

*Privy Council Appeal No. 68 of 1913. Bengal Appeal No. 13 of 1912.*

**Bhaiaji Thakur, since deceased (now represented by Jalandhar Thakur and another)** *Appellants,*

*v.*

**Jharula Das** - - - - - *Respondent.*

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 26TH MAY 1914.

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*Present at the Hearing :*

LORD MOLLTON.

SIR JOHN EDGE.

LORD PARKER OF WADDINGTON.

MR. AMEER ALI.

[*Delivered by* SIR JOHN EDGE.]

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The appellants here are the heirs and legal representatives of one Bhaiaji Thakur, now dead, who was the plaintiff in the suit in which this appeal has arisen. Bhaiaja Thakur was a Shebait of an ancient temple of Mahadeoji, called The Singheswar Temple, which is situate in Mawza Gouripur, otherwise Singhaswarpur, in the district of Bhagalpur. Bhaiaji Thakur became a Shebait of the Temple on the death in 1900 of one Musammât Grihimoni who was the widow of one Pratipal Thakur. Pratipal Thakur had been a Shebait of the Temple, and until his death had been, as such Shebait, entitled to receive a 3½ annas share of the daily surplus income from the offerings to, after defraying the expenses of, the Temple; on his death his widow Musammât Grihimoni, succeeded to his Shebaitship and accordingly became entitled to

receive the same share of the daily surplus income from the offerings. The right to such  $3\frac{1}{2}$  annas share came to Bhaiaji Thakur on the death of Musammat Grihimoni as the next reversionary heir under the Hindu Law to the Shebaitship. The Shebait of the Temple are Brahmin Pandas who, as Shebait have to perform, or to provide for the performance of, the sacred worship or *pūja* of the Deity at the Temple. Jharula Das, who is the defendant to the suit and the respondent to this appeal, is by caste a Beldar, and, as a Beldar, is not competent to perform, or to provide for the performance of, the sacred *pūja* to the Deity at the Temple, and consequently was incapable of acquiring or holding the office of a Shebait.

In 1880, Jharula Das obtained a decree for money on a mortgage which had been granted by Musammat Grihimoni. In execution of that decree Jharula Das in 1891 caused the  $3\frac{1}{2}$  annas share of Musammat Grihimoni to be put up for sale, and at the sale on the 20th November 1891 purchased the share. Jharula Das on the 8th February 1892 obtained a certificate of sale in which the property which he had purchased was described as the "Income of the " Muth of Sri Singheswarthanji Mahadeo, which " muth is situated in Mouzah Singeswarthan, " pergunnah, Nisankhipur Khurha, to the extent " of 3 annas 6 pies, which belongs to the " judgment debtor, within the jurisdiction of " the Madhepura Sub-registry Office, Bhagalpur " Collectorate."

In November 1892 Musammat Grihimoni and Bhaiaji Thakur brought a suit against Jharula Das to have the sale to him of the 20th November 1891 set aside. That suit was by the permission of the Court withdrawn by Musammat Grihimoni and Bhaiaji Thakur with liberty to bring a fresh

suit on the same cause of action. In 1895 Musammat Grihimoni brought a fresh suit against Jharula Das to have the sale set aside on the ground that the decree and the order for sale had been fraudulently obtained by Jharula Das. The suit of 1895 was dismissed on appeal on the ground that her proper remedy was by an application under Section 244 of the Code of Civil Procedure, 1882, to dispute the validity of the sale, and consequently that the suit did not lie. Their Lordships fail to understand how Section 244 of the Code of Civil Procedure, 1882, could have applied to a suit which in effect was brought to set aside the decree of 1880, and the order for sale, on the ground that Jharula Das had obtained them by fraud.

Musammat Grihimoni died in 1900. On the 25th January 1910 Bhaiaji Thakur brought the present suit in the Court of the Subordinate Judge of Bhagalpur and claimed possession of certain lands and mesne profits and a declaration that he was entitled to receive the  $3\frac{1}{2}$  annas share of the net income from the offerings to the Temple with other reliefs. In his written statement the defendant Jharula Das alleged, so far as is now material, that Bhaiaji Thakur was bound by the decree which dismissed Musammat Grihimoni's suit of 1895, and that the decision in that suit operated on the principle of *res judicata* to defeat the claim in respect of the  $3\frac{1}{2}$  annas share. At the trial a defence that the suit was barred by limitation was raised. As to the defence of *res judicata* the Subordinate Judge rightly held that the decision in Musammat Grihimoni's suit of 1895 did not operate as a bar to this suit. On the question of limitation the Subordinate Judge found that Jharula Das had not purchased the right of Shebaitship, but the Subordinate Judge

held that the appropriation by Jharula Das of the  $3\frac{1}{2}$  annas share of the surplus income from the offerings to the Temple practically amounted to a dispossession, and treating Bhaiji Thakur's suit, so far as it related to the  $3\frac{1}{2}$  annas share, as a suit for the establishment of his right to Shebaitship and for recovery of the profits of that office, and having found that Musammât Grihimoni had died in 1900, he applied Article 121 of the Second Schedule of the Indian Limitation Act, 1908, and decided that the suit had been brought within time. On the 3rd April 1911 the Subordinate Judge gave to the appellants here, who had been brought on the record as the representatives of Bhaiji Thakur, who had died, a decree for possession of the land claimed, for possession of the  $3\frac{1}{2}$  annas share of the net income from the offerings to the Temple, and for mesne profits subsequent to the institution of the suit. From that decree of the Subordinate Judge Jharula Das appealed to the High Court of Judicature at Fort William in Bengal. The High Court in the appeal upheld the decision of the Subordinate Judge so far as it related to the land claimed and to mesne profits in respect of the wrongful possession by Jharula Das of that land, and to that extent by their decree affirmed the decree of the Subordinate Judge. With that part of the decree of the High Court this Appeal is not concerned. Those learned Judges of the High Court considering that Article 121 of the Second Schedule of the Indian Limitation Act, 1908 applied to the claim in respect of the  $3\frac{1}{2}$  annas share of the surplus daily income from the offerings to the Temple, and being of opinion that the 12 years' period of limitation provided by that Article began to run in 1892, when Jharula Das first began to appropriate to his own use the income of the  $3\frac{1}{2}$  share, decided that

the claim in respect of the  $3\frac{1}{2}$  share was barred by limitation. They also held that the claim to the share was barred by the principle of *res judicata*, arriving at that decision apparently on the view that the dismissal of Musammât Grihimoni's suit of 1895 extinguished the claim of the Shebait to the  $3\frac{1}{2}$  annas share. Accordingly, the High Court by its decree of the 12th March 1912 set aside the decree of the Subordinate Judge so far as it related to the claim to the  $3\frac{1}{2}$  annas share and the profits of that share. From that decree of the High Court the present appellants have appealed to His Majesty in Council. The defendant Jharula Das has not appealed.

On the hearing of this appeal, the contention that the dismissal of Musammât Grihimoni's suit of 1895 extinguished the right of the Shebait to the  $3\frac{1}{2}$  annas share, and that the claim in respect of that share was *res judicata* was very properly abandoned; it was untenable. But it was strongly contended on behalf of the respondent that the claim in respect of that share came within Article 124 of the Second Schedule of the Indian Limitation Act, 1908, and was barred by limitation. It is not necessary for their Lordships to consider whether, if that Article applied, the 12 years' period of limitation began to run in 1892 or on the death of Musammât Grihimoni in 1900, as they are of opinion that Article 124 of the Second Schedule of the Indian Limitation Act, 1908, does not apply in this case. Bhaijî Thakur's suit was not a suit for possession of an hereditary office. Jharula Das had not taken possession of an hereditary office. The office of Shebait of the Temple was an hereditary office which could not be held by any one who was not a Brahmin Pauda. Jharula Das was not a Brahmin Pauda, he was of an inferior caste, and

was not competent to hold the office of Shebait of the Temple, or to provide for the performance of the duties of that office. The appropriation from time to time by Jharula Das of the income derivable from the  $3\frac{1}{2}$  share did not deprive Musammât Gribimoni, or, after her death, Bhaijī Thakur, of the possession of the office of Shebait, although that income was receivable by them in right of the Shebaitship. The right to the office of Shebait did not arise from, or depend upon, the receipt of a share of the surplus daily income from the offerings to the Temple, although the right to receive daily a share of the net income from the offerings to the Temple was attached to and dependent on the possession of the right to the Shebaitship. Unless the Shebait received their share of the daily net income from the offerings it does not appear how the ministrations of the Temple could be provided for. By adversely taking and appropriating to his own use a share of the surplus daily income from the offerings Jharula Das acquired no title and no right to a share of that income. On each occasion upon which Jharula Das received and wrongfully appropriated to his own use a share of the income to which the Shebait was entitled Jharula Das committed a fresh actionable wrong in respect of which a suit could be brought against him by the Shebait. But it did not constitute him the Shebait for the time being or affect in any way the title to the office.

The appellants here are entitled to have the decree of the High Court so far as it relates to the  $3\frac{1}{2}$  annas share, and to the costs in the High Court and in the Court of the Subordinate Judge varied by setting aside that part of the decree of the High Court which relates to the  $3\frac{1}{2}$  annas share and those costs, and by giving

them a decree for all the costs in the High Court and in the Court of the Subordinate Judge, and a declaration that Bhaiaji Thakur was at the date of the suit entitled to the  $3\frac{1}{2}$  annas share of the net daily income of the offerings to the Temple. Their Lordships will advise His Majesty accordingly.

The respondent must pay the costs of the appeal.

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In the Privy Council.

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BHAIAJI THAKUR, SINCE DECEASED  
(NOW REPRESENTED BY JALAND-  
HAR THAKUR AND OTHERS)

*v.*

JHARULIA DAS.

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DELIVERED BY SIR JOHN EDGEE.

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