Judge thought that the principle does not apply to this case, because Dowjee was not the founder of the Calcutta worship. But their Lordships adopt the view of the other Judges, and holding that the



mortal Dowjee was the founder they must also hold that the Plaintiff is by general law the shebait of that worship.

There is no proof of any usage or course of procedure at variance with this presumption in favour of the Plaintiff. The only circumstance bearing against him on this point is the non-appearance of intervention on the part of his family. So far as the oral evidence goes, it is to the effect that the custom of the Bullav Acharjee community is in accordance with the general rule, and is quite sufficient to satisfy the requirements of the case.

With respect to intervention by the Plaintiff, there is no evidence that the Plaintiff appointed Govindram as he alleges, and though it is clear that Poorooshottum did not appoint that mookhea, it cannot be assumed that the Plaintiff did so. But, to begin with the later part of the history, their Lordships consider that the reception given to the Plaintiff by the congregation of worshippers in February 1861, and the obedience which Sewloll at first paid to his directions, show that, in their opinion, he occupied a position of the highest authority, perfectly well known to them; that those events are inconsistent with the theory that his family had never intervened since the year 1825; and that they are not sufficiently accounted for by the family or spiritual character of the Plaintiff.

Going a little further back, we have evidence that Sewloll accepted appointment from the Plaintiff in the year 1878, through the agency of his jemadar Sookloll. Exhibit B is express to that effect. Some of the learned Judges have rejected that document, because it is not mentioned in this plaint, and because its custody is not clearly accounted for. But its execution in the presence of several people is positively deposed to by four witnesses, all

rigorously cross-examined, and so entirely unshaken that Mr. Mayne did not think it worth while to refer to those cross-examinations. The person who could contradict them with effect is Sewloll, who is a Defendant, is a partisan of the principal Defendant Poorooshottum, and was in Court when the evidence against him was given. He did not come forward to say a word about it. Their Lordships think it is carrying mere suspicion too far when it is allowed to get rid of a document so proved, and so allowed to pass by the person most nearly concerned in it. It may be that Sewloll consulted his security by taking appointments from Poorooshottum and from the committee. But his taking one from the Plaintiff shows that the Plaintiff was then intervening, and that his position was recognized.

Again travelling back to an earlier time, evidence is offered of the conduct of Govindram. Whether his mere declarations should be received as something against his interest is a question of some difficulty, which their Lordships would have investigated further if it had been necessary to decide it. But it was shown by Heerjee Meghjee that when Govindram made the monthly collections, he pressed for them on the Plaintiff's account; and by Suddasook that he urged that offerings should be made at his Munder because it was the Tickut's. Such conduct is clearly admissible, and is good evidence to show that in Govindram's time the Plaintiff's position was acknowledged.

With respect to the bar by lapse of time, their Lordships do not consider this suit to be one in which the Plaintiff is seeking merely personal relief. Even apart from the sixth and seventh paragraphs of the plaint, which expressly put forth his spiritual character as the foundation of his claim, the nature of the suit is for the proper conduct of the Thakoor's worship. It



rests quite as much on the right of the Thakoor to have the conduct of his worship and his own custody placed in the right hands, as upon the personal right of the Plaintiff to property. The suit would rather fall under Art. 124 or Art. 144 than Art. 49. But under whichever of the three articles it falls the starting point of time is unlawful possession or adverse possession. And the evidence leads their Lordships to the conclusion that until the affray of May 1881 there has been no possession of the Thakoor or of his possessions either unlawful or adverse to the Plaintiff.

The result is that on this part of the case their Lordships agree with the High Court, and on very nearly the same grounds as taken by the majority, whose opinion has prevailed there.

As regards the temple, the High Court thought the suit is barred by time. In that their Lordships cannot agree. The ground is dedicated to the Thakoors Beharyjee and Dowjee; and, except during the building time, it has been occupied by them ever since. If the fact was that the Thakoor Dowjee had been in the custody of, and his worship been regulated by, another shebait than the Plaintiff for a sufficient time, the Plaintiff might be barred; but the reasoning on the former part of the case disposes of that suggestion. There has been no possession of the temple adverse to the Thakoor Dowjee, and no possession of the Thakoor adverse to the Plaintiff till May 1881.

Their Lordships are of opinion that this part of the case must be governed entirely by the terms of Munnee Bibi's dedication. She gave the house and land to the two Thakoors, but with the condition attached that Poorooshottum should be shebait. The Thakoor Dowjee, or those who speak for him on earth, need not take

advantage of this gift. Munnee Bibi could not of her own authority alter the shebaitship of the Thakoor. But if the gift is taken and the condition insisted on, it must be observed. It has now been insisted on, and Dowjee must elect whether to change his habitation or to change his shebait.

It is true that money was raised to build the temple, and was raised mainly from the worshippers, and in the name, of the Thakoor Dowjee. But the facts of this case are not such as to raise an equity of the kind suggested at the Bar, and favoured by one of the judgements delivered in the Division Court. There is no reason to suppose that the subscribers did not know of Munnee Bibi's deed; and there is no evidence that the subscriptions, though given to the Thakoor Dowjee, were given with any reference to the question who should be his shebait.

The decree of the High Court must be affirmed and both appeals dismissed, but there will be no order as to costs. Their Lordships will humbly advise Her Majesty to this effect.

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