

(1984) 05 CAL CK 0020

Calcutta High Court

Case No: Civil Revision No. 2418 of 1981

Sm. Bharati Majumdar

APPELLANT

Vs

Biswanath Mukherjee

RESPONDENT

Date of Decision: May 15, 1984

Acts Referred:

- Transfer of Property Act, 1882 - Section 54

Hon'ble Judges: S.N. Sanyal, J

Bench: Single Bench

Advocate: Asoke Kumar Banerjee for the petitioner, for the Appellant; Sudhis Das Gupta, Shyama Prasanna Roy Chowdhury, Amar Nath Shaw for the opposite party, for the Respondent

Final Decision: Allowed

Judgement

S.N. Sanyal, J.

This revisional application is at the instance of the defendant and it is directed against an order dated August 8, 1981 passed by the learned Subordinate Judge, Sixth Court, Alipore allowing Misc Appeal no 346 of 1981 and granting the plaintiff's prayer for temporary injunction after setting aside the order dated May 18, 1981 made by the learned Munsif, Forth Court, Alipore in Title suit no 118 of 1981.

2. The opposite party Biswanath Mukherjee filed the suit against the petitioner Sm. Bharati Majumder for declaration that the plaintiff had right to conduct the palas of Dharendra Nath Mukherjee recorded in the same of his predecessor-in-interest Kshetrakali Mukherjee for the period of 11years from 1388 B.S. To 1389 B.S. with right to enjoy the income and usufructs of the said Palas for the said period. The plaintiff prayed for further declaration that the defendant had no right whatsoever to interfere with the plaintiff's right of carrying on or conducting the said palas. There was a prayer for permanent injunction. It was alleged that Dharendra Nath Mukherjee was a Shebait of Goddess Kali of Kalighat Kali Temple. Plaintiff is also a

shebait and he used to manage the Palas allotted to Dhirendra. Plaintiff paid Rs. 8000/- to Dhirendra on April 10, 1980 and Dhirendra granted a receipt. Plaintiff is entitled to usufruct of Dhirendra's Palas from 1388 B.S. To 1398 B.S. Dhirendra died on July 22, 1980.

3. The plaintiff filed an application for temporary injunction restraining the defendant from interfering with the plaintiff's right to carry on and conduct Palas for the period mentioned above. The said application was opposed by the defendant. The contention of the defendant was that the transfer of Shebaiti interest as Paladar could not be made without a registered instrument. The defendant also denied the allegations of the plaintiff that he had purchased the right from Dhirendranath Mukherjee on payment of Rs. 8000/-.

4. The learned Munsif after hearing the parties dismissed the application for temporary injunction. The decision of learned Munsif rests mainly on two grounds, that is, the document required registration and also the price was unduly low. The other ground, which weighed with the learned Munsif was the availability of adequate damages. On appeal the learned Subordinate Judge came to the conclusion that pala was a movable property and the right to collect offerings was a tangible thing, at any rate not an intangible thing annexed to immovable property. The learned Judge thus found that no registration was required. The learned Judge also held that collections must be widely fluctuating depending on the auspiciousness of the day of the week on which he would be entitled to collect offerings and no damages thus could be ascertained. The learned judge accordingly allowed the appeal and granted the prayer for temporary injunction.

5. Mr. Banerjee, appearing in support of the Rule, has argued that the learned judge was entirely wrong in holding that pala was not an immovable property and transfer of the same did not require registration. Mr. Banerjee argues that the document dated April 10, 1980 (Annexure "B" to the plaintiff's application for temporary injunction) by which the plaintiff obtained the right to usufructs of the pala belong to Dhirendranath Mukherjee clearly shows that not only the usufruct of the Pala was transferred but also the rights and duties of Dhirendranath Mukherjee as Paladar Shebaiti right and as such in view of the decision of the Supreme Court in [Ram Rattan \(Dead\) by Lrs. Vs. Bajrang Lal and Others](#), the said document required registration. Mr. Banerjee argues that the learned Subordinate Judge has acted illegally and with material irregularity when he failed to take into consideration the relevant principles of law. It has been further contended that the plaintiff has no Primaface case. In such circumstances, the prayer for temporary injunction could not have been granted.

6. Mr. Dasgupta, learned Advocate for the opposite party, has argued that the Pala or turn of worship is a movable property and as such it does not require registration. Mr. Dasgupta has further contended that the Supreme Court decision referred to above dealt with a case where not only the turn of worship was

transferred but there was also transfer of entire property of the Shebait. Mr. Dasgupta thus contends that in such circumstances the said Supreme Court decision will not be applicable to the instant case. Mr. Dasgupta has contended that by the document dated April 10, 1980 Shebaiti right was not transferred. Only the benefit arising out of the turn of worship was transferred and as such there was no transfer of the office of Shebait. Thus there was no question of registration as it was not an intangible immovable property. There was a Prima facie case and the injunction was rightly granted by the learned Court of Appeal below. Mr. Dasgupta has referred to the case of [Mt. Savitri Devi Vs. Dwarka Prasad Bhatya and Another](#). In this decision it has been held that S 54 of the Transfer of Property Act has no application to the sale of movable properties. The words "intangible thing" in S 54 have reference only to immovable property. Mr. Dasgupta has also referred to [Lala Manmohan Das Vs. Official Liquidators of Lower Ganges Jumna Electricity Distributing Co. Ltd. and Others](#). It has been held that the "other intangible thing" referred to in S. 54 T.P. Act is intended to embrace those imponderables, which are related to immovable property such as for example, a reversionary right. This case was dealing with transfer of license to sell electricity. It has been held that there is nothing in the T.P. Act to justify the conclusion that all licenses which are intangible things can be transferred by a registered instrument.

7. The receipt by which the plaintiff purchased from Dharendra Nath Mukherjee the right to usufruct from 1388 B.S. To 1398 B.S. also contains the condition that during the said period the plaintiff would have to pay the Committee the dues that were payable by Dharendra. The plaintiff was entitled to receive the dues of Dharendra. It was further stipulated that the plaintiff was required to do everything that was necessary for the Seba puja, Bhog, etc. Of the Deity in place of Dharendra. There was thus Prima facie not simply the transfer of the right to collect the usufruct. The obligations of Dharendra had also to be discharged by the plaintiff.

8. In [Ram Rattan \(Dead\) by Lrs. Vs. Bajrang Lal and Others](#), the question arose whether the right to worship by turn was an immovable property. It has been held that the devolution of the office of the Shebait depends on the terms of the deed or will by which it is created and in the absence of a provision to the contrary, the settler himself becomes a Shebait and the office devolved according to line of inheritance for, the founder and passes to his heirs. This led to an arrangement amongst various heirs equally entitled in her it the office for the due execution of the functions belonging to the office, discharging duty in turn. This turn of worship is styled as "Pala" in West Bengal and "Osra" in Rajasthan. It has been further held that both the elements of office and property, duties and personal interest are blended together in the conception of Shebaiship and neither can be detached from the other. The Supreme Court further lay down that the right to worship by turn is an immovable property the gift of which can only be made by a registered instrument. The definition of "immovable property" in Registration Act lends assurance to treating Shebait's hereditary office as immovable property because

the definition includes hereditary allowances. Though in this case there was not only the a transfer of the right to worship but also the entire property of the Shebait by a deed of gift but this decision of the Supreme Court clearly lays down that the right to worship by turn is an immovable property Mulla in his Commentary on the Transfer of Property Act (6th Edition Page 18) has observed that a Pala or turn of worship is a movable property. Several decisions have been cited by Mulla in support of the said proposition. The decision of the Supreme Court referred to above being directly on the point lays down the principles of law applicable to the transfer of turn of worship known as Pala in West Bengal.

9. It thus appears that Pala, Which is a right to worship by turn, is an immovable property. The transfer of Pala has thus to be made by a registered instrument. In the instant case, if only the right to enjoy the usufructs has been transferred much could have been said in support of the proposition that it was not an immovable property. The document however clearly shows that not only the right to collect usufruct was transferred but there was also transfer of the duties and functions, which devolved upon Dhirendra as Shebait. There was thus transfer of the Pala for a certain period. In such circumstances, the said transfer could have been made only by a registered instrument. The plaintiff has thus no prima facie case and the order of the learned judge granting temporary injunction cannot be upheld.

10. The revisional application thus succeeds. The order of the learned judge dated August 8, 1981 is set aside and the Rule is made absolute. The learned Munsif rightly dismissed the application for temporary injunction. Let the records be sent below forthwith. There will be no order as to costs. The learned Munsif is directed to dispose of the suit as early as possible.