(1890) 03 CAL CK 0001

Calcutta High Court

Case No: None

Hari Das Bundopadhya		APPELLANT
	Vs	
Khetter Chunder Ghose and Others		RESPONDENT

Date of Decision: March 13, 1890

Citation: (1890) ILR (Cal) 557

Hon'ble Judges: W. Comer Petheram, C.J; Banerjee, J

Bench: Division Bench

Judgement

Banerjee, J.

This appeal arises out of a suit by the respondent to recover possession of some land. The plaintiff alleged that a portion of the disputed land was his ancestral property; that the remainder, which formed the debutter land of an idol named Sridhar, originally belonging to the defendants family called the Ghoses, was made over along with the idol to the grandfather and the granduncle of the plaintiff by a deed of gift executed by defendant No. 4 and the father of defendants Nos. 1, 2 and 3 in 1254, or 1847, owing to their inability to carry on the worship with the profits of the endowed land; and that the plaintiff''s predecessors, and after them the plaintiff'', bad ever since been holding the land and performing the worship until 1291, or 1884, when the plaintiff was dispossessed by the defendants.

2. The defendants pleaded limitation, questioned the genuineness and the validity of the deed of gift set up by the plaintiff, and claimed the land in suit as their own.

3. The Courts below have found in favour of the plaintiff''s title and possession, and the Lower Appellate Court has further held that, even if the deed of gift was invalid, the plaintiff'' had acquired a title by twelve years'' possession.

4. In second appeal the grounds urged on behalf of the defendants are-first, that the deed of gift set up by the plaintiff'' is not valid in law, and secondly, that the plaintiff''s possession being admittedly that of a sebait or trustee, he could not

acquire any title by adverse possession.

5. Upon the first ground it is argued, first, that the deed is invalid as it purports to give away an idol, which cannot be the subject of transfer; and secondly, that in no case can the transfer be valid beyond the lifetime of the grantors, who were merely entitled to the management of the endowed property as sebaits or trustees for the time being, and who had no power to bind their successors.

6. It is true that the Hindu law prohibits the sale of an idol (see the Padma" Purana, Patalakhanda, Chapter 79), and also the partition of it (see Dayabhnga Chapter VI, Section II 26), though when there are several idols, partition is recognized by custom (see West and Buhler''s Digest of Hindu Law, 2nd edition, page 396). But there is no absolute prohibition against the gift of an idol. An idol is not mentioned as an unfit subject of gift by Hindu lawyers in their enumeration of what are, and what are not, fit subjects of gift (See Colebrooke''s Digest, Book II, Chapter IV); but on the contrary the gift of an idol under certain circumstances is considered a laudable act (see the Varaha Purana, Chapter 185; see also Hemadris, Chaturvarga Chintamani, Danahhanda, Chapter II). But having regard to the view we take of the deed in question, we do not think it necessary to examine this point much further. That deed, though it nominally professes to be a deed of gift of the idol and its land, is in reality a deed of arrangement for carrying on the worship of the idol. The fact, as the Courts below have found it, was that the Ghoses were unable to carry on the worship of the idol Sridhur with the income of the debuttcr, land, and the plaintiff''s predecessors being found able and willing to carry on the same, the Ghoses, with the concurrence of the whole family, made over to them the idol and its lands for the purpose of performing its worship regularly from generation to generation. It has been expressly found by the Courts below that the arrangement was for the benefit of the idol; and the real question in this case is whether such an arrangement is valid in law and binding upon succeeding sebaits.

7. We are of opinion that it is. It has been held in several cases that a sebait has authority to do what may be required for the service of the idol and for the benefit and preservation of its property. In Prosnnno Kumari Debya v. Golab Ghand Baboo 14 B.L.R. 450 the Judicial Committee observe: "It is only in an ideal sense that property can be said to belong to an idol, and the possession and management of it must, in the nature of things, be entrusted to some person as sebail or manager. It would seem to follow that the person so entrusted must of necessity he empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great a degree as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued for want of the necessary funds to preserve and maintain them." And the same view is affirmed by their Lordships in Doorga Nath Boy v. Ram Chunder Sen ILR Cal 341 in which it has been further observed that in the case of land dedicated to a family idol, ''the consensus of the whole family might

give the estate another direction.'' If that is so, we see no sufficient reason why the arrangement made in this case in 1254 by the sebaits who were all the then members of the Ghose family, for the purpose of preserving the property of the idol and preventing the discontinuance of its worship, should not be held to be valid. It was said that the effect of the arrangement was to convert an endowment for the spiritual benefit of the original founder''s family into one for the benefit of the family of the plaintiff. We do not think that that was so. Having regard to the terms of the deed of 1254, and to the fact that the idol with its endowed property was made over to the plaintiff''s predecessors, we think that according to Hindu notions the worship of the idol would still be for the benefit of the original founder''s family from a spiritual point of view. And if the worship of the idol is at any time neglected, it will be open to the representatives of that family to enforce its performance; for under the deed of 1254 it was upon the express condition of the regular performance of the worship that the idol and its properties were made over to the predecessors of the plaintiff. It has been found that the plaintiff has been duly performing the worship of the idol, and no question has been raised as to his fitness to do so.

8. It remains now to consider the cases that were cited in support of the appellants'' contention. They are all distinguishable from the present in one material respect. In none of them was it found or even alleged that the alienation that was called in question was for the benefit of the endowment.

9. In one of the cases cited, Durga Bihi v. Chanchal Ram ILR All 81 all that was held was that the right of managing a temple, of officiating at the worship conducted in it, and of receiving the offerings made at the shrine, could not be sold in execution of a decree against the manager. In Narasimma Thatha Acharya v. Anantha Bhatta ILR Mad 391 and Kuppa Gurukal v. Dorasami Gurukal ILR Mad 76 the sale of the priestly office for the benefit of the sebait was held to be illegal. In Ukoor Doss v. Chunder Sekhur Doss 3 W.R. 152 the gratuitous transfer of the right of management by one of several joint sebaits of a family idol was held to be invalid beyond the lifetime of the transferor, on the ground of its involving an intrusion by a stranger into the management of a family endowment, and in Rup Narain Singh v. Junko Bye 3 C.L.R. 112, the general proposition is affirmed that a person who is himself nominated a trustee has no right to transfer his trust to any other person.

10. In the case of Varmah Valia v. Vurmah Kunhi Kutty ILR Mad. 235 which was a case of a public endowment, the transfer of the office of trustees at the mere will of the trustees for the time being was held to be invalid as being in contravention of the special arrangements made by the founder, and as involving apprehended inconvenience in the carrying out of the trust. The case of Mancharam v. Pramhankar ILR 6 Bom 298 whilst affirming the invalidity of an alienation of he office of sebait to a stranger, supports the respondent''s case so far, that it upholds an alienation made in favour of a member of the founder''s family.

11. These cases therefore do not militate against the view that in the case of a private endowment an alienation of the sebait''s office, made with the concurrence of the whole family, and, for the benefit of the endowment, would be valid.

12. Upon reason and upon authority therefore we think that the deed of 1254 is a valid document, and that the plaintiff is entitled to succeed in this suit.

13. In this view of the case it is unnecessary to consider the question whether the plaintiff has acquired a title by twelve years'' possession.

14. The result is that this appeal must be dismissed with costs.