
(1910) 03 CAL CK 0036
In the Calcutta High Court

Madhab Chandra Bara

APPELLANT

Vs

Rani Sarat Kumari Debi and Others

RESPONDENT

Date of Decision : 09-03-1910

Acts Referred:

Citation : 6 Ind. Cas. 26

Hon'ble Judges : Sharf-ud-din, J; Brett, J

Bench : Division Bench

Judgement

1. The suit out of which this appeal arises was brought by the plaintiff-appellant for a declaration of his right to 1,451 bighas of land being a (sic) of 3,000 less 98 bighas covered by mourn Krishnanagar.

2. The plaintiff originally brought a suit against Raja Bhupendra Narain Chowdhury, the husband of the defendant No. 1, Rani Sarat Kumari Debi, to recover a debt. On the 28th July 1898, a decree was given by consent and, on the 16th December 1902, amongst others the property in suit, namely, a half share of Raja Bhupendra Narain Chowdhury in the 3,000 less 98 bighas of land included in mouza Krishnanagar. was sold, after attachment, in execution of the decree and purchased by the plaintiff. On the 7th January 1903, Bhupendra Narain Chowdhury made an application under Sections 311 and 244, Civil Procedure Code, to have the sale set aside on the ground of irregularity and consequential loss. On the 7th March 1903, that application was rejected and on the same day, the sale was confirmed and the sale certificate granted; and on the 17th June 1903, an order was passed for delivery of possession to the plaintiff. In May 1903, 3rd Jaistha 1310, Bhupendra Narain died leaving his widow, Rani Sarat Kumari Debi, the present defendant No. 1 respondent. On the 8th August 1903, she put in an application u/s 244, Civil Procedure Code, to have the sale set aside on the ground that the property sold was an endowed property belonging to the idol Sri Sri Madan Gopal Jiu of which she was the shebait. Her application was refused and she was referred to a regular suit. The plaintiff's case is that he then remained in possession of the land but that the

defendant No. 1 sent persons who cut and carried off the paddy. In consequence the plaintiff applied to the Revenue Court to have his name registered as the proprietor of the land under the Land Registration Act but, on the 29th March 1904, his application was rejected. He appealed to the Collector and on the 28th April 1904, the decision of the Deputy Collector was reversed and the prayer of the plaintiff was granted. There was an appeal against the Collector's order to the Commissioner and he restored the order of the Deputy Collector on the 3rd August 1904. The Board of Revenue on the 20th September 1904, refused to interfere with the order of the Commissioner and in consequence, the present suit was filed on the 31st July 1905.

3. The defence set up by the defendant No. 1 was that the idol Sri Sri Madan Gopal Jiu had been established by Lakshmi Narain Chowdhury, the ancestor of her husband; that he had, in 1755, made an absolute endowment for the benefit of the Idol of the whole of mouza. Krishnanagar and had appointed as shebait of the Idol one Brij Kishore Adhikary; that the profits of the mouza had been subsequently applied for the benefit of the Idol; that after the family of Brij Kishore Adhikary who had been appointed shebait had died out, the shebaitship reverted to the family of the founder of the endowment, and that Nara Narain Roy Chowdhury and after him, his son and grandson and great grandson were shebait of the thakur and held possession of an one-half share of the land in mouza Krishnanagar as such. It was also pointed out that, in certain resumption proceedings in 1832, mouza Krishnanagar had been recognised by the Revenue authorities as the debutter land of the Idol Sri Sri Madan. Gopal Jiu and that the mouza was afterwards measured as debutter and recorded as such in the Revenue Survey of 1247 (1840). It was further alleged that the plaintiff, when applying for the sale of the property in satisfaction of his decree, admitted that the property was debutter property and it was contended that he was not entitled in the present suit to claim to have acquired a valid proprietary title under his purchase.

4. In support of the defendant's case, reliance was placed on certain old documents commencing from 1775 up to 1785. These were a sanad dated the 11th day of Zilhijja 1166,--1775 (Ex. L.), a second copy of the above dated the 15th Zilhijja 1166, a petition of Brij Kishore Adhikary (Ex. Ta.) dated the 21st Kartick 1184=5th November 1777, addressed to the naib of Chakla Hijli praying for acknowledgment of his right as shebait to the debutter land, with an order of the same date passed on that petition, a sanad (Ex. Tc.) dated the 29th August 1782, addressed to the Sikdar of pergunah Keoramal directing him to release the debutter lands in favour of the shebait Brij Kishore Adhikary of Krishnanagar and a Rubakary (Ex. Tb) dated the 10th February 1785, addressed to the amlas and other officers of pergunah Keoramal directing them to take notice that the land was debutter. This last mentioned document referred to the order of 1782. These ancient documents were produced by the defendants in order to prove the original endowment and its subsequent recognition by the authorities.

5. Other documents relied on were (1) Ex. T, dated the 8th November 1830, being a list of certain papers filed in a resumption case relating to lakheraj mahal krishnanagar. This list contains the previous documents Exs. L, Ta, Tb and Tc: (2), Ex. U a copy of a Rubakary, dated the 4th May 1832, in proceedings taken under Regulation XIX of 1793. That Rubakary refers to all the documents mentioned in the list described above and directs u/s 2 of Regulation XIX of 1793, that the land described as 3,000 bighas of lakheraj debutter land in mouza Krishnanagar be recovered as lakheraj debutter Of Sri Sri Madan Gopal Jiu Thakur and (3) the Revenue Survey Chittas of 1247=20th April 1816 in which the lands of mouza Krishnanagar are described as the debutter lands of Thakur Madan Gopal Jiu, the then shebait being Krishnendra Narain Roy of Basudebpur. These documents were relied on to show that the debutter character of the property was recognised by the Revenue authorities in 1832 and 1840.

6. In addition to the above mentioned ancient documents, a number of judgments and decrees from 1872 to 1905 were filed by the defendants to show that, in those proceedings, the disputed property had all along been described as the debutter of the Idol Sri Sri Madan Gopal Jiu. The defendants also examined many tenants of the mouza and filed rent receipts in order to prove that the lands had all along been treated as the debutter lands of the Idol.

7. The principal documents on which the plaintiff relied were these: (1) A petition (Ex. 29) filed on the 15th May 1854, by Raja Koer Narain Ray, brother of Krishnendra Narain Roy, grand-father of the husband of the defendant No. 1, in a case brought against Raja Gajendra Narain Roy, father of Bhupendra Narain Roy, for recovery of a half share of mouza Krishnanagar. That document purports to show the debutter properties belonging to the two branches of the family and, as the Krishnanagar mouza is not included in it, it is suggested that it goes to show that the lands in mouza Krishnanagar were never treated as debutter; (2) an application for registration made in the Revenue Courts in 1891 by the manager of the Court of Wards for the registration of the name of Bhupendra Narain, who was then a minor, as the proprietor of a half share of mouzah Krishnanagar in which document Bhupendra Narain is described as the proprietor and not as the shebait, and it was relied on to prove that the property was all along held as secular property: and (3) an application made in 1891 by Haripriya, the widow of Kuer Narain Roy, for registration of her name as proprietor of half share of mouza Krishnanagar. Reliance was also placed on the fact that certain Chuckerbutties received gifts of lands included in mouza Krishnanagar amounting to 98 bighas in all from the family of defendant's husband, and that they afterwards obtained registration of their names as proprietors of those lands alleging that they had a title by gift and that their title was acknowledged by the members of the Raj family. Copies of the applications were filed and it was argued that they proved that the property was always treated as secular property and was transferred by gift by the members of the family to which the defendants belonged. Reliance was also placed on two mortgage bonds, one bearing date the 7th November 1899, Ex. I (1), executed by Bhupendra Narain Roy in favour of Pro-motho Nath

Mullick by which Bhupendra mortgaged with other properties the whole 16 annas of mouzah Krishnanagar and the other (Ex. 15) executed by the defendant No. 2 on the 30th March 1901, mortgaging a half share in Krishnanagar along with other properties to Jnanendra Nath Bhattacharji.

8. Oral evidence was also adduced on behalf of the plaintiff to prove that mouza Krishnanagar had all along been treated as secular property, and that there was really no Thakurbari or Idol in the estate.

9. A Commissioner was, in consequence of the denial by the plaintiff of the existence of the Thakurbari, appointed to make a local enquiry and his report was taken into consideration by the lower Court in deciding the case.

10. The lower Court, on a consideration of all the evidence, came to the conclusion that there had been a valid absolute endowment of the lands in mouza Krishnanagar to the Idol Sri Sri Madan Gopal Jiu in the year 1775, and that the debutter nature of the property was recognised after the British Government had taken over the country and also that thereafter the debutter nature of the property had been maintained and its existence recognised in the different decisions of the Courts and in the rent receipts produced by the defendants. The lower Court further held that the documents relied on by the plaintiff to establish the secular nature of the property failed to make out the plaintiffs' case. The applications by the Court of Wards for registration of the name of Bhupendra Narain as proprietor and by Haripriya for registration of her name, made in 1891, were held to have been made by mistake, and the alienations of the lands by gift and by mortgage were considered to be instances of breach of trust on behalf of the shebait which were not in themselves sufficient to destroy the debutter nature of the property. The Subordinate Judge held on a consideration of the evidence and of the report of the Commissioner that the Thakur Madan Gopal Jiu was in existence, that the endowment had been validly made and that the profits of the endowed property had been applied to the benefit of the Idol. He accordingly came to the conclusion that the plaintiff was not entitled under the purchase made by him in execution of his money decree to obtain possession of the land from the defendants and dismissed the suit. It is to be noticed here that the value of the property as stated by the plaintiff in his application for execution of the decree was Rs. 300 and that the property for the purposes of this suit has been valued at Rs. 17,797.

11. The plaintiff has appealed to this Court.

12. Before dealing with the appeal, it will be convenient to mention that, to the geneological table given by the lower Court at the commencement of its judgment, the following addition should be made. The father of Nara Narain Roy is Bir Narain Roy and his father is Lakshmi Narain Roy, who is alleged to have been the ancestor of the husband of defendant No. 1 who made the original grant of the property as debutter to the Idol.

13. In support of the appeal, it has been argued (1) that the original grant of the

property as debutter has not been proved and that the documents, which have been relied on by the defendants to prove that it was made, fail to substantiate that fact; (2) that the proceedings taken before the Executive and Revenue authorities in 1832, are of no value to prove that there was a valid endowment; (3) that the conduct of the parties since 1854 indicates that the property has all along been treated as secular property; (4) that the proceedings taken by the Court of Wards while the property was under its management indicate that the property was then regarded as secular property and not as debutter; (5) that the conduct of the parties from 1895 up to the date of the sale to the plaintiff in 1902 and thereafter goes to show that the property was all along regarded as secular property; (6) that the documents on which the defendants rely fail to prove that the profits of the property were devoted to the support of the thakur so as to indicate that the endowment was treated as a valid and complete endowment of the property for religious purposes; and lastly, that the report of the Commissioner is not entitled to any weight as it was objected to by the plaintiff and the defendants failed to call him as a witness.

14. In dealing with these points, it will be convenient to consider how far they are met by the arguments and the evidence relied on by the defendants and to state our conclusions on each of them in order.

15. Before dealing with these points, however, it is necessary for us to consider the arguments advanced on both sides and to determine what is necessary to constitute a valid and public endowment. The main distinction between endowments made for charitable purposes is clearly drawn in Mayne's Edition on Hindu Law and Usage. It is there pointed out that there is a strong line of distinction between endowments which amount to trusts created for the benefit of the members of a family, subject to certain charges for defraying the services of an Idol and absolute endowments made for religious objects and for the benefit of the public. In the present case, the contention advanced on behalf of the defendants-respondents is that the property in question is one which has been absolutely granted for religious purposes by the ancestor of the family and it is necessary to consider what they will be required to prove in order to make out that case. It has been laid down by this Court in the case of *Kasheshuree Dassee v. Krishna Kaminee Debea* 2 Hay's Reports 557, that in order to determine the question whether the endowment is a public religious endowment or not and also to determine the bona fide nature of the endowment, it is necessary to see whether the proceeds have been used from the time when the endowment was made exclusively for religious and pious purposes and, in the case of *Ganga Narain Sircar v. Brindabun Chunder Kur Chowdhury* 3 W.R. 142, it has been laid down that one test of ascertaining whether the endowment is one made bona fide for religious purposes or merely a nominal endowment made for the benefit of the family of the founder, is to see how the founder himself treated the property and how descendants have since treated it; and in the case of *Ram Pershad Doss v. Sreehuree Boss* 18 W.R. 399, it has been held that the mere fact that a portion of the profits of the land has been for some time used for the

worship of an Idol is no proof of a valid and public endowment. Instances are also given of incomplete endowments in the cases of *Sonatun Bysack v. Juggutsoondree Dossee* 8 M.I.A. 66 and *Ashutosh Dutt v. Doorga Churn Chatterjee*, 5 C. 438 : 5 C.L.R. 29 : 6 I.A. 182. From these cases it is clear that, in order to support the case relied on by the defendants that the lands in suit form the subject of a valid public endowment, it must be established that an absolute grant was in the first place made with the intention that profits should be applied for the services of the Idol, that the profits have since been so applied and that the members of the family of the founder have not treated the property as one, the profits of which were mainly intended to be applied for their benefit. The case put forward on behalf of the plaintiff-appellant is that the endowment in this case was merely a nominal endowment to the Idol, that it was made in the first instance for the purr poses of avoiding payment of Government Revenue, and that its main object was to secure the profits for the benefit of the members of the family.

16. Dealing now with the first of the points previously stated, we have already mentioned that the defendants rely on two copies of a sanad of 1775 (Zilhijja 1166). It has been argued on behalf of the plaintiff-appellant that these copies were not admissible in evidence, until it had been shown that there was a sanad of which there are copies and that that document could not be found and produced after due search. We are of opinion that this contention cannot prevail. The document of which the copies are produced does not itself purport to be the deed of grant by which the endowment was constituted but refers to the fact that the grant had been made by Lakshmi Narain Chowdhury and shows that it was recognised by the executive authorities. We are of opinion that the Subordinate Judge was right in holding that those documents were admissible in evidence, after their custody had been proved. To the petition of Brij Kishore Adhikary (Ex. Ta), dated the 21st Kartick 1184=5th November 1777 and the order passed thereon by the naib of Chakla Hijli, the objection has been taken that it was not admissible as the person who presented it was not a predecessor-in-interest to the parties in the present suit, and that its object was not to secure a recognition of the endowment, but, to escape the assessment and payment of Government Revenue. The sanad of the 29th August 1782, and the Rubakary dated the 10th February 1785, have been objected to on the same ground. The former was addressed to the Sikdar of pargana Keoramal and the latter to the amlas and other officers of the pargana, informing them that 153 Buttis of land comprised in mouza Krishnanagar are the debutter lands of the Idol Sti Sri Madan Gopal Jiu and that they are, in consequence, not liable to pay rent. The Subordinate Judge has held that these four documents go to show that Krishnanagar was acknowledged by the authorities as an endowed property of the Idol. The contention of the appellant is that these documents go no further than to show that the property was debutter property which on that account was released from assessment of Government Revenue, and that they cannot be taken in themselves to prove that there was a valid and complete endowment of the

property for religious purposes. For the defendant it has been urged that these documents prove that there was such a grant and that the grant was recognised by the Mahomedan authorities. We think that the view taken by the Subordinate Judge is correct and that these documents must be taken to support the case of the defendants that a valid endowment of 150 Buttis--3,000 bighas of land was made to the Idol Sri Sri Madan Gopal Jiu so long ago as 1775 and was recognised. The shebait was the predecessor-in-interest of the husband of defendant No. 1 who says he was shebait of the Idol.

17. It has been pointed out to us by the learned pleader on behalf of the respondent that, at the time when this grant appears to have been made, the land was jungle land, that the object of the grant was clearly to bring the land under cultivation and to make a settlement in the jungle and that the fact that the land is 22 miles distant from Basudebpore, the residence of the family to which the defendants belong, leaves no doubt that the intention of the original grantor was to make the property over to the Idel, and to the charge of Brij Kishore Adhikary in order that the land might be cleared and the profits applied for the service of the Deity. We think that this conclusion is fully justified by the circumstances and the facts to which we have been referred and by these above mentioned documents on which the defendant No. 1 relies.

18. We have now to deal with the second branch of the argument for the appellant. Objection is taken to the judgment in the resumption proceedings dated the 24th Bysakh 1239=4th May 1832 as supporting the case for the defendant. It is a Rubakary of the Court of the Collector of the Hijli District in proceedings taken under Regulation II of 1819. That judgment, after dealing with the four documents to which we have already referred, a list of which appears in Ex. T dated the 8th November 1830 and in Ex.30 (which appears to be a list of documents attached to the Rubkary itself), goes on to state that it is evident that Brij Kishore Adhikary has been in possession of the lakheraj lands as shebait of Thakur Sri Sri Madan Gopal Jiu from before the assumption of the Dewani by the East India Company, that the lands have all along been rent free, that they are the debutter land granted to the Idol Madan Gopal Jiu and that the shebait Brij Kishore Adhikary is not the real donee but that the thakur is the owner of the property. On behalf of the appellants, it has been contended that this decision of the Revenue authorities under Regulation II of 1819 cannot be accepted as proof that there was a valid debutter grant, but that it goes only to prove that there was a valid rent free grant. In support of this contention a passage in the judgment of one of the Judges, who decided the case of Budh Singh Dudhuria v. Nirad Baran Roy 2 C.R.J. 431 at p. 444, is referred to. The passage runs as follows: "The question whether the lands had been absolutely dedicated for a public charitable purpose was wholly foreign to the enquiry in the resumption proceedings and indeed beyond the jurisdiction of the Revenue authorities." The passage occurs in a portion of the judgment in which the learned Judge is considering how far the facts disclosed in resumption proceedings under Regulation II of 1819, afford any foundation for a title subsequently set up to

lands as forming a public charitable trust, and it must, in our opinion, be regarded rather as a portion of the argument than as a distinct pronouncement of the law. We are in entire agreement with the learned Judge's conclusion that, in proceedings under Regulation II of 1819, there could be no final adjudication, of the question whether lands had been so dedicated as to constitute a public charitable endowment, but we think the passage goes too far when it lays down that the question was wholly foreign to the enquiry to the resumption proceedings. We are of opinion that it would certainly be open to an officer acting under that regulation to enquire into the grounds set forward in support of a rent free grant claimed and when those grounds were based on the allegation that the lands had been dedicated for a public charitable purpose, then it would be necessary for such officer, for the purpose of arriving at a conclusion as to whether or not there was a valid rent free grant, to take into consideration and decide incidentally the question whether there had been a dedication for a public charitable purpose. Such an incidental decision would not amount to final determination of the question nor could it be relied on for such a purpose. For the respondents, it has been argued that, even though this judgment may not be conclusive proof of the validity of the grant, it is at all events evidence which goes to show that, in 1832, a claim was put forward by the shebait that the property was the debutter property of the Idol and so rent free and that his claim to hold the land rent free on that account was admitted by the Revenue authorities. The Subordinate Judge has held that the document is of value for that purpose and we see no reason to differ from him in that opinion.

19. Objection is taken to the Survey Chitta of the 9th Bysakh 1247=20th April 1840, as proof of defendants' case. In these Survey proceedings, the lands are described as the debutter lands of the Deity Madan Gopal Jiu in village Krishnanagar and it is also stated that, at that time, Krisnendra Narain Roy of Basudebpore was the shebait of the Idol, and the lands were measured and entered in the papers as the debutter land of the Idol. It has been argued on behalf of the appellant that the value of this document as proof of a complete grant is considerably discounted by the fact that no explanation is given why Krisnendra Narain Roy had then become the shebait of the Idol, for, if there had been a valid dedication and Brij Kishore had been appointed shebait, there is no reason why the property should have reverted to the family of the original grantor. In reply to this, argument, it has been urged on behalf of the defendant No. 1--and we think rightly--that it is impossible at this distance of time to explain how the succession to the shebaitship changed; and that, if, as seems to have been the case, the family of Brij Kishore Adhikary died out, the shebaitship would, in the natural course, revert to a member of the family of the original grantor (see the case of *Sital Das Babaji v. Pertap Chunder-Surma* 3 Ind. Cas. 403 : 11 C.L.J. 2. and the cases referred to in the judgments). These documents, in our opinion, go to support the conclusion at which the Judge of the lower Court has arrived that the lands in suit included in mouza Krishnanagar were the debutter lands of the Idol Madan Gopal Jiu and were recognised and treated as

such down to 1840 both by the public authorities and by the members of the family of the founder of the endowment.

20. We now come to the conduct of the parties after that date. On behalf of the plaintiffs it has been contended that the plaint Ex. A, dated the (sic) February 1851, filed in suit, brought by Raja Koer Narain Roy against Krisriendra Narain Roy, to recover possession of a half share of the ancestral zemindary and taluqs rent paying and rent free lands, jewelleries etc., all movable and immovable properties, shows clearly that the debuttar lands of the deity Madan Gopal Jiu were then treated as secular property because they were included in the list of the properties a half share of which the plaintiff sought to recover possession. It has further been contended that, the suit being one for partition and these properties being included in it, it is clear that they were then treated as secular and not as forming a religious endowment. To this contention, the defendants-respondents reply that the suit was not a suit for partition at all, that it was a suit for joint possession by one brother against another. The suit was dismissed on the ground that the inheritance in the family was governed by the rule of primogeniture under the custom prevailing in the family. There was an appeal to the Sudder Dewany Adalat and the judgment of that Court appears in the Sadder Dewani Reports of 1858 at page 1132. That suit was finally decided on compromise. We think that the case for the defendant must be accepted, that that decision merely indicates that, at that time, the land in suit was regarded as debutter of the Deity Madan Gopal Jiu, and that the suit, being one for joint possession and not for partition, does not necessarily go to indicate that the property was treated as secular property the plaintiff's claim to joint possession covered the shebaitship.

21. Our attention has been drawn next to a number of rent decrees and judgments filed by the defendants ranging from 1872 to 1905; These are relied on by the defendants as proving that the land was all along described in them and treated as the debutter property of the Idol. For the appellant, however, it is contended that as in these suits, a half share of the rent was sued for, it is clear that the property must have been treated as secular property, as there can be no partition of an endowed property. We think, however, that the answer given to this argument on behalf of the defendants is sufficient namely, that, after there had been the quarrel in the family in 1854, which had been settled by the compromise, it is not reasonable to expect that there would have been joint collections by the two branches and that the mere fact that each branch collected the rent in half shares could not be taken to indicate that the property which was described as debutter property was treated as secular property. We agree with the Subordinate Judge that these judgments and decrees are admissible as evidence u/s 13 of the Indian Evidence Act.

22. In 1876, Gajendra Narain, the father ,of the husband of the defendant No. 1, died leaving a Will by which he bequeathed his half share in various properties to his widow Anandamoyee. Afterwards, on the 30th January 1877, Anandamoyee

took out probate of this Will and, in the order for probate, it is stated that the testator bequeathed all his properties to the petitioner. It is argued on behalf of the appellant that, if there had been a valid dedication of the land in mouza Krishnanagar to the Idol in 1775, the testator could not have bequeathed any right in that property to his widow. In answer to this contention, it is urged on behalf of the defendants that under the Will, the testator bequeathed to his widow all the properties which he had and that, if the debutter property was included in the list of properties attached to his Will, that would go no further than to indicate that he bequeathed his right to the shebaitship of that property to his widow and not the property itself. We think that this contention is not unreasonable.

23. After the death of her husband, Anandamoyee adopted Bhupendra Narain Roy, the husband of the defendant No. 1, as her son and, in 1884, the Court of Wards took charge of the property of the minor and remained in possession until 1894.

24. This brings us to the fourth contention raised on behalf of the appellant. It seems that after taking possession of the property, the Court of Wards, on the 16th February 1891, applied for registration of the name of the minor, as proprietor of a half share of the 2,950 bighas of Bahali lands in mouza Krishnanagar. In that document it was stated that the minor had acquired his rights by inheritance. It is contended on behalf of the plaintiff-appellant that this leaves no doubt that the property was then treated as secular property. In that application the name of the last proprietor was given as Brij Kishore Adhikary, and it is stated that 49 bighas had been excluded from the total area of 3,030 bighas. The minor's name was registered and, on the 3rd March 1891, Haripriya, the widow of Koer Narain, applied for registration of her name as proprietor of half of the lands in mouza Krishnanagar and in the same way stated that her title had been acquired by inheritance. In neither of these documents is any mention made that the village was held by the applicants as shebait or that it was the debutter property of the Idol Madan Gopal Jiu. On the 26th May 1891, an order was passed for registration of the names of these two persons as proprietors. For the defendants it has, however, been contended that the statements made in the applications were incorrect, that they were made at a time when there was some considerable confusion in the estate and that the rights of the Idol ought not to be held to suffer for the mistakes made by the manager of the Court of Wards and by Haripriya.

25. In 1892, road-cess returns were filed by the manager of the Court of Wards in which the property was described as rent free; but, with regard to these documents, the same argument has been advanced on behalf of the defendants, viz., that the misdescription was due to mistake and that it cannot affect the rights of the Idol.

26. We have noticed that, in the application for registration made on behalf of Bhupendra Narain, it is stated that 49 bighas were to be excluded. These lands

are stated to have been given as free gifts to certain Chuckerhutties who were the priests of the family of the Roys. On the 15th November 1880, Indramani, the widow of Lal Mohan Chuckerbutty and guardian of her minor sons, Brojo Mohan Chuckerbutty and Radha Mohan Chuckerbutty, applied for registration of their names, by right of succession to ancestral lands acquired by gift, in respect of 49 bighas out of the lands in mousa Krishnanagar and, on the 23th November 1880, the registration was granted. It has been argued on behalf of the appellant that this alienation of a portion of the land in mouza Krishnanagar by gift goes to show that the land was all along treated as secular property by the members of the family. It also appears from an application made by Indramani on the 1st October 1876, that she applied for registration of her name on behalf of her sons in respect of these 49 bighas and an additional 15 bighas, or, in all; 64 bighas, and in the order dated the 10th May 1897, it was stated that, out of these extra 15 bighas, 7 bighas, 10 cottahs were lands which were previously registered in the name of Ananda-moyee, executrix to the estate of G-ajendra Narain Roy, and 7 bighas, 10 cottahs in the name of Haripriya, the widow of Koer Narain. It has been argued that these alienations which were admitted as valid in petitions filed by the members of both branches of the family go to indicate that they treated the property as secular property.

27. As to these alienations, it is contended on behalf of the defendants that, even if they covered lands included in mousa Krishnanagar, as to which, it is urged there is some doubt as they appear to have been lands in Deol Pota, still such alienations by the widow would not have the effect of binding the Idol or converting the property which was an endowed property into secular property. It has been argued on behalf of the appellant that the learned Subordinate Judge ignores the difficulty raised by the existence of these documents; but we think that the Subordinate Judge is right in the view which he takes that, if these be treated as alienations of endowed property by the shebait, they amount to instances of abuse of trust by the shebait and would not themselves be sufficient to destroy the character of the land as a religious endowment, if the other evidence established it to be such an endowment.

28. For the defendants, the kharcha papers for the year 1293, during which the Court of Wards were in management of the estate of the minor Raja Bhupendra Narain Roy, have been produced to prove that the lands in Krishnanagar were treated as debutter. In these documents, the property is described as debutter. For the appellants, it has been urged that, though the Subordinate Judge refers to these documents, he omits to notice that the words "Bahali Debutter" have clearly been interpolated, and to draw the necessary inference from such tampering with documentary evidence that the title, to support which the forgeries have been committed, is clearly unsustainable. We have examined those documents and feel bound to say that the words referred to appear to be subsequent interpolations. We find, however, that, apart from these interpolations, the land has all along been treated as confirmed rent free land and, if the interpolations have been made for the purposes of this suit, they were

certainly unnecessary. No doubt, such a tampering with documents ordinarily gives rise to suspicion, but, in this case, we think that the suspicion is groundless so far as it affects the title of the Idol to the lands.

29. The last two points must be considered together and with them we may conveniently deal with the report of the Commissioner. After the release of the property of the minor Bhupendra Narain Roy from the management by the Court of Wards on the 20th March 1894, Anandamoyee, widow of his father, Gajendra Narain Roy, applied under the Land Registration Act for registration in July 1894 on behalf of her minor son. Afterwards, on the 18th July 1895, she applied to have the entry corrected stating that she was entitled to be registered as executrix under her husband's Will and she was finally registered on the 14th November 1895 as executrix of the estate of Raja Gajendra Narain Roy. For the appellant, it has been argued that this shows that the property was then treated as secular. In her application, however, she describes herself as "shebait of the Deity Madan Gopal Jiu" and apparently she claimed that office and the right to be registered in respect of the property as executrix under her husband's Will. This document hardly helps the plaintiff to prove that the land was treated as secular.

30. For the appellant, great stress is laid on indicating the secular character of the property is laid on the mortgage-deed, Exhibit 1, dated the 27th November 1899, executed by Raja Bhupendra Narain Roy in favour of Babu. Promotha Nath Mullick by which he mortgaged the 16 annas of mouza Krishnanagar with other properties, and the mortgage executed by Rani Haripriya, widow of Raja Koer Narain, on the 1st April 1901 in favour of Gajanendra Nath Bhattacharjee and others by which she mortgaged a half share in mouza Krishnanagar with other properties as security for a debt of Rs. 63,000. It is contended that these two transactions clearly indicate that the property was treated as secular. As to the first mortgage, it is replied on behalf of the respondents that Rajah Bhupendra Narain Roy was at the time only 23 years old, that he was a spendthrift, that it is clear that he had no right to mortgage the whole of mouza, Krishnanagar even if it was secular property, that he was absolutely reckless and that his act must be regarded as an abuse of trust by him as shebait. No suit has been brought to recover the debt secured by this mortgage and it is argued that the wrong is as yet incomplete. As regards the mortgage by Rani Haripriya, it is pointed out that the document was executed in haste to meet a pressing necessity. She had been obliged to purchase Jalamutha in which her house stood which had been sold for arrears of Government Revenue and the money had to be raised on the 5th April 1901 before nightfall. It is suggested that the interest in mouza Krishnanagar was included by mistake. The debt was subsequently paid off and the mortgage discharged. We see no reason to differ from the opinion of the Subordinate Judge that these documents may be treated as evidence of acts of abuse of trust by shebaits, and cannot be accepted as conclusive proof that mouza Krishnanagar was a secular property,

31. Reliance has been placed on behalf of the appellant on the fact that mouza

Krishnanagar was sold in 1902 for Government arrears on a certificate issued under the Public Demands Recovery Act, It was sold for Rs. 25. The sale was afterwards set aside and the whole proceedings, to which we have been referred, appear to be so extraordinary and unsatisfactory in this character that we think they rather, if anything, go to indicate that the property was not regarded as rent free secular property. Had it been so regarded, it would not have been difficult to sell it.

32. On the other hand the deed of sale dated the 22nd Falgun 1308 (5th March 1899) of the tenant right in 11 bighas, 16 cottahs of land for Rs. 1,000 executed by Kashi Nath Pal's sons in favour of the plaintiff in which the Idol Madan Gopal Jiu is described as the proprietor of mouza Krishnanagar and the inventory filed by the plaintiff with his application for attachment and sale in execution in his suit No. 254 of 1905 containing the same recital go to establish the defendant's case that mouza Krishnanagar was always regarded as the endowed property of the Idol. The price at which the plaintiff purchased the tenant right in 11 bighas, 16 cottahs of land, namely, Rs. 1,000 and the price at which he purchased the alleged zemindary right in the whole village, namely Rs. 300, are also remarkable and go to indicate that it must have been understood at the latter sale that the property was an endowed property.

33. Evidence, oral and documentary, was adduced on behalf of the defendants to prove that the profits of the property were all along devoted to the service of the Idol, that the service was regularly carried on and that there is a masonry Thakurbari in the estate around which the offices connected with the management have been built. There is also the report of the Commissioner.

34. On behalf of The appellant, the evidence has been attacked before us as worthless and reliance is placed on the evidence of the plaintiff's witnesses to prove that there was no regular worship of the Idol and that the profits of the property were all sent to Basudebpur, the headquarters of the family of the Roy Chaudhuries.

35. It has also been argued that the description of the property as debutter in the various documents cannot be accepted as proof that the property was validly endowed property and that it was so described as it naturally would have been in popular language and the case of Ram Kanai Ghosh v. Raja Sri Sri Hari Narayan Singh Deo Bahadur 2 C.L.J. 546, is relied on. As to this; we have only to observe that, though the description may not amount to proof of the character of the endowment, it still can be accepted as supporting the case set up by the defendants that the property was all along regarded as endowed property.

36. In our opinion, the report of the Commissioner leaves no doubt that there is an old established masonry temple of Thakur Madan Gopal Jiu and that the thakur has been worshipped there ever since its establishment. The buildings have been allowed to fall into partial decay, owing probably to misappropriation of a portion of the profits but there is no doubt that the temple is an old one. Its

condition and its position in the estate support the conclusion that the estate was endowed to the temple for its support.

37. The documentary evidence produced on behalf of the defendants to prove the appropriation of the profits is of little value as it relates to years subsequent to the date of the plaintiff's purchase. The papers filed also exhibit mistakes to which the learned Counsel for the appellant has directed our attention and are, therefore, of little importance as evidence. Comment is made on behalf of the appellant on the failure of the defendants to produce documentary evidence for previous years of the appropriation of the profits of the property to the service of the temple. It is stated by the witnesses for the defendants that these papers were destroyed when the plaintiff took possession. There certainly seems to have been some confusion at that time.

38. The defendants have, however, produced witnesses to prove that they have regularly supplied certain articles and discharged certain duties for the service of the, thakur and that regular Services are carried on and litigation appears to have been resorted to on several occasions to establish the rights of different persons to discharge these services. The evidence to rebut this is not conclusive and we must arrive at the conclusion on this evidence that the temple was an old established temple and that the service of the thakur had been carried on regularly since it was established in it. Probably, in late years, the expenditure on the service of the thakur has been reduced, the income having been partly improperly diverted to other purposes. But this unlawful diversion of the profits would not be sufficient to destroy the original grant or to convert the property from the state of endowed property of the Idol to secular property.

39. The evidence of the plaintiff's own witnesses proves that he is not a stranger to the village in which the property is situated. His wife's home was in the village and his own home is only three miles off. It cannot, therefore, be said that, in this case, the plaintiff purchased the property without knowing all the facts connected with it. Then the deed of sale under which he previously purchased the jote right in the village, the description of the property given by him in his application for execution of his decree and the value given therein to the property all go to show that he knew well that the property was, and has always been treated as, the endowed property of the thakur and not, as is suggested in this case, rent free secular property.

40. The result, therefore, of the above conclusions at which we have arrived is that we hold that there was a valid and absolute grant of the property to the Idol as endowed property, that the grant was acknowledged by the Government at different times and by the Revenue authorities and that the worship of the thakur has all along been kept up out of the income of the property. In late years more of the funds of the property have probably been diverted from the services of the Idol than was right and the shebaites have on two or three occasions attempted to deal with the endowed property in contravention of the terms of the trust. These circumstances, however, are not in themselves sufficient to prove that the

property was treated as secular property or to destroy the original character of the grant which clearly appears to have been made for the benefit of the public. We hold that the endowment was not of a private character and that the members of the family of the original grantor have not resumed it and converted the property into secular property.

41. We have dealt with the important documents relied on by both sides and it is unnecessary, in our opinion, to go into further details in dealing with the rest of the documentary evidence which is very voluminous. On the whole, we see no reason to differ from the conclusions at which the lower Court has arrived after a careful consideration of all the evidence.

42. We, therefore, confirm the judgment and decree of the lower Court and dismiss the appeal with costs. We allow two sets of hearing fee, one for the Idol defendant-respondent and the other for the other defendants-respondents who have entered appearance.