

(1983) 09 CAL CK 0001
In the Calcutta High Court
Case No : Matter No. 1316 of 1982

Gour Lal Mitra and Another	Vs	APPELLANT
Tripura Prosanna Basu and Others		RESPONDENT

Date of Decision : 21-09-1983

Acts Referred:

Trusts Act, 1882 — Section 34, 7, 9

Citation : 88 CWN 928

Hon'ble Judges : Dipak Kumar Sen, J

Bench : Single Bench

Advocate : Suhrit Deb, for the Appellant; N.K. Bose, K.J. Sengupta and Dilip Kumar Banerjee, for the Respondent

Judgement

Dipak Kumar Sen, J.—Under the Will of one Gokul Chandra Mitra executed sometime in 1807 a de-butter estate was created and properties were dedicated for the seva puja of two Hindu Deities, namely Sri Radha and Sri Madan Mohon Jew. The said debutter estate is presently being managed under a scheme which was approved by a decree dated the 7th August 1940, passed by this Court in Suit No. 1958 of 1939. Gour Lal Mitra and Baranasi Mitra, two shebaites of the said Deities, by the present application u/s 34 of the Indian Trusts Act, 1882 have mooted the following questions be answered by this Court :

- (a) Are both the Managers, T.P. Basu and P.K. Das or either of them, and if so, which is the Manager to be held responsible for loss of ornaments and jewellery and utensils belonging to the said Thakurs ?
- (b) If the respondent No. 1 Taraprasanna alias T.P. Basu be found guilty as aforesaid, what steps can be taken for the recovery of the missing ornaments ?
- (c) Is the petitioner Gour Lai Mitra entitled as shebait to be reimbursed out of the said funds of the Estate to the extent of the disbursements made by him out of his own pocket for daily sheba and periodical festivals?
- (d) Is the Trust provided in the Trust Deed and the Scheme sanctioned by this

Court a private religious trust and, if so, can it be treated as or be lawfully converted into a public religious, and charitable trust or a mixed public and private Trust ?

(e) Are a majority of the Trustees entitled to commit acts which are likely to change the basic character and nature of the said Trust ?

(f) Are a majority of shebait by adopting resolution at meetings entitled to permit the Manager to instal a pawn box and is such installation permitted by the terms, letter and spirit of the said Deed of Settlement or Trust or of the said Scheme as amended and sanctioned by this Court ?

(g) Are a majority of shebait by adopting resolutions at their meeting entitled to set up or cause to set up a Homoepathic Charitable Dispensary at the cost and expense of the said Trust ?

(h) Are the shebait of the said Thakur or any number of them entitled to open the locker maintained at the Bank of the Thakur's Estate pending the appointment of a new Manager ?

(i) Are a majority of shebait by, adopting a resolution entitled to empower the present Manager to provide needy but meritorious students with food and lodging in the Temple premises at the cost and expenses of the Trust when such expenses are not permitted by the Scheme ?

(j) Are a majority of shebait entitled without prior sanction or permission of this without to allow or cause the Manager to file an application before the Income Tax Authorities for a declaration that the estate of the Deity is a public religious and charitable trust ?

(k) Are the aforesaid acts of (i) converting the said private religious trust into a public religious and charitable trust, (ii) installing a pawn box, (iii) setting up or causing to set up a Homeopathic Dispensary, (iv) providing needy but meritorious students with food and lodging in the temple, and (v) filing an application before the Income Tax Authorities for a declaration that the said estate is a public religious and charitable trust, permissible under or contrary to the terms, letter and spirit of the Scheme and the Deed of Settlement or Trust ?

(1) Is the manager entitled, in support of a resolution passed by the majority of the Trustees, to dispose of or to expend trust money or income for the aforesaid purported charitable activities, curtail or fail to pay out of the trust income just and reasonable amount of money to the petitioner No. 1 as the paladar for the time being when demanded by me for the daily and periodical worship of the said Thakur ?

(m) During the pendency of this application are the trustees or shebait entitled to open the said bank locker without the prior appointment of a new manager of the estate, and should the said application to the Income Tax Authorities be proceeded with on behalf of the trust and should the said trustees or shebait

appoint Kunja Mohan Sinha as the new Manager without calling for applications for the office by advertisement in newspapers and without furnishing due and sufficient security for the purpose ?

2. The petitioners also pray for the following orders :--

(b) The parties except the said Tripura Prosanna alias T.P. Basu be directed not to open or be restrained by an injunction from opening the said locker maintained in the State Bank of India, Bagh Bazar Branch on behalf of the said trust estate;

(c) The parties except the said Tripura Prosanna alias T.P. Basu be directed not to proceed or be restrained by an injunction from proceeding with the application made to the Income Tax Authorities;

(d) The parties except the said Tripura Prosanna alias T.P. Basu be directed to advertise in newspapers for and thereafter to select a suitable person for the office of the new Manager of the said trust estate upon requiring him to furnish due and sufficient security for that purpose;

(e) In the alternative, the parties herein except the said Tripura Prosanna alias T.P. Basu be directed not to appoint or be restrained by an injunction from appointing Kunja Mohan Sinha as the new Manager of the said trust estate without furnishing due and sufficient security for the purpose;

(f) The parties except the said Tripura Prosanna alias T.P. Basu be directed not to permit or maintain or be restrained from permitting or maintaining the said Homeopathic or any other charitable Dispensary at the temple premises at the cost of the said trust estate;

(g) The parties except the said Tripura Prosanna alias T.P. Basu be directed not to permit or maintain or be restrained from permitting or maintaining students at the said temple premises;

(h) Jogendra Lall Mitra, the respondent No. 19, be directed to furnish proper and faithful accounts of all rents, profits income and funds of the said trust estate dealt with by him or remaining in his custody since the 25th October 1982;

3. The grievance of the petitioners is that during the pala of the petitioner No. 1 amounts provided for in the scheme were not paid to the latter and that he was out of pocket in performing seva puja or the Deities during his turn. Another grievance is that ornaments belonging to the Deities have been lost or misappropriated by the previous Managers of the estate, appointed under the Scheme. A further grievance is that the she-baits are seeking to alter the nature of the Trust and convert a private trust created under the settlement into a public trust.

4. This application is opposed by the other shebaites who contend, inter alia, that this application is not maintainable under the Indian Trusts Act as the estate is not a trust estate governed by the Indian Trusts Act. It is contended further that the debutter estate is being administered under a scheme and without alteration

of the scheme the prayer sought for by the petitioners should not be allowed.

5. Section 34 of the Indian Trusts Act, 1882 provides as follows :

Section 34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court or original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

6. Learned Counsel for the petitioners submitted that the Matter is governed by Charitable and Religious Trusts Act, 1920. Sections 7 and 9 of the said Act, provide as follows :--

Section 7. Powers of trustee to apply for directions.

(1) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for public purpose of a charitable or religious nature may apply by petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advice or direction of the Court on any question affecting the management or administration of the trust property, and the Court shall give its opinion, advice or direction, as the case may be, thereon :

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.....

Section 9. Savings.

No petition under the foregoing provisions of this Act in relation to any trust shall be entertained in any of the following circumstances, namely :--.....

(c) If a scheme for the administration of the trust property has been settled or approved by any Court of competent jurisdiction, or by any other authority acting under the provisions of any enactment.

7. Both under the Indian Trusts Act, 1882 and Charitable and Religious Trusts Act, 1920, questions involving details or difficulty and of importance should not

be answered by the Court in a summary manner in an application made under the said statutes. In any event, no application can be made under the Charitable and Religious Trusts Act, 1920, where a scheme has already been framed by the Court. The Indian Trust Act, *ex facie*, does not apply in respect of a debutter estate in favour of Hindu Deities governed by the Hindu Law of religious-endowment. Disputes have been raised by the petitioners on the amount payable to the petitioner No. 1 during his *pala*. The quantum payable is not substantial. Whether the shebais are converting a private debutter into a public or religious trust is a serious matter and has to be considered in a proper proceeding. For that purpose, a new scheme may have to be framed if necessary. I decline to interfere in the management of the debutter estate indirectly by answering the questions mooted in this application. The petitioners will be at liberty to institute a regular administration suit, if so advised, and the petitioners, may also proceed against the Managers and ex-Managers of the estate in civil or criminal proceeding for alleged misappropriation of the assets of the debutter as they may be advised. This order is made without prejudice to the rights and contentions of the parties and it is made clear that the disputes raised have not been adjudicated in this proceeding. There will be no order as to costs. All interim orders are vacated.

All parties to act on the signed copy of the minutes of this order.