Anath Bandhu De Vs Krishna Lal Das and Others

Court: Calcutta High Court

Date of Decision: Sept. 6, 1978

Citation: 83 CWN 125

Hon'ble Judges: M.M. Dutt, J; D.C. Chakravorti, J

Bench: Division Bench

Advocate: Mukul Gopal Mukherjee, for the Appellant; Manmohan Mukherjee and Suniti Sen Gupta, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Dutt, J.
This appeal is at the instance of the plaintiff and it arises out of a suit for declaration of title, permanent injunction and for

accounts. The case of the plaintiff was that one Nayan Chand Nandi installed the deity Sree Sree Gopinath Jew Thakur at 5A, 5B and 5C, Ratan

Babu Road, Cossipur, more than a century ago. His son Mathura Mohan dedicated the Ka schedule properties to the deity. The Kha schedule

properties were acquired out of the income of Ka schedule properties. By an Arpannama executed by Mathura Mohan in or about Ashar 1229

B.S., he appointed his widow Rashmoni and his brother''s widow Jagadiswari as joint shebaits of the deity The Arpannama is not however,

traceable. After the death of Jagadiswari, the shebaitship of the deity devolved upon Rashmoni who acted as the sole shebeit upto about 1859. By

a will dated October 21, 1859, Rashmoni appointed her relation Sristidhar as the shebait of the deity. Sristidhar, by a will which was probated,

created a line of succession to the office of the shebait. He appointed his four sons, namely, Harinarayan, Haripada, Haribhusan and Harimohan as

the successive shebaits and it was directed that after their deaths the eldest for the time being amongst his grandsons, great grandsons and lineal

male descendents would be the shebaits of the deity. As per the direction in the will of Sristidhar, Harinarayan, the father of the plaintiff, became

the shebait.

2. It appears that there was some dispute amongst the sons of Sristidhar about the shebaitship of the deity. Haribhusan and Harimohan, the father

of the defendant no. 1, instituted a suit being Title Suit No. 89 of 1918 which was re-numbered as Title Suit No. 1 of 1927, in the Court of the

Second Additional Subordinate Judge, Alipore, against Harinarayan and Sm. Manjusree Dasi, the widow of Haripada, relating to the shebaitship

of the deity. That suit was eventually compromised between the parties and a compromise decree was passed on March 2, 1928. It was inter alia

directed in the said compromise decree that the parties would be bound by the terms and conditions as mentioned in the will dated Magh 29, 1310

B.S. of the late Sristidhar Dey including the direction for appointment of successive shebaits. Further, it was directed that in accordance with the

terms of the said will, the defendant No. 1 Harinarayan would continue as the shebait and on his death or relinquishment of the office of shebait, the

plaintiff No. 1 Haribhusan Dey and in his absence, the plaintiff, No. 2 Harimohan Dey would successively become the shebaits. Harinarayan

remained the shebait till September 14, 1928 when he dies and thereafter Haribhusan became the shebait. Haribhusan died on April 18, 1948 and

thereafter Harimohan became the shebait. Harimohan died on March 3, 1960, but before his death he appointed his son Krishnalal, the defendant

No. 1 as the shebait on February 7, 1955. The contention of the plaintiff was that the appointment of the defendant No. 1 was illegal. It was the

plaintiff''s case that he was the original shebait of the deity and was entitled to have the custody of the deity and to possess the debutter properties

on behalf of the deity. Accordingly, the plaintiff filed the said suit for a declaration that he was the lawful shebait of the deity and for permanent

injunction and accounts.

3. The proforma defendants Nos. 1 to 8, who are the heirs of the other sons of Sristidhar, supported the plaintiff. Krishnalal who was the principal

defendant contested the suit. His defence was that under the Arpannama of Mathura Mohan, the relevant provision of which were to be found in

the will of Rashmoni, Sristidhar could not lay down any line of succession in his will. He was only entitled to appoint his next successor-shebait. In

any event, Sristidhar having created a line of succession in tail male which was unknown to Hindu law, such line of succession was void and invalid.

Harimohan, who was the last surviving son of Sristidhar, held office of the shebait from April 1948 to March 1960 and on the strength of the

appointment made by him, the defendant was now lawfully holding the office of the shebait. It was contended that as the line of succession in tail

male as laid down in the will of Sristidhar was invalid in law, the plaintiff did not become the shebait after the death of Harimohan, and he was not

entitled to any of the reliefs prayed for in the suit.

4. The learned Subordinate Judge, 4th Court, Alipore, who tried the suit, upheld the contention of the defendant and dismissed the suit. The

plaintiff being aggrieved by the judgment and decree of the learned Subordinate Judge, filed an appeal against the same which was heard by the 9th

Court of the Additional District Judge, Alipore. The learned Additional District Judge took the same view as that of the learned subordinate judge.

Further, he held that as Harinarayan did not appoint his successor, the appointments of his brothers in accordance with the will of Sristidhar or in

terms of the compromise decree were void, and that accordingly, the shebaitship would revert to the family of the founder Mathura Mohan Nandi.

Upon the said findings, he dismissed the appeal. Hence this second appeal by the plaintiff.

5. It has been already stated that the will of Mathura Mohan Dey is not traceable, but the directions given by him for the appointment of shebaits

have been mentioned in the will of his wife Rashmoni, who became the shebait. It appears from the will of Rashmoni that her husband, the founder

of the debutter, directed that the shebait holding office for the time being would, before his death or relinquishment of his office of the shebait,

appoint or nominate his successor. It also appears that before his death Mathura Mohon had appointed his wife Rashmoni and his brother''s

widow Jagadiswari as the joint shebaits with the right of survivorship, and that since the death of Jagadishwari, the office was held by Rashmoni

alone. Under her will, Rashmoni appointed her near relation Sristidhar as the next shebait of the deity with the direction that before his death or

relinquishment of office, he should appoint one of his heirs if he is considered suitable or any other person as he would think fit, as the shebait.

Instead of appointing his successor, Sristidhar by his will laid down a line of succession in tail male to the office of the shebait. He directed that his

eldest son Harinarayan would be the first shebait and thereafter his other sons would become the shebaits in succession and, after the deaths of or

relinquishment of office by his sons, the eldest for the time being amongst the grandsons, great grandsons and lineal male descendents would be the

shebaits of the deity. Sristidhar was not the founder of the debutter, nor was he a donor and, accordingly, he had no right to create a line of

succession contrary to that laid down by the founder. Even assuming that he had such a right, still he was not entitled to create a line of succession

to the office of the shebait which was opposed and repugnant to Hindu law. The leading case on the point is the Full Bench case of Monohar

Mukherjee Vs. Bhupendra Nath Mukherjee and Others . It has been laid down in that case that the founder of Hindu debutter is competent to lay

down rules to govern the succession to the office of shebait, subject to the restriction that he cannot create any estate unknown or repugnant to

Hindu law. There can be no doubt that the line of succession to the office of the shebait in tail male as laid down in the will of Sristidhar is opposed

to Hindu law and accordingly, it is void and inoperative.

6. Mr. Mukul Gopal Mukherjee, learned Advocate appearing on behalf of the plaintiff appellant, however, submits that as the plaintiff, who is the

son of Harinarayan, was in being when Sristidhar died, he is entitled to the office of the shebait, for he is not hit by the rule against perpetuity. It is

true that the said rule is not applicable to the plaintiff as he was alive at the time of death of Sristidhar, but the gift of shebaitship was not made to

him by Sristidhar independently by name. A similar question came up for consideration before the Privy Council in Ganesh Chunder Dhur v. Lal

Behary Lhur, 41 C.W.N. 1. In that case, the founder of the debutter directed in his will as follows :

I appoint my sons Kartick Chunder Dhur and Ram Chunder Dhur to be the Shebaits of the said Thacoors and I direct that upon the death,

retirement or refusal to act of any of them or any of the future Shebaits the then next eldest male lineal descendant of Kartick Chunder Dhur or

Ram Chunder Dhur shall act as a Shebait in place of the deceased or retiring Shebait or Shebaits refusing to act as such--it being my intention that

the eldest for the time being in the male line of my said sons Kartick Chunder Dhur and Ram Chunder Dhur shall always remain as joint Shebaits

and in the event of the death or refusal to act of any Shebait the then next male member of the branch to which the Shebait dying or refusing

belonged shall act as a Shebaits in his place and stead.

7. The testator''s son Kartick died on May 24, 1927, leaving his son Netye, and the other son Ram died on October 17, 1928 leaving four sons of

whom Lalbehary was the eldest. It was held by the Privy Council that after the respective deaths of Kartick and Ram, by the will an invalid attempt

was made to lay down the line of succession not permissible under the Hindu law. It was further held that though Lal Behary and Netye were in life

at the testator''s death, yet there being no independent gift of the office for life in favour of persons, who were to take respectively on the death or

retirement of Kartick and Ram, including Lal Behary and Netye, they were not entitled to come in as Shebaits. It was directed that on the deaths

of Kartick and Ram respectively, the succession to the office of Shebait and the income of the estate must be according to the ordinary Hindu law

of succession. In view of the above Privy Council decision, the contention made on behalf of the appellant cannot be accepted.

8. It has been stated already, that under the will of the founder of the de-butter the existing Shebait was to appoint his immediate successor. It is

true that Sristidhar directed the appointment of his four sons one after another and thereafter created the line of succession opposed to Hindu law,

but the appointment of Harinarayan, the father of the plaintiff, was quite legal and valid. Harinarayan was the immediate successor in office of

Sristidhar. The appointments of other sons after Harinarayan were not in accordance with the terms of the will of the founder, for Sristidhar was

only entitled to appoint his immediate successor. The lower appellate court has also held and, in our opinion, rightly that the appointment of

Harinarayan was quite valid, and that the other appointments were invalid.

9. In this connection, it may be stated that the compromise decree whereby the parties bound themselves by the terms of the will of Sristidhar

regarding the appointment of Shebaits could not render valid the line of Succession laid down by Sristidhar in his will as the same was void being

opposed to Hindu Law. The plaintiff might be under the impression that Harimohan would honour the agreement which was arrived at by the

parties in the said suit relating to the compromise decree, but Harimohan violated the terms of the compromise decree and appointed his son, the

defendant No. 1, as the next Shebait.

10. The question, however, is whether the plaintiff succeeded to the Shebaitship after the death of his father Harinarayan. It has been laid down by

the Privy Council in Gassame Sree Greedharreeji v. Rumanlolliee Gossamee, ILR 16 IndAp 137, that according to Hindu law when the worship of

a Thakoor has been founded, the Shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it

otherwise, or there had been some usage, course of dealing, or some circumstances to show a different mode of devolution. This principle has also

been reiterated by the Privy Council in AIR 1925 139 (Privy Council) . In the instant case, a mode of devolution has been laid down by the

founder of the debutter. It has been already stated that Mothura Mohan, in his will, directed that a Shebait should, before his death, appoint or

nominate his successor to the office. The Shebaitship of the deity devolved in accordance with the said direction. The last Shebait was Harinarayan

who was the immediate successor of his father Sristidhar, as nominated by him. Harinarayan, however, did not appoint his successor to the office

of Shebait. Thus there was a break in the mode of devolution as directed by the founder of the debutter. It is claimed that the plaintiff being the sole

heir of Harinarayan succeeded to the Shebaitship of the deity under the Hindu law of succession. It is no doubt true that Shebaitship is property

and it is heritable like any other property, subject to the condition that the founder of the debutter has not laid down any mode of devolution of the

office of Shebait. In case such a mode is laid down, the office of Shebait would devolve according to that mode. In the absence of any disposition

of Shebaitship, it will devolve in accordance with the Hindu law of succession, and, in that case, the office of Shebait will be a hereditary office. In

Jagannath Prasad Gupta v. Ranjit Singh, ILR 25 Cal. 354, a Division Bench of this Court consisting of Maclean C.J. and Banerjee J. has laid

down that where a Shebait does not appoint his or her successor as provided in the will of the founder, and where there is no other provision for

the appointment of Shebait, the management of the endowment must revert to the heirs of the founder. The Shebaitship of the deity in the hands of

Harinarayan was not hereditary and so the question of succeeding to it by the plaintiff as the heir of Harinarayan does not at all arise. In the

circumstances, the plaintiff is not entitled to the same by right of inheritance. As Harinarayan did not appoint his successor in terms of the will of the

founder, there was a break in the mode of devolution as laid down by the founder and it would, accordingly, revert back to his heirs. The lower

Appellate court, in our opinion, has taken the correct view in this regard. The plaintiff"s claim to Shebaitship cannot, therefore, be allowed.

11. Before we part with this appeal it may be recorded that the Courts below are right in holding that the defendant No. 1 has not acquired any

title to the Shebaitship by adverse possession. For the reasons aforesaid, this appeal is dismissed, but in view of the facts and circumstances of the

case, we direct the parties to bear their own costs throughout

D.C. Chakravorti, J.

I agree.