# Dharam Karan Bahadur Asaf Jahi And Anr. vs Sm. Shahzad Kunwar And Ors. on 29 November, 1952

## Equivalent citations: AIR1953ALL359, AIR 1953 ALLAHABAD 359

JUDGMENT

Kaul, J.

1. This was an appeal filed by the two plaintiffs, namely, Hon'ble Rajman Raja Dharam Karan Bahadur Asaf Jahi and Shri Thakur Radha Manoharji Maharaj Birajman. The first plaintiff died during the pendency of the appeal. His legal representatives were brought on the record and the appeal has been continued by them.

2. The facts giving rise to the suit which has resulted in the present appeal are as follows:

3. So far back as 1865, one Rani Mata Bibi, a rich lady belonging to Hyderabad, visited Mathura on a pilgrimage. While there, she purchased a house in Bindraban from one Gosain Bhajan Lal on 30-9-1865. Mata Bibi constructed a small temple in the said house and installed therein a deity known as Shri Thakur Radha Manoharji Maharaj. On 25-2-1869, Rani Mata Bibi executed a deed of gift relating to the house, the temple therein, and the idol installed in the said temple in favour of her brother's son Raja Inderjit. He was constituted the owner of the property and directed to arrange for the Sewa Puja and Raj Bhog of the deity. On his death, Raja Inderjit was succeeded by his son, Baja Sheo Baj Bahadur. The last man died without leaving, any issue and was succeeded by his nephew Raja Dharam Karan, who was plaintiff 1 in the trial Court.

4. Baja Inderjit entered into possession of the property which formed the subject-matter of the deed of gift dated 25-2-1869, and appointed Gosain Jugal Lal as-Pujari to do the Sewn Puja of the deity and look after the house in which the temple was located. Jugal Lal died leaving two sons. Gobardhan Lal and Chhedi Lal alias Ghhote Lal. After Jugal Lal, his two sons continued to perform the duties which wore entrusted to their father. Gobardhan Lal had a son Radhe Lal who predeceased his father leaving a widow, Brij Bani. After the death of one of the brothers, the other continued to do the Sewa Puja. When he also died, Chhedi Lal's widow Shahzad Kuer and Radhe Lal's widow Brij Rani performed the Sewa Puja in the said temple. Brij Rani is also dead and for a number of years the temple's service was carried on by Shahzad Kuer.

5. On 7-2-1930, Shahzad Kuer, widow of Chhedi Lal, executed a will in favour of her daughter Lalli Bibi and her son-in-law Anand Gopal, respondents 2 and 3. Under the will she treated the house and the temple, to which reference has been made above, as her personal property and devised the same to Lalli Bibi and Anand Gopal. Raja Dharam Karan came to know of this will sometime in 1941 and dismissed Shahzad Kuer from the post of Pujari of the temple. She was asked to hand over

possession of the house, the temple, the idol and the articles pertaining to the said temple to him. She, however, refused to do so; hence the suit which has given rise to this appeal, was instituted.

6. Raja Dharam Karan put forward a twofold claim. His case was that the house purchased by Rani Mata Bibi in Mathura, the temple constructed therein, the idol and other things connected with the worship of the deity were the properties of Rani Mata Bibi who made a gift of them to her brother's son Raja Inderjit. The donee thus became the owner of all these properties and after him, that right devolved upon Eaja Sheo Raj Bahadur, who, in his turn, was succeeded by plaintiff 1.

7. In the alternative, it was averred that in case the whole or any part of the property to which reference has been made be held to be dedicated property of Raja Inderjit and Raja Sheo Raj Bahadur and after them, Eaja Dharam Karan was the Shebait of the said temple in succession, plaintiff 1 could maintain the suit for the benefit of plaintiff 2 (the deity Shri Thakur Radha Manoharji Maharaj) as Shebait.

8. The plaint prayed for the following reliefs:

> (a) A decree may be passed awarding possession over the property to the plaintiffs or any one of them who may be found to be entitled thereto ;
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> (b) The idol of plaintiff 2 may be caused to be handed over to plaintiff l by defendant 1 or defendants 2 and 3 if it is proved that they are in possession thereof; (c) The articles mentioned at the foot of the plaint be delivered by defendant 1 to the plaintiffs or in the alternative pay to the plaintiffs Rs. 2000 as the price of the said articles, (d) Costs of the suit may be awarded; and (e) Any other relief which may, in the opinion of the Court, be beneficial to plaintiffs' interests, also be granted to them.

9. A large number of pleas were raised in defence. Plaintiff 1 resided in Hyderabad and the suit in the lower Court was instituted through the agency (under special power of attorney) of Goswami Shri Brij Jiwan Lal. It was pleaded that Brij Jiwan Lal was not a duly authorised agent legally empowered to institute the suit, that the plaintiff had no right in law to maintain the suit, that the suit was bad for non-joinder of necessary parties and that defendants 2 and 3 were improperly joined in the suit.

As to the main defence, so far as it can be gathered from the written statement filed by Shahzad Kuer, her case was that the property in dispute was a temple dedicated to the idol Shri Radha Manoharji Maharaj, that the said idol was the ancestral idol of her husband's family and her husband and his ancestors were the Shebaits of the temple, that the property sold by Bhajan Lal could not convey any right to Rani Mata. Bibi, nor could Rani Mata Bibi by executing a gift thereof confer any right therein on Raja Iderjit or any of his successors, that Rani Mata Bibi was a disciple of her husband Grosain Bash Behari. Lal and from time to time used to offer gifts to him and his family deity, and lastly that plaintiff l had not been in possession of the property in dispute which had been in adverse possession of the first defendant and her husband's ancestors foe more than 12 years. Accordingly, even if Rani Mata Bibi or Raja Inderjit or any of her successors had any right in the

said property, they were extinguished.

10. The learned Civil Judge of Mathura on an examination of the materials before him, held that the suit was instituted by a duly authorised person, that defendants 2 and 3 were rightly im-pleadedand that the objection based on the failure of the plaintiffs to implead the other two descen-dants of Eaja Inderjit as parties to the suit was cured inasmuch as all such persons were subsequently impleaded. On the main question raised in the case, namely, whether the building in dispute was property dedicated to a deity and constituted a temple, the learned Judge's finding was that it is a temple dedicated to plaintiff 2 who is a juristic person. In view of this finding he came to conclude that the claim put forward by plaintiff l on the basis that the property in dispute was his personal property could not be sustained.

11. On the line of claim based on the right of Shebaitship, the learned Judge was of opinion that a vivified idol cannot be the subject of a will or gift like moveable property. He was, however, of opinion that by the deed of gift dated 25-2-1869, Rani Mata Bibi, the founder of the temple, constituted Raja Inderjit as Shebait, but did not. constitute him a fresh stock for a line of succession of Shebaitship. That on Raja Inderjit's death, the Shebaitship must be taken to have reverted to the family of Rani Mata Bibi's husband. He-further opined that even if Sheo Raj Bahadur acquired the right of Shebaitship by adverse possession, it did not devolve upon plaintiff 1.

12. It appears to have been argued before the learned Judge in the Court below that irrespec-tive of the plaintiffs' right of Shebaitship, Gobar-dhan Lal was admittedly appointed a Pujari by Eaja Inderjit and Raja Sheo Raj Bahadur and his successors having repudiated their character as licensees and asserted right of ownership to the property were liable to be ejected, by the successors of the licensors. This contention was repelled by the learned Judge as he held that defendant l Shahzad Kuer did not acquire a licence from anyone. As regards the claim in respect of the move-able mentioned at the foot of the plaint, the learned Judge came to the conclusion that it was not proved that they were entrusted to Shahzad Kuer. It was further held by the learned Judge that the suit was barred by the law of limitation inasmuch as the plaintiff had not been in possession of the property in dispute for more than 12 years before the suit was instituted. In the result, he dismissed the suit withcosts.

13. The findings of the trial Judge in so far as they were against the appellants are challenged before us. The main points argued before us were : (a) Is the building in dispute the property of plaintiff 1 ? If not so, (b) Is plaintiff 1 a Shebait of the endowed property? (c) What is the status of Shahzad Kuer? and (d) Limitation.

14. It was strenuously argued by the learned counsel for the appellants that there was no evidence of the dedication of the house in dispute to the deity. He argued that the mere fact that a small temple was built in the house and a deity installed therein would not make the whole house dedicated property. We are unable to accept this contention. Rani Mata Bibi belonged to Hyderabad. There is nothing on the record to suggest that she purchased the house in Bindraban for herself to live in, and having regard to the class to which she belonged, even if she wanted to have a house in Bindraban which she might have intended to visit at intervals, it is only a legitimate inference that

she would not purchase such a small house even for that purpose. The fact that she constructed a temple in the house and installed a deity therein clearly indicated the object which she had in view when she purchased the house. The house in question so far as we are aware was never put to any use except as a habitation for the deity installed by Rani Mata Bibi and for the residence of the Pujaris--persons who were supposed to administer to the needs of the deiby, i. e. Sewa Puja. The matter is, how-ever, clinched by the deed of gift Ex. 2 dated 25-2-1869, executed by Eani Mata Bibi in favour of her nephew Raja Inderjit. After reciting that she had purchased a house from Gosain Bhajan Lal for Rs. 2000 she says :

> "I built the temple of Thakur Radha Manonarji Maha-raj in the aforesaid house and installed therein the idoi of Thakur Kadha Manoharji Maharaj which is installed in the aforesaid temple upto this day. The expanses relating to the Raj Bhog of Thakurji is met by me."

Then she adds :

> "The present value of the aforesaid temple built by me is Rs. 12000 and it is in my proprietary possession and occupation npto this day,..... have..... gifted the entire temple aforesaid bounded as set forth above, valued approximately at Rs. 12000 together with Thakurji Maharaj installed therein.....to Kaja Inderjit Bahadur...who is related to me as my own brothers' son."

This deed makes it clear that the subject-matter of the gift comprised the house, the tern-ple as well as the idol. The whole building was valued at Rs. 12000 and she has described it as the aforesaid temple built by her. Thus there can be no doubt that the whole building including the particular apartment wherein the deity was installed was regarded as a 'temple' by the founder.

In this view of the matter we agree with the conclusion arrived at by the learned Judge in the Court below that the property which formed the subject-matter of the gift was dedicated property and Rani Mata Bibi, though she calls herself its proprietor could not, in law, be regarded as the owner thereof. Being the founder of the Dev Asthan, the Shebaitship vested in her and it was only this right which she could dispose of.

15. It was observed by Lord Hobhouse in the case of Gossami Sri Gridhariji v. Romanlalji Gossamee, 16 Ind. App. 137 (P. C.) that :

> "According to Hindu Law, when the worship of a Thakoor has been founded, the shcbaitship is held to be vested in the heirs of the founder, in default of evidence that he was dispossessed of it otherwise, or that there has been some usage, course of dealing, or circumstances to show a different mode of devolution."

16. The next question we have to consider is whether plaintiff 1 was a shabait of this Dev Asthan. It was argued on behalf of the appellants that even if the property in dispute be held to be dedicated property, the deed of gift executed by Rani Mata Bibi should be construed as conveying the right of

shebaitship to her nephew Kaja Inder-jit. Reliance in support of this contention is placed on Khetter Chander v, Hari Das, 17 cal. 557. It was laid down in that case by a Bench of the Calcutta High Court that :

> "A gift of an idol and of the lands with which it is endowed (being a private endowment) made with the concurrence of the whole family to another family for the purpose of carrying on the regular worship of the idol, if made for the benefit of the idol, is not invalid, and is one binding on succeeding shebaits."

The deed of gift executed by Bani Mata Bibi in favour of Raja Inderjit not only conveyed the property to him but also cast upon him the duty of arranging for the Sewa Puja and Raj Bhog of the deity. She says :

> "I have put the donee in possession and occupation of the aforesaid gifted property. The donee should enter into possession and ocaupation of the aforesaid gifted property and should perform the seua puja and Raj Bhog of the said Thakurji, as a proprietor."

In fact, it would appear from an examination of this deed of gift that the sole purpose which the lady had in view in executing the document was to ensure the due performance of the seva puja of the deity which she had installed. She says :

> "I have now grown old. No reliance can be placed on this life which is borrowed and unstationery. It is not known when the candle of my life may go out. On account of my old age I cannot make proper arrangements regarding the expenses of Raj Bhog of Thakurji Maharaj. 1 have, therefore, ..... gifted the entire temple aforesaid bounded as set forth above.....to Raja Inderjit Bahadur."

We are satisfied on an examination of this document that the chief object with which it was executed was to ensure the Sewa Puja of the deity installed in the temple constructed by the founder of the institution. Though the word 'She-bait' is not used, it is clear that the lady intended the donee to be invested with that function. The dedicated property vests in the idol only in anideal sense and in the nature of things the possession and management of it mast bo entrusted to some other human being. It was observed by the Judicial Committee in Prosunno Kumari Debya v. Golab Chand Baboo, (2 Ind. App. 145 P.C.)) that :

> " 'The person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, ab least to as great a degree as the manager of an infant heir. If this were not so, estate of the idol might be destroyed or wasted, and its worship discontinued for want of necessary funds to preserve and maintain them. This human ministrant of the deity who is its manager and legal representative is known by the name of Shebait in Bengal and Northern India." (See Mukerjea's Hindu Law of Religious and Charitable Trust, 197).

17. Wo find that throughout Raja Inderjit and his successors have been exercising the functions of a Shebait in relation to this temple. Though the actual service is carried on by the Gosaius who reside in Bindraban and they are appointed by Raja Inderjit and his successors, to carry on the Sewa Puja, the funds for the upkeep of the temple and the Raj Bhog have always been supplied by Raja Inderjit and his successors. Ex. 135 is a Sanad by which Raja, Inderjit appointed Jugal Lal, father-in-law of defendant 2 as Pujari (priest) of the idol installed in the temple in question. Ex. 134 is a copy of the Sanad granted by Raja Sheo Raj Bahadur, son and successor of Raja Inderjifc in favour of Gobardhan Lal, the elder brother of Shahzad Kuer's husband. It shows that on the death "of the former priest" Gobardhan Lal, son of Jugal Lal was appointed the priest of the idol installed in the temple. Ex. 3 is an agreement executed by Jugal Lal on 11-3-1879 wherein he stated :

> "I am residing in the temple built by Mata Bibi and made a gift of to the Raja Saheb aforesaid on this condi tion that whenever the aforesaid Raja Saheb shall order me to vacate the aforesaid temple, 1 shall vacate the earns without any excuse or objection and shall not raise any plea."

Exhibits 7, 8, 9, 10, 11, 12 and a number of documents on record conclusively establish that the funds for the upkeep of the temple and for the Raj Bhog wore throughout furnished by Raja Inderjit and his successors. There can thus be no doubt that after the execution of the deed of gift to which reference has been made, Raja Inderjit and his successors have been acting as da facto shabaits of this Dev Asthan. Tho learned Judge in the Court below accepts this position so far as Raja Inderjit was concerned. He observed :

> "My opinion, therefore, is that the founder nominated Raja Inderjit as Shebait with effect from 25-2-1869 by her misconceived deed of gift."

By a method of reasoning, however, which we consider erroneous, the learned Judge has come to the conclusion that Raja Inderjit could not be 'a. fresh stock of descent' for shebaitship. He says :

> "The law here is that if Raja Inderjit was a fresh stock of descent for shabaitship then his heirs would be the present day shebait. But if he was not a fresh stock of descent then the shebait ship after the death of Raja Inderjit went to the founder's heirs. This principle applies to the present case."

The learned Judge arrived at this conclusion because he found no reference in the deed of gift to the successors or heirs of Raja Inderjit. He observed :

> "The deed of gift mentioned that Eaja Inderjit should arrange ior the seva puja and rajbhog of the idol but it does not say who after him would do so. There is no reference at all to successors or heirs of Raja Inderjit. The position is that the founder framed no scheme for shebait-ship when the service of the Thakurji plaintiff 2 was established, that on 25-2-1869 a deed was executed by which a shebait was constituted, and that no provision was made for shebaitship after Raja Inderjit."

He adds :

> "A scheme by which llaja Inderjit's shebaitship was made hereditary for his heirs cannot possibly be fastened on this endowment."

We are unable to agree with the view taken by the learned Judge. Though the building in question was property that had been dedicated to the deity, under a misconception as to the correct legal position, Rani Mata Bibi treated it as property owned by her and as she wanted to arrange for the continuation of the Sewa Puja and Raj Bhog of the deity installed by her after her death, she made a gift of the property to Raja Inderjit and cast upon him the duty of arranging for the Sewa Puja and Raj Bhog. Naturally in the view which she took of the matter no question of prescribing a line of succession of Shebaits could arise. The right of shebaitship, it is well established, originally vests in the founder of the Deoasthan and would descend upon the heirs of the Shebait like other property. No specific for-mula is prescribed for appointment of a Shebait. By the deed of gift executed by Rani Mata Bibi she not only purported to convey the property in question, to Raja Inderjit but also invested him with the functions of a Shebait. It is not a case as appears to have been taken by the learned Judge in the Court below that a Shebaitship was conferred upon Raja Inderjit in person as a per-sona designata.

18. In the case of Bhabatarini Deli v. Asha-lata Devi (A. i. R. (30) 1943 p. c. 89) to which reference has been made by the learned Judge, the founder had directed that a designated person should hold the office during the person's life. That is not the case here. In the case before us, the property was made a gift of to Raja Inderjit and upon him was cast the duty of arranging for the Sewa Puja of the deity in his capacity as the owner of the temple. In a case like this, if the property is not conveyed to the donee, it must be held on a true construction of the deed that the hereditary right of shebaitship is conferred upon him. He was not appointed a shebait as a persona designata.

19. It appears to have been argued before the learned Judge that even if Raja Inderjit was appointed a shebait as a persona designata, he and his successors would have acquired a permanent right to shebaitship by adverse possession. The learned Judge has referred to a large number of documents including the Sanads granted by Raja Inderjit and Sheoraj Bahadur to Jugal Lal and Gobardhan Lal, and the acknowledgment by Jugal Lal (EX. 3) that he was residing in the building in question with the permission of the Raja Saheb and had undertaken to vacate it when so desired. He also referred to EXS. 214A to 234A (papers on the the pertaining to this temple maintained in the office of Raja Dharam Karan) which show that it was plaintiff 1 and his successors who had been looking after the upkeep of this temple and the necessities of the idol, i.e. Sewa Puja. Reference has also been made to EXS. 194A to 194A, letters which were written by Sheo Raj Bahadur to Shahzad Kuer or her predecessors advising the despatch of sums of money for the temple and the idol in response to the requests made by Shahzad Kuer and others to the plaintiff and his ancestors for funds. All these documents would, on the face of them, show that the descendants of Raja Inderjit were exercising the right of shebaitship in relation to this Devasthan.

20. By a process of reasoning, however, which wo cannot but call faulty, the learned Judge has come to the conclusion that all these documents, letters, petitions, etc., were written by Gobardhan Lal,

Jugal Lal and Shahzad Kuer only to obtain funds for the upkeep of the temple and the deity's service. He appears to have been much impressed by the fact that Rani Mata Bibi became a disciple of Gosain Rash Behari Lal about the year 1856. It appeared to him that having become his disciple, all that was done by her and Raja Inderjit and his successors was only a tribute from a Chela to the Guru. Such a view is wholly inconsistent with the conferment of Sanads by Raja Inderjit and Raja Sheo Raj Bahadur on Jugal Lal and Gobardhan Lal, nor is the agreement (EX. 3) executed by Jugal Lal on 11.3.1879, expressly admitting that he was residing in the building with the permission of Raja Sheo Raj Bahadur and undertaking to vacate it when so desired by him consistent with the construction put upon these documents and the view taken by the learned Judge.

21. We are of opinion that on the mass of material which is on record, the only legitimate inference that can be drawn is that Raja Inderjit and after him, Rajas Sheo Raj Bahadur and Dharam Karan acting as the shebaits in relation of this temple and that Jugal Lal, Gobardhan Lal and Chhedi Lal alias Chhote Lal were only Pujaris.

22. The next point to consider is what is the position of respondent l Mt. Shahzad Kuer in relation to this temple. Is she Shebait as claimed by her or only a Pujari? As already shown by us there can no doubt as to the position occupied by Jugal Lal and Gobardhan Lal. They were granted sanads by Raja Inderjit and Raja Bheo Raj Bahadur, (see Exs. 134 and 135) appointing them Pujaris. There is an express admission made by Jugal Lal, father-in-law of Shahzad Kuer, that he was residing in the building in question with the permission of Raja Sheo Raj Bahadur. He undertook to vacate it whenever so desired by the Raja (EX. 3). Ex. p. 138 is an agreement executed by Jugal Lal wherein he admits that all the articles (including the ornaments, clothes and utensils) dedicated to Shri Thakur Radha Manoharji Maharaj, the deity, installed by Rani Mata Bibi belonged to Raja Sheo Raj Bahadur; that he was entrusted with the custody of those articles under the supervision of 'Vislieshwar Din Karinda of Raja Sheo Raj Bahadur. The agreement adds :

> "Accordingly I have executed this agreement on my behalf in favour of Maharaja Sahab Raja Sheoraj Bahadur, and I covenant and give in writing that whenever the Maharaja aforesaid would make a demand of the articles, mentioned in the list, whether all or any number of them, 1 shall, without any objection hand them over forthwith to the Raja, Saheb aforesaid."

23. In view of these clear admissions, there can be no doubt as to the position occupied by Jugal Lal and his son Gobardhan Lal in relation to this temple. They wero mere Pujaris. The difference between a Pujari and a Shebait is clear. A Pujari or Archaka as observed by Mukherjee in his recent book on the Hindu Law of Religious and Charitable Trusts, p. 198, is appointed by the founder or Shebait to conduct the worship. He is a servant of the Shebait and no part of the rights and obligations of the latter are transferred to him. He further observes :

> "When the appointment of a Purohit has been at the will of the founder, the mere fact that the appointees have performed the worship for several generations will not confer an independent right upon the members of the family so appointed and will not entitle them as of right to be continued in office as priests." (See Srinivasa

Chariar v. Evalappa, 4.9 Ind. App. 237 (P.C.) and Kali-Krishna v. Makhanlal, 50 Cal. 233.

24. It has been stated earlier how the present respondent 1 Shahzad Kuer came to be associated with this temple. (After considering the documentary evidence, their Lordships continued.) In view of the material to which reference has been made, there can be no doubt that the position occupied by Shahzad Kuer after the death of her husband and her husband's, brother Gobardhan Lal was the same as was occupied by them in relation to this temple. We have already shown that they never had a status higher than that of a Pujari, and there is nothing on the record to show that Shahzad Kuer ever claimed a higher status till on 23-4-1938, when she executed a Mukhtar-i-nama to which reference has just been made. It is not clear when Raja Dharam Karan came to know of this assertion of a title to Shabaitship by Shahzad Kuer, but as the suit giving rise to the present appeal was instituted on 6-12-1941, no question of acquisition of a title to Shebaitship by adverse possession could arise. We hold accordingly that the position which Shahzad Kuer occupied was merely that of a Pujari. Neither Jugal Lal nor Gobardhan Lal nor Shahzad Kuer's husband Chhedi Lal ever claimed to have a right to even this post of a Pujari which could not be put an end to. A Pujari, as we know, is only a servant of the She-bait and his services can be dispensed with, at any time. Shahzad Kuer executed a will in respect of this property in favour of her daughter and son-in-law (EX. 77) and when Raja Dharam Karan came to know of it, Shahzad Kuer'a services were dispensed with. She has, therefore, no right to continue in possession.

25. On the material before us (EXS. 4, 61, 63, 64 and 65, communications addressed by Shahzad Kuer to the Nazim (Manager) of the Estate of Raja Dharam Karan) we are satisfied that there was no assertion of any title by her in respect of this property till 1938 except as a Pujari. Reference has already been made in another connection to EX. 68, a letter addressed by Shahzad Kuer to Raja Dharam Karan dated 28-1-1938, asking for a direction to the Nazim (Manager) of the addressee for payment of the arrears due on account of pay of the servant employed in the temple and also for her own allowance. All this is consistent only with the admission of the first appellant's right to Shebaitship to the temple. In this view of the matter no question of limitation arises. The appellant's claim was not barred either by Article 124 or 142, Limitation Act. It was suggested at one stage that the endowment was created by the Nizam of Hyderabad and a daily allowance of Rs. 2 was fixed by him. for this tem-ple, that this allowance was paid by Nizam through Raja Sheo Raj Bahadur and that the numerous demands made by Shahzad Kuer for this allowance wore in respect of the sum which was due to her under a grant made by the Nizam. We are clear that this fantastic theory will not stand a moment's examination. Apart from the other evidence, the contents of EX. 68, a letter addressed by Shahzad Kuer to Raja Dharam Karan furnish a complete answer to any such contention.

26. In view of the conclusions arrived at above, no other matter calls for consideration.

27. The result is that the appellants' claim is decreed, the immovoable and moveablo property in dispute is held to be dedicated property of which the deity appellant 2 must be bold to be the owner. The legal representatives of the original appellant 1, whose names have been brought on record as successors of the previous Shebait are entitled to recover the same from respondent 1, Mt. Shahzad

Kuer. For want of satisfactory evidence to prove that Mst. Shahzad Kuer was either entrusted by Raja Dharam Karan or that she received from the previous Pujaris all the move-ables mentioned at the foot of the plaint a decree can be passed in favour of the plaintiff appellant for the recovery of only the articles mentioned in the list filed by Shahzad Kuer on 9-4-1942 (paper no. 34C). If she fails to hand them over to the plaintiffs-appellants, she will be liable to pay them the market value thereof. This may be determined by the Court in the execution department, in case the articles are not delivered as directed by this Court. The appellants shall get their costs from respondents 1 and 2.