Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Maharaja Jagadindra Nath Roy Bahadur v. *Rani Hemanta Kumari Debi; and of Maharaja Jagadindra Nath Roy Bahadur* v. *Rani Hemanta Kumari Debi and others, from the High Court of Judicature at Fort William in Bengal; delivered the 29th July* **1904.**

Present at the Hearing:
LORD DAVEY.
LORD ROBERTSON.
SIR ARTHUR WILSON.

[Delivered by Sir Arthur Wilson.]

In order to appreciate the points raised on these Appeals, it is necessary briefly to trace the course of proceedings in the suits out of which they arise.

The principal suit was brought by the present Appellant, as sebait of an idol, against the first Respondent. He alleged that "as sebait" of the idol the proprietary right in certain taluqs (which, in fact, lie within the ambit of the Defendant's pergunnah Pukhuria) was in him, that Mouzah Gabshara included within these taluqs long ago became diluviated, that re-formation took place, and that the re-formed lands were resumed by Government, and under the designation Khas Mehal Chur Gabshara, were settled with the predecessors in title of the Plaintiff for different periods successively; that the lands now in dispute became part of Chur Gabshara by re-formation and accretion; that in 1864 the predecessor in title of the Defendant

(now Respondent), with others, sued the Plaintiff's predecessor in title to establish title to the lands in dispute and failed, whereby the right of the Plaintiff's predecessors in title became established as against those whom the Defendant represents; and on the strength of this title the Plaintiff claimed to recover the lands in question, of which he said he had been dispossessed.

The written statement raised many points, of which two call for mention here. It alleged that the suit was barred by limitation; and it said that the lands now in dispute were not identical with those to which the litigation of 1864 related.

The second suit was brought to recover other lands adjoining those claimed in the principal suit. To this suit all the Respondents were Defendants. The main circumstances of the two suits were the same; and they were disposed of by the High Court upon the same ground.

The defence of limitation was based upon the case that the Plaintiff had been out of possession for more than twelve years, and such is the fact, as found in both Courts. To this it was answered that the period of limitation was sixty years, as if the suit had been brought by the Secretary of State. This view found favour with the first Court, but was rejected by the High Court. It is enough to say that on this point their Lordships entirely concur with the learned Judges of the latter Court. It was answered, secondly, that the dispossession on which this suit is based occurred after the Plaintiff's title accrued but while he was a minor, and that the suit was brought within three years after he attained his majority. And both Courts have found that such are the facts.

In the High Court another ground of limitation was raised, and raised apparently by the learned Judges themselves. In order to follow this

point it is necessary to examine the facts of the case a little more closely than has been done so far.

Although this suit is brought by the Plaintiff as sebait there is no evidence, on which any reliance could be placed, as to who founded the religious endowment, or as to the terms or conditions of the foundation. The legal inference, therefore, is that the title to the property, or to the management and control of the property, as the case may be, follows the line of inheritance from the founder, as was laid down by this Board in *Gossamee Sree Greedharreejee* v. *Rumanlolljee Gossamee*, 16 I.A. 137.

It is not necessary for the present purpose to go back very far in the history of the property. In 1859 a settlement for a term of years was made by Government with Maharani Krishto Moni, followed by similar settlements with Maharani Shibeswari. These ladies were members of the family now represented by the Plaintiff Appellant. There is nothing to show under what right or in what capacity they obtained the settlements; nor does it appear that these settlements were expressed to be made with them as sebaits of the idol. In 1868 the property of the family now represented by the Plaintiff was vested in Maharaja Gobinda Nath, and he obtained a settlement for five years of the lands in question, in which he was described as sebait to the idol. The settlement pottah contained a provision by which the rent reserved might be realised by sale according to law of all the property of the grantee. It also contained a provision that if the grantee should die during the term, the Government should have power to determine whether the settlement should be continued to his heirs.

Maharaja Gobinda Nath died in March 1868 leaving a widow Maharani Braja Sundari. She

in December 1869 adopted the Plaintiff as son to her husband, and thus the Plaintiff became heir of Gobinda Nath. In January 1877 Maharani Braja Sundari obtained a fresh settlement of the lands in question for 32 years, in which she was described as shikmidar of the taluq and as sebait of the idol. This settlement, like that with her husband, purported to make all the property of the grantee liable for the jumma reserved.

After the adoption of the Plaintiff his adoptive mother Maharani Braja Sundari was in no sense the heir or representative of her deceased husband, nor entitled to the family property. And their Lordships think the only inference that can properly be drawn is that, in taking the settlement of the lands in question, she acted as the guardian and on behalf of her adopted son, in whom the right lay. The dispossession complained of has been found to have taken place after the date of the Plaintiff's adoption, and therefore the cause of action in respect of it accrued to him and to no one else, and it accrued according to the findings during his minority.

The first Court decided both cases in favour of the Plaintiff. The learned Judges in the High Court found in favour of the Plaintiff upon every point except limitation, but they dismissed the suits as barred by limitation. Their ground was this :—that the suit being brought by the Plaintiff as sebait, the interest was admitted to be in the thakur, that the settlements of 1868 and 1877 were made with the grantees as sebaits, and that the suit must be regarded "as brought "by the thakur, the Plaintiff being only "sebait." They further said: "The Settlement "in the year 1877 was . . . made with "Braja Sundari Debi as sebait of the Thakur. "It is quite possible that in taking that settlement "she represented the Plaintiff who was then a "minor. But whichever view may be taken, it is

" obvious that the settlement was made with the
" Thakur, represented, as the Thakur then was,
" by Maharani Braja Sundari Debi. And we are
" unable to understand what there was to prevent
" a suit being brought on behalf of the Thakur
" represented by Braja Sundari Debi as the
" settlement-holder."

There is no doubt that an idol may be regarded as a juridical person capable as such of holding property, though it is only in an ideal sense that property is so held. And probably this is the true legal view when the dedication is of the completest kind known to the law. But there may be religious dedications of a less complete character. The cases of *Sonatun Bysack* v. *Sreemutty Juggutsoondree Dossee*, 8 Moo. I.A., 66, and *Ashutosh Dutt* v. *Doorga Churn Chatterjee*, 6 I.A., 182, are instances of less complete dedications, in which, notwithstanding a religious dedication, property descends (and descends beneficially) to heirs, subject to a trust or charge for the purposes of religion. Their Lordships desire to speak with caution, but it seems possible that there may be other cases of partial or qualified dedication, not quite so simple as those to which reference has been made.

If it were necessary to determine the nature of the dedication in the present case, their Lordships would have felt great difficulty in doing so. On the one hand the use of the term "sebait" in the settlement pottahs of 1868 and 1877, and in the plaint in this suit, points rather to a dedication of the completest character. On the other hand the provisions in those pottahs which impose liability upon the grantees to the whole extent of their own property, and not merely to the extent of what they might hold as sebaits, suggest a different conclusion. And so does the clause in the

pottah of 1868 empowering Government to determine the term on death.

But assuming the religious dedication to have been of the strictest character, it still remains that the possession and management of the dedicated property belongs to the sebait. And this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the sebait, not in the idol. And in the present case the right to sue accrued to the Plaintiff when he was under age. The case therefore falls within the clear language of Section 7 of the Limitation Act which says that: "If a person "entitled to institute a suit . . . be, at the "time from which the period of limitation is to "be reckoned, a minor," he may institute the suit after coming of age within a time, which in the present case would be three years.

It may be that the Plaintiff's adoptive mother, with whom the settlement of 1877 was made as sebait, might have maintained a suit on his behalf and as his guardian. This is very often the case when a right of action accrues to a minor. But that does not deprive the minor of the protection given to him by the Limitation Act, when it empowers him to sue after he attains his majority. For these reasons their Lordships are unable to concur with the learned Judges in thinking that these suits are barred by limitation.

On behalf of the Respondents their Lordships were asked to hold that the suits had been rightly dismissed on another ground altogether. It was contended that an examination of the Amin's map in the proceedings of 1864 and of that prepared in the present cases, and a comparison of the two would show that they had been misunderstood and misapplied, and that it ought to have been held that the lands now

claimed were not the same as those upon which the adjudication took place in the suit of 1864.

The question of identity is one of fact. In the pleadings that identity was alleged on one side and denied on the other. Express issues were raised upon it. The first Court found those issues in the affirmative. The question was raised again in the grounds of appeal to the High Court. And the learned Judges of that Court have deliberately concurred with the finding of the first Court upon this point. Their Lordships see no sufficient reason why these concurrent findings upon a pure question of fact should not be accepted.

Their Lordships will humbly advise His Majesty that the Decrees of the High Court should be discharged with costs, and that the Decrees of the Subordinate Judge should be restored, with the modification that in each Decree, instead of wasilat being awarded for the period of claim, it be awarded for three years before suit.

The Respondents will pay the costs of these Appeals.