(1875) 04 CAL CK 0003

Calcutta High Court

Case No: Regular Appeal No. 63 of 1874

Nawab Syud Ashgur Allykhan and Others		APPELLANT
	Vs	
Delroos Banoo Begum		RESPONDENT

Date of Decision: April 20, 1875

Judgement

Glover, J.

The first point we have to consider is her objection that this was not a case coming under Act XX of 1863, and that the Judge had no jurisdiction to try it. Now Act XX of 1863 was passed, as appears from its preamble, to relieve the Boards of Revenue and local agents of the duties imposed upon them by Regulation XIX of 1810, which Regulation so far as related to endowments for the support of mosques, Hindu temples, or other religious purposes, was by it repealed. The endowments, &., referred to in the Act, ss. 3, 4, 5, are declared to be the same as those to which the Regulation of 1810 was applicable, and s. 16 of that Regulation specifies the kind of endowment which should be made subject to its control and supervision. The words of the section are:--"It is to be clearly understood that the object of the present Regulation is solely to provide for the due appropriation of lands granted for public purposes" Was then the tauliatnama executed by Delroos Banoo Begum an appropriation of lands for public purposes, so as to bring it within the purview of Act XX of 1863?

2. The Judge says:--"I apprehend that a private endowment is one in which the benefits are appropriated wholly or partly to individuals as distinguished from the general Mahomedan public;" and again:--"The difference between a private and a public endowment is explained in Dalrymple v. Khoondkar Azeezul Islam S.D.A., 1858, Pt, i., 586. Now the terms of the tanliatnama are not uncertain or ambiguous; the wakf constituted thereby fulfils all the requisite conditions; and the acts of the defendant in registering the deed, in obtaining the transfer of names in the Collector"s books, and in managing the property throughout the intervening twenty years under the appellation of mutawalli, sufficiently prove that possession passes from herself as malik to herself and Jigri Khanum as mutawallis. It is clear that a valid wakf once completed cannot be

revoked; and it is certainly not open now to the defendant to say that she misunderstood the effect of the words she used, and the acts by which she consummated the wakf. The endowment certainly is a religious establishment within the meaning of Act XX of 1868."

3. I doubt whether Dalrymple v. Khoondkar Azeezul Islam S.D.A., 1858, Pt, i., 586 lays down any rule, or gives any explanation as to the difference between public and private endowments for religious purposes, It rather deals with the difference between a mutawalli considered merely as a superintendent of a religious establishment, and one who combines both a personal and an official interest in the endowment, and, when the appropriation has been made partly for religious and partly for secular purposes. A public endowment for religious uses is one which distributes its benefits to all men of all classes professing a defined form of religion: a similar endowment for pious and charitable purposes generally would include all members of the community who chose to avail themselves of the means afforded them by the appropriator; every one would have an equal right to participate, and that at all times and at all seasons. Now what is the case here? The tauliatnama executed by the defendants Delroos Banoo Begum is to the following effect:--

4. She begins by saying that she considers it incumbent on her to continue and perpetuate the ceremonies for pious uses such as fatiha, haziri, &., which she says is the fixed and settled usage of her family. She then details the ceremonies, &c., on which the larger part of the income is to be spent: they are the fatihas of Mahomed and of the twelve Imams, the expenses of the first tea days of the Mohurrum and of the holidays, the repairs of the imambara and of the tombs, by which she means her mother''s tomb. Of the rest of the income, part is to be expended in paying and pensioning the servants of the estate (the property was a large one, yielding nearly three quarters of a lakh of rupees annually), and part is to be applied to the mutawallis'' own uses. She appoints herself and her sister-in-law Jigri Khanum joint mutawalies, with power to the survivor, and makes arrangements for the appointment of a superintendent after her death.

5. This document was executed on the 10th of September 1852, at a time, that is, when Regulation XIX of 1810 was in force, and when, according to that Regulation, the superintendence of the endowment, if a public one, would have been vested in the Board of Revenue and Board of Commissioners, who would have been bound to take order that the endowment was duly appropriated to the purpose for which it had been destined. Now it is not contended in this case that any such superintendence was ever exercised by the Boards in question, or that they ever interfered in any way with the appropriation, and this too when the tauliatnama or endowment deed had been publicly registered, and application had been made to the Collector to substitute the names of the mutewallis in his mutation register for the name of the former proprietor. It seems clear from this that the authorities did not at the time when the endowment was made, consider that it was of a public character coming under the provisions of Regulation XIX. Nor, when Act XX of 1863 was passed, did the Local Government make any special provision under ss. 4 to 7, as contemplated by s. 3 of the Act, which it was bound to have done, had the endowment

been one of a public nature and for public purposes coming under the Regulation of 1810: no transfer was made under s. 4 of Act XX of 1863. In short, the defendant was never interfered with under either Act or Regulation.

6. Then as to the wording of the tauliatnama itself. It seems to me that there is nothing in it that contemplates an appropriation for the "general benefit," whilst the defendant"s object in making it is farther explained in her deposition, which is on the record. It was to perpetuate certain ceremonies in commemoration of her mother"s death according to the custom of the family, which was of the Shiah sect, and in the regular performance of which the defendant, who had married a husband of the Sunni sect, probably saw some future difficulty. The prayers, &c., to be recited were not to be made in any mosque or regular place of worship, but in the defendant"s own imambara (a building admittedly within the precincts of her dwelling-house), and the expenses of the first ten days of the Mohurrum were matters of an essentially private character, Mahomedans of both Sunni and Shiah sects are in the habit of performing these Mohurrum ceremonies According to their means, and the richer class of them no doubt spend large sums in commemoration of the deaths of Hassan and Hossein; but these ceremonies are personal matters only, and the general public have no right to take part in them. An imambara, moreover, is not a public place of worship as is a mosque or temple, but an apartment in a private house set apart no doubt for the performance of certain Mohurrum ceremonies, but no more open to the general public than a private oratory in England would be. As a matter of fact strangers are ordinarily excluded from these celebrations. Doles of a particular kind of provision are no doubt distributed at this time to the fakirs and beggars in attendance, but this is a matter of individual charity; there is no general distribution in which all the poor have a claim to share.

7. It appears to me, after reading the terms of the tauliatnama, mud considering the evidence which has been adduced as to the way in which its provisions were understood and carried out, that the appropriation of Delroos Banoo Begum was not of a public character, and that Act XX of 1863 does not apply to it. It follows that the Judge bad no authority to give the plaintiff leave to sue, and that his decision was ultra vires.

8. This would be sufficient to dispose of the present appeal, but as we have been informed by the respondent"s counsel that the case will be carried further, it will be as well to give our opinion on the other points which have been argued before us.

9. And first as to the way in which the suit has been brought. The plaint is on a 10-rupee stamp, on the ground that a declaratory decree only is sought; but this is not so. The plaintiffs ask for distinct and important consequential relief; they ask not only that the defendant may be declared to hare wasted the endowment, and thereby to hare betrayed her trust, but also that she may be turned out of her mutawalliship, and they, the plaintiffs, be appointed in her room. The plaintiffs say that what they claim does not admit of being properly estimated by a money-value; but this is not so. Under the tauliatnama the mutawallis were to receive six twenty-eighths of the produce of the estate, a very

considerable sum, and the plaintiffs claim to this share as an appurtenance to the office of mutawalli was easily to be estimated in money. I am of opinion that the plaint ought to have been engrossed on a stamp of proper value.

10. Then as to the plaintiffs'' interest, I very much doubt whether they, or any one else, could have claimed as a matter of right to be present at the imambara on the occasion of the Mohurrum ceremonies, or to have participated in the charities then disbursed. I consider both to have been of a private character, and that the defendant had the right to forbid, had she been so minded, any one from entering her premises on these occasions. In any case all the plaintiffs would not have had the right, even if the two nephews, as being of the family, possessedit.

11. I now come to the substantial question between the parties as to whether this appropriation by the defendant Delroos Banoo Begum was a legally constituted wakf. I agree with the Judge in thinking that so far as words go, it was a wakf which would have bound the appropriator: but what we have to consider is, whether it was intended by the appropriator Delroos Banoo Begum to operate as such, and whether she knew that by executing the tauliatnama she then and there divested herself of all her proprietary right in her large and valuable estate, and became only a co-superintendent with her sister-in-law, with a comparatively small allowance for maintenance.

12. The Judge holds that the defendant cannot now be allowed to say that she misunderstood the effect of the words she used, or of the acts by which she consummated the wakf, and under ordinary circumstances no doubt a person would be rightly presumed to have known the consequence of his own deliberate act; but in this case the matter is somewhat different. The defendant is a pardanashin Mahomedan lady, unable to read and write, and generally ignorant, as are most of her class. She has been examined, and she swears positively that she did not understand the meaning of the deed which she executed. She admits her wish to keep her estate for the purpose of perpetuating certain ceremonies in memory of her mother, and out of the hands of her legal heirs, and that to this end she, by the advice of her confidential servant Ali Jameen, signed a deed which she was told would have that effect. She swears positively that the tauliatnama was only read over to her in Persian, a language which she did not understand, and that she had no idea of divesting herself by it of her proprietary rights. No evidence has been given to rebut this statement. Only one witness to the tanliatnama, Abdool Azeez (summoned by the defendant), has been examined, and be does not prove that the deed was ever read to the Begum in. Hindustani, a language which she understood, or that its purport was explained to her. Her own acts have been from the first absolutely inconsistent with a knowledge that she had divested herself of her rights as proprietor by the tauliatnama; from a time shortly after its execution, we find her dealing with the property just as if it were still her own, selling, buying, borrowing, granting mukarrari leases, and exercising all the usual rights of ownership, and making everything as public as possible by registering the documents affecting these conveyances. I find moreover that, long after the tauliatnama was executed (namely in 1871), the Collector of

the 24-Pergunnas gave pottas to Delroos Baooo Begum,--and this is a further argument in favor of the property never having been considered an endowment for public purposes under Regulation XIX of 1810,--and treated her as the proprietor of her estate. It is moreover hardly likely that, had Delroos Banoo Begum known what was the real effect of making a wakf, she would have headed her receipts for rents paid by the ryots with her name as mutawalli and a description of the estate as a wakf mehal, and still have gone on disposing of the property at her pleasure and as if she had made no wakf at all. From first to last, as it seems to me, her acts denote a person endeavoring to make such an arrangement of her property, as would defeat the claims of her heirs, and permit of the estate being retained for particular purposes, but always considering that she stilt retained the right to do what she pleased with the property so long as she lived.

13. I think therefore that the burthen of proof was shifted, and that the plaintiffs ought to have given some evidence to show that Delroos Banoo Begum understood the true nature of a wakf appropriation, and that when she executed the tauliatnama she knew that by it she divested herself at once of all her large property. It is clear that she had no professional assistance at the time. Ali Jameen is described as an old and trustworthy servant, but not a lawyer; and none of the witnesses examined for the plaintiff"s prove that the Begum in creating the wakf was in any way cognizant of the effect of her act. It has been generally held in this country that pardanashin ladies have a claim to special consideration, particularly in cases when they deny on oath an effectual knowledge of documents which they are said to have made, and a precedent was quoted to us--Price v. Price 1 DeG., M. & G., 308--where, in the case of an illiterate husband making a gift of his whole property to his wife, the writer of the document being the only person present who could write, and he not being a professional man, the Court of Chancery required to be satisfied that the purport of the deed had been properly explained to the husband, and that he knew what he was about, and not being so satisfied, dismissed the wife"s petition.

14. In this case we have an illiterate and prejudiced woman, with no professional assistance, executing a deed written in a language which she did not understand, and which, as she swears was not explained to her by which she completely divests herself of the whole of a large property, and then immediately sets to work to do a series of acts which would have the effect of taming her out of the matawalliship she had created for herself and of turning her upon the world absolutely penniless. Before we come to such conclusion, we ought to have very distinct proof that the real purport of the wakf deed was properly explained to Delroos Banoo Begum, and that she knew what she was about; and it is not too much to say that no such proof has been attempted to be given by the plaintiffs.

15. It does not appear necessary to go further than this. As to the objections raised by the defendant that the wakf was indefinite, and therefore void, I think it enough to say that it, in my judgment, fully answered all the requirements of the Imameea law, and that, if it had been really and knowingly executed, it would have bound Delroos Banoo Begum without the power of revocation. I think that this appeal must be allowed, and the Judge"s

decision in favor of the plaintiffs be reversed with costs.

[1]Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Ainslie.

The 14th August 1874.

Joy Narain Giree (Plaintiff) v. Greesh Chunder Mytee and Others (Defendants).*

Court Fees Act (VII of 1870), Sch. ii, Art. 17, cl. 3--Stamp--Suit to set aside a Deed or Will■Declaratory Decree--Consequential Relief.

In a suit for confirmation of possession by declaration of proprietary right, and also to set aside a forged and invalid will, held that the plaintiff sought consequential relief over and above the declaratory decree prayed for, and therefore the petition of appeal ought to be engrossed on a stamp of proportionate value to the subject-matter of the suit. CASE stated by the Deputy Registrar, and referred by the Taxing Officer under s. 5 of the Court Fees Act, 1870.

"This appeal is from an order of the lower Court in a suit "for confirmation of possession by declaring proprietary right to the properties real and personal, as per schedule, and for setting aside a forged and invalid will," or, according to the statement at the head of the groands of appeal, for confirmation of possession and cancellation of a document dated the 26th Baisakh 1268." The properties which form the subject of the suit are valued at Rs. 93.102-7. The Court fee paid is Rs. 20, which, the pleader on the part of the appellant (Baboo Ram Churn Mitter) urges, is the fee provided for such a suit by cl. 3, No. 17 of Sch. ii of the Court Fees Act of 1870. He states, moreover, that objection to that fee was taken before the lower Court, and overruled."

In stating and referring the case, cl. c. of para. iv of s. 7 of the Act which prescribes that the fee should be computed according to the amount at which the relief sought is valued in the plaint," was referred to as being that applicable to the suit; and the case of (1874) L.R. 1 I.A. 192 (Privy Council) was cited to show that the prayer to have the deed set aside was one for substantive relief.

Mr. R.T. Allan and Baboos Kali Mohun Dass and Ram, Churn Mitter for the appellants.

The respondents did not appear.

The opinion of the Court was delivered by

Couch, C.J.--The Judicial Committee of the Privy Council appear to me to have been of opinion in the case of (1874) L.R. 1 I.A. 192 (Privy Council) that when a plaintiff alleges a deed not to be genuine, and asks to have the deed set aside, there is a prayer for substantial relief. They say that "on the whole they agree with the substance of both the decisions below that these deeds are not genuine and ought to be set aside;" and that the

High Court Ought not merely to have made a decree that "so much of the decree of the Court below as declares that the plaintiffs are the rightful owners of the property be confirmed;" that is, the High Court was not right in making a merely declaratory decree. This appears to me to be an authority of the highest tribunal that, where a plaintiff asks to have a deed or will set aside, there is a prayer for substantial relief.

The clause in the schedule of the Court Fees lot under which the appellant says that he has a right to affix to his petition of appeal a stamp of Rs. 20 is that "a plaint or memorandum of appeal in each of the following suits" may be on a stamp of Rs. 10; and one of the suits mentioned is "a suit to obtain a declaratory decree where no consequential relief is prayed, "If consequential relief is prayed, a stamp of Rs. 10 is not sufficient.

Here, according to the opinion of the Judicial Committee, consequential relief is prayed, and the appellant cannot relieve himself from the obligation to pay the full stamp by saying that he does not ask for consequential relief, and that he will be content with a decree of this Court merely declaring his right to obtain possession; and when we look at substance rather than form in this case, the suit is really to obtain consequential relief. The effect of it is that, whereas a person, if a will be valid, would be entitled under it to execution of an order of Her Majesty in Council, the plaintiff anticipating the claim for execution brings this suit, which really is to extinguish that right and to stop the party from obtaining execution of the order or decree. It is really a suit for something more than a declaration of title, it is to obtain what would be a substantial relief.

I think the stamp is not sufficient and that the petition of appeal must be stamped according to the value of the subject-matter of the suit.

*Regular appeal, No. 204 of 1874, from a decree of the Judge of Midnapu dated the 29th July 1874,

2PRIVY COUNCIL**

The 8th May 1873.

Maharanee Brojosoondery Debia (Plaintiff) v. Ranee Luchmee Koonwaree and Others (Defendants.)

[On Appeal from the High Court of Judicature at Fort William ill Bengal.]

Religions Endowment--Purchase in name of Idol--Alienation--Limitation. The plaintiff sued as the sebait of a certain idol to recover possession of a zamindari by setting aside an alienation thereof effected by his grandmother, on the ground that it was debutter property dedicated to the idol, and consequently inalienable. It appeared that the property in dispute was purchased by the grandfather of the plaintiff in the name of the idol, which was set up merely for his private worship in his own house without any priests to perform

regularly any religions service for the public benefit of Hindus, and that the property had been dealt with all along as his own private property. Held, that it was a mere nominal endowment, and consequently the alienation thereof was not invalid. Held also, that a property purchased by a man in the name of his own idol, which no one except himself has the power or right to worship, is not the property of the idol, but the property of the person who purchased it. Held on the facts, that the suit was barred by limitation.

Appeal from a decision of the High Court at Calcutta (Norman and E. Jackson, JJ.) dated 5th January 1869 2 B.L.R., A.C. 155.

The facts of the case are sufficiently stated in the judgment of their Lordships, which was as follows:--

This suit was commenced on the 11th November 1867. It was brought by Maharaja Govindnath Roy, who was the grandson and heir through adoption of Maharaja Ramnath, alias Biswanath Roy. The suit is against Ranee Luchmee Koonwaree and others. It is brought by the plaintiff as the sebait of the idol Shyamsoonder Thakoor, to recover a certain zamindari in Zilla Rajshahye, which, be contends, was improperly assigned and sold by his grandmother Maharanee Kristomonee, the widow of Biswanath Roy.

The two important questions in this case are, first, whether the property was endowed for a religious purpose; and in the next place, whether the suit is barred by limitation.

With reference to the endowment, it appears that on the 17th of Jaisti 1206, about the year 1799, the zamindari was sold for arrears of Government revenue. It was purchased for RBs. 5,005, and the name of the purchaser was entered as "Shyamsoonder Thakoor," that is the idol, "by the pen of Raghoonath Nandee." It does not appear who Raghoonath Nandee was, but he merely signed on behalf of the idol as the purchaser. Where the Rs. 6,005 came from does not very clearly appear, but there can be no doubt from the whole of the case that the money was supplied by the Maharaja Biswanath. On the 18th August 1802 there was a bill of sale executed by Brojokishore Shaha, said to be a purchaser of the zamindari, in favor of Rughoonath Nandee; but how Brojokishore Shaha got the property does not appear. How the idol, who had purchased at the auction, transferred his property, or by whom the property was transferred on behalf of the idol, does not appear; but it appears that Brojokishore Shaha reconveyed or conveyed the property to Roghoonath Nundee as the gomasta. Rughoonath Nondeo is described (I do not know whether it is very material) merely as the gomasta of the idol, whereas the Maharaja is described as sebait. Whether there is any material distinction between a gomasta and a sebait, I am not aware, nor is it, I think, very important. Now the bill of sale says:--"In the course of cosiness by Brojokishore Shaha, son of" &c., "in favor of Roghoonath Nandee, gomasta of the most worshipful Shyamsoonder," that is the idol. "Having failed to clear and prepare, and pay the Government revenue of our purchased zamindari Perganna Soojanunggur Sirkar Bhuggo Korat, within Chakla Bhadorea, the sadder land revenue of which said pergunna, as per allotment, is recorded at Rs. 4,742-4,-4, and whereas there

is, no possibility of our doing so next year we do of our own will and accord, in full possession of our reason and senses, in health of body, and without compulsion, sell to yon" that is, to Rughoonath Nundee, "the pergunna aforesaid, for a full consideration of Rs. 6,901." Where that money came from does not appear, but there is no doubt that it was the money of the Maharja. A certificate of that sale was put in evidence, which does not carry the case any further, and the deed was registered.

On the 24th of Chaitra 1211, a deed was executed by Rughoonath Nandee, conveying the property to the idol and the Maharaja sebait. He says:--"This deed of agreement is executed in the coarse of business. Being appointed in the office of gomasta,"--there he calls himself again "gomasta"--"on the part of the idol, I have purchased, in the name of the god, Pergunna Soojanuggur, from Tikhum Roy and Brojokishore, I having myself caused the bill of sale to be executed, my name is recorded in the bill of sale, certificate of sale and bill of mutation of names as gomasta on the part of the god. And I now present the bill of sale, &c., under the hand of the Roy and Shaba before you, to enable you to present a petition to have the said pergunna entered as a zamindari in the name of the god and your own name recorded as the sebait thereof; and I accordingly agree and write this to the intent that yon may have the names of the Roy and Shaha struck off from the Collectorate in respect of the said pergunna, and have your own inserted in the office as a zamindari in the name of the god, and yourself as the sebait thereof." That document was also registered, and therefore anybody could have discovered that the deed had been executed.

But the question is whether there is any evidence of an endowment properly so called. Now what is the evidence of an endowment! This was clearly not an endowment for the benefit of the public. The idol was not set up for the benefit of public worship. There are no priests appointed, no Brahmins who have any legal interest whatever in the fund. It is not like a temple endowed for the support of Brahmins, for the purpose of performing religious service for the benefit of any Hindu who might please to go there. It is simply an idol set up by the Maharaja, apparently in his own house. And for what purpose? Why, for his own Worship. We constantly have suits claiming certain turns of worship, but here there is no turn or right of worship established. There is nothing stated in any way to show that the Maharaja intended that the idol should be kept up for the benefit of his heirs in perpetuity; and before it can be established that lands have been endowed in perpetuity, so that they can never be sold and must he tied up in perpetuity, some clear evidence of an endowment must be given. What are the objects of the endowment? None of the essentials of an endowment are stated. The Maharaja appears to hare purchased the property in the name of the idol, and that is all. Then he deals with the funds of the idol as if they were his own property. There is no evidence at all of any of the essentials of an endowment in favor of the idol.

In the case of Mahatab Chand v. Mirdad Ali 5 Sel. Rep 268, which was a very similar case, it was held that, when an endowment is merely nominal and indications of personal appropriation and exercise of proprietary right are found, a sale of the property is valid

under the Hindu law.

It appears, therefore, to their Lord ships, upon the authority of that case, and upon the principle of endowments) that this was not an endowment by the Maharaja in perpetuity for the benefit of the idol, so as to establish that the property so conveyed to the idol was to be the property of the idol for ever, and that no body could alienate it, Suppose the Maharaja had established the idol in his house, would anybody pretend that he could not sell his house? Well, then, what would become of the idol''s temple in the house? He could sell the house notwithstanding he, had put an idol there; and what would become of the idol itself? Here there was no endowment, no priests no public, no one legally interested in the worship of this idol, except the Maharaja himself and nothing to show that the Maharaja intended to establish it for the benefit of his sons or heirs, or anybody else, in perpetuity.

If there was not an endowment, the case appears to be very clear. The Maharaja having purchased the property in the name of the idol, mortgaged it to Komul Lochun Nundee for a sum of Rs. 32,000. Komul Lochun, not baring been repaid, took steps to foreclose the estate; and the period of foreclosure was about to elapse when, the Raja having died, and having appointed his widow, Kristomonee, the manager and owner of the property, she came in and made an arrangement with Komul Lochun to extend the period; and she afterwards borrowed from Rajas Woodmunt Sing and Janokeram Sing Rs. 46,400, with which Komul Lochun was paid off. The conditional sale was to pay off a debt due from her husband to Komul Lochun. Now, as a widow, she was entitled to alienate the property for the purpose of paying and discharging her husband''s debts. After that, the period for the repayment of the money to Woodmunt Sing and Janckeram Sing having elapsed, they foreclosed the estate against the widow Kristomonee, and brought a suit, and recovered possession of the land, and were put into possession forty-seven years before the commencement of this suit.

The defendants claim under Rajas Woodmunt Sing and Janokeram Sing. Raja Janokeram Sing died, leering Raja Woodmunt Sing his heir; and the whole property then became established in him. He died, leaving two sons, and the sons conveyed the property to the defendants. It is unnecessary, however, to enter into the title of the defendants.

The question is, has the plaintiff any right to recover this property? The widow made a valid sale of it; and even without the Statute of Limitation, the defendants are entitled to it.

The Courts, below hare both held that there was no actual endowment. The principal Sudder Ameen (although possibly all his reasons may not be correct) says:--"It is simply this that the grandfather of the deceased purchased the property claimed in the name of the idol." Then he held that there was not an endowment, and that the property was the private property of the grandfather. The High Court say:--"No evidence has been given to show that there ever was any formal dedication of the property to the idol. It is a mere

purchase in the name of the idol. From the time of the purchase of the property, Raja Biswanath Roy appears to have dealt with it as his own.

In the case of Gosain v. Gosain 6 Moore"s I.A., 63, it was held that if a Hindu purchase property in the name of his son, the property is not vested in the son but remains vested in the father who purchased; and so with regard to an idol. If a man merely purchases-property in the name of his own idol, whom no one except himself has the power or right to worship, the property is not the property of the idol, but the property of the person who purchased it. The High Court say.--"From the time of the purchase of the property. Raja Biswanath Roy appears to have dealt with it as his own. In 1802 it was conveyed or mortgaged to one Bheekum Roy, and in 1812 it was mortgaged, apparently for the Raja"s purposes. There is no proof that either the first or the second mortgage was executed in any way for the purposes of the worship of the idol, or for the performance of any trust connected with it. For all that appears, the money was raised for the private purposes of the Raja. No evidence has been given to show that the revenue of the property was expended for the purposes of the idol, and the pleader for the appellant, when arguing the case before us, was not prepared to go into evidence- upon that point. We do not mean to rest our decision of the case on that point. But we may observe that we do- not see any reason to doubt the correctness of the decision of the Principal Sudder Ameen that there was no real endowment."

Now both the Courts below have found that there was no real endowment, and their Lordships entirely concur in that finding. There was, therefore, nothing to deprive the purchaser of the power of alienation.

It is scarcely necessary to advert to the question of limitation. In this case forty-seven years have elapsed since those under whom the defendants claim purchased the property bona fide, under the belief that the foreclosure in favor of Rajas Woodmunt Sing and Janokeram Sing was a valid title in those parties, and they purchased the property for a valuable consideration. The property has been out of the possession of the Maharaja"s family for upwards of forty-seven years, and limitation is clearly a bar to the suit.

Under there circumstances their Lordships will humbly advise Her Majesty to affirm the decision of the High Court, with the costs of this appeal.

**Present.--Sir J.W. Colvile, Sir B. Peacock, Sir M.E. Smith, and Sir L. Peel. (a) 2 B.L.R., A.C., 155.