

(1924) 06 CAL CK 0029

Calcutta High Court

Case No: None

Sripati Chatterjee and
Others By Their Father
And Next Friend
Baghambar Chatterjee

APPELLANT

Vs

Khudiram Banerjee and
Others

RESPONDENT

Date of Decision: June 17, 1924

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 145

Citation: 82 Ind. Cas. 840

Hon'ble Judges: William Ewart Greaves, J; Chakravarti, J

Bench: Division Bench

Judgement

Chakravarti, J.

These two appeals arise out of two suits, the plaintiffs in one suit being the defendants in the other, in respect of the right of shebaitship of a Thakur named Radha Benode Jew. The facts which are necessary for the determination of these appeals are these: Thakur Radha Gobinda Jew was the family diety of one Man Govinda Banerjee who had only a turn in the worship of the said Thakur and his agnate relations were also co-shebait with him. The Thakur had some debutter lands dedicated by the ancestors of Man Gobinda of about 120 bighas in area. Man Gobinda had no children. By a registered Will executed in 1306 he appointed one Tarak Nath Chatterjee and his heirs to act shebait of the Thakur after his and his wife"s death. Dissatisfied with the conduct of Tarak, Man Govinda, when he was about 70 years old, by an arpannamah executed in 1308, dedicated certain Immovable properties in favour of the family Thakur for the better performance of the worship during his turn of worship., and also for the annual festivals of the Thakur and by the said deed he provided that during his life he shall continue to be the shebait and after his death his widow will, succeed, to the office and then on her death, his agnatic

relatives, the plaintiffs in Suit No. 1951 of 1919 and their heirs in succession will become the shebait in" his place. In 1316 Man Gobinda executed another deed of gift by which he dedicated some further Immovable properties to the said Thakur and made a gift of his right as a shebait of his turn of the worship in favour of one Nil Kumari Devi, the mother of the Chatterjees the plaintiff in Suit No. 2094 of 1919. This gift was given immediate effect and Nil Kumari Devi was installed as shebait in his own place and she manage the dedicated properties and acted as, shebait of the Thakur. It appears that in a rent suit in 1911, while Man Gobinda was still alive she was made a party in that suit and she was treated as, a co-shebait, taking the place of Man Gobinda, by the other co-shebait of the Thakur Man Gobinda died in 1319 and his widow died in 1320. Then a dispute broke out between the parties as to the possession of the properties dedicated to the Thakur by Man Gobinda, and it culminated in a proceeding u/s 145 of the Criminal Procedure Code with the result that the Banerjees were maintained in possession of 6 bighas and the Chatterjees, the heirs of Nil Kumari, were maintained in possession of 2 bighas of the endowed lands. Each party brought a suit with respect to the land which was declared in possession of the other u/s 145 of the Criminal Procedure: Code. As I have already stated the Banerjees brought Suit No. 1951 and the Chaterjees brought Suit No. 2094 both of 1919, the plaintiffs in one suit being the defendant in the other. Both the Courts below have found in favour of the Banerjee and, therefore, decreed Suit No. 1951 and dismissed the Suit No. 2094. The Chatterjees have brought these second appeals against the judgment and decree of the Subordinate Judge of Assansol who affirmed the decree of the Munsif of the said place.

2. Both the Courts came to the conclusion that the appointment of the Banerjees by the arpannamah of 1308 was not revocable by Man Gobinda and, therefore, the subsequent appointment of Nil Kumari by the deed of gift of 1316 was invalid. Consequently the Banerjee were declared as the shebait of the Thakur of the dedicated properties and as such they got a decree for possession of the lands held by the Chatterjees whose suit was dismissed.

3. The Subordinate Judge further finds that the gift by Man Gobinda to Nil Kumari was operative so long as he was alive; and that Nil Kumari acted as shebait even during the lifetime of Man Gobinda and that she was treated as a co-shebait by the other shebait of the family Thakur. It is then observed by the learned Subordinate Judge that "the god was not the property of Man Gobinda alone" and later on he says: "Man Gobinda was not the founder of god or of god"s estate, he added to that estate, with the consensus of all the shebait this change in the succession was not made." It is difficult to follow what the learned Judge meant to decide on the basis of his observations that Man Gobinda was not the founder and that he was one of the many shebait. If the learned Subordinate Judge was thinking that a subsequent shebait has no right, although he might make additional gifts to a family Thakur, to alter the rule of succession established by the founder, then Man Gobinda had no authority to appoint either the Chatterjees or the Banerjees who base their claim only on the arpanammah and not on their right as the

successor of the original founder who apparently has more successors than the Banerjees, the plaintiffs in Suit No. 1951. It was the common case of the parties that Man Gobinda could and did appoint shebait with reference to the properties dedicated by himself and also by his ancestors but the question as to the validity of such appointment has not been determined having regard to the fact that Man Gobinda was merely a co-shebait. Upon the facts admitted by the parties and on the findings arrived at by the lower Appellate Court the following questions arise and must be decided before the rights of the parties can be determined.

(1) Was the appointment of the Banerjees by the deed of 1308 revocable by Man Gobinda?

(2) Was the appointment of Nil Kumari and her heirs as shebait in the place of the Banerjees by the deed of 1316 valid?

(3) What is the effect of the two deeds in respect to the lands dedicated by Man Gobinda by these deeds?

4. In order to answer the above mentioned questions, it is necessary to bear in mind some of the general principles as regards the endowments made in favour of a family Thakur. The gift of land to the service of the deity was not only permitted but highly extolled for inducing pious men to make such dedication: "The bestower of skin of land to Vishnu is promised fortune and prosperity for seven births; he who dedicates a field or a house for the enjoyment of Vishnu is released from all sins". See Hemadrikh quoted by Pran Nath Saraswati in his Tagore Law Lectures, p. 137. There are numerous such other texts, and it is unnecessary to multiply them. The Thakur could not obviously enjoy any property unless, some one manages the same for him and utilises the income for his worship. This is usually done by the appointment of a shebait. In an early case, the Judicial Committee said as follows: "The taluk itself, with which these jamas were by tenure, was dedicated to the religious services of the idol. The rents constituted, therefore, in legal contemplation its property. The shebait had not the legal property, but only the title of manager of a religious endowment". See *Maharanees Shibessoree Debea v. Mathooranath Acharjo* 13 M.I.A. 270 : 13 W.R.P.C. 18 : 2 Suth. P.C.J. 300 : 2 Sar. P.C.J. 528 : 20 E.R. 552.

5. In the case of *Prosunna Kumari Debya v. Golab Chand Baboo* 2 I.A. 145 : 14 B.L.R. 450 : 3 Sar.P.C.J. 449 : 23 W. R., 253 : 3 Suth. P.C.J. 102(P. C). the Judicial Committee of the Privy Council referred to the case of *Maharanees Shibessoree Debea v. Mathooranath Acharjo* 13 M.I.A. 270 : 13 W.R.P.C. 18 : 2 Suth. P.C.J. 300 : 2 Sar. P.C.J. 528 : 20 E.R. 552 and said as follows: "The authority of the shebait of an idol's estate would appear to be, in this respect analogous to that of a manager for an infant heir which was thus defined in the case of *Hunoomanpersaud Panday v. Babooee Munraj Koonweree* 6 M.I.A. 393 : 18 W.R. 81n: Sevestra 253n; 2 Suth. P.C.J. 29 : 1 Sar. P.C.J. 552 : 19 E.R. 147". On these authorities, it is clear that the dedicated properties belong to

the Thakur and that the shebait is a mere officer and has no right therein. The gift to the Thakur is absolute and cannot be revoked nor can any one misappropriate it. "He who seizes the subsistence of the gods or priests whether given by himself or another is born a reptile for a million of years". Macnaughton's Principles of Hindu Law, Vol. II, p. 305. It is now settled law that the appointment and succession to the office of a shebait must follow the line laid down in the original grant and in the absence of special direction and usage the heirs of the donor succeed. See *Gossami Sri Gridhariji v. Romanlalji Gossami* 16 I.A. 137 : 17 C. 3 : 13 Ind. Jur. 211 : 5 Sar. P.C.J. 350 : 8 Ind. Dec.(N.S.) 541 (P. C) also *Kali Krishna Roy v. Makhan Lal* 72 Ind. Cas. 686 : 50 C. 233 : 36 C.L.J. 441 : 27 C.W.N. 411 : AIR (1923) (C.) 160 and *Ananda Chandra Chakravarti v. Broja Lal Singh* 74 Ind. Cas. 793 : 50 C. 292 : 36 C.L.J. 356 (1923) AIR (C.) 142.

6. The right of a pujari of the Thakur is not that of a shebait and he is merely a servant appointed by the shebait for the performance of the ceremonies. See *Ananda Chandra Chakravarti v. Broja Lal Singh* 74 Ind. Cas. 793 : 50 C. 292 : 36 C.L.J. 356 : AIR (1923) (C.) 142.

7. Now it may be borne in mind that the rule laid down in the *Jotendromohun Tagore v. Ganendromohun Tagore* [The Tagore case] I.A. Sup. Vol. 47 : 18 W.R. 359 : 9 B.L.R. 377 : 2 Suth. P.C.J. 692 : 3 Sar, P.C.J.82 (P.C.) prohibiting a Hindu from creating a special line of succession unknown to Hindu Law does not apply to the case of appointment of a shebait of a family Thakur and the reason is obvious, for an appointment to such an office creates no interest in property. See [Mathura Nath Mukherjee Vs. Lakhi Narain Ganguly](#), . The appointment of a shebait, therefore, is obviously not a gift of any property to the shebait but it is purely an appointment to an office without, it may be, any remuneration whatsoever. The dedication to a Thakur is irrevocable but on what principle can it be said that the appointment of a shebait for the management of an endowed property is also irrevocable by the donor although it is unalterable after his death by a succeeding shebait of the Thakur. If the donor during his lifetime cancels the previous appointment and appoints a new person, on what ground can the dismissed nominee enforce his right?

8. From the authorities, which I have quoted, the rules which, in my opinion, are laid down and are deducible are these: First: That the dedication to the Thakur is irrevocable. Second: The rules laid down for the worship of the Thakur and for the management of the charities, if any connected with the endowment, are binding: Third: That the rule laid down for the appointment of shebait and their succession in the deed of endowment are binding Fourth: That the shebait had no right to the property but is merely an officer with the rights and limitations as are applicable to the guardian of a minor Fifth: That the rules laid down in the deed of endowment are binding and are unalterable after the death of the donor by an successor in estate of office. Sixth: That the office of a shebait is not transferable either by sale or gift See *Raja Vurmah Valia v. Rani Vurmah Kunhi Kutty* 4 I.A. 76 : 1 M. 235 : 1 Ind. Jur. 134 : 3 Sar P.C.J. 687 : 3 Suth. P.C.J. 382 : 1 Ind. Dec (N.S.) 156 (P.C.) and *Gnanasambanda Pandara Sannadhi v. Velu Pandaram* 27 I.A. 69 : 23 M. 271 : 4 C.W.N. 329 : 10 M.L.J. 29 : 2 Bom. L.R. 597 : 7 Sar. P.C.J. 671 (P. C).

Seventh: That the gift in favour of a co-shebait has been recognised. See *Radha Rani Dasi v. Doyal Chand Mullick* 62 Ind. Cas. 222 : 33 C.L.J. 141. but this is not allowed except on the ground that such transfers are for the benefit, of the endowment. See *Gobinda Kumar Roy Chowdhury v. Debendra Kumar Roy Chowdhury* 12 C.W.N. 98.

9. There is no authority, so far as I know, with the exception of a case which I shall discuss later, nor is there any- thing on principle which would stand in the way of the donor to alter the appointment of a shebait to the of or the rules regulating the worship except on the ground that the donor has expressly precluded himself from doing so or that such an alteration affects some right of property of the shebait so appointed or the right of a third party which had already been created provided always that any such alterations do not affect any of the fundamental gifts, So far as I know, such alterations, as stated above, are frequently made, and if not allowed, may lead to needless complications and difficulties and it may be observed that Man Gobinda himself executed three deeds by which he changed the shebaits from time to time. Ordinarily these appointments are without remuneration and shebaits are appointed in many instances without their knowledge or consent and consequently shebaits so appointed are not bound to accept the office. *Tarak Nath Chatterjee*, who was appointed by Man Gobinda in 1306, refused to act and then the Banerjees were appointed.

10. It is needless to point out that all the shebaits if they agree and if it is for the benefit of the endowment may introduce changes without changing the rules of the founder in any vital matter.

11. In this case the appointment of the Banerjees was to take effect after Man Gobinda's death and his widow's death. It was not an appointment which had taken immediate effect, it was in the nature of a testamentary arrangement to come into effect after his death and after the death of his widow. If the appointment was to a mere office, as I think it was, I do not see any reason why Man Gobinda could not alter what was really a testamentary provisions. A donor may think a particular person was a fit and proper person, at the time when he executed the deed, why can he not take a different view as to, the fitness of that individual before he died. Take the analogy of the testamentary appointment of a guardian of a minor. Surely the testator can alter it by a subsequent. Will.

12. The learned Vakil for the respondent relied upon the case of *Gouri Kumari Dasi v. Ranimoyi Dasi* 70 Ind. Cas. 175 : 50 C.197 : 26 C.W.N. 920 : AIR (1923) (C) 30 in support of his contention that the appointment of the Banerjees was irrevocable. The learned Judges held that "the creator of a debutter could not make any change in the order of succession of shebait unless he had made a reservation to that effect in the deed." On the principles and authorities. I have discussed, the appointment being an appointment to an office of the peculiar kind as indicated above I am inclined to think that the power should be presumed to exist unless expressly given up In the present case the Courts below have held that the deed of 1308 contains provisions by which Man Gobinda,

precluded himself from making any further change. Although I feel considerable doubt as to the construction put upon the deed, I do not however, feel justified in holding that both the Courts are clearly wrong in the view taken by them as to the effect of Bengali deed. Man Gobinda consequently precluded himself by terms of the deed of 1398 from revoking the appointment of the Banerjee as shebait for the management of 6 bighas of land endowed by that deed. In this view of the matter, the case of Gouri Kumari Dasi v. Ranimoyi Dasi 70 Ind. Cas. 175 : 50 C.197 : 26 C.W.N. 920 : AIR (1923) (C) 30 is in support of the decision of this case.

13. What then is the effect of these two deeds as to the rights of the contending parties in the additional endowments made by Man Gobinda.

14. Before we can answer this question another question arises and that is this Could Man Gobinda appoint a new line of shebait to a family diety who was established by his ancestor and the line of successors after the death of that ancestor seem to be his heirs? In the present case it appears that the legal heirs of the donor are the shebait of the old endowment. It is clear on the authorities, Man Gobinda who had only a turn in the 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 the new shebait so far as his own endowments are concerned, as I have already said, is the common case of both the parties but how are these appointments valid.

15. Additional endowments are frequently made to a family diety 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 shebait 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 shebait under the "original founder"s rules. If the old shebait agree, the new shebait 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 foundation in any material particular. In this connection see the case of Pradyumna Kumar Mullik v. Pramatha Nath Mullik 77 Ind. Cas. 833 : 27 C.W.N. 684 : AIR (1923) (C.) 708. The Thakur in the nature of the thing, cannot express any view, he must speak through the shebait who have the control of the original endowment.

16. As I have already stated, Man Gobinda by the deed executed in 1316 endowed additional lands, and appointed Nil Kumari the shebait even of the land covered by the deed of 1308 and put her in immediate possession of both the properties and Nil Kumari was accepted as shebait by all the shebait under the original endowment; including the Banerjees, who are the plaintiffs in Suit No. 1951.

17. As I have pointed out before the deed of 1316 made an additional endowment of some more properties including 2 bighas the subject-matter of the suit instituted by the Banerjees. On the principle already discussed and accepted, there was nothing to prevent Man Gobinda to appoint Nil Kumari and her heirs as shebait of these additional endowed properties. I am clearly of opinion, that the right created in favour of Nil Kumari has not ceased on the death of Man Gobinda's widow and that under the circumstances the Banerjees have no right under which they could recover possession of the properties in the hands of Nil Kumari's heirs. The deed of 1308 deals only with 6 bighas and not the 2 bighas granted in 1316. Additional endowments, if allowed, must be accepted with the terms and conditions in the deed but subject always to the limitation that such endowments are for the benefit of the Thakur and the new rules are not inconsistent with the rules already made.

18. Then let us see how the matter really stands. As regards the shebatiship of the Thakur, as created by the original founder, Man Gobinda could not alter it either in favour of the Banerjees who are only some of the heirs of the founder nor could he alter in favour of Nil Kumari who was not a member of the family. So far as the properties endowed by him by the deed of 1308, Banerjees were appointed she baits and Man Gobinda was not competent by the terms of the deed to alter this appointment, under which the Banerjees are entitled to manage the 6 bighas of land endowed by the deed of 1308 but the Banerjees had no right as shebaits to the property created debutter by the deed of 1316, by which Nil Kumari and her heirs were appointed, It is found by the First Court that both the Banerjees and Chatterjees are performing the pujas and are in possession of some of the lands.

19. What the effect of the acceptance of Nil Kumari as a co-shebait by the other shebaits, is, need not be considered in this case because that question relates to the shebaitship of the Thakur under the original grant and I have that question open for decision if and when occasion arises for its determination in the presence of all the necessary parties.

20. The result of the foregoing considerations, is that both the suits must fail and should be dismissed with costs throughout. Appeal No. 764 of 1922 is allowed with costs in all Courts, and Appeal No. 765 of 1922 is dismissed with costs.

William Ewart Greaves, J.

21. I agree.