Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Abhiram Goswami Mahant, deceased (now represented by Nrittomoyi Debi) and another v. *Shyama Charan Nandi and others, from the High Court of Judicature at Fort William in Bengal; delivered the* 30*th July*, 1909.

Present at the Hearing:

LORD ATKINSON.
LORD COLLINS.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

The subject-matter of this litigation is a mouzah called Gorfalbari, in the District of Manbhum, and the main questions for consideration are, first, whether the mouzah is *debottar* or *dewattar* property, and, secondly, whether, assuming it to be so, the Mohunt of the endowment for the time being had power to grant a *mokarari pottah*, or permanent lease, of it.

The relevant facts may be shortly stated. In the village of Achkoda is the shrine of two Hindu idols, known as Raghunath Jiu and Durga Mata, served by a family of Goswamis, among whom the office of Mohunt has descended, for more than a century, by the rule of lineal primogeniture. In 1787, one Bichitrananda was Mohunt, and the

[41] P.C J. 83. L. & M.—125—21/6/09. Wt. 98.

origin of the title to the mouzah is a sanad dated on the 23rd December in that year, which is in the following terms :—

> To the remembered and abode of all blessings, Sri Bichitrananda Mohunt Goswami, of good character.
>
> This deed of pottah of debottar property is executed to the following effect :—
>
> Being in sound health and easy mind, I do grant to you by way of lakeraj debottar the entire mouzah Gorfalbari, in pergunnah Pandra, together with all bils, jhils, waste and danga lands, jungles and culturable lands and whatever exists thereon. By bestowing your blessings on us, you do enjoy and possess the same with fresh felicity. If I or any of my heirs ever dispossess you, the dispossession shall be ineffectual.

It was contended on behalf of the Respondents that, although the grant was to the Mohunt, and "by way of lakeraj debottar," there was no complete or specific dedication of the mouzah to the service of any idol, but that the gift was to the Mohunt personally, and descendible to his heirs, in return for blessings bestowed on the donor and his family. There is, no doubt, much force in this contention, but, however ambiguously the intention of the donor may have been expressed, it is perfectly clear from the evidence in the case that the donee received the gift as a gift for the service of the particular idols whose shebait he was, and that the income of the mouzah has ever since been entirely appropriated to that service. The Subordinate Judge finds as a fact that "its "proceeds have all along been spent for the main- "tenance of the Sheba of the said idols," and there is no evidence at variance with this finding. The mere fact of the proceeds of any land being used for the support of an idol may not be proof that those lands formed an endowment for the purpose (*Muddun Lall* v. *Komul Bibee*, 8 W.R. 43), but it is a fact that may well be taken into consideration when, as in this case, the intention of the founder

has to be gathered from an ancient document expressed, to say the least, in ambiguous language. *Contemporanea expositio est optima.*

But the case for the Appellants does not rest on this consideration alone. In February, 1860, the then Mohunt Prananda, describing himself as "Brittibhogi holder of debottar," granted to one Ananga Mohini Debi a *mokarari pottah*, or permanent lease, of the entire mouzah, with the exception of five bighas, which were reserved as "set apart as the place of repose for the deity." In this document the mouzah is described as "my long-standing ancestral lakeraj debottar property endowed for the services of the deity." Under this grant, Ananga Mohini, and afterwards her husband, Magaram, had possession of the estate until 1877, when it was sold in execution of a decree for rent obtained by Prananda against Magaram, whose interest is now represented by the first three Respondents. The five bighas reserved in the original pottah were granted to the same Respondents on the same tenure by the three sons and the widow of Prananda by a lease dated the 2nd November, 1896.

Upon these facts, the learned Subordinate Judge found that Gorfalbari was the debottar property of the idols Raghunath Jiu and Durga Mata; and the High Court, feeling a difficulty on this point, decided the case upon the question of limitation. Leaving the question of limitation aside for the moment, their Lordships are of opinion that the Subordinate Judge was right, and that Gorfalbari must be held to be debottar property, in the sense of having been dedicated to the worship of the idols represented by the Mohunt Bichitrananda.

The second question is whether, this being so, the Mohunt had power to grant a *mokarari pottah* of the mouzah. It is well settled law that the

power of the Mohunt to alienate debottar property is, like the power of the manager for an infant heir, limited to cases of unavoidable necessity. (*Prosunno Kumari Debya* v. *Golab Chand*, L.R., 2 I.A. 145.) In the case of *Konwur Doorganath Roy* v. *Kam Chunder Sen* (L.R., 4 I.A. 52) a *mokarari pottah* of *dewattar* lands was supported on the ground that it was granted in consideration of money said to be required for the repair and completion of a temple, for which no other funds could be obtained. But the general rule is that laid down in the case of *Maharanee Shibessouree Debia* v. *Mothooranath Acharjo* (13 Moore I.A. 270, at p. 275) that, apart from such necessity "to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty" in the Mohunt. There is no allegation that there were any special circumstances of necessity in this case to justify the grant of the pottah of 1860, which on the most favourable construction enured only for the life-time of the grantor, Prananda, who died in 1891, or of the pottah of 1896, which, at best, could only be deemed operative during the life-time of Raghubananda, who died in 1900. As regards Raghubananda, who succeeded his father as Mohunt in 1891, the Subordinate Judge found that he became insane about two years before his father's death, and continued so to the time of his death. The High Court say that "he was apparently insane in 1892 and again in 1897, but the oral evidence as to his being insane in 1896, at the date of the lease, is far from convincing. . . . The better view seems to us that he was not insane in 1896." Their Lordships can find no satisfactory evidence of any lucid interval between the periods when he was undoubtedly a lunatic, and as his mental

incapacity arose from an excessive habitual use of ganja, it is extremely unlikely that such an interval should have occurred. They agree with the Subordinate Judge's finding upon this point.

It remains to deal with the question of limitation, upon which the learned Judges of the High Court have rested their decision. The article in the Limitation Act applicable to this case is Article 134, by which a period of twelve years from the date of purchase is fixed for suits "to recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards purchased from the trustee or mortgagee for a valuable consideration." The operation of this article is controlled by Sec. 10 of the Act, which provides that

> No suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property shall be barred by any length of time.

"Statutes of Limitation, like all others, ought to receive such a construction as the language, in its plain meaning, imports." (*Luchmee Buksh Roy* v. *Runjeet Ram*, 13 Beng. L.R. (P.C.) 177, at p. 182.) Now, what is the plain meaning of the words "purchased for a valuable consideration"? They mean that the ownership of the property sold has been absolutely transferred from the vendor to the purchaser in consideration of a price paid or secured by the purchaser to the vendor. Sir Robert Finlay, in his able argument for the Respondents, contended that a *mokarari* lease is tantamount to a conveyance in fee simple, and that the lessee must therefore be treated as a purchaser within the meaning of the Limitation Act. But the distinction between the two transactions has been well pointed out by Jenkins, J., in his judgment in the

case of *Kally Dass Ahiri* v. *Monmohini Dassee* (I.L.R., 24 Cal., 440, at p. 447). "Because at the present day," says the learned Judge, "a conveyance in fee simple leaves nothing in the grantor, it does not follow that a lease in perpetuity here has any such result. . . . The law of this country does undoubtedly allow of a lease in perpetuity. . . . A man who, being owner of land, grants a lease in perpetuity carves a subordinate interest out of his own, and does not annihilate his own interest. This result is to be inferred by the use of the word *lease*, which implies an interest still remaining in the lessor." He held, therefore, that, whether the Transfer of Property Act applied or not, such a lease is forfeitable, notwithstanding that it is permanent. In this opinion their Lordships concur, and it follows that they are unable to give to the Limitation Act the wider interpretation adopted by the High Court, and to treat the lessee as a purchaser under Article 134 of the Act. The purchaser must be the purchaser of an absolute title.

For these reasons their Lordships are of opinion that the leases under which the Respondents claim were valid only during the life-time of the Mohunt by whom they were granted, and they will humbly advise His Majesty that this Appeal ought to be allowed, the judgment of the High Court set aside with costs, and the decree of the Subordinate Judge restored.

The first and fourth Respondents, who resisted this Appeal, must pay the costs of it.

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