

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Greedharea
Doss Mohunt v. Nundokishore Doss Mohunt, from
the High Court of Judicature at Fort William in
Bengal ; delivered on the 18th July, 1867.*

Present :

LORD ROMILLY.

SIR JAMES W. COLVILLE.

SIR EDWARD VAUGHAN WILLIAMS.

SIR RICHARD TORIN KINDERSLEY.

SIR LAWRENCE PEEL.

THEIR Lordships do not think it necessary to hear Counsel on behalf of the Respondent in this case.

They have come to the conclusion that the decision of the High Court of Judicature is proper to be affirmed by Her Majesty. It is an Appeal from the High Court of Judicature at Fort William, which reversed a Decree of the Principal Sudder Ameen of Zillah East Burdwan, which was in favour of the Appellant; and the only facts in the case to which their Lordships think it necessary to refer are those which I am about very shortly to state.

It appears that Gopaul Doss was the Mohunt of the Akra, a religious institution wealthily endowed at Rajgunge, in the Zillah of Burdwan. In the year 1857, being afflicted with illness and expecting shortly his dissolution, he made his Will. The Will is set forth in various places in these proceedings. It is addressed to Ladlee Doss. In it he refers to the illness he was labouring under, and after referring to the Akra of Rajgunge and the subordinate Akras, he says:—

“There is no one among my chelas (*that is*, my disciples) so fit, wise, virtuous, and leaving (*sic* in record) towards religious men, that I can entrust him with the performance of these duties so as to protect the said immovable and movable properties, &c., and perform the

“religious ceremonies after my death; consequently, I
 “think it expedient and necessary to make arrangements
 “during my own life, whereby the said worship and the
 “entertainments of the guests, &c., will continue as they
 “now do, and whereby the properties annexed thereto
 “may be properly managed.”

Then, addressing himself to Ladlee Doss, he says:—

“As you are my Gooroo brother (*that is*, my spiritual),
 “and specially since the time of my late Gooroomohassy
 “and my election to the Guddee, you, by your ability,
 “wisdom, and virtue and good conduct, have satisfac-
 “torily fulfilled the several duties relating to the Akras
 “in your capacity as Adhicarry (head) of the Akras, and
 “you have authority over everything,—I have, therefore,
 “a firm conviction that if you are appointed Mohunt
 “in my place, the properties belonging to those several
 “Akras will be properly managed, and the religious rites
 “which are performed there will have perfect justice in
 “your hand. Therefore, of my own free will, and in a
 “sound state of mind, without any compulsion and coer-
 “cion, I execute this my last Will, whereby I make the
 “following promise and arrangement:—If the present
 “sickness prove, which God forbid, fatal to me, you will
 “succeed me in my absence in the Guddee as the next
 “Mohunt, and have your own name entered as proprietor
 “in the records of all those properties in substitution of
 “mine, and take charge of all the properties both real and
 “personal belonging to the said Akras, and keep in safe
 “custody the gold and silver ornaments, and plates,
 “and brass utensils belonging to the idols at those
 “Akras, and receive the outstanding debts due to the
 “Akras, and pay the debts due by them, and, thus repre-
 “senting me every way, you will perform the religious
 “duties in the usual way. Of my chelahs (disciples)
 “Sreejoot Greedharee Doss is a little intelligent, but he
 “is of immature age. If he studies the Dhurmo Shastro
 “(*that is*, the religious books) for a short time he may
 “become a fit person, therefore you shall keep him under
 “you, and instruct him in the Dhurmo Shastro, and other
 “books studied by Mohunt. When you will find your-
 “self incapable of fulfilling the duties aforesaid, you will
 “appoint the said Greedharee in your place as Mohunt.
 “You shall not be able to act otherwise. To this purport
 “I make my Will, and after my death any demand or
 “objection by any person against it will not be admissible;
 “but if, by the grace of God, I recover from illness, then
 “this Will shall cease to take effect, and I shall continue
 “Mohunt as I used to do.”

In this case two questions arise on the construc-

tion of this Will, and another independently of the Will itself. The question on the construction of the Will is, whether there is an absolute gift of the mohuntship to the Appellant Greedharee Doss, as soon as he becomes competent to perform the duties, or whether the gift of the mohuntship is in reversion after the incapacity of Ladlee Doss. The question, independent of the Will, is whether, if there be such a gift contained in the Will, there exists such an authority within the power of a Mohunt as to enable him to make such a gift.

Their Lordships are of opinion that the points which depend on the contents of the Will itself must be decided against the Appellant on the present occasion. They think, in the true construction of the Will, that it does not give the Appellant an absolute, positive, unqualified right at any time to the mohuntship, even on the incapacity of Ladlee Doss to perform the duties of mohunt. They think, until Ladlee Doss becomes incapable, no trust or duty is suggested, and that even when Ladlee Doss becomes incapable, it cannot be put higher than Sir Roundell Palmer himself put it, viz. as a gift in the nature of a precatory trust—that is, one requesting Ladlee Doss to perform the wishes of the testator, and to appoint the Appellant his successor, provided he found that the incapacity which then existed in the Appellant (who was not then of sufficient age to be appointed Mohunt) should cease to exist at the time when Ladlee Doss was unable to perform those duties.

It is, therefore, clearly unnecessary for their Lordships to consider the second point, whether, in point of law, a grant of a mohuntship can be made by any holder of the office with the super-added obligation imposing on the grantee the necessity of following the wishes of the grantor as to the person whom he is to appoint to be his successor in that office.

It is to be observed that the only law as to these Mohunts and their offices, functions, and duties, is to be found in custom and practice, which is to be proved by testimony; and no evidence has been adduced before their Lordships to show that any such appointment has ever been made in reversion on any former occasion.

The only question, therefore, which their Lord-

ships have to consider on the present occasion is, whether in this state of circumstances, in the events which have subsequently occurred, the Appellant has obtained any right which can entitle him to be placed in that particular situation on the decease of Ladlee Doss, in the absence of any compliance by him with the wishes of his testator or grantor.

The facts are these:—Gopaul Doss, after executing his Will, died in June, 1857, and thereupon Ladlee Doss was installed or invested as Mohunt; and it is to be observed that the other Mohunts placed the same construction upon the Will that their Lordships have placed, by electing him. Accordingly so did the Maharajah, who, as chief benefactor and patron, invested him with the full mohuntship, and gave him the ticca, or mark of investiture. He did not merely appoint Ladlee Doss adhicarry or agent, which, according to the contention of Sir Roundell Palmer and Mr. Leith, was the extent of his authority. It is plain, therefore, that they considered him to be entitled to have the full mohuntship, and he was fully invested with the ticca accordingly.

Mr. Leith has called their Lordships' attention to some evidence which was intended to show that there was a double ticca. What the nature of that double ticca was does not very clearly appear. This seems to be clear, from all the evidence in this case, as far as it has been brought under their Lordships' attention,—that there cannot be two existing Mohunts; that the office cannot be held jointly; and that therefore, if there was a double ticca at all, it must have been a ticca of the office in reversion after the existence of the incapacity of Ladlee Doss to perform the duties. But the evidence upon that point, and the law adduced upon the subject before their Lordships, fail entirely to satisfy their minds that any such species of investiture was according to the rules and customs of these Mohunts, or that any such mohuntship can be given in reversion.

They therefore consider that Ladlee Doss was invested as the Mohunt of the Akra.

This was the view also taken in the Court in India when the suit was instituted in September, 1859, by the Appellant against Ladlee Doss, in-

sisting that he was entitled to be appointed on the ground that he was then capable, and that his right arose as soon as he was so. He appealed from that decision, and the decision was affirmed.

Mr. Leith.—He withdrew his Appeal.

The Master of the Rolls.—Yes, he withdrew the Appeal, but not till after the death of Ladlee Doss.

Ladlee Doss died on the 5th of November, 1860, and upon his death Nundokishore Doss received the ticca.

Their Lordships are of opinion that it is not necessary for them—nay, more, that it is very undesirable for them, to go into the question of whether the Respondent was duly appointed Mohunt or not. They are of opinion that that is not the question which they have to determine; because for the present Appellant to succeed in this case, he must succeed by force of his own title, and not by the infirmity of the Respondent's title.

Mr. Leith suggested that the Mohunt, or any person connected with the establishment of the Akra would have a right to contest the appointment of the Respondent as Mohunt, and he insists that it has become necessary that that question should be determined. If that be so, their Lordships are of opinion that it must be raised in a suit properly framed for that purpose. Without expressing any opinion upon the point itself, they are of opinion that this is not a suit properly framed for that purpose.

Their Lordships observe also that the Judges of the Court of Appeal, the High Court of Judicature, make use of these expressions, which are strongly confirmatory of this view of the case. "We can understand," they say, "a suit being brought to set aside the election of the Defendant and to order the Mohunts to make a new election; but this was not a suit to set aside the election, but to put the plaintiff in possession of the whole estate. So it was in the case cited. It was a suit to recover the office of Mohunt, together with the lands attached to it. Supposing we thought the election of the present Defendant an improper one, what authority have we to direct a new election?"

This is the view which their Lordships took of the case below, and their Lordships here have only

had to consider whether upon the case brought before them the Appellant has made out his title?

It is not for them to consider whether he has shown any infirmity whatever in the title of the Respondent; but whether he has made out a satisfactory case to entitle him to recover the office and the land and property belonging to the office of Mohunt.

Upon a complete review of the case, their Lordships are of opinion, both on the construction of the Will, and the evidence brought before them of the facts which have occurred throughout (which they think it unnecessary to detail with greater minuteness), that the Appellant has completely failed in the attempt to set up his own title, and that, consequently, the decision of the Court below, which simply asserts that he has failed to establish any title of his own, ought to be affirmed, and their Lordships will humbly advise Her Majesty to direct that this Appeal be dismissed with costs.