

Sankari Prasad Mukherji and Others Vs Chandra Sekhar Mukherji and Another

Court: Calcutta High Court

Date of Decision: Feb. 17, 1982

Citation: 86 CWN 693

Hon'ble Judges: Amitabha Dutta, J

Bench: Single Bench

Advocate: Pramatha Chandra Roy and Ranjit Kumar Roy, for the Appellant; Dilip Kumar Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

Amitabha Dutta, J.

This is an appeal by the defendants from a decree of reversal in a suit for declaration that the properties mentioned in

"ka" and "ga" schedules to the plaint are absolute debutter properties of the deity Shree Shree Chandrachur Shiv Thakur and that the plaintiffs

have joint shebaiti right with the defendants in such properties and for permanent injunction restraining the defendants from interfering with the

plaintiffs joint possession thereof. "Briefly stated the plaintiff's case is this. One Kamini Dasi of a barbar family of Tatalpur having 2/3rd share in

ka" and "kha" schedule properties absolutely dedicated her state to the deity Shree Shree Chandrachur Shiv Thakur by a registered deed of

Arpannama dated 29th Magh 1311 B.S. and appointed Purna Chandra Banerji of Memari as shebait of the deity to perform sheba puja out of the

usufruct of such property. Rakhal Chandra Nai who had the remaining 1/3rd share in such properties also made an absolute dedication of his share

in favour of the said deity orally and entrusted the sheba puja of the deity to the same shebait Puma while exercising his shebaiti right and

performing his spiritual duties died leaving his only son Satya Charan who inherited shebaiti right and performed the sheba puja of the deity ml he

became old. Thereafter, as ha laced great difficulties in performing the sheba puja of the deity daily alter coming to Tatalpur from his village Memari

he brought his brother-in-law Nagendra Mukhopadhy from his village Kuingram to Tatalpur and entrusted to him the duties of performing the

Sheba puja of the deities. Subsequently being satisfied with his performance Satya Charan transferred his shebaiti right in "ka" and kha" schedule

properties to Nagendra by a registered deed of transfer dated 12th Bhadra 1321 B S with the stipulation that he and his heirs and successors in

interest would perform the sheba puja of the deity from generation to generation out of the usufruct of such property Nagendra functioned as

shebait of the deity for over 50 years. But he transferred portions of "ka" "kha" shedule properties without legal necessity to different persons

treating them as his secular properties Nagendra thereafter, orally dedicated his own property mentioned in "ga" schedule to the plaint to the same

deity absolutely and applied income from such property to the sheba puja of the deity subsequently by a registered document dated 5th Kartick

1374 B S. (23.10. 1967) Nagendra purported to nominate the defendants who are two out of his four sons as shebait of the deity in respect of

"ga" schedule property excluding the plaintiffs who are his other to sons. But Nagendra remained shebait of the deity till his death which took place

in 1377 B. S. Thereafter, the plaintiff and the defendants jointly possessed the "ka" and "ga" schedule properties and performed sheba puja of the

deity as shebait but since Ashar 1380 B.S. the defendants taking advantage of the aforesaid document dated 23. 10. 67 an erroneous entry in the

C.S. and R S. records threatened to interfere with the plaintiffs" joint possession of the disputed "ka" and "ga" schedule properties. Hence the suit.

2 The defendants In their written statement have denied the material averments made in the plaint. The substance of the case is that Purna Chandra

Banerji was shebait of Shree Shree Mahadeb Shiv Thakur of the barbar family of Tatalpur who dedicated "ka" and "kha" schedule properties for

performance of sheba puja of the said daity, which was installed in the house of Kamini Dasi that the said house collapsed and the idol got buried

that after the death of Puma his son Satya Charan in order to save such properties from being made khas by the landlord created the sham

document dated 12th Bhadra 1321 B.S. purporting to declare the "ka" and "kha" schedule pro parties as debutter properties of Shree Shree

Chandrachur Shiv Thakur and transferred the shebaiti right in favour of Nagendra Thereafter Nagendra possessed such properties and acquired

title thereto by adverse possession. Nagendra"s father Akshoy had come to Tatalpur and acquired "ga" schedule property which was inherited by

Nagendra who consecrated the deity Shree Shree Chandrachur Shiv Thakur and installed it in a temple constructed by him on Plot No. 164.

Nagendra made a partial dedication of "ga" schedule property in favour of the said deity which is different from the deity Shree Shree Mahadeb

Shiv Thakur of the barbar family and became its founder shebait. He legally nominated the defendants as shebait of the delty in respect of "ga"

schedule property and the plaintiffs having no shebait right in the disputed properties, the suit is liable to be dismissed.

3. The trial court has held that the disputed properties are the absolute debutter properties of Shree Shree Chandrachur Shiv Thakur established

by the barbar family of Tatalpur and that Purna Chandra Banerji was shebait of the deity and was succeeded by his only son Satya Charan. But

according to the learned Munsif Satya Charan had no right to transfer the shebaiti right to Nagendra Mukhopadhyaya to whom both parties claimed

such right, in that view the learned Munsif has dismissed the suit. In appeal the learned Subordinate Judge has held that the transfer to the shebaiti

right by Satya Charan to Nagendra for pressing necessity and in the interest of deity is valid. The first appellate court has found that the plaintiffs'

case has been sufficiently established and that the defendants have failed to prove their allegations. So, it has reversed the decision of the trial court

and decreed the suit.

4. It has been submitted on behalf of the appellants before this Court that the first appellate court has erred in holding that "ka" and "kha" schedule

properties are absolute debutter properties in the face of the Arpannama dated 29th Magh 1311 B.S. (Ext. "A") by Kamini Dasi in favour of

Purna Chandra Banerji in respect of her 1/3rd share inherited from her husband and the deed of gift dated 29th Magh 1312 B.S. (Ext V) in favour

of the same person in respect of 1/3rd share which she had purchased from her husband's elder brother. But it is difficult to accept the

submissions. The recital in exhibit "A" shows that she made the property "Nibyuirha" debutter i.e. absolute debutter in favour of her husband's

ancestral family deity Shree Shree Iswar Mahadeb Shiv Thakur by making the grant to Purna Chandra Banerji as shebait of the deity or its human

agent A Hindu widow has unlimited power of alienation for obligatory religious purposes of providing for the deity established by her husband's

family. The subsequent deed of gift (Ext "A-1") was made in favour of Purna Chandra Banerji on the express conditions that he would reside at

village Tatalpur to perform the daily sheba puja of the said deity as there was no resident Brahmin in that village and it was stipulated that the donee

would lose the property if the condition was not fulfilled. Thus there was implied dedication as the intention of the donor was that the property was

to be held by the shebait for the benefit of the deity by way of regular performance of sheba puja. Her intention to divest herself completely of the

property dedicated to the deity is manifest from the recitals in the documents and also from the subsequent acts and conduct of the donor, there

being no evidence to show that she ever dealt with or enjoyed the dedicated property for her own purposes.

5. It is not disputed that the other co-sharer of Kamini Dasi in respect of 1/3rd share orally dedicated his share in "ka" and "kha" schedule

properties absolutely in favour of the said deity. There is evidence that Purna as shebait performed sheba puja of the deity during his life time from

the usufruct of such properties treating them as absolute debutter and was succeeded by his only son Satya Charan who did the same. This fact

that after Satya Charan, Nagendra dealt with portions of such properties as secular properties does not take away their character as absolute

debutter. A mere abuse of trust by a trustee for the time being cannot make a real endowment unreal or illusory or affect its validity. In my view,

both the courts below have rightly held in accordance with the settled law on this point that "ka" and "kha" schedule properties are absolute

debutter properties.

6. The courts below have after due consideration of the evidence in this suit concurrently found that Mahadeb Shiv Thakur and Chandrachur Shiv

Thakur are the same deity established by the barbar family of Tatalpur and it was installed in the temple constructed on Plot No. 164, disbelieving

the defence case that Chandrachur Shiv Thakur is a separate deity founded by Nagendra after the deity of the barbar's of Tatalpur got buried

when Kamini Dasi's house where it was installed collapsed. In this connection, what is important is the establishment of the idol and not the

construction of the temple building where it installed. In my opinion, there is no reason to differ from the aforesaid concurrent findings of the two

courts.

7. There is evidence accepted by the first appellate court that Satya Charan who is the only son of the She-bait Purna became shebait of the deity,

and was a resident of village Memari found it extremely difficult in his old age to come daily to Tatalpur from Memari to perform the sheba puja of

the deity and in view of pressing necessity to make a proper arrangement for performance of the sheba puja regularly and in the interest of

rendering daily services and worship to the deity brought his brother-in-law Nagendra Mukhopadhyaya to Tatalpur from Kulingram to perform those

deities and after being satisfied with his performance transferred the shebaiti right in "ka" and "kha" schedule properties to Nagendra by the

registered document dated 12th Bhadra 1321 B.S. (Ext. 2). The learned Subordinate Judge has held differing from the trial court that the transfer

is valid. In my view, the doctrine of alienation of shebaiti right comprising both the temporalities of the idol and the spiritual rights and duties of the

shebait in the interest of the idol can be supported in view of the Bench decision of this Court in the case of Nirmal Chandra Banerji vs. Jyoti

Prasad 42 CWN 1138 and I therefore, hold that the learned Subordinate Judge is right in his view that the alienation of the shebaiti right by Satya

Charan to Nagendra is valid.

8. It is not disputed that Nagendra, father of both the plaintiffs and the defendants was shebait of the deity Shree Shree Chandrachur Shiv Thakur

for a period of over 50 years till his death in 1377 B.S. or 1970. He transferred portions of "ka" and "kha" schedule properties to different

persons (including the plaintiff No. 2 and the defendant Nos. 1 and 2) in 1949, 1954 and 1967 treating them as his secular properties. There is

evidence that after such abuse of trust Nagendra made an oral and absolute dedication of his own "ga" schedule property to the deity and

performed the sheba puja of the deity out of the usufruct of such property. Thereafter, on 23.10.1967 he nominated the defendants as shebait of

the deity by a registered document (Ext. "C") in respect of "ga" schedule property. The plaintiffs have challenged the validity of such nomination

and the learned Subordinate Judge upheld their contention has held that such nomination is contrary to law as Nagendra was not the founder and

so the plaintiffs have joint shebaiti right with the defendants in the disputed properties. It has been urged on behalf of the appellants that the learned

subordinate Judge has erred in law as Nagendra should be regarded as the founder in respect of "ga" schedule property dedicated by him to deity

and his nomination of the defendants as shebait in respect of such property is valid in the eye of law. But in my view, this submission cannot

prevail as after the foundation of the deity additional endowments cannot alter the line of succession laid down by the founder under the ordinary

rules of Hindu Law unless the appointment of a new line of shebait is made a condition attached to the gift and the gift with such condition is

accepted by the family deity expressing its will through the members of the founder's family both male and female. This view finds support in the

Bench decision of Rankin C J. and C. C. Ghosh J in the case of Ashutosh Seal vs. Benode Behary 34 CWN 177. Where an additional gift is

made by the donor without any condition he does not become a joint founder and his gift is treated as an accretion to the existing endowment (see

Ananda Chandra vs. Brojo Lal 36 CLJ 356. In the present case there is no evidence that Nagendra made the additional gift of "ga" schedule

property to the deity with a condition that the defendants would be the sheba t of such property. So after Nagendra's death the shebaitship would

devolve on his four sons that is to say both the plaintiffs and the defendants under the ordinary rules of succession of Hindu Law. I, therefore, find

that the learned Subordinate Judge has correctly held that the plaintiffs have joint shebaiti right with the defendants in the deputed "ka" and "ga"

schedule properties which are absolute debutter properties of the deity Shree Shree Chandrachur Shiv Thakur of Tatalpur.

9. No other point has been raised in this appeal. I hold that the first appellate court has rightly decreed the suit and this appeal must fail. The appeal

is dismissed. There will be no order as to costs.