Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Srimati Janoki Debi v. *Sri Gopal Acharjia and others, from the High Court of Judicature at Fort William, in Bengal, delivered 9th December* 1882.

Present:

LORD FITZGERALD.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

The Appellant in this case brought a suit to recover possession of certain properties which she alleged in the plaint to be partly brahmuttur and partly debuttur, the latter being dedicated to certain deities of the names of Keshub Roy and others, and also for the possession of the deities themselves from the hands of the first Defendant, Sri Gopal Acharjia Goswami. Although the Plaintiff described part of the properties claimed as her own brahmuttur, which had devolved upon her by right of inheritance, it appeared on the hearing before the first Court, and was admitted by both parties, that the whole of the properties claimed belonged to the deities.

The Plaintiff's case was that the properties were in the possession of Lukhun Acharjia Goswami as sebait of the idols; that he having no son of his body, took the Plaintiff's husband, Bejoy Lukhun Acharjia, in adoption, and died in October or November 1859; that Bejoy

Lukhun being then a minor, his mother took possession of the properties on his behalf, the right of sebaitship having devolved upon him in the same way as any other property of the deceased would have devolved upon him by right of inheritance; that the idols were established by a remote ancestor of her husband, and the right had devolved from one person to another, following the rule which governs the succession of an ordinary heritable property.

The Plaintiff further alleged that the mother remained in possession, on behalf of her minor son, up to 1863, when he died, and the right of sebaitship devolved upon the Plaintiff, as his widow, but she being then a minor her mother-in-law managed the deb-sheba for her up to the time of her death, which occurred in March 1864; that upon the death of her mother-in-law, the first Defendant Gopal Acharjia, one of the Respondents in this appeal, who was the natural father of Bejoy Lukhun, attempted to take possession of the properties along with the deb-sheba, and was opposed on her behalf by her father and maternal uncle, the second and third Defendants and also Respondents, and that a compromise was effected between them, which the Plaintiff sought to set aside as collusive. As the father and uncle do not appear to have had any legal authority to act as the Plaintiff's guardians, and the compromise has not been relied upon, it is unnecessary to notice it further.

The defence of Gopal Acharjia was, that the suit was barred by the law of limitation; that the adoption of the Plaintiff's husband was not valid according to Hindu law; that the Plaintiff, being a female, was not competent to perform the duties which ordinarily devolve upon a sebait, and to fill the office; and that, according to the usage of the family, and the

rules regulating the appointment of mohunts to the gaddi, he was entitled to succeed to the deb-sheba estate on the death of Bejoy Lukhun, and the Plaintiff had no right whatever; that originally the deb-sheba was founded by an ancestor of the present Rajah of Panchkote, and the title of sebait was not complete unless he was confirmed in his appointment by the Rajah of Panchkote for the time being, and that Raja Nilmoni Sing Deo, the present Rajah, had made the confirmation in his favour. Rajah Nilmoni Sing Deo was added as a Defendant, and put in a written statement to the same effect as the last allegation.

The first Court decided the question of limitation in the Plaintiff's favour, and the Defendants did not appeal from that decision. It then found that the Plaintiff's husband Bejoy was duly adopted by Lukhun Acharjia, and the customary ceremonies of adoption were performed, but that, he being the eldest son of Gopal Acharjia, his adoption by Lukhun was invalid.

The suit was dismissed, and the Plaintiff appealed to the High Court, which held that the Lower Court was wrong in holding that the adoption of the Plaintiff's husband was invalid by reason of his having been the eldest son of his natural father; but upon the question whether the Plaintiff was entitled upon the death of her husband to succeed as sebait, the Court held that although there was no satisfactory evidence that the appointments of sebait had been made by the Rajah of Panchkote, the evidence did not establish the Plaintiff's right to succeed under the Hindu law of inheritance. The appeal was therefore dismissed.

The Plaintiff has appealed to Her Majesty in Council, and it has been contended on her behalf that, in the absence of prescribed rules or usage, the ordinary law of inheritance applies.

It appears to follow from the judgments of their Lordships in Greedharee Doss *v.* Nundokissore, Doss Mohunt (11 Moore, I. A., 428), Rameswarem Pagoda, Law R., 1, Ind. Ap., 209, and Rajah Vurmah Valia *v.* Rajah Vurmah Mutha, Law R., 4, Ind. Ap., 76 (*see* p. 83), that when, owing to the absence of documentary or other direct evidence, it does not appear what rule of succession has been laid down by the endower of a religious institution, it must be proved by evidence what is the usage.

The greater part of the villages in dispute were dedicated to the idols more than a century ago, by the then Rajah of Panchkote or Pachete, and from time to time other villages have been added to the endowment. The first sebait was Rungraj Goswami, who left an only daughter, Auchuma, who married, and had issue an only daughter, Bencooma; she married, and her only issue was a daughter, Lukhipria, and according to the Plaintiff's case Lukhipria had an only daughter, Kedro Bibi, who married Lukhun Acharjia, and had a son, Srinibash, the grandfather of the Plaintiff's husband. The Plaintiff asserted that the four daughters succeeded each other as sebaits; the Defendant Gopal on the contrary asserted that their husbands were the sebaits. It appeared, however, that Lukhipria held the "guddi" for nearly 60 years, her husband having died first, which is inconsistent with the latter contention. Now, whether the four daughters succeeded each other or their husbands were the sebaits, the succession was not according to Hindu law, as a daughter's daughter is not an heir except in certain cases of stridhun, and a son-in-law has no right of succession. There is, no doubt, considerable difficulty in ascertaining what is the rule of succession to this office, but it is certain that the usage has not been according to the ordinary rules of inheritance under Hindu law. Not only does the

usage not support the Plaintiff's claim, but it is opposed to it. It is not for their Lordships to consider whether there is any infirmity in the title of the Respondent Gopal, who has been in possession many years, with the consent if not by the appointment of the Rajah. The Plaintiff being out of possession must recover upon the strength of her own title, and not on the weakness of that of the Defendant. Their Lordships have, therefore, only to consider whether the Appellant has made out her title, and they are of opinion that the High Court was right in holding that she had not. They will humbly advise Her Majesty to confirm the judgment of the High Court and to dismiss the appeal. The costs will be paid by the Appellant.