(1925) 08 CAL CK 0034

Calcutta High Court

Case No: None

Lalit Mohan Seal		APPELLANT
	Vs	
Brojendra Nath Seal and Others		RESPONDENT

Date of Decision: Aug. 13, 1925

Citation: 96 Ind. Cas. 45

Hon'ble Judges: Page, J

Bench: Single Bench

Judgement

Page, J.
In this suit the Court is asked to construe certain documents relating to the property of Gopal Chandra Seal, who died on the 14th September 1911. [After deciding the validity of certain other

nstruments his Lordship continued:]

2. On the 20th August 1910 Gopal Chandra Seal made a Will, which was duly admitted to Probate. Under the Will the testator gave and bequeathed:

all my real and personal estates whatsoever and wheresoever situate to my wife Sreemati Badam Moni Dasi upon trust for the maintenance of herself and for the expenses of worship of my family idols Sree Sree Madan Mohan Jew, Sree Sree Badha Eanee Jew, Sree Sree Sreedhur Jew, Sree Sree Luckhy Thakur Ranee Jew. I do hereby nominate and appoint my wife Sreemati Badarii Moni Dasi to be the sole executrix and trustee of this my last Will and testament and shebait of my said idol.

I have by a deed of conveyance in favour of my son Lalit Mohan Seal provided that he will receive the rents and profits of the half part or share of the Bustee land No. 9, Damzen''s Lane in the town of Calcutta for the maintenance and support of himself and his wife Sreemati Basanta Mani Dasi, and after their respective deaths my grandsons Braja Ballav Seal, Banamali Seal and Kartick Chandra Seal as therein mentioned shall Mold the same as shebait of the said family idols, and perform the

annual festival of Dol Jatra of the said family idols out of the residue of the rent of the said premises No. 9, Damzen''s Lane as mentioned and described therein.

3. In my opinion, for the reasons which I propose to state hereafter, the directions in the Will appointing the testator''s wife and grandsons shebaits of the family idols, and directing them to perform the annual festival of the idols out of the residue of the rent of No. 9, Damzen''s Lane are void in law.

4. In the Will the testator also referred to certain premises No. 6, Damzen''s Lane, but the clauses relating to this property are inoperative, for these premises are covered by the deed of arpannamah of the 22nd February 1897 to which I will now refer. ,By this deed of arpannamah Gopal Chandra Seal, who was entitled to a pala of the worship of the family idols for four months in the year, in order to make further provision for the endowment of which he was the shebait but not the founder, dedicated by way of an absolute trust for religious purposes the property No. 6, Damzen''s Lane. This property under the deed he handed over to the trustees for the time being, of whom he was to be the first, for the sole purpose of performing the sheba, of the idols of his family. I am of opinion that this was an absolute trust for religious purposes, and that after the execution of the arpannamah, No. 6, Damzen''s Lane became debutter and res extra commercium. By the deed of arpannamah Gopal Chandra Seal further provided that he should be the first shebait and managing trustee of the property for the performance of the sheba,, and laid down directions for providing a(1;ffiew line of shebaits. By his Will he created another and different line of shebaits of the said debutter property. These two lines of shebaits were different from the line of shebaits laid down by the founder, or by the Hindu Law, and each of the two lines which he instituted was inconsistent with the other, and different from what I may term the original line of shebaits of which he was one. The main question ?which falls for determination in respect of this deed of arpannamah is whether Gopal Chandra Seal as the shebait for the time being of the pala of four months of the worship of the family idols was entitled of his own will to alter the existing line of she-baits. For the reasons which I have stated in the case of Nagendra Nath Palit Vs. Robindra Narain Deb, and which I need not repeat, I am of opinion that, apart from usage or a consensus of opinion among those interested in the worship of the idols in favour of such a course, a shebait is impotent of his own will and pleasure to alter the line of shebaits laid down by the founder or by the common law of India. Counsel for the first and second defendants in the course of his argument drew my attention to the judgment of Greaves and Chakravarti, JJ., in Sripati Chatterjee and Others Vs. Khudiram Banerjee and Others, , and it is necessary that I should examine the ratio decidendi of that case to ascertain what their Lordships decided. It appears that one Man Gobindo Banerjee possessed a pala of worship of certain family idols, of which, however, he was not the founder. Twice during his lifetime he made accretions to the property of the family deities, and on each occasion he instituted a new line of shebaits who were not the existing shebaits of the family idols. After holding that a

shebait for the time being could not create a new line of shebaits of properties already dedicated to an ancestral deity, their Lordships proceeded to lay down that:

It is clear on the authorities that Man Gobindo, who had only a turn of worship, could not alter the line already established but without doing that, could he fix a new line for the property endowed by himself? That he could appoint new shebaits so far as his own endowments are concerned, as I have already said, is the common case of both parties, but how are those appointments, valid? Additional endowments are frequently made to a family deity by the descendants of the original donor, and this is highly desirable and is to the benefit of the Thakur, and I am of opinion that there is no objection to the donor appointing a new line of shebaits for the management of the property dedicated by himself. But he cannot alter any of the rules laid down specifically by the founder. Such new shebait may manage the property and he would be ordinarily allowed to place the income in the hands of the shebaits under the original founder''s rules. If the old shebaits agree, the new shebaits may act as a joint shebait, as Nil Kumari was allowed to do from 1316 to 1320. The cardinal points to be kept in view in these matters are, first, that additional endowments are for the benefit of the Thakur, secondly, that the new endowment and the rules laid down for its management and the use of the income should not be in any way inconsistent with the rules and usage of the original founder in any material particular.

5. With great respect for those learned Judges I regret that I cannot persuade myself that a donor of accretions to the property of an idol already consecrated and installed possesses any such right. I am the more emboldened to express my dissent from the judgment in that case because their Lordships cite no decision in support of a proposition of law which appears to me to be opposed alike to principle and to authority. The donor, of course, may create a trust whereby the trust property may be managed by any person whom the donor elects to appoint for the purpose, whether the trust be of a religious character or not; but such a trustee does not become ipso facto a shebait and entitled to hold the sacred office of serving the deity: As I apprehend the law, the donor of accretions to the estate of an idol already in. existence, except in the special circumstances to Which I have alluded, is neither entitled nor competent to appoint a shebait of such property. Such, a course, if permitted, would result in endless complications and commission. Which of the shebaits would be entitled to the care and custody of the idol, the original shebaits, or one or more of the shebaits of the additional endowment? I need not, I think, labour the lively sources of friction which would arise in such a case. In my opinion, "the persons who, subsequent to the foundation, furnish additional contributions do not thereby become joint founders; their benefaction is regarded as nothing but an accretion to an existing foundation;" per Mookerjee, J., in Ananda Chandra Chakravarti Vs. Broja Lal Singh and Others, , Annasami Pillai v. Ramakrishna 24 M. 219 : 11 M.L.J. 1, Gossami Sri Gridhariji v. Romanlalji Gossami 17 C. 3 : 16 I.A. 137 : 17 Ind. Jur. 211 :5 Sar. P.C.J. 350 : 8 Ind. Dec. (N.S.) 541 (P.C.) and

Gouri Kumari Dasi Vs. Srimati Ramanimoyi Dasi and Others, .

6. Now, if the decisions in the above cases correctly state the law, it follows that the directions of Gopal Chandra relating to the alteration of the line of shebaits in the deed of arpannamah and in the Will are void and inoperative. I am further of opinion that it was the intention of Gopal Chandra that the trustees of the endowment should be the shebaits for the time being of the family idols during pala of worship of which he was the present holder. These persons are his heirs. If it were to be urged that the gift of No. 6, Damzen''s Lane cannot be accepted by the idols unless the condition as to the line of the shebaits also is accepted and carried out, the answer would be that if the donor intended that the gift should become effective only if the conditions were to be fulfilled, or, in other words, if the terms of the arpannamah are indivisible and must be accepted or rejected as a whole, such a gift could only be accepted (if at all) provided the shebaits obtained the sanction of all the persons interested in the worship to "give the estate another direction" see Konwar Doorganath Roy v. Ram Chunder Sen 2 C. 341 : 4 I.A. 52 : 3 Sar. P.C.J. 681 : 1 Ind. Dec. (N.S.) 508 (P.C.). But I am of opinion that such was not the intention of the donor. I believe that Gopal Chandra desired and intended to dedicate the property in question whether a change in the line of shebaits was effected or not, and was not minded to make the validity of the gift contingent upon the alteration in the line of shebaits being accepted and carried out. The new lines of shebaits which he indicated differed little from that already in existence. But I go further, for even if the directions relating to a change in the line of shebaits amounted to a condition, it was a condition subsequent that was void, and the offending provisions can be expunged without affecting the validity of the dedication or the property thereunder made debutter; In re Greenwood, Goodhart v. Woodhead (1903) 1 Ch. 749 : 72 L.J. Ch. 281 : 51 W.R. 358 : 88 L.T. 212 : 19 T.L.R. 180 and In re Croxon, Groxon v. Ferrers (1904) 1 Ch. 252 : 73 L.J. Ch. 170 : 52 W.R. 343 : 80 L.T. 733.

7. For these reasons, in my opinion, the trust in respect of No. 6, Damzen''s Lane was a valid trust in favour of the deities, and this property will be held in trust for the deities by the heirs of Gopal Chandra, who also happen to be the present shebaits of his pala of worship. There will be the usual order for partition; costs of all parties will come out of the estate.