Rambir Das and Another

Vs

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Civil Appeals No. 947 of 1980

(K. Ramaswamy, S. Saghir Ahmed JJ)

19.02.1997

ORDER

1. This appeal by special leave arises from the judgment dated 19-3-1980 passed by the learned Single Judge of the High Court of Allahabad in SA No. 1940 of 1977.

2. The admitted position is that one Hari Das owned considerable properties situated in Town Khair of Aligarh District which is part of Schedule 'B' attached to the plaint. He constructed a temple, by name Shri Jugal Kishorji Maharaj Mandir. Therein, the principal deity is Lord Krishna and Radha. He endowed all his properties to the Mandir. During his lifetime, he was in charge of the temple as de facto trustee and he did seva (service) and pooja to the deity. After the abolition of the estate under the U. P. Zamindari Abolition and Land Reforms Act, 1950, bhumidhari rights in the properties were conferred on the deity, Lord Krishna and Radha. Hari Dass left behind him four chelas by the name, Narain Das, Bansi Dass, Manohar Dass and Ram Dass alias Ram Chander. Appellant 1 Rambir Dass and his brother Har Govind Das are sons of Ram Dass. Bansi Dass, the last serving chela, had execute a Will, Ex. B-19 on 9-2-1955 whereunder he nominated the plaintiff and his brother as Shebaits of the Mandir. During his lifetime by Deed of Adoption dated 6-1-1966, Ex. A-45 cancelled the Will and adopted Defendants 1 and 2 his chelas. Bansi Dass died on 3-2-1969. Thereafter, the disputes arose between the appellants and the respondents as to who would be entitled to succeed to the shebaitship of the Mandir. It is not necessary to dilate upon the proceedings that went on in the criminal court and in the suit. Suffice it to state that the appellant had sought a relief of declaration of succession as a Shebait to the Mandir, possession thereof and consequential perpetual injunction against the respondents from interfering with his shebaitship and possession and enjoyment of the property as a Shebait of the temple. The trial court granted the decree. On appeal, it was confirmed. In the second appeal, the learned Single Judge held that the cancellation of the Will in the Adoption Deed is valid for the reason that Rambir Dass had married and thereby he ceased to be a bairagi. His brother Har Govind Dass having become insane, was disqualified to be a Shebait. The defendants-respondents being minors, nomination in that behalf is invalid in law. As a consequence, the property became escheat; he directed the Advocate General to take action for possession of the properties. Thus, this appeal by special leave and cross-appeal.

3. The primary question for the consideration is whether the appellant's claim to be a Shebait of the Mandir is valid and sustainable in law. In Tagore Law Lectures - 1936 published in Hindu Law of Religious and Charitable Trust, Justice B. K. Mukherjea, the former Chief Justice of this Court, stated at page 216 as under :

> "As shebaitship is property, it devolves like any other property according to the ordinary Hindu law of inheritance. If is remains in the founder, it follows the line of founder's heirs; if it is disposed of absolutely in favour of a grantee, it devolves upon the heirs of the latter in the ordinary way and if for any reason the line appointed by the donor fails altogether, shebaitship reverts to the family of the founder. In the matter or appointed of a Shebait, the discretion of the founder is unfettered. No Hindu would indeed think of appointing a person as manager of a temple who is a follower of a different religion, but there is nothing in law which prevents him from appointing as a Shebait a person of different or inferior caste."

It is further stated at page 217 thus :

> "As succession to shebaitship is governed by the ordinary law of inheritance, it scarcely admits of any doubt that a woman can succeed to shebaitship. The Supreme Court of India has held very recently that shebaitship is 'property' within the meaning of the Hindu Women's Right to Property Act; consequently, in a case to which the Act applies, the window and the son of the last Shebait would succeed jointly to the shebaiti rights held by the latter. It has been held further that even if the expression 'property' in the Hindu Women's Right to Property Act is to be interpreted as meaning property in its common or accepted sense and is not to be extended to any special type of property which 'shebaitship' admittedly is, as succession to shebaitship follows succession to ordinary secular property the general law of succession under Hindu law to the extent that it has been modified by the Hindu Women's Right to Property Act would also be attracted to devolution of shebaiti rights."

At page 227, it is stated thus :

> "As there is always an ultimate reversion on the founder or his heirs, in case the line of Shebaits is extinct, strictly speaking no question of escheat arises so far as the devolution of shebaitship is concerned. But cases may be imagined where the founder also has left no heirs, and in such cases the founder's properties may escheat to the State together with the endowed property. In circumstances like these, the rights of the State would possibly be the same as those of the founder himself, and it would be for it to appoint a Shebait for the debutter property. It cannot be said that the State receiving a dedicated property but escheat can put an end to the trust an treat it as secular property."

4. In Mayne's Hindu Law & Usage (14th Edn.) at p. 965, para 639 on "Entrance into religious order", it is stated as under :

> "One who enters into a religious order severs his connection with the members of his natural family. He is accordingly excluded from inheritance. Neither he nor his natural relatives can succeed to each other's properties. The persons who are excluded on this ground come under three heads, viz., the Vanaprastha, or hermit; the

> Sanyasi or Yati, or ascetic; and the Brahmachari, or perpetual religious student. In order to bring a person under these heads, it is necessary to show an absolute abandonment by him of all secular property, and a complete and final withdrawal from earthly affairs. The mere fact that a person calls himself a Bairagi, or religious mendicant, or indeed that he is such does not of itself disentitle him to succeed to property. Nor does any Sudra come under this disqualification, unless by usage. This civil death does not prevent the person who enters into an order from acquiring and holding private property which will devolve, not of course upon his natural relations, but according to special rules of inheritance. But it would be otherwise if there is no civil death in the eye of the law, but only the holding by a man of certain religious opinions or professions."

5. In Baba Kartar Singh Bedi v. Dayal Das [AIR 1939 PC 201 : 42 Bom LR 1] (PC at p. 207) this Court had held thus :

> "It was also argued by the respondent's counsel that the word 'chela' in the Will meant an adopted son. This contention too, in their Lordships' view, is totally without foundation. A chela, as is well known in India, means a disciple. He is different from an adopted son, both in the process of his initiation and in the purpose of his existence. A chela is generally nominated by the ruling mahant during his lifetime to conduct the affairs of a religious institution, or if he fails to do so, the chela is nominated by his principal followers after his death, who are connected with the institution. There could be no analogy between him and an adopted son, as known to Hindu law. In the case if the latter, it is imperative that one of his genitive parents must give, and one of his adoptive parents must receive, him in adoption. Without such a gift and taking, no adoption can be valid. There are, in addition, rituals such as the sacrificial fire, called 'Homa' to complete ceremonially the transaction of adoption and lastly it may be mentioned that the principal function of an adopted son is to perform periodically shraddhas, or obsequial rites to his parents and other ancestors for the salvation of their souls, according to Hindu sentiment. None of these incidents are to be found in the case of a chela, whose affiliation, if it may be so described, is mainly for the purpose of continuing the traditional obligations of the institution and holding and managing its property for purposes incidental thereto. His main function is not to perform obsequial rites for the benefit of his ancestors, for, in most cases, a sanyasin or a mahant, when he enters that order, abrogates the rights and obligations of a grihastha (householder), whose future felicity in a post-mortem existence is the object of solicitude on the part of his male descendants."

6. In Parma Nand v. Nihal Chand [LR (1938) 65 IA 252 : 1938 All LJ 799 : 40 Bom LR 907] (IA at p. 257) Sir Shadi Lal speaking on behalf of the Judicial Committee held thus :

> "In the town of Gujranwala there is a building variously described as Baghichi Thakaran or Gurdwara Baghichi, and the main issue which their Lordships have to determine in this appeal, is whether that building, together with the shops and other property attached to it, is the subject-matter of a trust for a public purpose of a charitable or religious nature. The issue was raised by the defendants who, claiming to be the representatives of the Hindu public, made an application to the District Judge under Section 3 of the Charitable and Religious Trusts Act (No. XIV of 1920), alleging that the Baghichi Thakaran was a public endowment for religious and

> charitable purposes, and called upon Mahant Narain Das, who was described by them as the trustee of the endowment, to furnish details of the nature and purposes of the trust, and of the value of the property belonging to the trust, and also to render an account of the income and expenditure of the trust property. Their allegations were contested by Narain Das, and the controversy between the parties led to the present action, brought by Narain Das for the purpose of obtaining an authoritative pronouncement upon the nature of the trust and of the property attached to it."

7. In Shri Krishna Singh v. Mathura Ahir [(1983) 3 SCC 689 : AIR 1980 SC 707] (SC at p. 725) this Court had pointed out in paras 77 and 89, as regards the rights of a Sanyasi, thus : (SCC pp. 717 and 720, paras 76 and 88)

> "The learned Civil Judge in his judgment observed : 'The fact of Harsewanand being a sanyasi remains undoubted.' His finding that he was not a Hindu sanyasi was based upon the view that under Hindu law mere 'renunciation' of the world is not sufficient. Hence, he holds that a Sudra who renounced the world and became sanyasi cannot be said to be a Hindu sanyasi, as according to the Hindu Sastras no Sudra can become a sanyasi. The underlying fallacy lies in his overlooking that the question had to be determined not according to the orthodox view, but according to the usage or custom of the particular sect or fraternity. It is needless to stress that a religious denomination or institution enjoys complete autonomy in the matter of laying down the rites and ceremonies which are essential. We must accordingly hold that the plaintiff was the validly initiated chela of Swami Atmavivekanand and upon his demise was duly installed as the mahant of Garwaghat Math according to the tenets of his 'Sant Mat' Sampradaya.

In the instant case, the appellant himself has, of course, without prejudice to his right to challenge the right of the original plaintiff, Harsewanand, to bring the suit, substituted Respondent 1 Harshankaranand, as his heir and legal representative, while disputing his claim that he had been appointed as the mahant, as he felt that the appeal could not proceed without substitution of his name. In his reply, Respondent 1 Harshankaranand alleges that after the demise of Mahant Harsewanand he was duly installed as the mahant of Garwaghat Math by the 'Sant Mat' fraternity. He further asserts that he was in possession and enjoyment of the math and its properties. The fact that he is in management and control of the math properties is not in dispute. The issue as to whether he was so installed or not or whether he has any right to the office of a mahant, cannot evidently be decided in the appeal, but nevertheless, he has a right to be substituted in place of the deceased Mahant Harsewanand as he is a legal representative within the meaning of Section 2(11), as he indubitably is intermeddling with the estate. He has therefore, the right to come in and prosecute the appeal on behalf of the math."

8. In Sri Mahalinga Thambiran Swamigal v. His Holiness Sri La Shri Kasivasi Arulnandi Thambiran Swamigal [(1974) 1 SCC 150 : (1974) 2 SCR 74] (SCR at pp. 78-81), this Court had held as under : (SCC pp. 158-59, para 18)

> "The definition of 'will' in Section 2(h) of the Indian Succession Act, 1925 would show that it is the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. By exercising the power of nomination, the head of Mutt is not disposing of any property belonging to him which is to take effect after his death. He is simply exercising a power to which

he is entitled to under the usage of the institution. A nomination makes the nominee stand in a peculiar relationship with the head of the Mutt and the Hindu community and that relationship invests him with the capacity to succeed to the headship of the Mutt. A nomination takes effect in praesenti. It is the declaration of the intention of the head of the Mutt for the time being as to who his successor would be; therefore, although it is said that the usage in the Mutt is that the power of nomination is exercisable by will, it is really a misnomer, because, a will in the genuine sense of the term can have no effect in praesenti. There can be no dispute that a nomination can be made by deed or word of mouth. In such a case, the nomination invests the nominee with a present status. That status gives him the capacity to succeed to the headship of the Mutt on the death of the incumbent for the time being. If that is the effect of the nomination when made by deed or word of mouth, we find it difficult to say that when a nomination is made by will, it does not take effect in praesenti, and that it can be cancelled by executing another will revoking the former will. Such, at any rate, does not seem to be the concept of nomination in the law relating to Hindu Religious Endowments. A nomination need not partake of the character of will in the matter of its revocability, merely because the power of nomination is exercised by a will. In other words, the nature or character of a nomination does not depend upon the type of document under which the power is exercised. If a nomination is otherwise irrevocable except for goods cause, it does not become revocable without good cause, merely because the power is exercised by a will. If the power of nomination is exercised by a will, it is pro tanto a non-testamentary instrument. A document can be partly testamentary and partly non-testamentary. In Ram Nath Das v. Ram Nagina Choubey [AIR 1962 Pat 481] the head of the Mutt for the time being exercised his power of nomination, more or less in terms of Exhibit B-1 here, namely, by making the nomination of a successor and providing that he will be the owner of the properties and charities of the Mutt and also of the other properties standing in the name of the head of the Mutt. The Court held that so far as the nomination and devolution of the properties of the Mutt were concerned, the will operated as a non-testamentary instrument. The Court said that the condition which must be satisfied before a document can be called a will is that there must be some disposition of property and that the document must contain a declaration of the intention of the testator not with respect to anything but with respect to his property. According to the Court, if there is a declaration of intention with respect to his successor, it cannot constitute a will even if the document were to state that the nominee will become the owner of the properties of the Mutt after the death of the executant of the will as that is only a statement of the legal consequence of the nomination."

At p. 88, this Court, looking from another angle, held as under : (SCC pp. 166-67, paras 44-45)

"Looking at the matter from another angle, we come to the same conclusion. We have already said that the power of nomination must be exercised not corruptly or for ulterior reason but bona fide and in the interest of the Mutt and the Hindu community. It then stands to reason to hold that power to revoke the nomination must also be exercised bona fide and in the interest of the institution and the community. In other words, the power to revoke can be exercised not arbitrarily, but only for good cause. We do not pause to consider what causes would be good and sufficient for revoking a nomination as the defendant had no case before us that he revoked the

nomination for a good cause.

We hold that a nomination when made can be cancelled or revoked only for a goods cause and, as admittedly, there was no good cause shown in this case for cancellation of the nomination by Exhibit B-9, the cancellation was bad in law. Therefore, it must be held that the appellant was holding the status of the Elavarasu of the Kasi Mutt during the lifetime of the defendant. Normally, a court will declare only the rights of the parties as they existed on the date of the institution of the suit. But, in this case on account of the subsequent event, namely, the death of the defendant, we have to mould the relief to suit the altered circumstance. If the defendant had been alive, it would have been sufficient if we had declared, as the learned Single Judge has done, that the appellant was the Elavarasu of the Kasi Mutt. Now that the defendant is dead, we make a declaration that the appellant was holding the position of the Elavarasu during the lifetime of the defendant, that the revocation of the nomination of the appellant as the Elavarasu by Exhibit B-9 was bad, and that the appellant was entitled to succeed to the headship of the Mutt of the death of the defendant."

9. Ms. Rachna Gupta, learned counsel appearing for the respondents, relied on the passage from Tagore Law Lectures - 1936 delivered by B. K. Mukherjea as published in Hindu Law of Religious & Charitable Trusts at p. 205, paras 5.6A and 5.6B which read as under :

> "5.6A. Shebaitship remains in the founder and his heirs unless disposed of. - When a deity is installed, the shebaitship remains in the founder and his heirs. 'According to Hindu law', thus observed Load Hobhouse in Gossamee Sree Greedharreejee v. Rumanlolljee Gossamee [LR (1889) 16 IA 137 : ILR 17 Cal 3] and this observation has been reiterated in numerous cases since then - '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 stow a different mode of devolution'. Unless therefore the founder has disposed of the shebaitship in any particular way and except when an usage or customs of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder.
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> 5.6B. It devolves like any other species of heritable property. - Where the founder of a temple had died without having appointed a Shebait, is 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 been applied to the office of Archaka as well, where emoluments were attached to it."

10. From the evidence it is clear that the plaintiffs are entitled to act as Shebaits of the temple because in the endowment deed at Ex. 2 late Shri Hari Dass did not lay down the line of succession to the office of Shebait. Further his 4 chelas nominated in this deed did not exercise their power to appoint some Shebait and as such it was not open for late Bansi Dass to appoint 2 chelas belonging to another family of his own desire. Since Bansi Dass died issueless the property would go again to the heirs of Ram Dass because Ram Dass and Bansi Dass were real brothers.

11. The trial court decreed the suit holding that the plaintiffs are Shebaits or Sarbarkars of the temple Shri Thakur Jugal Kishorji Maharaj Birajman Mandir (Marhi) in Town Khair and its debutter property as shown in Schedule 'B' of the plaint and for possession over the said property

and also for a permanent injunction restraining the defendants from interfering in the plaintiffs' possession over the said property. The defendants are given one month's time to deliver vacant possession of the disputed property to the plaintiffs failing which the plaintiffs would be entitled to get possession through court.

12. On appeal, the appellate court recorded the findings thus :

> "Hari Dass, the original founder of the trust had not specified any direction in the waqf deed of 1-4-1920 with regard to future Shebaitship or Sarbarkarship after the death of the four chelas nominated by him. The four chelas were also not given any authority to nominate future Shebaits or Sarbarkars after their death and as such the office of Shebaitship or Sarbarkarship devolved on the plaintiff as sons of Ram Dass and Bansi Dass though they were also the disciples of Bansi Dass. Defendants 1 and 2 were minors and as such they could neither act as chelas of Bansi Dass nor could entitle themselves to act as Shebaits or Sarbarkars in law on any account and the directions given in the adoption deed dated 6-6-1966 were illegal and void ab initio. Defendants 4 and 4 (sic) had got fraudulent and fictitious entire made in Revenue papers in their favour in collusion with lekhpal as sub-tenant over certain area of the temple and though they had no interest or title at all and as such Hoti Lal and Kishore Lal, the respective father and guardians of the Defendants 1 and 2 had no right claim the property against the interests of the deity."

13. It would, thus, be seen that there is no controversy as to whether Rambir Dass became entitled to succeed the temple as Shebait as could be seen from the evidence; in the light of the above legal position, Hari Dass had not laid down any line of succession to his chelas to administer the debutter estate of the temple. He left behind him four chelas and admittedly one of the chelas, Ram Dass, had married. The appellant and his brother, are the progeny of Ram Dass. Bansi Dass, the last chela had executed a Will under which he nominated Rambir Dass and his brother as Shebaits. Admittedly, he did not reserve any right to cancel their nomination in the Will. He cancelled the Will while executing an adoption deed in favour of Will having duly nominated the appellant and his brother as Shebaits ? Since the brother of the appellant became insane, it is not necessary to go into the question whether he would succeed after Rambir Dass. The Will in the normal connotation, takes effect after the demise of the testator. But in the case of nomination of a Shebait, the nomination takes effect from the date of its execution though it is styled as a Will. Once it takes effect, the nominee becomes entitled to go into the office as a Shebait after the demise of the last chela of Hari Dass. Under these circumstances, the shebaitship being a property, vests in Rambir Dass and he could administer the property and manage the temple for the purpose of spiritual and other purposes with which Hari Dass, the original founder had endowed the property to Lord Krishna and Radha.

14. The next question is whether Bansi Dass has power to adopt Defendants 1 and 2 and deprive the appellant of his right of shebaitship. Having seen that Bansi Dass did not reserve any right to cancel the nomination and that too for valid reasons, the Will became operative as soon as it was executed. Thereby, he had no more any power to cancel it and thereby the right of adoption would not be approved of by this Court as valid in law, as he is a bairagi and he could not adopt anyone except nominating a chela who follows the principles and precepts the founder had laid for being observed. Unfortunately, there is no plea in this behalf nor is there any power in that behalf. The only ground on which the cancellation came to be made was that Rambir Dass had married and thereby he became disentitled to be a bairagi to administer the debutter estate as a Shebait. There is no pleading that a married bairagi cannot hold the property nor that he becomes a Shebaits to administer the

debutter estate endowed to the Mandir. It is to be seen that the property stands vested in the deity, Lord Krishna and Radha and that anyone who administers the property, does so as a Shebait and administer as a trustee for and on behalf of the deity. It is true that the High Court has disallowed the Will and held that neither party is entitled to shebaitship. The view taken by the High Court is clearly illegal. It is not the case that the appellant was not nominated under the Will executed by Bansi Dass, in the first instance and thereby he was vested with the right to manage, as a Shebait of the debutter estate belonging to the deity, Lord Krishna and Radha. There is no plea nor proof that a married person is not entitled to be the Shebait. Therefore, the view of the High Court that he became disentitled on account of the marriage is clearly illegal. A chela cannot be adopted but can be nominated. As a consequence, the adoption of Defendants 1 and 2 by Bansi Dass as chelas is also not legal for the reason that they were minors as on the date when he claims to have adopted them as chelas. Chela nominated must be one who is independent and capable to renounce the worldly affairs or capable to adapt himself as bairagi. He cannot adopt anyone as his successor by application of the general principles of law.

15. Under these circumstances, though for a different reason, the adoption deed executed by Bansi Dass is clearly illegal. In consequence, the estate does not become an escheat but it continues to remain vested in the deity and the Shebait remains in charge of management of the property. The right of management should go either in the order of succession given by the original founder or, in its absence, in the line of intestate succession. It is seen that Ram Dass, one of the chelas was married and he left behind his son Rambir Dass, the appellant; another chela, Bansi Dass having died without nominating any chela, necessarily, the succession would go to the heirs of one of the chelas. In the absence of the line of succession indicated by the founder, admittedly, Rambir Dass became entitled to succeed by inheritance the debutter estate as Shebait to manage the temple on behalf of the deity, Lord Krishna and Radha and he remains to be the trustee and is entitled to get possession of the properties and manage the same for the purpose for which and in the manner in which, it was endowed by Hari Dass. If there is any dereliction of the duty in that behalf by the appellant, appropriate action would be taken by the Endowment Department of Uttar Pradesh Government in accordance with law. But so long as he maintains and administers the property for the benefit and for the purpose for which and in the manner in which, it was endowed by Hari Dass. If there is any dereliction of the duty in that behalf by the appellant, appropriate action would be taken by the Endowment Department of Uttar Pradesh Government in accordance with law. But so long as he maintains and administers the property for the benefit and for the purpose for which they were endowed, he is entitled to manage as a Shebait for and on behalf of the deity, Lord Krishna and Radha.

16. The appeal is accordingly allowed. The judgment and decree of the High Court stands set aside and that of the trial court stands restored. But, in the circumstances, without costs.

CA No. 4173 of 1983

17. In view of the above order, the appeal is dismissed. No costs.