

(1870) 04 CAL CK 0006

Calcutta High Court

Case No: Special Appeal No. 2426

Chattar Dhari Sing

APPELLANT

Vs

Mussamat Jai Bansi
KunwarRESPONDENT

Date of Decision: April 26, 1870

Judgement

Bayley, J.

In these cases one Harprasad is admittedly the original owner of the property. The plaintiff, Chattar Dhari Sing, is the brother of the husband of Deojani, a sister of the said Harprasad, and sues as her heir, on the ground that she (Deojani) had derived the properties in suit from her brother, the said Harprasad. The defendants, special appellants, before us, Jaibansi Kunwar and Pit Kunwar, are widows of the said Harprasad. It appears that Harprasad executed two deeds; one a bakhshishnama, and the other a wukfnama, dated the 14th March 1857, passing certain properties to Deojani. In regard to the bakhshishnama, both the Courts below have decreed the plaintiff's suit, and the defendant, Jaibansi Kunwar, special appellant, in case No. 2426, does not take any objection to this part of the lower Appellate Court's judgment.

2. We now come to, the deed of wukfnama of the same date. That is a deed which makes Deojani matwali (trustee) of certain properties allotted for the maintenance of the worship of thakur (idol), and thakurbari (its temple). One of the conditions in that deed is, that each successive matwali shall have the power of appointing each his successor, but it makes no provision, in case there should be failure in such nomination. It so happens in this case that Deojani died without nominating any successor, and the plaintiff sues, as heir of Deojani, to enforce his right of succession.

3. Now the real test of the plaintiff's right in this matter is to see how Deojani received the property. Now Deojani did not receive the property by any right of inheritance, purchase, or co-parcenary; but as the property of the idol, endowed by Harprasad, of which she was by the terms of the deed and the nature of the endowment, simply made a matwali. As before observed, one of the provisions of the trust failed, so far as it regarded the

nomination by Deojani as matwali of a successor to that office, but the property is always the property of the idol under the management of the matwali; and in that view, the managership must revert to the heirs of the person who endowed the property. In this view we hold that, as regards so much of the property, as is concerned by the wukfnama, the judgment of the lower Appellate Court must be reversed, and the plaintiff's suit dismissed.