Badri Nath and Another

Vs

Mst. Punna (Dead) by Lrs. and Others

Civil Appeal No. 1118 of 1972

(V. R. Krishna Iyer, D. A. Desai JJ)

15.02.1979

JUDGMENT

KOSHAL, J. -

1. This appeal by special leaves has arisen out of a suit brought by Smt. Punna, respondent 1, against the two appellants and respondent 2 for the issuance of a perpetual injunction restraining the three defendants from interfering with her right to recover her father's share of six annas in a rupee in the offerings made at the sacred shrine of Shri Vaishno Devi Ji which is situated on the Trikutta Hills. The suit was decreed by the trial Court who Judgment was upheld in first appeal by the District Judge, in a second appeal by a learned Single Judge of the High Court of Jammu and Kashmir and in a Letters Patent Appeal by a Full Bench of that Court. It is the Judgment of the Full Bench (which is a dated January 18, 1972) that is impugned before us.

2. The averments made in the plaint may be summarised thus. The plaintiff is the daughter of one Bagu who died in or about the year 1959. During his lifetime Bagu and the three defendants were entitled to receive the offerings made at the shrine of Shri Vaishno Devi Ji on certain days falling within very seventh Bikrami year so that bagu would gave 6/16th share therein and the defendants collectively a similar share. After the death of the plaintiff's father the parties were entitled to receive the offerings in the shares abovementioned on every eighth day in the Bikrami year 2019, the plaintiff having succeeded to the share of her father both under the law of inheritance and by virtue of a will executed by him in her favour. The plaintiff had to resort to the suit as the defendants had started interfering with her right to collect her share of the offerings.

3. The defendants contested the suit. They challenged the will set up by the plaintiff as a forged one and further pleaded that only members of four sub-castes namely, Khas Thakars, Drora Thakars, Manotra Thakars and Samnotra Brahmins were entitled to receive the offerings and that while Bagu was entitled to a share in the same, the plaintiff was not as she had lost her original sub-caste by marriage outside the four sub-castes mentioned above. The offering, according to the defendants, were also not liable to devolve by inheritance or demise.

4. The finding arrived at by the trial Court were these :

> (1) On the death of a baridar (which expression, when literally translated, means turn-holder) belonging to any of the aforementioned sub-castes, his heirs inherited his right to receive offering just as they inherited his other property.
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> (2) Under Section 4 of the Hindu Succession Act, any custom or usage inconsistent

with the provisions of that Act becomes ineffective.

(3) Even under Section 6 of the Hindu Succession Act read with the Schedule appended thereto the property of Bagu would devote on the plaintiff in case Bagu died intestate.

(4) Bagu executed a valid will in favour of the plaintiff devising to her the right to receive the offerings, apart from other properties.

(5) The plaintiff was entitled, in view of the above four findings to inherit the right to receive offerings not only by reason of the provision of Sections 4 and 6 of the Hindu Succession Act, but also because of the will.

5. At the hearing of the Letter Patent Appeal by the Full Bench, the following four contentions were raised on behalf of the defendants :

(1) The chance of future worshippers making offerings to the deity is a mere possibility of the nature referred to in clause (a) of Section 6 of the Transfer of Property Act and is not property which can be transferred or inherited.

(2) The right to receive offerings is not a transferable or heritable right.

(3) The provisions of the Hindu Succession Act do not apply to the case in hand.

(4) According to the custom governing the shrine of Shri Vaishno Devi Ji, only the abovementioned four sub-castes were entitled to share the offerings.

6. All these contentions were rejected by the Full Bench as untenable. In regard to the first of them of the Full Bench followed Balmukund v. Tula Ram (AIR 1928 All 721 : 26 ALJ 185) in which it was held that the right to receive offering when made is a definite and fixed right does not depend on any possibility of the nature referred to in clause (a) of Section 6 of the Transfer of Property Act, because the fact that offerings whether large or small are bound to be made is a certainty.

7. In relation to the second contention, the Full Bench noted the contents of paragraph 422 of "Principles of Hindu Law" by Mulla which states, inter alia, that where offerings, though made to idols, are received by persons independently of any obligation to render services, they are alienable and attachable. Reference in this connection was also made to Balmukund v. Tula Ram (supra) wherein the following passage occurs :

But when the right to receive the offerings made at a temple is independent of an obligation to render services involving qualifications of a personal nature, such as officiating at the worship we are unable to discover any justification for holding that such a right is not transferable. That the right to receive the offerings when made is a valuable right and is property, admits of no doubt and, therefore, that right must, in view of the provisions of Section 6 of Transfer of Property Act, held to be transferable, unless its transfer is prohibited by the Transfer of Property Act or any other law for the time being in force.

In view of these observations which were adopted and followed in Nand Kumar Dutt v. Ganesh Dass (AIR 1936 All 131 : 1936 ALJ 409 : 159 IC 812) the Full Bench being in agreement therewith,

proceeded to determine whether the right to receive the offerings in the present case was or was not independent of services of a priestly or personal nature. The following translation of an extract from the Wajib-ul-Arz relating to village Purana Daiur wherein the holy shrine is situated, was then taken up for consideration :

> Leaving said cash, whatever is the Charatt at the temples of 'Ad Kanwari' and Sri Trikutta Devi' the entire Darora community distributes that among itself and of (?) other attached areas of Pangal, Sarron, Batan, Kotli, Gran, Parhtal, etc. according to hereditary shares. And the castes 'Thakar Khas' and 'Manotra' are included in it Darora caste take two shares and Manotra and Khas castes also take one equal share of 'Charatt' that is divided as per hereditary shares. There is no service in lieu thereof. Only it is described as the blessings of Goddess. Rupees twenty-one hundred (two thousand on hundred rupees) go to the Government. Every baridar keeps his man present in the temple who receives the 'Charatt' Pujaries get pay from us.

and it was interpreted to mean that the right to share in the offerings made at the holy shrine had no connection with any priestly functions or with other services involving qualifications of a personal nature and therefore was a heritable as well as alienable right. This very conclusion was reached by the Full Bench on a consideration of the deposition of the Patwari of the concerned circle and the Ain-i-Dharamarth which purports to be constitution of a Board of Trustees appointed by the State to manage the shrine.

8. In relation to the third contention, the Full Bench noted that the properties to which the Hindu Succession Act does not apply are only these which find enumeration in Section 5 thereof, that the right share the offering is not one of those properties and that, therefore, such a right could not but be governed by the provisions of the Act.

9. In repelling the last contention Full Bench relied upon the provisions of the Hindu Succession Act which overrides all customs of usage being part of the Hindu Law as in force immediately prior to the commencement of the Act and concluded that the custom of the right to share in the offerings being restricted to members of the four sub-castes above mentioned could not be given effect to and that the plaintiff was full entitled to succeed to that right in spit of the fact that she did not belong to any of those sub-castes.

10. It was in these premises that the Letters Patent Appeal was dismissed by the Full Bench.

11. At the very outset Mr. L. N. Sinha, learned Counsel for the appellant, has drawn out attention to the fact that the extract from the Wajib-ul-Arz taken note of by the Full Bench of the High Court relates not to the temple of Shri Vaishno Devi Ji but to a couple of other temples situated in its vicinity, namely, the temples of 'Ad Kanwari" and "Sri Trikutta Devi' and has urged that the extract could not possibly relate to the temple of Shri Vaishno Devi Ji which was the main temple in the complex and a reference to which could not have been omitted from the extract in case it was intended to apply to that temple also. A careful perusal of the extract shows that Mr. Sinha's contention is well-founded because there is not so much as a hint to the main temple in the extract. According to Mr. Sinha, the duties to which the right to shares the offerings is subject are detailed in the settlement record prepared for village Daiur (Shri Vaishno Devi Ji) for the year 1965-66 Bikrami and a resolution passed by the Dharamarth committee on Sawan 27, 1983 Bikrami. These documents may be set out in extenso :

Settlement Record

In the column of ownership, the State is entered as owner; in the column of possession - Dharamarth Trust entered as in possessions.' Mandir Gupha' situate on land comprising 7 marlas bearing Khasra No. 166 and 'Bhawan' situation land comprising 4 marlas baring Khasra No. 167. The sub-caste Thakar Darora, Manotra, Khas, and Brahmin Samnotra have been sharing the offerings according to the shares mentioned below from the very beginning. Thakar Daroras and Brahmin Samnotra are entitled to three shares and on share respectively out of 2/3 of the total offerings whereas Thakar Manotras and Khas are entitled to share equally in the rest 1/3 of the total offerings.

Darora Thakars are sub-divided into further four sub-castes namely; (i) Darora Sunk, (ii) Darora Jaga, (iii) Darora Pai, and (iv) Darora Deoch and each one of them has one equal share. Similarly Brahman (Samnotra) have also divided their share into four shares which are received as under :

Samnotra Brahmins from the Branch of 'Darya' on share : Brahmins from the branch of 'Bairaj' on share; Brahmins from the branch of 'Gobind' one share; and Brahmins from the branch of 'Ganesh' on share. Therefore, 'Darora Sunk' and Samnotra from the branch of 'Bairaj' have their turn together in on year and they divide the offering for that in the proportion of 3 : 3 (i.e. 3 shares of Darora Sunk and 1 shares to Samnotra from the branch of Bairaj), Similarly Brahmins from the branch of 'Darya' have their turn with 'Darora Jagga' Brahmins from the branch of 'Ganesh' with 'Darora' Parath' and Brahmins from the branch of 'Gobind' with 'Darora Dech' and Brahmins in each case receive 1/4th share and Darora Thakars have 3/4th share.

In the beginning nothing was taken from these persons (baridaran) in consideration of their receiving the offerings. But because the Sadhus would often go to the shrine and due to the mismanagement of their stay and meals over there there were always riots at the shrine. Therefore, in the year 1907 Bikrami during the regime of Maharaja Gulab Singh an amount of Rs. 1150 was fixed as 'Aian' to be paid by the baridars for the management of stay and meals for Sadhus at the shrine. The said amount was to be deposited in the State Treasury. Thereafter in 1920 Bikrami another hundred rupees were added to the above said amount and thenceforth Rs. 1250 were fixed per annum which was being deposited in the State Treasury. After 1940 Bikrami the said amount of Rs. 1250 was being deposited with the Dharamarth Trust and this continues till today. The said amount is recovered from Thakar sub-castes. Besides this, so many other things (such as silk chunis etc.) are received from the said Thakar baridars. Thakar baridars are also liable to provide three permanent servants and six more peons during the season and will be liable to pay them. The said Thakars are liable to arrange the carriage and pay for the 'Pershad' etc. from Katra to Vaishno Devi temple. With regard to the cattle kept by the Dharamarth Trustees, the said Thakars are liable to arrange for taking them from one place to another. If any Government servant visits the shrine the said Thakars will be liable to arrange for the carriage of this luggage, etc. The said Thakars are also liable to perform the following duties :

(1) Cleanliness of the Gupha (Vaishno Devi temple) and the compound appurtenant thereto.

(2) To carry Puja material inside the Gupha (temple) along with the Pujari.

(3) If during mela season there is any trouble to any pilgrim or he becomes sick, etc., the said Thakars are liable to make proper arrangements for the removal of any such trouble.

RESOLUTION OF THE DHARAMARTH COMMITTEE

(a) Dharamarth Trust shall charge its usual Aian (rent) from the baridaran which shall be paid by them before they distribute their share of the offering. The baridar who refuses or avoids the payment of rent to Dharamarth shall not be entitled to receive his share of the offering and the same shall be attached and deposited with the Manager, Dharamarth Trust. The baridar whose share has been thus attached can receive his share on payment of the rent due to the Dharamarth Trust.

(b) Unanimously it is passed that the strangers or persons other than baridars (i.e. four sub-castes) shall have no right to get the Puja performed in the shrine.

(c) In case any baridar or his legal representative due to any reason, cannot attend in person then it will be the duty of other co-sharer to deposit the absentee's share with the Manager, Dharamarth Trust an when that baridar comes present, the Manager, Dharamarth Trust shall, after deducting the due, if any from him to the Dharamarth, pay his share to him. The baridaran shall be bound to perform the duties (such as Kah, Kunda, Argi etc.) being performed by them previously.

According to these documents the right to share the offering is restricts to members of the four sub-castes above mentioned, and although to begin with baridars did not perform any duties in return, certain obligations were super imposed on the right from year 1907 Bikrami onwards. Those obligations are :

(a) A duty to deposit a fixed annual sum with the Dharamarth Trust to be spent on arrangements of lodging and boarding of Sadhus visiting the shrine.

(b) To provide three permanent servants, in addition to six persons, during the "season".

(c) To pay for the "prasad" and to arrange its transport from Katra to Vaishno Devi temple.

(e) To arrange for the carriage of the luggage of Government servants visiting the shrine.

(f) To keep the temple and the compound appurtenant thereto in a state of cleanliness.

(g) to carry inside the temple the material required for worship by the priest.

(h) To look after visitors to the shrine who fall ill and to make proper arrangements for the restoration of their health.

12. There is thus no doubt that the right to receive a share in the offerings is subject to the performance of onerous duties. But then it is apparent that non of this duties is in nature priestly or

requiring a personal qualification. On the other hand all of them are of non-religious or secular character and may be performed not necessarily by the baridar personally but by his agents or servants so that their performance boils down to mere incurring of expense. If the baridar chooses to perform those duties personally he is at liberty to do so. But then the obligation extended merely to the making of necessary arrangements which may be secured on payment of money to others, the actual physical or mental effort involved being undertaken by those others. The right is, therefore, transferable right as envisaged in the passage above extracted from Balmukund v. Tula Ram (supra) which has not been challenged before us as erroneous and which we regard as laying down the law correctly. The contentions raised by Mr. Sinha to the contrary is thus repelled.

13. Another challenge made by Mr. Sinha to the impugned judgment is that the right to share offerings coupled with the duties to which it was subject must in its totality be regarded as an office (like that of a shebait) only and not as property and that therefore no question of its heritability could arise. In connection reference was made to the following observations made by Mukherjea. J., who delivered the judgment of the majority of this Court Angurbala Mullick v. Debabrata Mullick.

In a Hindu religious endowment on the other hand the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person and the shebait or mahant is a mere manager.

There is nothing to indicate that baridars in the present case are the managers of the shrine in the sense that a shebait is in relation to the temple in his charge. On the other hand it appears that the overall management of the shrine vests in the Board of Trustees known as Dharamarth Committee and it would not be correct therefore to look at the right of the baridars in the light of the right and duties of a shebait. However, it may be pointed out that shebaitship cannot be described as a mere office because apart from certain responsibilities. It carries with it a definite right to property. This is proposition on which emphasis was laid by this Court in Angurbala's case (supra) itself. Mukherjea, J., observed in this connection :

> But though a shebait is manager and not a trustee in the technical sense, it would be correct to described the shebaitship as a mere office. The shebait has not only duties to discharge in connection with the endowment, but he has a beneficial interest in the debutter property. As the Judicial Committee observed in the above case, in almost all such endowments the shebait has a share in the usufruct of the debutter property which depends upon the terms of the grant or upon custom or usage. Even where no emoluments are attached to the office of the shebait, he enjoys some sort of right of right or interest in the endowed property which partially at least has the character of a proprietary right. Thus, in the conception of shebaiti both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other. It is the presence of this personal or beneficial interest in the endowed property which invests shebaitship with the character of proprietary right and attached to it the legal incidents of property. This was elaborately discussed by a Full Bench of the Calcutta High Court in Monohar Mukherjee v. Bhupendra Nath Mukherjee (ILR 60 Cal 425 : AIR 1932 Cal 791 : 56 CLJ 468) and this decisions of the Full Bench was approved of by the Judicial Committee in Ganesh Chunder Dhur v. Lal Behary (63 IA 448 : AIR 1963 PC 318 : 1936 All LR 848), and again in Bhabatarini v. Ashalata (70 IA 57 : AIR 1943 PC 89 : 1943 ALJ 381). The effect of the first two decisions, as the Privy Council pointed out in the last case, was to emphasise the proprietary element in the shebait right, and

> to who that though in some respects anomalous, it was an anomaly to be accepted as having been admitted into Hindu law form an early date. "According to Hindu law", observed Lord Hobhouse in Gossamee Sree Greedharreejee v. Rumanlollji Gossammee (16 IA 137 : ILR 17 Cal 3 : 5 Sar 350), "When the Worship of a Thakoor has been founded, the shebaitship is held to be vested 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 dealing, or some circumstance to show a different mode of devotion". Unless, therefore, the founder has disposed of the shebaitship in any particular manner - and this right of disposition is inherent in the founder or except when/usage or custom of different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder.

14. Angurbala's case was followed by this Court in a recent decision reported as Ram Rattan v. Bajrang Lal ((1978) 3 SCR 963 : (1978) 3 SCC 236) wherein Desai, J., who delivered the judgment of Court observed :

> In the conception of shebait both the elements of office and property, duties and personal interest are mixed up and blended together and one of the elements cannot be detached from the other. Old texts, one of the principal sources of Hindu law and the commentaries thereon, and over a century the Courts with very few exceptions have recognised hereditary office of shebait as immovable property, and it has all along been treated as immovable property almost uniformly. While examining the nature and character of an office as envisaged by Hindu law would be correct to accept and designate it in the same manner as has been done by the Hindu law text writers and accepted by courts over a long period. It is, therefore, safe to conclude that the hereditary office of shebait which would be enjoyed by the person by turn would be immovable property.

15. These observations as also those made in Angurbala's case and extracted above demolish the contention of Mr. Sinha that shebaitship is nothing more or less than an office and is not heritable property.

16. The right to share the offerings being a right coupled with duties other than those involving personal qualifications and, therefore, being heritable property, it will descend in accordance with the dictates of the Hindu Succession Act and in supersession of all customs to the contrary in view of the provisions of Section 4 of that Act, sub-section (1) of which states :

> (a) Save as otherwise expressly provided in this Act - any text, rule or interpretation of Hindu law or any custom or usage as apart of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provisions is made in this Act;
>
> (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far it is inconsistent with any of the provisions contained in this Act.

The requirements of the custom relied upon by the appellants to the effect that that right could not be exercised by a person who is not a member of any of the four sub-castes mentioned above

becomes wholly ineffective in view of these provisions, being contrary to the order of succession laid down in chapter II of the Hindu Succession Act under which the right devolves on the plaintiff-respondent.

17. The only contention raised by Mr. Sinha is that the plaintiff had not stated in any part of the pleadings that she was prepared to carry out the services to the performance of which the right to share the offerings is subject and that therefore she was not entitled to a decree. This contention must be repelled for the simple reason that it was not raised before the High Court. Besides, there being no repudiation on her part of the obligations to render the services abovementioned, her claim must be regarded for the enforcement of that right coupled with those services and the decree constructed accordingly even though it may be silent on the point.

18. In the result the appeal fails and is dismissed, but the parties are left to bear their own costs throughout.

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