(1943) 08 AHC CK 0004

Allahabad High Court

Case No: None

Ram Das		APPELLANT
	Vs	
Shri Ram Lakshman Janki through Mahant Ganga Das		RESPONDENT

Date of Decision: Aug. 12, 1943

Citation: AIR 1943 All 352 : (1943) 13 AWR 189

Hon'ble Judges: Collister, J; Allsop, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Collister, J.

This is a defendant''s appeal tinder the Letters Patent from a decision of a learned Judge of this Court. Plaintiff respondent 1 is an idol and plaintiff respondents, by name Ganga Prasad, claims to be the shebait. The suit was for a declaration that respondent 2 is the shebait and manager of the temple and its property, and for a perpetual injunction to restrain the defendant appellant from realising rent and from executing decrees for arrears of rent with respect to certain plots belonging to the idol. It was alleged that respondent 2 was the founder of the endowment and that seven years before the suit he appointed the appellant as manager of the property, but the latter did not perform his duties properly and so the respondent dismissed him from that office by a notice dated 15th August 1935. The defence was that it was the appellant himself who had constructed the temple, that he was the shebait and that in that capacity he had obtained the decrees for arrears of rent. There was also a plea that the suit was barred by Section 92, Civil P. C. The trial Court found that it was a private endowment and that it was respondent 2 who built the temple and was its shebait and manager. The Court also found that the suit was not barred by Section 92, Civil P. C., and the suit was accordingly decreed. The lower appellate Court reversed this decree. The learned Judge found that the endowment was public and that the suit was barred by Section 92, Civil P. C., and he accordingly

allowed the appeal and dismissed the suit. There was no clear finding by that Court as to whether respondent 2 or the appellant was the shebait. There was an appeal to this Court and a learned Judge remanded the following issue to the lower appellate Court :

Whether plaintiff 2 or the defendant was the shebait or the de facto shebait of the temple in dispute on the date of the suit ?

2. The finding which the learned Judge of the lower appellate Court returned was that on the date of suit the defendant that is, the appellant before us, was the shebait of the temple, "with this reservation that he had no authority to interfere with the plaintiff''s management of the service of the temple." Thereafter the learned Judge of this Court allowed the appeal and restored the decree of the trial Court. He was of opinion that the finding by the Judge of the lower appellate Court was "based on certain contradictory conclusions arrived at by him," and the following observation by that Court is cited in the judgment under appeal :

... the service at the temple has always been in charge of plaintiff 2 and only in his absence an arrangement may have been made for it by the defendant. It appears that plaintiff 2 as founder reserved for himself and always conducted service at the temple ; but as regards the property of the temple he, in order to ward of! public suspicion, appointed the defendant as mutwalli or shebait, which office still vests in him.

3. After citing this observation the learned Judge of this Court says :

It appears to me that in recording the finding noted above the learned Judge was under a misapprehension as to the position of a shebait. He seems to have been under the impression that the position of a shebait is in all respects analogous to that of a mutwalli of a Mahomedan endowment. This, however, is not so. The duties and privileges of a shebait primarily are those of one who fills a sacred office. He is the custodian of the deity and has to look after its sewa-puja. The main concern of a shebait is to carry out the sacred duties of his office. If certain properties are dedicated to the use of the deity, the shebait by virtue of his office is entitled to manage the same....

4. In this connection the learned Judge cites Ghosh''s Law of Endowment, Edn. 2, p. 275 and Pramatha Nath Mullick v. Pradyumnakumar Mullick . The learned Judge then goes on to observe :

In the present case it is clear from the finding recorded by the lower appellate Court that plaintiff 2, who was the founder of the endowment, reserved to himself the right of service at the temple and has all along been performing that service. That being so, the position of plaintiff 2 was that of a shebait. The defendant, according to the finding of the lower appellate Court, was charged with the management of the endowed properties appertaining to the temple. These duties were of a secular

and not of a religious nature and, as such, the defendant''s position could not be that of a shebait. He was to all intents and purposes a manager appointed by plaintiff 2 to look after the endowed properties. The lower appellate Court was, therefore, wrong in holding that the defendant was the shebait of the temple in dispute.

5. In conclusion the learned Judge finds that the plaintiff, being the shebait, had a right to dismiss the manager appointed by him. I may say that there was no contest before the learned Judge as regards the finding that the temple was open to the public; but this is admittedly immaterial. It is a matter of admission before us that respondent 2 built the temple out of subscription and that he must be deemed in law to be the founder of the endowment. After building the temple he admittedly reserved to himself the right and duty of performing the sewa-puja. This is the office of shebait and the person holding it can either perform it himself or, if not qualified, can empower a qualified person to perform the office. Respondent 2 was qualified, and admittedly he has all along been performing the office; but he orally appointed the appellant to manage the property. In the notice of dismissal dated 15th August 1935 he referred to the appellant as "mutwalli." The lower appellate Court regarded this as equivalent to "shebait and manager of the temple," but the learned Judge of that Court appears to have misused the word "shebait" in this connection; respondent 2 was the shebait, for he did the sewa of the idol, and with this office the appellant had no concern at all. The question we have to decide is, what was the legal position of the appellant and whether respondent 2, as founder and shebait, was or was not competent to discharge him from his office of manager of the property belonging to the temple? In other words, did respondent 2 as founder appoint the appellant as "trustee" --I have advisedly put this word in inverted commas--or did he retain this post himself and merely appoint the appellant as manager of the property under his supervision? In Ghosh''s Law of Endowment, Edn. 2, at p. 275 the learned author, in discussing the rights and duties of a shebait says :

Sheba means service, and whenever an image or idol is set up and consecrated there must needs be a shebait to serve and sustain the deity whose tabernacle the image is. The duties and privileges of a shebait primarily are those of one who fills a sacred office. He must take the image into his charge and custody; he must see that it is washed and fed and clothed and tended and that due provision for its worship is made. The main concern of a shebait is duly to carry out the scared duties of his office. He may perform his spiritual functions personally or he may -- indeed, if he does not possess the necessary qualifications to enable him to celebrate the worship of the deity, he must, -- appoint a qualified deputy to officiate in his stead. It usually happens, when an image is consecrated, that property, moveable or immovable, is dedicated to its use.... After dedication the proprietary title to the property is vested in the idol, the right to possess and the duty to manage the property in the shebait.

6. Reference is made in the commentary to two decisions of the Privy Council, Pramatha Nath Mullick v. Pradyumnakumar Mullick already referred to, and Jagadindra Nath Roy v. Hemanta Kumari Debi (''05) 32 Cal. 129 ; but neither of these decisions affords us any real assistance in determining the question which arises from the peculiar facts of the particular case which is under our consideration. We are also referred to Mulla''s Hindu Law, Edn. 9, paragraphs 413 and 414. In para. 413 it is stated :

Where property is devoted absolutely to religious purposes, in other words, where the dedication is absolute and complete, the possession and management of the property belongs, in the case of a ... temple, to the manager of the temple, called shebait....

7. In para. 414 the learned author says :

A shebait is by virtue of his office the administrator of the property attached to the temple of which he is the shebait. As regards the property of the temple, he is in the position of a trustee. But as regards the service of the temple and the duties that appertain to it, he is rather in the position of the holder of an office or dignity.

8. The last-mentioned comment is based on a decision of the Privy Council in Ramanathan Chetti v. Murugappa Chetti (''60) 29 Mad. 283 ; but here too the matter in controversy before us is not directly touched and the observations of the Judicial Committee are only of general assistance as regards the position of a shebait in circumstances other than those attending the particular case with which we have to deal. Respondent 2 was admittedly the founder of the endowment, and he reserved to himself the sewa puja of the idol. In Ananda Chandra Chakravarti Vs. Broja Lal Singh and Others, there is the following observation :

Now it is well settled that when the worship of an idol has been founded, the shebaitship is vested in the founder and his heirs, unless he has disposed of it otherwise, or there has been some usage or course of dealing which points to a different mode of devolution.

9. Respondent 2 was the shebait, and as such he was entitled to administer the endowed property himself but he chose not to do so; he appointed the appellant to perform this duty. In the notice already mentioned he refers to the appellant as ''mutwalli,'' but he obviously did not mean that he had invested the appellant with the office of trustee of the endowed property to his own exclusion. An analogy may be drawn from the case of a minor''s guardian. A Hindu father, who is the natural guardian of the person and property of his infant son, is competent to engage a particular person to manage the property and he will be equally competent to dismiss him; and there is no reason why the shebait of a temple should not take similar action. It is contended on behalf of the appellant that the founder of the endowment--that is to say respondent 2 --absolutely divested himself of all secular power in respect to the property in favour of the appellant, who has thus become

the mutwalli of the property and is not liable to dismissal at the will of the founder. But if this was the intention of respondent 2, it is more probable that a formal document would have been executed; whereas all he did was to appoint the appellant verbally to manage the property. In all the circumstances I think it is a reasonable inference that, while retaining the office of shebait in his own hands, he appointed the appellant, as his agent or nominee, to manage the property. It is certainly a fact that from the notice of 15th August 1935 it would appear that the founder originally intended to execute a deed of appointment at a later date; but the language of the notice makes it quite clear that this was to depend on how the appellant managed the property. Possibly at the outset the founder may have intended, if the property was honestly managed by the appellant, to divest himself of his powers of "trustee" of the property in favour of the appellant; but he never did so, presumably because he was not satisfied with the way in which the appellant managed the property. The learned Judge of this Court says of the appellant that "he, was to all intents and purposes a manager appointed by plaintiff 2 to look after the endowed properties" and I do not think that there are any sufficient grounds for taking a different view. In my opinion, this appeal should be dismissed.
Allsop, J.

10. I have had the advantage of seeing my learned brother''s judgment. There seems to be no doubt that the founder of a Hindu temple can appoint some person to be responsible for the custody and service of the idol and that this person normally is entitled to manage any property or expend any monies which vest in the idol. Although this person is responsible for the service of the idol, he may and indeed sometimes is bound to, appoint some other person to perform the actual ceremonies connected with the service. There may be some question Whether a person who intends to transfer property for the benefit of a temple or an idol is necessarily compelled to entrust the management of this property to the person who is responsible for the custody and service of the idol itself. In the present case, some difficulty arises because respondent 2 who collected the money with which the temple was built is to be regarded, according to the admissions made before us, as the founder of the temple. He appointed the appellant orally as the mutwalli of the temple and entrusted him with the management of the property but retained in himself the duty of performing the necessary services of the idol. It certainly appears that different interpretations may be placed upon the conduct of respondent 2. There is a question whether he intended to reserve to himself the right to control the service of the idol--because if he did so, he would be the shebait in the proper sense of the term--or whether he intended merely to reserve to himself the right to conduct the actual services under the responsibility of the defendant. The connected question is whether when he made the defendant mutwalli he intended him to have absolute control of the property or merely to manage it as his agent or representative. It appears to me that the learned single Judge of this Court was right when he pointed out that the finding of the learned

Judge of the lower appellate Court was a contradiction in terms. The learned Judge of that Court recorded a finding that the defendant was the shebait but that he had no right to interfere with the service of the idol. Shebait is a term which means a person who is ultimately responsible for the service of an idol and therefore if the defendant had no rights or responsibilities in this matter he could not be the shebait. I have already suggested that there may be some doubt upon the question whether respondent 2 as the founder of the temple could not arrange for the management of the property dedicated to the temple by putting it in the custody of some person other than the shebait, but on the whole I am inclined to think that he should, if he wished to do this, transfer the property not to the idol but to a trustee who would hold it on behalf of the idol and it does not appear that it was ever suggested that he dealt with the matter in this way. The tex-books quoted by my learned brother, against which no authority has been shown to us, suggest that the shebait would at least normally be the person who would manage any property which was vested in the idol. In these circumstances I do not feel that I would be justified in differing from my learned brother''s opinion and I have not been convinced that the decision of the learned single Judge of this Court was wrong. I concur in the proposed order of my learned brother.

11. The appeal is dismissed with costs.