

(1911) 08 CAL CK 0042
In the Calcutta High Court
Case No : L.P. Appeal No. 9 of 1911

Dharma Das Mandol

APPELLANT

Vs

Gosta Behary Mandol and others

RESPONDENT

Date of Decision : 31-08-1911

Acts Referred:

Citation : (1911) 08 CAL CK 0042

Judgement

Chatterjee, J.—This appeal arises out of a suit for a declaration that certain properties which had passed from the family of the Plaintiff and Defendants and had been re-purchased by some of the Defendants were debutter properties and liable to contribute to the expenses of the debsheba. There were also certain other prayers. The debutter character of the property was denied. The learned Subordinate Judge has found that the property was once debutter but that by the action of certain members of the family in dealing with this property the character of the property has been changed into that of secular property. As authority for the latter conclusion, he has relied upon certain cases which he does not name. He may have had in his mind the case of Doorga Nath v. Ram Chandra I. L. R. 2 Cal. 341 (1876). In that case, there is no doubt, their Lordships said : "but in the case of a family idol, the consensus of the whole family might give the estate another direction." In the first place, that is a mere opinion which was not necessary for the decision of the case : and, in the second place, it does not say that it is competent to the heirs of the donor or other shebait to convert debutter property into secular property by the manner of their dealing with the same. In any case, the facts found in this case do not come within the purview of that opinion even, for, in this case, there was not the consensus of the whole family. The Plaintiff and his predecessors were not guilty of any breach of trust in respect of the debutter in question. It is argued before us that the mere fact of the several members of the family having partitioned the land was an act of breach of trust and that in that way the whole family may be considered to have joined in giving the property a direction in the way of its being treated as a secular property. The partition, however, must have been for

the purpose of convenience of user for the sheba for which the property was dedicated: and, if that be so, the partition would not be in violation of any trust for the sheba of the deity. Besides that, there is nothing against the Plaintiff or his predecessors. There has not, therefore, been any legal conversion of the debutter property and the finding of the learned Subordinate Judge to that effect is wrong.

2. During the pendency of the appeal, there has been a compromise of the case with Defendant No. 3 and the relation between the parties is governed, so far as the Defendant No. 3 is concerned, by the terms of the compromise entered into in the case. As regards the other Defendants, there will be a decree in this case declaring that the property in suit is debutter property and liable to contribute to the sheba of the deity Sridhar Jiu.

Jenkins, C.J.

3. I agree with the conclusion at which Mr. Justice Chatterjee has arrived. The case appears to me to be a very simple one. We are only concerned with Defendants Nos. 1 and 2, for with Defendant No. 3 there has been a compromise which removes that Defendant from the sphere of contest. We start with the fact found by the Subordinate Judge that the property in suit was debutter. The purpose of the suit is to have its debutter character established, at this present day, with consequential relief. It is sought to establish this claim not against a stranger to the dedication, but one who claims under an original shebait. It lies upon Defendants Nos. 1 and 2 to show that there has been some subsequent legal conversion of the land to the ordinary user of property. [See *Juggut Moheene v. Rajendro Nath* 10 B. L. R. 19, 31 (1871)]. Whatever force may be attributed to what was said by their Lordships of the Privy Council in *Doorga Nath's case* I. L. R. 2 Cal. 341 (1876) in relation to a family idol, it certainly is not shown upon the facts of this case that there has been a legal conversion of the property which has divested it of its original debutter character.

4. On these grounds, I think that the decree of the Subordinate Judge cannot be supported and his decree as well as the judgment of Mr. Justice Caspersz must be set aside and a decree passed declaring the present debutter character of the property and that the Plaintiff and Defendants Nos. 1 and 2 as shebaites are under an obligation to apply the income of the debutter property towards the purpose to which it was dedicated, that is to say, the worship of the deity Sri Sri Sridhar Jiu. The Plaintiff declares his willingness to apply the income of the property in his possession for the purpose of the endowment, and we decree that the income of the property in the possession of Defendants Nos. 1 and 2 be also applied for the purpose of the endowment. Each party will bear its own costs in all the Courts.