Shambhu Charan Shukla

Vs

Shri Thakur Ladli Radha Chandra Madan Gopalji Maharaj and Another

Civil Appeal No. 1372 of 1979

(A. Varadarajan, Sabyasachi Mukharji JJ)

19.03.1985

JUDGMENT

A. VARADARAJAN, J. -

1. This appeal by special leave is by the defendant-respondent in second Appeal No. 626 of 1976 on the file of the Allahabad High Court and directed against judgment of the learned Single Judge of that high Court insofar as it relates to the appointment of the second respondent/second plaintiff Man Mohan as the Mohatmim/Shebait of the first respondent Shri Thakur Ladli Radha Chandra Madan Gopalji Maharaj (for short "Gopalji") and the properties belonging to that idol.

2. The second appeal was filed by the respondents Gopalji and Man Mohan, plaintiffs 1 and 2 respectively. The second respondent who is the son of one Shyam Sunder claimed to have been adopted by Asharfi Devi, widow of one Purushottam Lal by the document A-24 dated november 20, 1956. The High Court has not gone into the question of this adoption in its judgment. Therefore, it is not necessary to refer to the case of the parties and the judgment of the courts below in detail in regard to the question of the adoption. The suit was filed by both the respondents for recovery of possession of the idol and temple of Gopalji described in the plaint and the money lying in deposit with the Punjab National Bank at Vrindavan, the zamindari abolition compensation and the rehabilitation grant bonds specified in the plaint. The trial court decreed the suit expect as regards items 1 to 25 and 37 to 41 of List I of Schedule "Ba" and the sum of Rs. 1004.97. The appellant filed an appeal in the District Court and the respondents filed a cross-objection in that appeal in regards to the money claim disallowed by the trial court. The learned Second Additional District Judge, Mathura allowed the appeal and dismissed the cross-objection and the suit. Therefore, both the respondents filed the second appeal.

3. The respondents' case was that the idol of Gopalji was installed by Purushottam Lal in his house at Vrindavan Which later became the temple of the deity. Purushottam Lal, who had no issue, performed seva puja of the deity so long as he was alive and it was performed thereafter by his wife Asharfi Devi. By his Will Ex. A-2 dated April 14, 1944 he dedicated his entire property to the deity and made his wife the Mohatmim/Shebait without any power to transfer any property. In accordance with the directions of her husband, Asharfi Devi adopted the second respondent by a registered deed dated November 21, 1956 by performing the necessary religious ceremonies. After the death of Asharfi Devi the appellant worked as Pujari in temple of Gopalji with the consent of the second respondent's guardian and natural father Shyam Sunder. Later, he denied the rights of the second respondent contending that Asharfi Devi executed her last Will Ex. A-6 dated December 21, 1957 bequeathing her bank deposits, Government bonds, household articles, utensils etc. to the appellant Shambhu Charan and all her jewelry including those kept by her in the custody of Shyam Sunder to

the second respondent and declaring so long as the second respondent was a minor the appellant shall act as Mohatmim of Gopalji and be responsible for the seva puja and raj bhog of the deity and the management of the deity's properties. The Will further declares that the appellant shall continue to live in the house at Bengal Bindala. Vrindavan and act as the guardian of the second respondent in view of his natural father Shyam Sunder's refusal to do so and that on the second respondent attaining majority the appellant shall hand over the sewa puja and raj bhog and he shall have all the rights of Mohatmim which Asharfi Devi held, without any right to alienate any of the properties. But this Will was not duly executed by Asharfi Devi and she had no right to execute such a will and it does not confer any right on the appellant.

4. Besides denying the adoption of the second respondent the appellant contended in his written statement that Asharfi Devi validly executed the Will dated December 21, 1957 inter alia bequeathing items 1 to 25 and 37 to 41 of Schedule "Ba" and items 3 and 4 of the plaint schedule, namely, the fixed deposit in Punjab National Bank, Vrindavan, the zamindari abolition compensation bonds and the rehabilitation grant bonds which were all her personal properties, and not endowed properties, to the appellant and he has thereby become the absolute owner of those properties. In that Will Shyam Sunder had got certain provisions alleged to confer certain rights on the second respondent inserted by exercising undue influence on Asharfi Devi, and they are not binding on the appellant.

5. The trial court held the adoption of the second respondent by Asharfi Devi to be duly authorised and valid and found that she had validly executed the Will Ex. A-6 dated December 21, 1957 but could not transfer the shebaiti rights to the second respondent thereby and that the second respondent has, however, become the Mohatmim/Shebaiti by reason of the adoption and that the appellant had spent the sum of Rs. 1004.97 towards sewa puja and raj bhog of Gopalji. The trial court further found that the movable properties and the cash claimed by the appellant under the Will were the personal properties of Asharfi Devi and that the appellant has become entitled to them as a legal under the Will and that the other properties belong to the first respondent Gopalji and thus decreed the suit in part.

6. In the appeal by the appellant and the cross-objections filed by the respondents the learned Second Additional District Judge, Mathura found that the adaptation made in November 1956 was without the authority of Asharfi Devi's husband to adopt and, therefore, invalid in law. In the event of the adoption not being upheld the respondents wanted to fall back on the Will to support the second respondent's claim to shebaitship. That was naturally opposed by the appellant as the respondents did not rely upon the Will in the plaint and based the second respondents claim to shebaitship only on the adoption. The learned Second Additional District Judge rejected that contention as also the contention of the respondents that Asharfi Devi as the heir of her husband could appoint her successor shebait by her Will on the ground that it could not be done by Will following this Court's decision in K. K. Ganguli v. Panna Banerjee ((1975) 1 SCR 728 : (1974) 2 SCC 563 : AIR 1974 SC 1932) and he held that the second respondent has not become shebait under the Will. In this view the learned Additional District Judge allowed the appeal and dismissed the cross-objection and the suit in full.

7. In the second appeal also the question whether the appointment of the second respondents as shebait of the first respondent deity by Asharfi Devi's Will was valid in law was the only question considered by the Single Judge. The learned Judge expressed the view that it cannot be that prior to the commencement of the Hindu Succession Act a successor to shebaitship could not be appointed by Will unless it be that the Will was executed by the founder who had created the endowment by

dedicating his own absolute properties to the deity. In the light of this Court's decision in Angurbala Mullick v. Debabrata Mullick (1951 SCR 1125 : AIR 1951 SC 293 : 1951 SCJ 394) in which it has been held that if a shebaiti dies leaving behind him a widow and no son she would to the shebaiti right under the ordinary law but her rights in the shebaiti would be restricted in the same manner as they would have been if the successor was the son, which view reiterates the view expressed by the Privy Council in Bhabatarini Debi v. Ashalata Debi (AIR 1943 PC 89 : 47 CWN 607 : 207 IC 553 : (1943) 2 MLJ 51) that shebaiti is heritable property, the learned Single Judge held that shebaiti is property and found that no restriction had been placed in the Will of Asharfi Devi's husband Purushottam Lal in regards to the shebaiti and, therefore, Asharfi Devi had succeeded to the limited right of shebaiti as the heir of her husband and it became enlarged into an absolute right by Section 14(1) of the Hindu Succession Act, 1956 and that as there was no other heir or successor to Purushottam Lal, Asharfi Devi's appointment of the second respondent as the shebait under her Will Ex. A-6 Dated December 21, 1957 is valid in law. The learned Judge found that the zamindari abolition compensation and rehabilitation grants bonds go with the shebait and could not be claimed by the appellant. Thus he allowed the second appeal in part except as regards items 1 to 25 and 37 to 41 and the cash of Rs. 1004.97 and the fixed deposit lying with the Punjab National Bank at Vrindavan.

8. In this Court, The only question to which the arguments were confined by the learned counsel for the parties is whether the shebaiti right could be bequeathed by Asharfi Devi by her Will Ex. A-6.

9. It has to be noticed at the outset that the respondents had based their claim to the properties and the shebaiti rights only on Purushottam Lal's last Will and testimony Ex. A-2 dated April 14, 1944 Whereby he created the endowment constituting himself as the shebait and on the adoption deed Ex. A-24 dated November 10, 1956. That adoption which has been held to valid by the trial court has been found by the first appellate court to be invalid in law for want of authority of the husband to make the adoption prior to the commencement of Hindu Succession Act, 1956, and the High Court has not gone into that question. The respondent attacked the genuineness of Will Ex. A-6 in toto in their pliant while the appellant had relied upon it in part to the extent that it purports to confer on him absolute right in regard to certain properties including items 1 to 25 and 37 to 41 of List I of Schedule "Ba". He contended that the remaining portion of that Will which purports to confer shebaiti rights on the second respondent had been fraudulently introduced by the second respondent natural father Shyam Sunder by the exercise of undue influence on Asharfi Devi and that portion of the Will is not, therefore, binding on him. However, the learned Judge of the High Court has allowed the second appeal in part as stated above only on the basis of that Will. It may be stated as it was not contended by Mr P. K. Chatterjee, learned senior advocate appearing for appellant that it was not open to the High Court to grant relief to the second respondent on the basis of the Will on which no reliance had been placed in the plaint. As started earlier the only question regarding which Mr Chatterjee appearing for the appellant and Mr G. Viswanatha Iyer, learned senior advocate appearing for the respondent advanced their arguments was as regards the validity of the appointment of the second respondent as shebait by Asharfi Devi's Will, Ex. A-6.

10. Mr Chatterjee conceded in the course of his arguments that shebaitship is heritable property but submitted that hereditary succession to shebait is not mentioned in Purushottam Lal's Will, Ex. A-2 and, therefore, after the death of Asharfi Devi shebaitship right will revert to the heirs of the founder Purushottam Lal and that the second respondent could not, therefore, claim to be shebait of the first respondent-temple. In the connection, Mr Chatterjee invited our attention to the Judgment A. N. Ray, C.J., and K. K. Mathews, J. of this Court in K. K. Ganguli v. Panna Banerjee ((1975) 1 SCR 728 : (1974) 2 SCC 563 : AIR 1974 SC 1932) where at page 734 (SCC p. 568 para 19), Chief

Justice Ray Speaking for the Bench has observed that the transfer of shebaitship by Will is not permitted because nothing which the shebait has can pass by his Will which operates only after his death. Earlier at page 733 the learned Chief Justice has observed; (SCC p. 567, para 17)

The rule against alienation of shebaiti rights, has been relaxed by reason of certain special circumstances. These are classified by Dr B. K. Mukherjee at page 231 in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trust, First Edition under three heads. The first case is where transfer is not for any pecuniary benefit and the transferee is the next heir of the transferor or stands in line of succession of shebaits and suffers from no disqualification regarding the performance of the duties. Second, when the transfer is made in the interests the deity itself and to meet some pressing necessity. Third, when a valid custom is proved sanctioning alienation of shebaiti within a limited circle of purchasers, who are actual or potential shebaits of the deity or otherwise connected with the family.

11. This decision rendered in a case of sale of shebaiti right for pecuniary consideration appears to support the stand taken by Mr Chatterjee. But later decisions of this Court have taken a different view which appears to be consistent with the principles of Hindu Law. We find the following passage in para 419-A of Mulla's Hindu Law, Fifteenth Edition.

Though a Female is personally disqualified from officiating as a Pujari for the shastraically installed and consecrated idols in the temples, the usage of a female succeeding to a priestly office and getting the same performed through the competent deputy has been well-recognised and it is not contrary to textual Hindu Law nor opposed to public policy. In Raj Kali Kuer v. Ram Rattan Pandey ((1955) 2 SCR 186 : AIR 1955 SC 493 : 1955 SCJ 493) the Supreme Court upheld such usage.

In the next para 420 we find the following passage :

> A sale by a shebait or mohunt of his right to manage debutter property is void, even through the transfer may be coupled with an obligation to manage the property in conformity with the trust attached thereto. Nor can the right be sold in execution of a decree against him.

12. At page 158 of Mukherjee's Hindu Law of Religious and Charitable Trusts, Third Edition, it is stated thus :

> Unless therefore the founder has disposed of the shebaitship in any particular way and except when an usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder. Where the founder of a temple had died without having appointed a shebait, it was held that his widow on whom the right to appoint had devolved was entitled to appoint a shebait for the temple, and such appointment was not open to attack as an alienation of the office of a trustee. And the rule that shebaitship devolves like any other species of property has been applied to the office of archaka, as well, where emoluments were attached to it.

13. In the decision in Profulla Chorone Requitte v. Satya Chorone Requitte ((1979) 3 SCR 431 : (1979) 3 SCC 409), Sarkaria, J. speaking for himself and Tulzapurkar. J. has observed at page 440 thus : (SCC p. 417, paras 21 and 22)

> Office and property are both blended in the conception of shebaitship .... Apart from

> the obligations and duties resting on him in connection with the endowment, the shebait has a personal interest in the endowed property. He has, to some extent, the rights of a limited owner. Shebaitship being property, it devolves like any other species of heritable property. It follows that, where the founder does not dispose of the shebaiti rights in the endowment created by him, the shebaitship devolves on the heirs of the founder according to Hindu Law, if no usage or custom of a different nature is shown to exist.

14. A similar view has been expressed in an earlier decision of Chandrachud, C.J. and Desai and Pathak, JJ. in Ram Rattan v. Bajrang Lal ((1978) 3 SCR 963 : (1978) 3 SCC 236) where Desai, J. speaking for the Bench has observed thus : (SCC pp. 241-43)

This hereditary office of shebait is traceable to old Hindu texts and is a recognised concept of traditional Hindu Law. It appears to be heritable and partible in the strict sense that it is enjoyed by heirs of equal degree by turn and transferable by gift subject to the limitation that it may not pass to a non-Hindu. On principles of morality and property sale of the office of shebait is not favoured ..... Both the elements of office and property, of duties and personal interest are blended together in the conception of Shebaitship and neither can be detached from the other ..... A full Bench of the Calcutta High Court in Manohar Mukherjee v. Bhupendra Nath Mukherjee (AIR 1932 Cal 791 : 37 CWN 29 : 141 IC 544) held that the office of shebait is hereditary and is regarded in Hindu Law as immovable property. This Court took note of this decision with approval in Angurbala Mullick case (1951 SCR 1125 : AIR 1951 SC 293 : 1951 SCJ 394) .... Office of shebait is hereditary unless provision to the contrary is made in the deed creating the endowment. 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 element cannot be detached from the other ..... 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. The gift of such immovable property must of course be by registered instrument.

15. The text of Hindu Law and the aforesaid two decisions of this Court and the earlier decision in Angurbala Mullick case (1951 SCR 1125 : AIR 1951 SC 293 : 1951 SCJ 394) show that shebaitship is in the nature of immovable property heritable by the widow of the last male holder unless there is an usage or custom of a different nature in cases where the founder has not disposed of the shebaiti right in the endowment created by him. In the present case Purushottam Lal has not made any disposition regarding shebaiti right in his Will, Ex. A-2 dated April 14, 1944 whereby he created the endowment. No custom or usage to the contrary has been pleaded. Therefore, the widow Asharfi Devi had succeeded to the shebaiti right held by him on his death as a limited owner and that right has become enlarged into an absolute right by the provisions of Section 14(1) of the Hindu Succession Act, 1956 and she could transfer that right by a Will in favour of a person who is not a non-Hindu and who could get the duties of shebait performed either by himself or by any other suitable person. In these circumstances I hold that the second respondent has acquired the shebaiti right under the Will Ex. A-6 executed by Asharfi Devi on her death on March 7, 1963. No interference is called for in this appeal with the judgment of the learned Single Judge of the High Court. The appeal is accordingly dismissed with costs.

SABYASACHI MUKHARJI, J. (concurring) �

I agree that the appeal should be dismissed with costs. I would, however, like to explain the reasons why I come to that conclusion. In my opinion it is well-settled by the authorities that shebaitship is a

property which is heritable. The devolution of the office of shebait depends on the terms of the deed or the Will or on the endowment or the act by which the deity was installed and property consecrated or given to the deity, where there is no provision in the endowment or in the deed or Will made by the founder as to the succession or where the mode of succession in the deed or the Will or endowment comes to an end, the title to the property or to the management and control of the property as the case may be, follows the ordinary rules of inheritance according to Hindu Law. As shebaitship is property this Court in the case of Angurbala Mullick v. Debabrata Mullick (1951 SCR 1125 : AIR 1951 SC 293 : 1951 SCJ 394) recognised the right of a female to succeed to the religious office of shebaitship in view of the Hindu Women's Rights to Property Act, 1937.

17. Section 14(1) of the Hindu Succession Act, 1956 enlarged the limited right of a Hindu female to the absolute right of the holder. As in this case there was no bar against alienation imposed by the founder, the property in the nature of shebaitship in this case was devolved on Smt. Asharfi Devi under the Will of here husband Shri Purushottam Lal dated April 14, 1944. This will, the wordings of which have been set out in the judgment in the second appeal of the High Court, has not restricted the property in any manner in shebaitship bequeathed to Smt. Asharfi Devi. The High Court found and I respectfully agree with the High Court that the first sentence of the Will makes an absolute bequest of shebaitship to Smt. Asharfi Devi. The subsequent words only describe the rights and duties In the premises, in view of the law as laid down in Angurbala case (1951 SCR 1125 : AIR 1951 SC 293 : 1951 SCJ 394), she could make a Will in respect of shebaitship.

18. On the aforesaid reason, in my opinion, the appeal should fail. It is not necessary, therefore, to express any opinion on the correctness or otherwise of the views expressed by this Court in K. K. Ganguli v. Panna Banerjee ((1975) 1 SCR 728 : (1974) 2 SCC 563 : AIR 1974 SC 1932). Appeal dismissed with costs.

</html