

PRIVY COUNCIL

Pramatha Nath Mullick

Vs.

Pradhyumna Kumar Mullick

P.C.A No. 59 of 1924

(Lords Shaw Blanesburgh, J. Sir John Edge and Mr. Ameer Ali JJ.)

28.04.1925

JUDGMENT

LORD SHAW J.

1. The questions raised by this appeal are of a wide and general importance. They have reference to the control and worship of a Hindu family idol. It may be explained that although one idol is referred to, called, of course, the Thakur, there were two others, the Thakurani, a female idol referred to in some of the papers as the consort of the Thakur and there was also a third, a sacred or defiled stone called the Salgram Sila. These three idols became the objects of the pious worship of the founder, Mutty Lal Mullick, who originally installed them. But the points in the case can be more simply treated by referring to the one, namely the principal idol, the Thakur.
2. The appeal is from a decree dated the 10th April, 1923, made by the High Court in Calcutta in its Civil Appellate Jurisdiction reversing a decree dated the 1st June, 1922, made by the same Court in its Original Civil Jurisdiction.
3. The case was argued at great length, and a large mass of authorities was cited.
4. Before entering upon the legal questions which were debated, their Lordships think it not inadvisable to state the family history, in so far as it concerns the installation of this idol. It was established and consecrated many years ago by a wealthy Hindu inhabitant of Calcutta, *Babu Mutty Lal Mullick*, in his family dwelling house, in a Thakur Ghar, or room therein set apart for worship.
5. Mutty Lal Mullick died in 1846 leaving a widow, Ranganmoni, and an adopted son, Jadulal, then two years of age. He left a will dated 17th August, 1846, (shortly before his death). He had for some time prior to his death set up and established and

consecrated the idol, and no doubt is thrown upon the fact that the idol so installed became unquestionably the object of worship by himself and the family. The will provided that his widow should be the malik or proprietor and attorney, for the protection and care of the whole of his estate until his adopted son Jadulal attained the age of 20, and the enumeration included the Sri Iswar Thakurs, Thakuranis, etc., established by him and ancestral.

6. Upon the adopted son attaining 20 the property was to be made over to the son as his heir. There was a power to the widow in case the adopted son died without issue to adopt another. A gift was made to the widow of one lac of rupees, together with various jewels and silver with right of residence in the family residence. With regard to the maintenance and worship of the idol certain funds, amounting to Rs. 600 a month, were to be drawn by the widow and therewith she was to defray the expenses of the idol's Sheba (or worship) and for religious festivals and ceremonies, "in the method that I have paid and defrayed the same hitherto." Upon the adopted son attaining 20 the widow was to "make over the whole of the property to him fully and he will in a like manner protect the whole of the property and effectuate the Kreeh Karmas or religious acts and ceremonies."

7. It seems accordingly clear that in Mutty Lal Mullick's life-time the idol was, as already stated, established as a house-hold god ; and the pious founder, narrating his own upkeep and maintenance of the deity, gave funds in order that those should be continued ; and he prescribed the duty of continuance to the widow during the adopted son's minority and upon the son thereafter during his life.

8. One of the questions emerging at this point, is as to the nature of such an idol and the services due thereto. A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of Law, a juristic entity." It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established.

9. A useful narrative of the concrete realities of the position is to be found in the judgment of Mukerji, J., in *Rambrahama Chatterji v. Kedar Nath Banerji*, AIR 1923 Calcutta 60 : 36 CLJ 478.

"We need not describe here in detail the normal type of continued worship of a consecrated image - the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy : the vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest."

10. The person founding a deity and becoming responsible for these duties is de facto and in common parlance called shebait. This responsibility is, of course, maintained by a pious Hindu, either by the personal performance of the religious rites or - as in the case of Sudras, to which caste the parties belonged - by the employment of a Brahmin priest to do so on his behalf. Or the founder, any time before his death or his successor likewise may confer the office of shebait on another.

11. Under the will of Mutty Lal Mullick he did not adopt the latter course, but he acted as shebait with the Brahmin assistance referred to. After his death his widow officiated similarly as the ministrant of the worship, and she used, as directed, the endowed funds specially destined for the upkeep and worship of the deity. After the adopted son Jadulal reached the age of 20 he then became de facto the person, charged with the same duties, to be performed as fully as his adoptive father and mother had performed them.

12. It must be remembered in regard to this branch of the law that the duties of piety from the time of the consecration of the idol are duties to something existing which, though symbolising the Divinity, has in the eye of the law a status as a separate persona. The position and rights of the deity must in order to work this out both in regard to its preservation, its maintenance and the services to be performed, be in the charge of a human being. Accordingly he is the Shebait custodian of the idol and manager of its estate. and so, paying proper respect to the religious proprieties of the case, the father, mother and adopted son were successively and de facto ministrants and custodians of this idol.

13. The period during which this state of matters existed was in the narrative from anterior to 1846 till the year 1864. The widow's charge of the affairs of the idol had come to an end; and Jadulal the son's period of administration, he having reached the

age of 20 had begun. Jadulal died in the year 1894. What had happened during his period of administration was this; that in 1881 he enlarged the old family dwelling-house containing the Thakurbari in which the household gods had hitherto resided and were worshipped. He had erected a puja dalan for the worship of all the family Thakurs, including three referred to, that is to say, instead of one house with its Thakurbari for the family, two houses were erected on adjoining plots of ground and between these the puja dalan was erected, having a private entrance from each of the private dwellings so that the family worship was conducted with due decorum and propriety in what was practically an annexe to either house.

14. Two other events occurred which are important during this period of Jadulal's regime. In 1888 he executed a deed of trust providing particular premises for the location and worship of the deities in the puja dalan aforesaid. The terms of this deed are the centre of the contentions raised by the parties in the appeal and will be more particularly hereinafter referred to. The other fact affecting this period was that in the year 1891, Ranganmoni, the widow of Mutty Lal Mullick, died. She made a very large endowment in favour of the family idol, amounting to about one lac of rupees. By her will she appointed Jadulal her executor and trustee and she made a disposition of her property in these terms:-

"I give and devise my tenanted land No. 129 Bowbazar Street in Calcutta, to my said trustee, his heirs and representatives to be held by him and them upon trust, to apply the rents and income thereof, after providing for the payment, of taxes and other outgoings, in the performance of the daily and periodical worship of the idol, consecrated by my late husband, called Radha-Shamsunder such worship to be performed by my said son and his descendants."

15. Jadulal died in 1894, leaving issue, three sons and four daughters. The estates were large, and a suit for partition among the three sons ensued. Questions of importance were raised as to :-

- (1) The provisions of Jadulal's will and
- (2) The endowment by Ranganmoni. On the former head the disputes and differences were submitted to the arbitration of the late Mr. W. C. Bannerjee, who delivered an award in 1899. That award was made a rule of Court. In the partition proceedings, Mr. Bannerjee declared that the three sons, as Jadulal's heirs, were entitled to the residue of the father's estate in three equal shares. He allotted one of the two houses to the first son, another to the third son, and, in regard to the second son, the present appellant he was, so to speak, paid out in

money in order that he might erect a desirable residence for himself. Among other trusts declared in Jadulal's will was the following, namely:-

The trust for the worship of the said Jadulal Mullick's hereditary Goddess Sri Sri Singhabahini Debi and other family deities during his turn or pala of worship.

16. It is to be observed that, although the turn or pala of worship as amongst the three sons was recognized in that part of the award the idols in question in this case were not named.

17. In a subsequent part of the award various turns of worship were given to the sons in order. As to the Thakurbari, or pujah dalan, plans were referred to, and it was declared to be the joint property of the three sons. Prohibition was made against the two sons vested in the adjoining properties raising any structure or building of any kind which might inter fere with the joint property.

18. The situation created by this deed accordingly was that, while the deities were not named, the joint property of the three sons in the house dedicated to the idol was declared and the system of worship by turn or pala was established.

19. With regard to Ranganmoni's estate and endowment, suit was brought in 1904 and in June, 1905, it was decreed that a scheme should be framed for carrying on the varied trust of the lady's will and, subject to provision being made therefor, her estate should be divided into three equal shares among the plaintiffs and defendants in this suit. A commission was accordingly issued to Babu Bhupendra Nath Basu to frame a scheme of worship and to partition the residue. This was done by return to the commission, which appointed the worship of Thakur *Sri Sri Radha Shamsunderji*, the idols in question in this suit, in the following terms :-

"I direct that the sheba and worship of the Thakur Sri Sri Radha Shamsunderji and of the Thakur located at Mahesh and Brindaban and the Ekodistha sradh will be performed by the parties and their heirs by turns of one year each, the first turn commencing from the first day of Baisakh in the Bengali year 1317 and such first turn shall devolve on the said, Pradyum na Kumar Mullick and his heirs, the second turn commencing from first day of the month of Baisakh 1318 shall devolve on the said Pramatha Nath Mullick and his heirs, and the third turn commencing from the first day of the month of Baisakh 1319 shall devolve on the said Manmatha Nath Mullick and his heirs, and so on by rotation. On the demise of any one of the parties, his heirs will become entitled

to his turn of worship, and the party having the turn of worship will perform such worship without any interference by any of the other parties."

20. The family very sensibly acted in accordance with the rules set down in these proceedings. The practical result was that the parties, now judicially separated, continued the worship of the idols. The idol was of course, not removed by the parties during their period of worship or pala because in the building as constructed the idols were located as mentioned in a building adjoining their respective houses.

21. In the year 1910-11 the second son's establishment was set up. The idol was removed to this house in connection with certain festivals considered suitable for the occasion and, after these were concluded in February, 1911, was brought back to the puja dalan. In May, 1911, the second son's year of pala, or turn of worship, came round and the family idol was removed to the Thakurbari of his house and family worship continued there for one year. In 1914 the same thing occurred, the first respondent being still an infant. It is not suggested in any part of the case that these temporary transfers of the location of the family idol (such temporary transfers on occasions of festivals are familiar in the community were not conducted with complete reverence any propriety and without interruption of the ordinary daily services tendered to the idol or any of the rights connected with its worship. In short, the results of the partition suit, the interpretation of the wills of Jadulal and Ranganmoni, and the awards made therein, were so far worked out without defect or friction.

22. When the appellant's pala, however, again came round, namely in 1917, the transfer of the idol by him as before to his Thakurbari was objected to by the first respondent, who had now attained majority (with whose objections the third son concurred); and the broad question in this appeal is whether that objection is well founded in law.

23. In substance the objection is founded upon the deed executed in 1888 by Jadulal.

24. The argument in the Appellate Court is thus recorded by Richardson, J. :-

The learned Standing Counsel, Mr. B. L. Mitter, founding on Mutty Lal's will, argued that the testator treated the idols or images which he had set up as his personal property and left them absolutely to Jadulal. When pushed, Mr. Mitter said that Jadulal might if he had so pleased, have thrown them into the river.

25. The Appellate Court rejected that proposition. and this Board can give no countenance to it. As is added in the judgment referred to :-

"The inclusion of the idols however, among items of property, moveable and immovable, does not show that the testator regarded his interest in them in the same light as his interest in his secular property. The careful directions given later in the Will show that the testator intended the worship of the ancestral deities and the deities he had established to be a charge upon his estate.

26. There may be, in the nature of things, difficulties in adjusting the legal status of the idol to the circumstances and requirements of its protection and location and there may no doubt also be a variety of other contracts of such a persona with mundane ideas. But an argument which would reduce a family idol to the position of a mere moveable chattel is one to which the Board can give no support. They think that such an argument is neither in accord with a true conception of the authorities, nor with principle. The Board does not find itself at variance with the views upon this subject taken in the Appellate Court or with the analysis of the authorities there contained.

27. The Appellate Court, it is true, felt itself constrained by the terms of the deed of 1888 to arrive at a conclusion adverse to the case of the appellant ; but upon the main points in argument, both as to the contention that the household god was mere property, and as to Jadulal's right being absolute therein, this appeal was argued before the Board by the counsel for the respondents here on the footing that if the Appellate Court's decree depended on the reasons given, it could not be defended. The Board is, on the contrary, of the opinion that, upon the two points they discussed, the reasoning and view of the High Court are sound.

28. Their Lordships would only add, on the subject of property, that the argument is said to be supported by the judgment of Banerjee, J. in *Khetter Chunder Ghose v. Hari Das Bundopadhya* (1890) 17 Cal 557. In that case the facts were that the household idol was made over to relatives, owing to the family, whose idol it was, being unable to carry on the worship on account of the paucity of profits of the endowed lands, and it was held that the transfer was justified in the interests of the idol. It was a proper and a pious act. The Shebait being charged fundamentally with the duty of seeing to the worship being carried on, and, having the concurrence of the entire family to the transaction, did have power to carry through the transaction "for the purpose of performing its worship regularly through generation to generation. The members of the family were thereby deprived of no right of worship. The interests of worshippers and idol were conserved. Their Lordships do not think that such cases form any ground for the proposition that Hindu family idols are property in the crude sense maintained, or that their destruction, degradation or injury are within the power

of their custodian for the time being. Such ideas appear to be in violation of the sanctity attached to the idol, whose legal entity and rights as such the law of India has long recognized.

29. The argument as to property being thus displaced, their Lordships have now to consider the position of Jadulal the grantor of the deed of 1888.

30. Was he Shebait of this idol in the narrower sense as the appellant contends or did he succeed by virtue of Mutty Lal's will to the rights and privileges possessed by the testator ? In the deed of 1888, Jadulal declares as follows :- " whereas the said Babu Mutty Lal Mullick, the father of the said Jadulal Mullick, established and consecrated the Thakur called Radha Shamsunderji." As has been seen during his life Mutty Lal Mullick had de facto performed piously and regularly all the duties which the law would charge upon the custodians of the idol. It stands without question that Jadulal himself was fully performing similar duties and functions. As was said by Lord Hobhouse in *Gossamee Sree Greedharreejee v. Rumanlolljee Gossamee*,

"According to Hindu law, when the worship of a Thakur has been founded the Shebaitship is held to be invested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution."

31. A similar principle appears also to have been implied in the judgments of *Jaganath Prasad Gupta v. Runjit Singh Sheoratan Kunwari v. Ram Pargash*, , *Mt. Jai Bansi Kunwar v. Chatiar Dhari Singh*, 5 BLR 181.

32. To apply this law to the present case, Jadulal was the sole heir of his father and, by the general law of India, he thus stood vested with the right of custody of, and management of the trust for the family idol which his father had consecrated and set up. So far as the legal status and rights of Jadulal as grantor of the deed of 1888, the deed proceeds to narrate :-

"Whereas the said Jadulal Mullick is now desirous of dedicating the said premises to the said Thakur in the manner hereinafter expressed."

33. This is perfectly correct language in acknowledgment of the fact that the Thakur existed and was the capable recipient in law of the property dedicated to it. The deed then proceeds to declare that certain premises, described in the schedule.

"Shall be for ever held by the said Jadulal Mullick, his heirs, executors,

administrators and representatives to and for the use of the said Thakur Radha Shamsunderji to the intent that the said Thakur may be located and worshipped in the said premises and to and for no other use or intent whatsoever provided always that if at any time hereafter it shall appear expedient to the said Jadulal Mullick, his heirs, executors, administrators or representatives so to do it shall be lawful for him or them upon his or their providing and dedicating for the location and worship of the said Thakur another suitable Thakur Bari of the same or greater value than the premises hereby dedicated to revoke the trusts hereinbefore contained and it is hereby declared that unless and until another Thakur Bari is provided and dedicated as aforesaid the said Thakur shall not on any account be removed from the said premises and in the event of another Thakur Bari being provided and dedicated as aforesaid the said Thakur shall be located therein but shall not similarly be removed therefrom on any account whatsoever."

34. This passage has been quoted in full so as to make clear the three propositions which seem to follow, namely, First, the recognition as mentioned of the idol as the dedicatee : Second, the conveyance in no respect whatever appears to be a conveyance of the idol, but is a conveyance of the premises described in the schedule to and for the use of the idol and for no other use : Third, this use is not to be interfered with by Jadulal's heirs, executors, administrators or representatives except upon providing for the dedicatee another Thakurbari of the same or a larger value. When that is done Jadulal's heirs, etc., could revoke the trusts of the premises affecting the present puja dalan, and unless and until that is done the idol is not to be removed therefrom.

35. It is this last proposition which raises the real difficulty in the case and their Lordships express no surprise that the High Court should have felt it. Upon a full consideration their Lordships have come to the conclusion that this was not a dedication, in any sense of the word, of the idol as property, nor of the idol at all. It was a dedication of real estate in trust for the idol, recognised as a legal entity, to which such dedication might be made.

36. The true view of this is that the will of the idol in regard to location must be respected. If, in the course of a proper and unassailable administration of the worship of the idol by the Shebait, it be thought that a family idol should change its location the will of the idol itself, expressed through his guardian must be given effect to. This is in accordance with what would appear to be the sound principle of the position and it is further in accord with the authority on the subject. In the case already referred to

so far did the decision go that it was expressly said by Lord Hobhouse in *Gossammee Sree Greedharreejee v. Rumanlalljee Gossam mee (Supra)* "The Thakur Dowjee, or these who speak for him on earth, need not take advantage of this gift."

37. A fortiori it is open to an idol acting through his guardian the Shebait to conduct its own worship in its own way at its own place always on the assumption that the acts of the Shebait expressing its will are not inconsistent with the reverent and proper conduct of its worship by those members of the family who render service and pay homage to it.

38. A question was raised whether the right of worship of an idol can be made the subject of partition. Their Lordships have already referred to this point when dealing with the arbitration proceedings.

39. In 14 Bengal L. R., page 169, the point arose especially in the case of *Mitta Kunth Audhicarry v. Neerunjun Audhicarry 14 BLR 166 : 22 WR 437*. The head note is as follows :-

"The reasons for which one of several joint owners is entitled to a partition of joint property, apply also to the case of a joint right of performing the worship of an idol. The joint owners of such a right are entitled to perform their worship by turns."

40. And, in Sir Richard Couch's judgment the following rule of law is referred to :-

"The suit is founded upon the right of the plaintiff, as property, to a partition. No doubt the plaintiff is entitled to that : and the decree of the First Court was right in awarding it. But that decree has not made provision for the term that each of the three persons, the plaintiff and the two defendants, should have, and does not state whether the plaintiff is to have his turn first, or second, or third. We must therefore direct the Extra Assistant Commissioner to determine by lot in what order the plaintiff and the two defendants shall exercise the right to worship the idol. and having determined that, he should insert in his decree, so that it will be settled in what order they are to exercise the right of worship."

41. The sole objection made in these proceedings to the removal by one of the shebait during his pala or turn of worship to his residence is founded upon the deed of 1888 already analysed. In para graph 13 of the defence "this defendant admits that the plaintiff's turn of worship commenced on and from... the 14th April, 1917. On the 2nd April, 1917, this defendant, who had attained majority on or about 20th November, 1914,... objected. In the evidence of the first respondent, he deposed as follows :-

"Babu Bhupendra Nath Basu divided the turn of worship of 6 Thakurs, and each of us have one year... my only objection is based on the deed of the dedication; apart from the deed there would be objection to the removal because the Thakur has its own house where arrangements are made for sheba. I have said that my only objection is on the deed of dedication."

42. While, however, this is the only objection actually made by the objecting defendant, it has to be pointed out that the idol is not otherwise represented in the proceedings, though the result might conceivably vitally affect its interests. In that sense the contest has related to the establishment of individual rights as between contesting shebait. The interests of the female members of the family, especially in view of the fact that they are excluded from the managership of the idols might need special protection. They are entitled to participate in the worship established by Mutty Lal Mullick without obstruction or inconvenience.

43. Their Lordships are accordingly of opinion that it would be in the interests of all concerned that the idol should appear by a disinterested next friend appointed by the Court. The female members of the family should also be joined and a scheme should be framed, for the regulation of the worship of the idols.

44. Their Lordships will therefore humbly advise His Majesty that the case should be remitted to the High Court to be dealt with in accordance with this report. It will be necessary in these circumstances to set aside the decree of both the Courts below. The parties must bear their own costs in the Courts of India and before this Board; any costs paid under either of the decrees of the Courts below will be re-paid.

Case remitted.

Case Referred.

(1890) 17 Cal 3 : 16 IA 137 : 5 Sar 350 (PC).

(1898) 25 Cal 354;

(1896) 18 All 227 : 1896 AWN 37