Raj Kali Kuer vs Ram Rattan Pandey on 7 April, 1955

Equivalent citations: 1955 AIR 493, 1955 SCR (2) 186, AIR 1955 SUPREME COURT 493

Author: B. Jagannadhadas

Bench: B. Jagannadhadas, Vivian Bose, Bhuvneshwar P. Sinha

PETITIONER:
RAJ KALI KUER

Vs.

RESPONDENT:
RAM RATTAN PANDEY

DATE OF JUDGMENT:
07/04/1955

BENCH:
JAGANNADHADAS, B.
BENCH:
JAGANNADHADAS, B.
BOSE, VIVIAN
SINHA, BHUVNESHWAR P.

CITATION:
1955 AIR 493 1955 SCR (2) 186

ACT:
Hindu Law-Hereditary priestly office of a Pujari and Panda -Hindu female-Bight to succeed-Usage.

HEADNOTE:
Though a female is personally disqualified from officiating as a Pujari for the Shastrically installed and consecrated idols in the temples, the usage of a Hindu female succeeding to a priestly office and getting the same erformed through a competent deputy has been well-recognised and it is not contrary to textual Hindu Law nor opposed to public policy. - Subject to the proper and efficient discharge of the duties of the office being safeguarded by appropriate action when necessary, a Hindu female has a right to succeed to the hereditary priestly office of a Pujari and Panda held by her husband and to get the duties of the office performed by a substitute except in cases where usage to the contrary is

pleaded and established.
Quaere:-Whether and how far votive offerings can be appropriated by a Pujari for his emoluments if the temple is a public institution, (i.e., not a private family temple) and whether any usage in this behalf is valid.
Case-law and the relevant texts reviewed.
Judgment of the High -Court of Patna reversed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 136 of 1953.

Appeal by Special Leave from the Judgment and Order dated the 4th day of May 1949 of the High Court of Judicature at Patna in Appeal from Appellate Decree No. 1918 of 1947 against the Decree dated the 23rd day of July 1947 of the Subordinate Judge, Arrah in Appeal No. 137 of 1946 arising from the Decree dated the 29th March 1946 of the Court of the 2nd Munsif at Arrah in Suit No. T. S. 120 of 1943. R. C. Prasad, for the appellant.

S. P. Varma, for the respondent.

1955. April 7. The Judgment of the Court was delivered by JAGANNADHADAS J.-This is an appeal by leave granted under article 136(1) of the Constitution against the second appellate judgment of the High Court of Patna. It relates to the office of Pujari and Panda of a famous temple in the town of Arrah in the State of Bihar, known as the temple of Aranya Devi and Killa Ki Devi. The appellant before us-a woman-brought this suit claiming joint title to the office along with the defendant and as such entitled to perform the Puja either by herself or through her Karinda and to get a half share in the income of offerings of the said Asthan. It is the admitted case that this office belongs to the family of both the parties and that the duties of the office were being jointly performed by the defendant and his deceased brother, Rambeyas Pande, and that they were enjoy- ing the emoluments jointly. The plaintiff-the widow of Rambeyas Pande-claims to have succeeded to her husband's share in this property and bases her suit on- the said claim. In the written statement the defendant raised three main defences, two out of which are (1) the plaintiff was not the legally wedded wife of his brother, Rambeyas Pande, and (2) during the life time of Rambeyas Pande, there was a division between them with reference to the office of Pujari and Panda belonging to this family in respect of two temples

(a) at Arrah and (b) at Gangipul, that the office of pujari at Gangipul was given to the plaintiff's husband and that the temple of Aran Devi at Arrah was given to the defendant and that since then, i.e., for about 11 years prior to the date of the suit, the plaintiff's husband had no connection with the office of Pujari in this temple nor with the receipt of any offerings therein. Both these contentions were found against the defendant by the trial court as well as by the first appellate court and they have become conclusive. The further and third defence raised by the defendant was that the property in suit, viz., the office of Pujari and Panda of the templet cannot be-inherited by a female, The contention is set out in the following terms in the written statement:

> "The plaintiff is not at all entitled to the office and the post of Pujari and Panda of Arun Devi and she is not entitled to get 1/2 share or any share in the income and offering of the said Asthan, nor has she got any right to perform Puja as a Panda personally, or through her karinda and to get the income, etc. This is against the custom and usage and practice and also against the Sastras. The property in suit is such as cannot be inherited by a female".

It is the question thus raised which has got to be con- sidered in this appeal.

The trial Court held against this contention in the following terms:

> "No authority has been cited nor any custom proved to show that, female cannot inherit a property of this nature".

The first appellate Court also affirmed this view as follows:

> "The defendant's objection that the plaintiff being a female is not authorised to hold the office of a priest of the Aranya Debi temple is not borne out by any evidence or material on the record. There is nothing to show that by reason of her sex she is debarred from holding this office either by religion, custom or usage. Moreover admittedly she holds the office at the Gangi temple".

On the findings arrived at by the trial court and the first appellate court, the plaintiff got a decree as prayed, for declaring her right to half share in the office and for recovery of mesne profits on that footing. On second appeal to the High Court, the learned Judges went into the question at some length and were of the opinion that "the plaintiff being a female is not entitled to inherit the priestly office in question and her claim to officiate as a priest in the temple by rotation cannot be sustained. The declaration sought for by her that she is entitled to the office of Pujari cannot, therefore, be granted". They held, however, "that she is not debar-red from being entitled to be maintained out of the estate of her, husband which, in the particular case, happens to be no other than the emoluments attached to the priestly office in the shape of offerings made to the deity which office was undoubtedly hereditary". They further held that "she will be entitled to receive from the defendant half the amount of the offerings in lieu of her maintenance" and they varied the decree of the trial court accordingly. The short question that arises, therefore, for consideration in this appeal is whether a Hindu female is entitled to succeed to the hereditary priestly office of a Pujari and Panda held by her husband in a temple and to receive the emoluments thereof. This is a question about which there has been some diff- erence of opinion in the decided cases. It requires close examination.

That religious offices can be hereditary and that the right to such an office is in the nature of property under the Hindu Law is now well established. A Full Bench of the Calcutta High Court in Manohar v. Bhupendra(1) has laid this down in respect of Shebaitship of a temple and this view has been accepted by the Privy Council in two subsequent cases in Ganesh v. Lal Behary(2) and Bhabatarini v. Ashalata (3). In a recent judgment of this Court reported as The Com- missioner,

Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar(4) this view has been reiterated and extended to the office of a Mahant. On the view that Shebaiti is property, this Court has also recognised the right of a female to succeed to the religious office of Shebaitship in the case reported as Angurbala v. Debabrata(5), where the question as to the applicability of Hindu Women's Right to Property Act to the office of Shebaitship came up for consideration. On the same analogy as that of a Shebaiti right, the right of a hereditary priest or Pujari in a temple must also amount to property where emoluments are attached to such an office. Indeed, some of the decisions which have recognised the Shebaiti right as property appear to be cases where the Shebaiti (1) A.I.R. 1932 Calcutta 791.

(2) (1936] L.R. 68 I.A. 448.

(3) [1943] L.R. 70 I.A. 57.

(4) [1954] S.C.R. 1005.

(5) [1951] S.C.R. 1125.

right combines the priestly office of a Pujari of the idol with the office of the manager of the temple, who in South India, is known by the name of Dharmakarta. As early as in Mitta Kunth Audhicarry v. Neerunjun Audhicarry(1), it was recognised that hereditary priestly office in a family is property liable to partition. A number of other decisions to be noticed in the later part of this judgment recognise this position. The learned Judges of the High Court in their judgment in the case under appeal, have attempted to distinguish the present case from that of the case of the Shebaitship and have come to the conclusion that while in respect of Shebaiti right a woman may succeed by heirship, she is not entitled to such succession in respect of the right of a Panda and Pujari. But in making this distinction they do not negative the idea that the right to the office of the Pujari itself is property to which a female could succeed, but for her supposed disqualification. The disqualification is said to arise with reference to the duties attached to this office, and it is said that in this respect it differs from the office of a Shebait. Now there can be no doubt that while in one sense the right to such a religious office is property it involves also substantial elements of duty. As has been stated by this Court in Angurbala v. Debabrata(2) and in The Commissioner, H. R. E., Madras v. Sri Lakshmindra Thirtha Swamiar(3) "both the elements of office and property, of duties and personal interest are blended together (in such offices) and neither can be detached from the other". It must also be recognised that in respect of such offices especially where they are attached to public institutions, the duties are to be regarded as primary and that the rights and emoluments are only appurtenant to the duties. See the -observations of Justice Page in Nagendra v. Rabindra(4) at pages 495 and 496 and that of Justice Sadasiva Aiyar in Sundarambal v. Yogavanagurukkal(5) at page 564, as also of Mukherjea on 'Endowments (1) [1875] XIV B.L.R. 166.

(2) (1951] S.C.R. 1125.

(3) [1954] S.C.R. 1005.

(4) A.I.R. 1926 Calcutta.490.

(5) A.I.R. 1915 Madras 561.

(1952 Edn.) page 201. If, therefore, it is found that the recognition of a female's right to succeed to the hereditary office of Pujari in a temple held by her husband is incompatible with due discharge of the duties of the office, her right to succeed must be negatived. The correct approach to a question of this kind has been laid down by the Privy Council in a case which relates to a Mohammadan religious office but would equally be applicable to a Hindu religious office. In Shahar Bano v. Aga Mahomed Jaffer Bindaneem(1) their Lordships, after noticing the View taken by the learned Judges of the Calcutta High Court, that "there is no legal prohibition against a woman holding a mutwalliship when the trust, by its nature involves no spiritual duties such as a woman could not properly discharge in person or by deputy" approved this view of the High Court and said "it appears to their Lordships that there is ample authority for that proposition". The question, therefore, that requires consideration in the present case is whether the office of the Pujari and Panda in a temple involves such duties as could not be discharged by a female in person and if so, whether she is also incompetent to get the same discharged by a deputy. Now for this purpose it is desirable to have a clear idea of the duties of a Pujari in an ordinary Hindu temple. A Pujari has to perform the prescribed daily worship of the image as well as the special worship of a periodical nature on particular occasions and for prescribed festivals during the year. In Ramabrahma Chatterjee V. Kedar Nath Banerjee Justice Sir Asutosh Mookerjee indicated the daily routine of worship in the following passage:

> "The normal type of continued worship of a consecrated image consists of the sweeping of a temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the (1) [1906] L.R. 84 I.A. 46, 53.
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> (2) A.I.R. 1923 Calcutta 60, 62.

master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest".

In Saraswati's Hindu Law of Endowments(1) the nature of the daily worship of a consecrated idol in a temple is set out at pages 134 and 135 in detail. It must be recognised that the daily worship differs according to the tenets and usages of the religious sect for which the temple is intended and the idol is consecrated. But whatever may be the details of the worship and the variations therein, there can be no doubt that the ministration of various services involving personal touch of the idol, and, often enough, the recitation of religious hymns inclusive of Vedic hymns are amongst the normal and essential features of a Pujari's duties, at any rate in temples where the worship is conducted according to the Shastras. It is also undisputed that according to Hindu Shastras the functions of a

Pujari can be performed only by certain limited classes and involves special qualifications and that these classes may vary with the nature of the institution. Now, whatever may have been the position in early times, of which there is no clear historical evidence, it appears to have been well established in later times that a female, even of the recognised limited classes, cannot by herself perform the duties of a Pujari. Even at a time when the institution of temple worship had probably not come into general vogue, the incapacity of a woman to recite Vedic texts, to offer sacrificial fire, or to perform sacramental rites, is indicated in certain texts of Manu. (See Sacred Books of the East, Manu, Vol. 25, pages 330 and 437, Chapter 9, section 18 and Chapter 11, section 36). Whether it is on the basis of these texts or for some other reason, her incapacity to discharge, in person, the duties of the Pujari appears to have been well (1) The Hindu Law of Endowments by Pandit Prannath Saraswati, T.L.L., 1892. (1897 Edn.).

settled in later times as appears from the following text from Brihan-Naradiya Purana quoted in Saraswati's Hindu Law of Endowments at page 136.

> "Women, those uninvested with the sacred thread, (i.e. the members of the Dvija class before the initiation ceremony has been performed for them), and Sudras are not competent to touch images of Vishnu or Siva. A Sudra, one uninvested with the sacred thread, a woman or an outcaste, having touched -Vishnu or Siva, goes to hell".

This passage, in terms, refers to the images of Vishnu and Siva but it may reasonably be assumed, in the absence of any evidence to the contrary, that in practice the incapacity of a female to discharge the duties of a Pujari by herself extended, at any rate, to all public temples where an image of whatever form had been consecrated and installed according to the Shastras. Indeed, all the cases on the subject have assumed this incapacity of the female. The point of controversy has been whether she is also incompetent to get the duties discharged by employing a qualified substitute. If her competence in this behalf is recognised and can be accepted there is no reason why she should not be held entitled to succeed to the office. Thus the really important question for consideration in this case is whether the duties of the Pujari'8 office can be got done by a substitute and if so is there any particular reason or clearly established usage, against a female employing such a substitute and thus becoming entitled to the office. In early Hindu society a priestly office could have relation only to the performance of various kinds of Vedic rituals and sacrifices either of a daily and routine nature or of a periodical and special nature. In theory a Brahmin is to perform such functions for himself by himself, while persons of other classes ,should get them done through qualified Brahmin,s. On principle a, priest in the Hindu concept is chosen as such with reference to his personal qualities and competence. The system of hereditary priesthood however, with the possibility of persons not fully competent, succeeding to or occupying such an office, appears to have come into vogue from fairly early times. It appears, however, that from the very nature of the situation, the temporary discharge of the priestly function by a substitute in the place of the hereditary priest was a matter of inevitable necessity since the Hindu Shastras recognised temporary and casual disqualifications like that of butt and death pollution. But there does not appear to be any indication in the early books of any general practice about the functions of priestly office being discharged by proxies. In comparatively later days, however, there is clear indication of such a practice. In Saraswati's Hindu Law of Endowments at page 56, it is stated that in the Padma Purana and other treatises incapacitated

persons are directed to have the worship performed through Brahmins. This statement is with reference to the performance of service of an idol and has presumably reference to the incapacity of persons occupying a priestly office. In Colebrooke's translation of the Digest of Hindu Law on Contracts and Successions with a commentary by Jagannatha Tercapanchanana (4th Edition, published by Higginbotham & Co., Madras, 1874), Vol. I, Book II, Chapter III, Section 11, pages 360 to 381 deal with the topic of partnership among priests jointly officiating at holy rites. A perusal thereof and particularly of placita 28 to 44 containing citations from various Smrutis with Jagannatha's commentary thereon, clearly indicate that the institution of hereditary priestship, became established by that date and that the performance of such priestly functions by substitutes had definitely come into vogue. Various rules are propounded as to the sharing of remuneration between the substitute priest and the hereditary priest when the former happens to perform the functions in the place of the latter. It is to be noticed that these passages from Jagannatha's Digest refer in terms only to priestly office by way of officiating at holy rites, i.e., sacrifices and other Vedic or Shastric functions but do not in terms refer to the discharge of a priest's duties in relation to the worship of an idol in a temple.

This is all the more remarkable because by the date of Jagannatha's Digest the institution of worship of consecrated idols in temples had become long since fairly established. The probable explanation is that Jagannatha's Digest is a commentary on selected texts mostly of the various Smrutis from which he quotes and that in the days of the Smrutis the temple worship does not appear to have come sufficiently into vogue. The historical origin and growth of temple worship has been fully dealt with in Saraswati's Hindu Law of Endowments and has been also noticed in the referring judgment in Annaya Tantri v. Ammaka Hengsu(1). It is pointed out therein that according to Hindu sentiment the performance of the duties of an Archaka or Pujari for an idol has been considered sinful and it required inducements by way of liberal grants of land and promise of substantial perquisites to attract competent persons for the office of Pujari or Archaka. This, in course of time and with the change in social conditions and economic values, rendered the offices of Panda and Pujari in almost all the famous shrines in India, a lucrative affair, and has enabled the hereditary priests to get the functions discharged by paid substitutes and themselves enjoy a substantial margin of income. Here just in the same way as the patronage of the kings or the society may have been a great incentive to the development of the system of discharge of hereditary priestly functions by substitutes in relation to sacrificial and Vedic religious rites, the phenomenal development and worship of idols in temples and the substantial emoluments which in course of time rendered the discharge of priestly office lucrative must have brought into vogue the employment of substitutes for performance of the duties of the priests not only for sacrificial or other religious rites but also for temple worship. Whether and how far this practice is permitted by the Shastras is not the question before us. But it cannot be denied and is indeed a matter of common knowledge, that at the present day, hereditary priestly offices are, as often as not, performed by proxies, (1) A.l.P, 1919 'Madras 598 (F,B.).

the choice of proxy being, of course, limited to a small circle permitted by usage. The question for consideration of the courts is, whether, in this state of things, a female is to be excluded from succession to the hereditary office of Pujari on account of her well recognised personal disqualification to officiate as such Pujari for the Shastrically installed and consecrated idols in the temples and whether she is to be denied the capacity to retain the property by getting the priestly

duties efficiently discharged through a competent substitute. The only basis for the alleged denial is a passage from Jagannatha's Digest which is as follows: (Vide Vol. 1, page 379, commentary under placitum 43).

> "Wives and others, disqualified by sex for the performance of holy rites, cannot appoint a substitute; as defiled person cannot perform a solemn act ordained by the Vedas, therefore wives have no property in the office of priest".

Now apart from the question whether this passage can be taken to be sufficiently authoritative, there has been some difference of opinion as to the correct import thereof. In Sundarambal Ammal v. Yogavanagurukkal(1) this passage has been relied upon by Justice Sadasiva Aiyar as showing that women are incompetent to discharge the functions of a priest even through a substitute and that, therefore, they have no right of succession to the office. The learned Judges of the High Court in the present case have also relied on it. In Annaya Tantri v. Ammaka Hengsu(2), Justice Seshagiri Aiyar in his referring judgment has referred to this passage and was of the opinion that it does not express a specific view. In Ganapathi Iyer on Hindu and Mahomedan Endowments (2nd Edn.) the learned author while commenting on this very passage says as follows at page 453 of his book:

> "Jagannatha there considers the question whether wives and others have a title to the succession to this priestly office. As usual with the discussions of (1) A.I.R. 1915 Mad. 561.
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> (2) A.I.R. 1919 Mad. 598 (F.B.).

Jagannatha it is difficult to say what his final opinion is. But we should certainly think that Jagannatha's opinion is that women can inherit doing the duties through a substitute, but enjoying the emoluments attached to that office".

It appears on a careful consideration of the disputed passage with reference to its context, that this view' of the learned author is correct. In any case the passage cannot be definitely relied upon as an authority for the contrary view. The discussion in connection with which this passage occurs in the commentary is under placitum No. 43 in Section II of Chapter III, Book II, which is a text from Narada relating to hereditary priests. The statement relied on occurs at a place where there is an attempt to reconcile the disqualification of the female to discharge the functions of a hereditary priest, and the recognition of her right to succeed to all property including a hereditary office. The relevant portions of the discussion are herein below set out:

> "It is doubted whether wives and others have a title to this succession, although the partition founded on the admission of a right vesting in Agraharicas and other officiating priests, ought to be similar to the partition of inheritance in general. As the wife's title to succession, on failure of heirs in the male line as far as the great-grandson, will be declared under the head of Inheritance, what should reverse her title in this instance? It should not be argued, that the wife can have no right to the village, because as a woman, she is disqualified for the performance of holy rites,

> and because the wives of agraharicas and others are totally incapable of receiving tila delivered as a gift to priests. The tila may be received, and the rites be performed, through the intervention of a substitute. Let it not be argued, that, were it so, a property in the sacrificial fee and regular dues would vest in the substitute. The wife may have the benefit of property acquired by the substitute, as a sacrificer has the benefit of rites per formed by an officiating priest. However, there is this difference: the sacrificer acquires merit from rites performed by an officiating priest, and none is ever acquired by the intermediate performer of the rites; but if the duty of the officiating priest. be performed by a substitute, property in the sacrificial fee is at first vested in the substitute, and through him, in the widow entitled thereto. It is alleged, that there is no authority for this construction.
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> * * * * The text which ordains that "a person unable to act shall appoint another to act for him", is the foundation of this construction: but the property of an outcaste, or other person disqualified for solemn rites, is absolutely lost, in the same manner with his right to the paternal gold, silver, and the like. This will be explained in the fifth book on Inheritance. Wives and others, disqualified by sex for the performance of holy rites, cannot appoint a substitute: as a defiled person cannot perform a solemn act ordained by the Vedas: therefore wives have no property in the office of priest".

At the end of the discussion there is the following significant passage:

> "Therefore the difficulty is thus reconciled; women are entitled to that only for which they are qualified. In regard to the assertion, that women, being disqualified, cannot appoint a substitute, this must be understood: being disqualified for solemn acts ordained by the Vedas, they cannot appoint a substitute for such acts; but, qualified for worldly acts, nothing prevents their appointment of a substitute for temporal affairs: and the right should devolve on the next in succession, under the text quoted in another place (Book 5, v. 477) and because women are dependent on men. Grain and similar property may be consumed by a woman entitled to the succession; but gold, silver, and the like, should be preserved: if she cannot guard it, let it be entrusted to her husband's heir, as will be mentioned under the title of inheritance. Here, since a woman cannot preserve the office, it should be executed by her husband's daughter's son, or other heir: but the produce should be enjoyed by the woman. However, should the daughter's son be at variance with his maternal grandmother, it may be executed by another person: he is not entitled to his maternal grandfather's property, if that grandfather leave a wife: and should the maternal grandmother litigate, it must be amicably adjusted".

The concluding portion seems rather to indicate that the more categorical passage underlined above and relied upon is in the nature of an objection which is being answered and that the final conclusion is the recognition of a right to succeed by getting the duties of the office performed by the next male in succession. The learned Judges of the High Court have in fact noticed this concluding passage but have missed its correct import.

It is desirable now to consider how this question stands with reference to the decided cases in the various High Courts. A fairly substantial number of cases appear in the reports of the Madras High Court. One of the earliest decisions is that of the Madras Sadar Diwani Adalat in Seshu Ammal v. Soundaraja Aiyar(1) wherein it was held, following the opinion of the Sadar Court Pandits, that a woman was disqualified by reason of her sex from inheriting the office of Acharya purusha but the same Pandits' opinion distinctly recognises that religious offices like those of an Archaka or Pujari can be held by a female, by her getting the duties thereof performed through a competent male substitute. In Tangirala Chiranjivi v. Rama Manikya Rao Rajaya Lakshmamma(2) it was stated that there was no basis for the assumption that a minor, a female, or a person unlearned in the Vedas, will lose the right to service in the temple and that the onus will be on the person who alleges the dis- qualification to prove it. The learned Judges categorically asserted (apparently as being a matter within general knowledge and experience) that "service in temples is being performed by proxies". In Ramasundaram Pillai v. Savundaratha Ammal(3) the learned Judges say as follows:

(1) [1863] M.S.D.A. 261.

(2) A.I.R. 1915 Madras 505(1).

(3) A.I.R. 1915 Madras 725.

"It is undeniable that this and other High Courts have in

-numerous cases acted on the assumption (which was not questioned) that women could hold religious offices and get the duties performed by proxy".

They further say "It may be that the parties concerned are so accustomed to the idea of female office-holders with proxies that it has usually not occurred to them to question the legality of such a state of affairs and that in the absence of contest, the Courts have somewhat too readily assumed it to be legal without requiring proof of a valid custom in support of it". In Rajeswari Ammal v. Subramania Archaka(1) the learned Judges state as follows:

"We are of the opinion that a female is not, under Hindu law or custom, disqualified from succeeding to a hereditary religious office and getting such duties as she may be disqualified by reason of her sex from performing, performed by proxy".

The only dissentient view against this current of authority in the Madras High Court was that of Justice Sadasiva Aiyar in Sundarambal Ammal v. Yogavanagurukkal (2) . He expressed a strong opinion that the practice of allowing the priestly office to be performed by a substitute excepting for merely temporary occasions or casual purposes, is wholly opposed to public policy and that it should not be recognised. In a later judgment in Annaya Tantri v. Ammaka Hengsu(3) relating to the same topic be (Justice Sadasiva Aiyar) stated as follows:

"It is notorious that the deputy is usually chosen on the principle of a Dutch auction. The man who agrees to allow the widow to retain the largest portion of the

emoluments of the office and to receive the least as his own remuneration is given the place of the deputy".

The learned Judge pointed out that "such a practice was mischievous and that even (1) A.I.R. 1917 Madras 963(2).

(2) A.I.R. 1915 Madras 561.

(3) A.I.R.1919 Madras 598 (F.B.).

if it was sanctioned by usage it ought not to be recognised by courts".

There is certainly force in this comment. But in a matter of this kind where there is no express prohibition in the texts for the performance of the duties of the Pujari's office by the appointment of substitutes and where such an office has developed into a hereditary right of property, the consideration of public policy cannot be insisted to the extent of negativing the right itself. In such a situation what has to be equally emphasised is the duty-aspect of the office and to insist, on the superior authorities in charge of the temple exercising vigilantly their responsibility by controlling the then incumbent of the priestly office in the exercise of his rights (or by other persons having interest taking appropriate steps through court), when it is found that the services are not being properly or efficiently performed. In view of the peculiar nature of such offices as combining in them both the element of property and the element of duty, it cannot be doubted that superior authorities in charge of the institutions or other persons interested have this right which may be enforced by appropriate legal means. In Raja Peary Mohan Mukherji v. Manohar Mukherji(1) the Privy Council has recognised that notwithstanding the personal interest of a Shebait in respect of his office, the performance of the duties thereof has got to be safeguarded and that he can be removed where he has put himself in a position in which the obligation of his office can no longer be faithfully discharged. So far as the Madras High Court area is concerned, the controversy has been settled by the Full Bench case in Annaya Tantri v. Ammaka Hengsu(2) where the view taken by Justice Sadasiva Aiyar was specifically overruled on the ground that "there were numerous decisions of the Madras High Court in conformity with the decisions of the other High Courts by which the widow and the daughter and the daughter (1) [1921] L.R. 48 I.A. 258.

(2) A.I.R. 1919 Madras 598 (F.B.).

of the last male Archaka are held entitled in accordance with the established user to succeed to the office of Archaka discharging his duties by deputy and to transmit it to their heirs, who as male heirs are preferred to female, and will generally be competent to perform the duties in person". These decisions of the Madras High Court seem to recognise both the factum and validity of the usage as one that has been accepted by the courts not only within its own jurisdiction but also within the jurisdiction of the other High Courts. It is urged, however, that there is no such usage that can be definitely said to be established with reference to the decisions of the other High Courts. As regards the other High Courts doubtless the actual cases appearing in the reports about this point are not many. In the Bombay High Court one of the earliest decisions is the case in 1866 of Keshavbhat bin

Ganeshbhat v. Bhagirhibai kom Narayanbhat(1) where the learned Judges say as follows:

> "With respect to the objection, that a Hindu female cannot perform the duties which attach to the office for the maintenance of which the allowance was granted, it may be observed that the defendant had not proved the existence of any usage in conformity with his allegations. The claim in question in that case was to an annual allowance paid from the Government Treasury to the members of a family for the maintenance of certain religious services at the temple of Mahadev at Baneshvar near Poona. In Sitarambhat et al v. Sitaram Ganesh(2) the head-note shows as follows:
>
> "Semble, that an hereditary priestly office descends in default of males through females".

This is apparently the assumption on which that judgment appears to have proceeded though the matter does not appear to have been specifically so decided. In Calcutta one of the early cases is Poorun Narain Dutt v. Kasheessuree Dosee(3). There it was recognised that a woman can succeed to a priestly (1) 3 B.H.C.R., A.C.J. 75. (2) 6 B.H.C.R. A.C.J. 250. (3) [1865] 3 W.R. 179.

office and the contention to the contrary was over. ruled on the ground that the lower appellate court found the same as a fact on the evidence and that no one but the defendant had raised the contention. In Joy Deb Surma v. Huroputty Surma(1) the same question was raised, viz., whether according to Hindu law a woman can succeed to the priestly office and reliance appears to have been placed for that contention on the passage from Colebrooke's Digest already above referred to. In view of this contention the learned Judges remitted the case to the lower court for deter- mination of the question whether with reference to any particular custom or rule of Hindu law a woman is entitled to succeed to the priestly office. In that case it was the office of the Dolloi of the temple. It does not appear what the finding received was and how this matter was finally decided. In Radha Mohun Mundul v. Jadoomonee Dossee(2) their Lordships of the Judicial Committee quoted with apparent approval the following passage from the judgment of the trial Court:

> "They (the members of the family) merely say that as the said properties are of a debuttur character, they are not susceptible of division among the shareholders; and that since the plaintiff is a childless widow, she is not competent to carry on the service of the gods. That the properties in question do not admit of any partition among the co-sharers is a fact which must be admitted by me; but I do not see any reason why a widow of the family should be incapacitated from superintending the service of the gods. It is not urged by the defendants that any such rule has been laid down in the family, and that under it the widows have been excluded from the above superintendence. On the other hand, among the Hindoos, persons belonging to no other caste except that of Brahmins can perform the service of a god with his own hands, that is, worship the idol by touching its person. Men of other castes simply superintend the service of the gods and goddesses established by them- selves, while they cause their actual worship to be (1) [1871] 16 W.R. 282.

(2) 23 W.R. 369.

performed by Brahmins. Thus, when persons of the above description can conduct the service of idols in the above- mentioned manner, why should not the widows of their family be able to carry on worship in a similar way?..... Consequently, there is nothing to prevent the Court from finding that the plaintiff has a right to hold possession of the debutter properties enumerated by the defendants in the 12th paragraph of their written statement, and to superintend the service of the gods conjointly with the other co-sharers". In Mahamaya Debi v. Haridas Haldar(1) it has been recognised that according to custom the palas of Kalighat shrine in Calcutta are heritable and that it was immaterial whether the heir is a male or a female. This must necessarily have involved the recognition of the capacity of the female to get the worship performed by a male substitute who is to be taken from a limited class. As has been already noticed, the reported cases dealing with this matter outside the Madras High Court do not appear to be many. At any rate, no others have been brought to our notice dealing with this question directly, though there are many cases relating to the question of succession to the office of Shebait and the performance of duties thereof by proxy, which is a matter distinguishable from a case relating to the office of Pujari or Archaka simpliciter. The paucity of decided cases in the reports of the other High Courts may very well be due to what has been pointed out in one of the Madras cases, viz., that the practice of females succeeding to this office and getting the duties thereof performed by a substitute was so common and well recognised that it has not been seriously contested and brought up to the Courts. Further the institution of private family temples and the endowments of large and substantial properties for the Deb-seva in such temples though somewhat uncommon in South India is fairly common in Bengal and some other States. In view of the Dayabhaga system of law of succession prevalent in Bengal and the very much larger number (1) A.I.R. 1915 Calcutta 161(2).

of occasions for wives and daughters succeeding to a sonless coparcener in Dayabhaga joint families, the practice of females succeeding to the priestly office and of getting the duties performed by other members of the family as proxies in their places must, by the very situation, have been common in these areas. The case reported in Jalandhar Thakur v. Jharula Das(1) is a case relating to Shebait's (priest's) office in the Singheswar temple of Bhagalpur and the facts therein show that there was unquestioned female succession to the office. It is a clear indication of the prevalence of the usage of female succession to priestly office in the State of Bihar from which the present case arises.

A careful review, therefore, of the reported cases on this matter shows that the usage of a female succeeding to a priestly office and getting the same performed through a competent deputy is one that has been fairly well recognised. There is nothing in the textual Hindu law to the contrary. Nor can it be said that the recognition of such a usage is opposed to public policy, in the Hindu law sense. As already pointed out the consideration of public policy can only be given effect in the present state of the law, to the extent required for enforcing adequate discharge of the duties appurtenant to the office. Subject to the proper and efficient discharge of the duties of the office, there can be no reason either on principle or on authority to refuse to accord to a female the right to succeed to the hereditary office held by her husband and to get the duties of the office performed by a substitute excepting in cases where usage to the contrary is pleaded and established. In the present case such a usage was pleaded by the defendant in his written statement but no evidence of it was

given. Indeed as pointed out by the first appellate Court, the plea that there has been a partition of the offices of the two temples and the implied recognition of the plaintiff's right to the office of the other temple at Gangupal appears to indicate the contrary usage. We are accordingly of the opinion (1) A.I.R. 1914 P.C. 72.

that the claim of the plaintiff-appellant is made out and that she is entitled to succeed.

The discussion above is more germane to the case of a public temple wherein the idol has been Shastrically installed and consecrated and the worship is in accordance with the Shastras. There is nothing on the record to show whether the temple in this case falls within this category. If, however, the temple is a private one or the idol therein is not one Shastrically consecrated, the case in favour of the plaintiff is much stronger and her right cannot be seriously challenged. At this stage, it is desirable to mention one other matter. In the present case the emoluments attached to the office are stated to be the daily and other offerings made to the deity at the worship by the visiting devotees. Both the parties to this case have come up to Court on the common footing that it is this which constitutes the emoluments. Whether and how far such votive offerings can be appropriated by a Pujari for his emoluments if the temple is a public institution, (i.e., not a private family temple) and whether any usage in this behalf is valid is a matter which does not arise before us in this case.

In the result, the appeal must be allowed with costs throughout and the decree of the trial court must be restored.