

Shyam Sundar Pramanick

Vs.

Moni Mohan Sadhukhan and Others

Civil Appeal No. 1645(N) of 1973

(A. Alagiriswami, Syed M. Fazal Ali, N.L. Untwalia JJ)

21.08.1975

JUDGMENT

UNTWALIA, J. -

1. This is an appeal by special leave from the appellant judgment of the Calcutta High Court affirming the decision of the learned Single Judge of that Court. We are concerned in this case with only two points - one in relation to the interpretation of the will dated August 23, 1930 executed by one Nandalal Paramanick and the other as to the interpretation and effect of a compromise decree dated July 13, 1939 passed by the Calcutta High Court in Suit No. 1539/196.

2. Nandalal Paramanick was the owner of considerable properties. By his last will dated August 23, 1930 he gave and bequeathed his properties to his family deity Sree Sree Iswar Sridhar Jieu. He also laid down a line of succession of shebait in the will. Probate of the will was granted by the High Court to Nandalal's widow Smt. Chamatkarini Dasi on July 9, 1936. Shyam Sundar Paramanick - the sole appellant in this appeal filed Suit No. 1539 in the High Court on August 26, 1936 for self and as the next friend of the deity. The suit was an administration suit. In this suit apart from Smt. Chamatkarini Dasi, Krishna Chandra Sadhukhan, father of respondent No. 1 was also impleaded as the defendant. Krishna Chandra Sadhukhan was the daughter's son of Nandalal Paramanick. Krishna Chandra died during the pendency of Suit No. 1539. Respondent No. 1 then a minor, was substituted in his place and was put under the guardianship of Smt. Chamatkarini Dasi. The said suit was disposed of by a compromise between the appellant and Chamatkarini Dasi apparently acting for self and also as guardian of respondent No. 1. Smt. Chamatkarini Dasi died on October 12, 1947 and it appears thereafter the appellant acted as a shebait of the properties of the deity. Respondent No. 1 along with plaintiff respondent No. 2 filed a suit on April 12, 1958 impleading the appellant as defendant No. 1, Shree Shree Iswar Sridhar Jieu, the deity respondent No. 3 as defendant No. 2 for construction of the will and for a declaration that respondent No. 1 was entitled to be the shebait of the deity and trustee in respect of the deubar estate in any event to act as a joint shebait with the appellant. Certain other reliefs were also claimed in the suit which was contested by the appellant. The trial Judge decreed the suit on April 2, 1971 and declared that respondent No. 1 was entitled to be the shebait of the deity along with the appellant in accordance with the terms of the will. Certain other reliefs were also granted with which we are not concerned in this appeal. The appellants appeal has been dismissed by a Bench of the High Court.

3. Mr. S. T. Desai, learned Counsel for the appellant submitted that on a correct interpretation of the will and especially Clause 9 it ought to have been held that after the death of Smt. Chamatkarini Dasi the appellant was entitled to act as the sole shebait as Krishna Chandra Sadhukhan predeceased Chamatkarini. Counsel further submitted that even if it be not so the compromise decree in the

earlier suit was binding on respondent No. 1 as it was entered into on his behalf also. Under the terms of the compromise the appellant alone was entitled to act as shebait during his lifetime. Mr. A. K. Sen, learned Counsel for respondent No. 1 submitted that the judgment of the High Court on both the points was correct and ought to be interfered with.

4. The High Court in its appellate judgment has quoted the relevant clauses of the will in question. It has rightly held that giving of the properties to the deity and laying down the line of shebaitship was done by Clause 3 of the will. The matter of succession to shebaitship was clearly provided in Clause 10. Clause 9 of the will on which great reliance was placed on behalf of the appellant was not laying down any different line of shebaitship from the one mentioned in Clauses 3 and 10. Reading the will as a whole the High Court in our opinion has rightly come to the conclusion that so long Smt. Chamatkarini Dasi was alive she was to be the sole shebait and after her death the appellant and Krishna Chandra Sadhukhan were to be the joint shebait. On the death of either of them his male heirs were to succeed the deceased.

5. We shall read Clause 3 of the will in full and portions of Clauses 9 and 10. They are as follows :

Whatever immovable (movable) properties I have or whatever movable and immovable properties shall have at the time of death shall be regarded as the estate of my family deity established by me Sree Sree Iswar Sridhar Jieu Thakur or in other words, the entire estate of mine shall belong to the said deity. My said wife and after her demise my said fosterson and the said grandson (daughter's son Sriman Krishna Chandra Sadhukhan) shall remain down to their male heirs succession as the shebait or trustees of the said Thakur and his estate and shall look after and preserve the said estate according to the directions noted below.

After the death of my said wife the said fosterson and the said grandson (daughter's son Sriman Krishna Chandra Sadhukhan) shall jointly or one of them on the demise of the other as the joint or the sole shebait and trustee of the said estate make expenses etc.

My said fosterson and the said grandson (daughter's son Sriman Krishna Chandra Sadhukhan) also shall remain the trustees of the said estate during their lifetime and shall act as stated above. Upon their demise all their male heirs such as son and son's son etc. shall be the shebait and trustees in their places manage the said estate.

6. It is clear on reading the relevant words of the three clauses of the will extracted above the intention of the testator was after bequeathing the properties to the deity, to appoint his wife as the sole shebait during her lifetime and to treat his fosterson Shyam Sundar and his daughter's son Krishna Chandra on equal footing so that so long both were alive they may act as joint shebait and after the death of either his male heirs may step into his shoes. It was not the intention of the testator to make either of the survivors, the fosterson or the daughter's son, to be the sole shebait for his life. It is not correct to say as was argued on behalf of the appellant, that the heirs were to come in the picture only after the death of both. In Clause 9 a direction was given to the shebait or the shebait whether one was the sole shebait or a joint shebait to do certain things according to the will of the testator. In the event of one of the two dying without leaving any male heir, the surviving one could have become the sole shebait. But he would be a joint shebait with the male heirs of the deceased shebait in case he left such heirs. It is on that account that in Clause 9 it was said "one of them on the demise of the other as the joint or the sole shebait", to meet both the eventualities.

7. The High Court has read in full the terms of the compromise decree. According to Clause 3 Smt.

Chamatkarini

will continue to act as such shebait during the time of her natural life. On her death the plaintiff Shyam Sundar Paramanick will act as the shebait of the said deity.

The High Court has rightly pointed out that although the compromise was entered into also on behalf of respondent No. 1 who was then a minor, but the declaration in the various clauses of the compromise was confined to as between two persons namely Smt. Chamatkarini Dasi and the appellant. The High Court has also pointed out that even in accordance with Clause 3 the appellant was not to act as the sole shebait and that any different construction did not fit in with what was recited in Clause 4 of the compromise. We do not find any reason to persuade us to take a view different from the one taken by the High Court as respects the effect of the compromise decree. Since the previous suit was an administration suit one may at best say in favour of the appellant that according to the compromise (and this is on the footing that the compromise was binding on respondent No. 1 also) the appellant was to act as the sole shebait so long respondent No. 1 was a minor. On his attaining majority, there was nothing to prevent him from becoming a joint shebait with the appellant. Respondent No. 1 filed the suit in the year 1958 indisputably after attaining majority. In any view of the matter the appellant cannot succeed.

8. For the reasons stated above we dismiss this appeal with costs to plaintiff respondent No. 1 alone.

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