BOMBAY HIGH COURT

Raghunath Vithal Bhat

Vs

Purnanand Saraswati Swami

(Norman Macleod, Kt., C.J. Crump, J.)

10.11.1922

JUDGMENT

Norman Macleod, Kt., C.J.

1. This appeal raises a question on which there does not appear to be any direct authority. The facts are simple. Fifty years ago a Guru owned a temple at Sadashivgad and he appointed a certain person as a priest to perform "Puja" and other services to the deity on receipt of a certain quantity of paddy. The present plaintiff is the third, Guru in order of descent. The defendant is the son of the original Pujari who had two sons, the defendant and Dattatraya the plaintiff's case being that Dattatraya having a half interest in the office of Pujari transferred or surrendered it to him. It has been held in this Court in *Mancharam v. Pran-shankar*[1] that hereditary offices, whether religious or secular, are no doubt treated by the Hindu text writers as naturally indivisible; but modern custom, whether or not it be strictly in accordance with ancient law, has sanctioned such partition as can be had of such property by means of the performance of the duties of the office and the enjoyment of the emoluments by the different coparceners in rotation. The Court said that "there. was no reason why the alienation of a religious office to a person standing in the line of succession, and free from the objections " relating to the capacity of a particular individual to perform the worship of an idol or do any other necessary functions connected with it, should not be upheld." It was, therefore, in favour of alienations in the family of the original grantee of the office.

2. In *Kuppa v. Dorasami*[2] it was held that the sale of a religious office to a person not in the line of heirs, though otherwise qualified for the performance of the duties of the office, was illegal. Mancharam v. Pranshankar was discussed and the Court was not prepared to go so far as to say that a purchase by a person standing in the line of heirs or otherwise qualified should be upheld.

3. We have been referred to no decision which differs from those cases and, therefore, unless there is direct evidence of custom, it should be taken that the transfer by one member of the family entitled to an hereditary office to an outsider would be considered by the Court invalid.

The transfer by one member of his share to another member of the family could not be considered in any way objectional. It would only reduce the number of members who were entitled to the office and a share in the emoluments.
4. The other question that arises is whether one member of the family entitled to an hereditary office can surrender his share to the original grantor. If all the members of the family agree to give up the duties of performing worship and receiving emoluments, then there could be no objection to their doing so. But there is a great difference between the whole group of members surrendering their rights to the grantor, and one member purporting to give up his rights to the grantor which would cause an interference with the rights amongst the remaining members of the family. It seems to us that the matter is entirely one of first impression, and it can only be decided in accordance with the principles which would be most consistent with the proper performance of an office of this nature. We do not propose to decide anything which might cause disputes in future or interfere with the harmonious performance of the duties appertaining to the office. It seems to us that the duties of the office and the emoluments appertaining thereto remain within the family of the original grantee, and those members of the family, who wish to retain the office and share the emoluments, are entitled to do so, and if one of the members of the family wishes to get rid of his duties as well as his rights, he could only do so in favor of the remaining members of the family, and he cannot evade the ordinary rule as to alienations by purporting to surrender his share to the original grantor, or, put in other words, the alienation of a share by one member of the family is invalid whether it is made in favor of an outsider altogether or whether it is made in favor of the original grantor of the office.

5. It seems to us that this aspect of the case has not been considered by the lower Courts. The District Judge has treated the matter as a question of contract. No doubt every promisee may dispense with or remit the performance of any promise made to him. But we do not think that is a proper principle to apply to the decision of this case.

6. Then it was argued that the plaintiff lay under an estoppel because Dattatraya, who was a plaintiff in a suit against the Guru, admitted that he had parted with his share in favor of his brother. There could be no case of estoppel, It would be a question of proof whether Dattatraya had, as a matter of fact, transferred his share to his brother, the present defendant, for it is difficult to say that in consequence of that statement the defendant altered his position for the worse. However that may be, it is hardly necessary for the purposes of this case to decide, when sitting in second appeal, that as a matter of fact Dattatraya, when he purported to assign his share to the plaintiff, had as a matter of fact already surrendered it to his brother. We decide the case on principles that are already recognized in this Court. Dattatraya, although he could have given up his share in the office to his brother, could not endeavour to alienate it either to a person outside the family or to the original grantor or a descendant from him. The appeal, therefore, must be allowed and the suit dismissed with costs throughout.

Cases Referred.

1(1882) I.L.R. 6 Bom. 298
2(1882) I.L.R. 6 Mad. 76