CALCUTTA HIGH COURT

Nirad Mohini Dassi

Vs

Shibadas Pal Dewasin

(Stephen and Vincent, JJ.)

08.07.1909

JUDGMENT

Stephen and Vincent, JJ.

1. The plaintiff, respondent in this appeal, sued for certain shares in the pala of a Thakur's sheba, and in the property appertaining thereto. His claim is based on an arpannamah executed in his favour by three of the defendants Nos. 5, 6 and 7. He is at present an eight-anna owner of the property in dispute, has a reversionary interest in th of the remainder, and is the maternal uncle of defendants Nos. 5 to 7. It is asserted in the plaint, and appears to be the case, that the plaintiff owing to his place of residence and other advantages could perform the sheba of the Thakur much better than defendants 5 to 7, and that this was a reason for the arpannamah. Under these circumstances relying on the decision in *Mancharam v. Pranshanhar*[1] the lower Appellate Court has held that the office of shebait was alienable by defendants 5 to 7 and that the plaintiff acquired a good title under the arpannamah. This decision was, in our opinion, correct. It is true, that the decision in *Mancharam v. Pranshanhar*[2] has recently been disapproved of in this Court [see *Rajeshwar Mullick v. Gopeshwar Mullich*[3]], but that was on the ground that the alienation was by will. At the same time Maclean C.J. admits that there are authorities for such an alienation inter vivos under special circumstances. Such special circumstances seem to have existed in the case of *Khetter Chunder Ghose v. Hari Das Bundopadhya*[4] where a. transfer inter vivos of an idol and the lands with which it was endowed was allowed on the ground that the arrangement was a beneficial one for the idol, because it tended to provide for the proper conduct of its worship. Further light is thrown on the case by the judgment in *Rajaram v. Gonesh* [5]where Ranade J., while affirming the general rule against alienation, indicates private voluntary alienations as possible exceptions to the rule. It is to be observed that in Mancharam v. Pranshankar (1882) I.L.R. 6 Bom. 298(Supra), the fact that the alienation was to a person in the line of succession and capable of performing the worship of the idol was regarded as a justification for the alienation, and that in Rajeshwar Mullich v. Gopeshwar Mullich (1907) I.L.R. 35 Calc. 226(Suupra), Mitra J. treated "clear benefit to the Thakur" in the same way. In the present case, therefore, as the alienation was by an arpannamah to a closely connected member

of the family who seems to have more interest in the worship of the idol than any one else, and as it seems to have been made without any idea of personal gain, in order to prevent the interference of the appellant who claims herself as an alienee of the interest of defendants 5 to 7, we consider that the case is governed by the special circumstances to which Maclean C.J. refers.

2. The result is that this appeal is dismissed with costs.

Cases Referred.

1(1882) I.L.R. 6 Bom. 298
2(1882) I.L.R. 6 Bom. 298
3(1907) I.L.R. 35 Calc. 226
4(1890) I.L.R. 17 Calc. 557
5(1898) I.L.R. 23 Bom. 131