

(1981) 08 MP CK 0014
In the Madhya Pradesh High Court
Case No : S.A. No. 286 of 1967

Idol Ganeshji Maharaj and others

APPELLANT

Vs

J.M. Anand and another

RESPONDENT

Date of Decision : 26-08-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1983) J LJ 248

Hon'ble Judges : B.C. Varma, J

Bench : Single Bench

Advocate : P.W. Sahasrabuddhe, for the Appellant; J.M. Anand, for the Respondent

Final Decision : Allowed

Judgement

B.C. Varma, J.—This appeal is by the plaintiffs.

2. Ganpat Rao, maternal grand-father of Madhav Ramchandra Agashe, constructed a row of houses called Bada. He also constructed a temple and installed therein an idol of Shri Ganeshji Maharaj sometime before the year 1900. Ganpat Rao's widow was Saraswatibai. After the death of Ganpat Rao, she sold the entire property to defendant No. 2 respondent No. 2, Firm Nandram Narayandas, vide sale-deed dated 10-4-1933 (Ex. D/6). Later, respondent No. 2, vide sale-deed dated 7-2-1957, sold all that property to defendant No. 1 respondent No. 1. Saraswatibai died in the year 1948 without leaving any son. Plaintiff Madhav Ramchandra is the daughter's son of Saraswati Bai and Ganpatrao. Ramchandra had taken proceedings before the Aukauf Department of the then Gwalior State laying claim to this property as a public trust His claim was rejected by Aukauf Department, vide order Ex. D/1.

3. The three appellants before this Court were the plaintiffs. Since at the time of hearing of this appeal, Shri P.W. Sahasrabuddhe, learned counsel for the appellants stated before me that he does not claim the temple of Shri Ganeshji

Maharaj to be a public trust or a public temple and restricted his claim only on behalf Madhav Ramchandra as an individual and that too for worship of the idol installed in the temple and for its management, I shall confine myself to narrate only such facts which are necessary to decide this claim.

4. The plaintiffs' case is that the temple in question which also includes the Sabhagrah, was constructed by his mother's father Ganpat Rao somewhere in the year 1900. Deity of Ganeshji Maharaj was installed in that temple after due ceremonies. The temple is known as Pendse temple and the other house property is known as Pendse Bada. Ganpat Rao had a right to worship the deity in the temple and to manage the temple. On his death, his entire property, i.e. the Pendse temple, Pendse Bada and right to worship the deity and manage the temple were inherited by his widow, Saraswatibai from Ganpat Rao. She did not nor could she under the law transfer the right to worship the deity and manage the temple. The respondent No. 2, therefore, acquired no right to manage the temple. The right to worship continued in the family of Ganpat Rao and was inherited by the plaintiff as reversioner after the death of Saraswatibai in the year 1948, he being daughters son of Saraswati bai. It was, therefore, alleged that even on transfer of the property by the respondent No.2 in favour of respondent No. 1 by sale-deed dated 7-2-1957, this right to worship the deity and, therefore, the consequent right of access to the deity and the temple and also the right to manage the temple devolved and continued to vest in Madhav Ramchandra. Further allegation is that having obtained the sale-deed dated 7-2-1957, respondent No.1 started proclaiming that with other properties, he has also purchased the temple. The respondent No. 1 not only made such declaration but also threatened to dismentle the Sabhagrah which, according to the appellants, is a part of the temple itself. Defendant No. 1 also used to lock the temple which made it manifest that he challenged the right of the plaintiff Madhav Ramchandra to approach the temple, manage it and worship the deity installed therein. It is this adverse claim by the respondent No. 1 which gave the plaintiffs a cause of action to file a suit giving rise to this appeal. Many reliefs were claimed. As I have earlier stated, the claim in this appeal is restricted only on behalf of the Madhav Ramchandra and that too for declaration that he has a right to enter into the temple, worship the deity and to manage the temple including the Sabhagrah as its part. The plaintiffs also claim that the defendants be restrained from interfering with the aforesaid rights.

5. The respondents' case was one of denial. According to them, the temple of Ganeshji Maharaj is not a public temple nor a public trust. The deity of Ganeshji Maharaj was not installed in the temple. There was no Shebait nor any such right of Shebaitship including right of worship was inherited either by Saraswatibai or on her death, by his daughter's son Madhav Ramchandra. The temple was a part of the personal assets of Ganpat Rao. It was transferred to respondent No. 2 by Saraswatibai and then by respondent No. 2 to respondent No. 1 by duly executed sale-deeds. By sale-deed (EX. D/6), Saraswatibai divested herself of all the rights, title and interest in the property left by Ganpat Rao including the temple

in suit. While executing the sale-deed (Ex. D/6) she did not reserve to herself the right to worship the deity or the right to manage the temple. She was only permitted to occupy some rooms in those premises for her life. It was also submitted that Sabhagrah is not the part of the temple. The temple was said to be the private temple of Ganpat Rao. Thus, the plaintiff's rights as claimed in the suit were denied. It was also alleged that since Saraswatibai transferred the property in 1933 in favour of respondent No. 2 and respondent No. 1, got it transferred in his favour from him and thus continued to be in possession openly, peacefully and adversely to the plaintiffs and Saraswatibai, the plaintiffs right or title, if any, had long extinguished by adverse possession.

6. The trial Court to some extent upheld the plaintiff's right but dismissed the suit holding it to be barred by time. On appeal by the plaintiffs, the the lower appellate Court held the suit to be within limitation being filed within twelve years by Madhav Ramchandra as reversioner on the death of Saraswatibai but negated the plaintiff's claim on the ground that the plaintiffs did not inherit any right of worship in the temple or in its management. It also held that the Sabhagrah was not the part of the temple. This appeal is directed against this dismissal of the suit. Before me, Shri Sahasrabuddhe, learned counsel for the plaintiffs appellants pressed the following two questions for consideration:

(i) Whether the plaintiff Madhav Ramchandra in his personal capacity has a right to worship the deity of Ganeshji Maharaj installed in the temple as an heir of the founder and manage the temple, and

(ii) Whether the Sabhagrah is part of the temple ?

7. No trace of idol worship existed during the Vedic period and early Vedic hymns make no allusion to idol worship. According to Max Muller, idolatry did not exist among the Vedic Aryans. Latter literature has reference to image worship and it is from Buddhism that Hinduism received impetus for, in domestic shrines and public temples. Certain rituals have to be gone into before the idol is set up and before it can be used for worship, it has to be properly consecrated. Most important is the Pran-Pratishtha, i.e., life-implacing. The ceremonial rites and observances connected with Pratishtha or consecration of an idol are long and elaborate. The orthodox Hindus believe that by this Pran-Pratishtha the universal soul is localised and is made to dwell at a particular place and the law would presume that when the idol is installed in a temple, the ceremonies have been properly performed. The deity is infused with life by the chanting of Mantras, sprinkling with water from holy places etc. It is after this Pran Pratistha that the deity becomes worshipful and in image is treated as living being. It is unusual to have such elaborate installation in case of domestic idols.

8. A temple is the house of the deity. Since it is the abode of a deity, certain rules are laid down to ensure greater sanctity of structure. Selection of the proper site, colour, odour, taste and solidity of the soil, fixing of the cardinal points, location of the doors, windows etc. are various aspects which have to be

borne in mind while constructing a temple. However, for our purpose, such ceremonies have little importance and even if the rules prescribed by the Smriti writers are not observed by the founder of the temple, the legal rights over or in respect of the temple cannot, in any way, be affected by such omission. Structure of the temple is relevant only in deciding whether it is public or private. In a Hindu temple, there is often a Holy of Holies to which access is not free and is regulated by special rules or special rights to enter and perform worship therein. For general worship or Darshan of idol, there is usually the Sabhamandap which is at some distance from the main body of the temple. After the deity is duly installed in the temple by performance of Pran-Pratishtha, says Pandit Pran Nath Saraswati, it divests the proprietorship of the temple from the donor and vests it in the idol. The ceremonies of dedication are Sankalpa, Utsarga and Pratishtha. Utsarga is the formal renunciation by the founder of his ownership in the property whereafter it becomes impressed with the trust for which he dedicates it. The Supreme Court in *Deoki Nandan Vs. Murlidhar*, observed that even without the observance of such ceremonies, there can be valid dedication of a temple. It is usual to dedicate immovable properties for worship of the deity and for other religious and charitable purposes. As held in *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, , no document is necessary for any such dedication. Emphasis is laid upon the intention of the grantor and if there is clear and unequivocal manifestation of the intention to create a trust and there is formal divesting of ownership in the property on the part of the donor with the intention of devoting it to religious or charitable purpose, the dedication must be deemed to be complete. The absence of ceremonies would only be a piece of evidence and would not be material if there is other evidence sufficient to establish dedication.

9. Now building of a temple itself is a religious purpose. When a deity is installed in a temple and is regularly worshiped, it becomes a religious endowment, the deity becomes a juristic person and the manager occupies the same position as a Shebait. The deity is looked upon as a kind of human entity. A Hindu idol has always been held to be a juristic person and it is in this idol that the dedicated property, vests. This juristic personality in the idol is a mere creation of law and has its origin in a desire for doing justice and providing centres for juristic relations. The Privy Council in *Pramotha v. Pradyumna* (L.R. 521 245) observed that "it has juridical status with the power of suing and being sued. The juridical person in the idol is not the material image and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the Pran-Pratishtha ceremony. It is not also correct that the Supreme being of which the idol is a symbol or image is the recipient and owner of the dedicated property. The idol as representing and embodying the spiritual purpose of the donor is the juristic person recognised by law and in this juristic person the dedicated property vests. "Deity, however is the owner of the dedicated property not in the primary but in the secondary sense, inasmuch as it cannot hold or enjoy property like a man The fictitious ownership which is imputed to the deity

is determined by the express intentions of the founder, the debuttar property cannot be applied or used for any purpose other than that indicated by the founder. Thus, in this sense, the deity as owner represents nothing else but the intention of the founder. [See : H.K. Mukherjea's Hindu Law of Religious and Charitable Trusts, Fourth Edition, pp. 38 and 39].

10. Since it is only in the ideal sense that the property vests in the idol, the possession and management of it must be entrusted to some person as manager or Shebait. When a man installs a deity and he does not appoint any Shebait, he himself becomes responsible for the service of the deity. The duties may be personally performed or may be performed by employment of a priest, Shebaitship is not a mere office, "a Shebait has also a personal interest in the endowment. He has some sort of right or interest in the endowed property which has, at least, partially a characteristic of proprietary right. He can create derivative tenure in respect of the endowed property. Shebaitship is now accepted as property". [See: Ganesh Chunder v. Lal Behari (LR 63 IA 448)]. When a deity is installed, the Shebaitship remains in the founder and in the line of his heirs. It is now well accepted principle that Shebaitship devolves like any other specific heritable property. A Division Bench of Patna High Court in Mt. Anuragi Kuer Vs. Parmanand Pathak and Another, held that where a founder of temple acts as the Shebait during his life time but makes no disposition of the Shebaitship to take effect after his death and there is no usage, course of dealing and some other circumstances showing a special mode of devolution, the management and control of the Shebait property, besides the right of the acting as a ministrant to the deities, follow the line of inheritance from the founder. It must now be taken as a settled law after the decision of Privy Council in Bhava Tarini v. Asha Lata (ILR (1943) Cal. 137) that even if the founder were to make a limited grant of Shebaitship, the residue would still remain in him and his heirs in state of inheritance. But if the founder appoints some one as Shebait and also lays down line of its devolution without reserving any right of revocation in himself at the time of making the grant, it is not competent for him to revoke it later. But if it remains in founder, it follows the line of founder's heirs. As a necessary corollary, it follows that a women can succeed to Shebaitship. In Angurbala Mullick Vs. Debabrata Mullick, , it has been laid down that Shebaitship is property within the meaning of Hindu Women's Rights to Property Act. It has, therefore, been held that in case to which the Act applies, the widow and the son of the last Shebait would succeed jointly to the Shebaiti rights held by later. It has further been held that even if the expression "property" in the Hindu Women's Rights 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 the general law of succession under Hindu Law to the extent that it has been modified by the Hindu Women's Rights to Property Act would also be attracted to devolution of Shebaiti rights. Yet another important feature of this Shebaiti right is that despite being heritable like any other property, it lacks other character of being freely transferable by the

person in whom it vests. The reason, as pointed out by B.K. Mukherjee in his Hindu Law of Religious and Charitable Trusts," Fourth Edition at page 229, is that the personal proprietary interest which the Shebait has got is ancillary to and is inseparable from his duties as an administrant of the deity and a manager of its temporalities. The transfer of Shebaitship would mean a deligation of duties of the transferer and says Mukherjee, it would contravene the very policy of the Law. Of late, the Supreme Court, in Kali Kinkor Ganguly Vs. Panna Banerjee and Others, , at page 1936, paragraph 25), has laid down that "neither a temple nor the deities nor the Shebaiti right can be transferred by sale for pecuniary consideration. It has been further observed that such transfer by sale is void in its inception." The property dedicated to the services of an idol is, as a rule, inalienable. But exceptions to this rule have been recognised in the interest of the deity itself.

(Emphasis supplied).

11. The aforesaid is the position of law. The lower appellate Court, which is the final Court of fact and whose findings of fact are binding in this second appeal u/s 100, Civil Procedure Code, has in paragraph 8 of the impugned judgment, found that Ganpat Rao Pendse, the father of Madhav Ramchandra Rao's mother constructed the temple and installed the deity of Ganeshji Maharaj in that temple. As the deity is admittedly set up in the temple, it shall be presumed that all the necessary formalities of "Pran Pratishtha" have been performed. Once that is found it has further to be held that the doner is divested of the proprietorship of the temple and it is then the idol in whom the ownership vested. Shri Anand for the respondents argued that there is no evidence of dedication and consequently no endowment ever came into existence. Relying on Shahzad Kunwar v. Ram Karan (AIR SC 254), it was submitted that mere construction of a temple without anything more will not create an endowment. To some extent, this also is the view of the lower appellate Court, which, after holding that the temple was constructed by Ganpat Rao, who also installed the deity of Ganeshji Maharaj therein, has held that the temple is neither public nor a private endowment on the basis that there is no evidence of dedication. The appellants examined Hari Dinker (PW 1) a man aged about 78 years at the time of deposition to say that he witnessed the "Pran Pratishtha" of the deity in the temple. The lower appellate Court has doubted the presence of this witness at that occasion as the temple is found to have been constructed sometime in the year 1900 A. D. To accept or not to accept his testimony was the exclusive domain of the lower appellate Court. But then this evidence of Hari Dinker (P.W. 1) and that of other witnesses has been considered only to judge if the nature of the temple was public or private. Now since we are not required to resolve that controversy as per the statement made at the Bar before me by the learned counsel for the plaintiffs appellants and since we are only to consider the claim of Ramchandra Agashe to worship the deity in the temple and to manage it, nothing much will turn upon the oral evidence in this case. The temple has been constructed, the deity had been duly installed and was admittedly being

worshipped. On formal installation of the deity, the dedication was complete and valid, This is the view expressed by the Supreme Court in *Deoki Nandan Vs. Murlidhar*, where it was observed that where there was *Pratishtha*, i.e., formal installation of the deity, the dedication was complete and valid notwithstanding that *Utsarga* (formal renunciation by the founder of his ownership in the property) had not been performed. There is evidence to show that after the deity was duly consecrated, it was being regularly worshipped by the founder and then by his widow *Saraswatibai* and *Utsavas* (religious functions) were being held. The plaintiffs' witnesses have deposed that the deity was regularly worshipped even after the execution of sale-deed by *Saraswatibai* in favour of the respondent No. 2, who even appointed a *Pujari* and functions were held, of course, with the permission of the respondent No. 2. All this clearly manifests the intention of the founder that he reserved no right to himself in the temple which after the installation of the deity therein, became the property of the idol. There is nothing on record to show that even after the construction of the temple and due installation of the deity therein, the founder, viz., *Ganpat Rao*, even treated the temple as his personal property. Once the act of installation of the deity in the temple was performed, it was for the respondents who claim it to be still their personal property, to show that it never vested in the deity despite such consecration. In this the respondents have utterly failed. Besides there is admission of the respondent No. 2's partner *Kashiram* in proceedings before the *Awkaf Department* that the temple was not included in the sale-deed. This admission is decisive of the issue unless withdrawn. The learned Judge of the lower appellate Court has clearly fallen into error of law in not drawing the necessary presumption of law after reaching a finding that the temple was constructed by *Ganpat Rao* who also duly installed the deity therein according to law This is more so when direct evidence of *Pran Pratishtha*/installation was not available, the temple being constructed in the year 1900 A.D.

12. For what I have stated above, it is not necessary to find out with reference to the oral evidence on record and the sale-deed (Ex. D/6) whether the sale in favour of the respondents included the rights which are now contested in this appeal. It was argued by the learned counsel for both the parties with considerable amount of stress that the sale-deed included the temple also. Even if it were so, on the state of law as I have discussed above the right to worship the deity installed in the temple and its management could not be transferred under the law and, therefore, continued to vest in the transferer and his family and now in *Madhav Ramchandra Agashe* *Madhav Ramchandra Agashe*, therefore, has a right to manage the temple and to worship the deity installed therein. To this extent, I differ from the findings arrived at by the lower appellate Court.

13. Relying upon an obiter dicta of the Privy Council in AIR 1940 116 (Privy Council) , *Shri Anand*, learned counsel for the respondents, argued that Hindu religious endowment is subject to law of limitation. Their Lordships, while dealing with the question whether a Mosque can be said to be a juristic person, observed that Hindu religion in India recognises certain doctrines of Hindu law as essential

thereto, e.g., that an idol may be the owner of the property. It is in this connection that the Privy Council observed that the property of a Hindu religious endowment including a Thakurvari is subject to the law of limitation. It has, therefore, been argument of Shri Anand that even if the deity, the temple and its property have not been transferred under the law, the respondent No. 2 and thereafter the respondent No. 1 have prescribed a title over the temple and its property by adverse possession for more than the statutory period. Referring to the evidence, learned counsel demonstrated that right from the date of transfer in the year 1934, the alienor withdrew her possession over the property sold and the alienees came into possession in their own rights. The question nevertheless is whether a right to worship in a temple and to manage its property, as distinct from the endowed property, can be acquired by adverse possession. The weight of the authorities seems to be that the right can be so acquired. [See : Chitale v. The Limitation Act, 1963, 4th 1965--Edition, pp. 1301 and 1302]. Since the transfer of these rights, as I have indicated above, is void ab initio but nevertheless is property, time shall start running right from the date of transfer. [Ghansambanda Pandara v. Velu Pandaram (AIR 1952 Orissa 203)]. In the present case, however, the position is slightly different. The recitals in Ex. D/6, which is the first transfer by the founder's widow Saraswatibai, show that she has reserved to herself the right to worship. () Ex. D/1, the of the Awkaf Department, shows that the transferee respondent No. 2 worshipped the deity and managed the temple not in his own right but under the direction contained in Ex. D/1. It thus appears that the worship of the idol and control of the deity were exercised by the alienor Saraswatibai sometime upto the the year 1940 and was, thereafter, being exercised by the transferee not in his own right but under the directions of the Awkaf Department. There is no assertion nor is there any evidence that by some overt act detention of the right to worship and manage the temple by Saraswatibai and the direction issued by the Awkaf Department were denied and challenged. It was only in the year 1957 when for the first time by erecting a wall in between Sabhagraha and the place where the deity is actually put, that the subsequent transferee respondent No. 1 obstructed the entry and challenged the right to worship and manage the temple. It is, therefore, obvious that the first purchaser never exhibited any animus to prescribe the right to worship and to manage the temple. The worship of the deity and the management of the temple done by him must be deemed to be permissive and not hostile. It can, therefore, be inferred that the hostile assertion against these rights was exhibited for the first time in the year 1957 and, therefore, the right cannot be said to have been lost by adverse possession.

14. There is yet another reason to find in favour of the appellants and against the respondents. The reason on this count is that the right to worship and manage the temple as incident of Shebaitship devolved on Saraswatibai as a widow of the founder following the line of inheritance. She must, therefore, be deemed to have a widowed interest therein. Necessarily therefore, on her death it would pass to the heirs of the last male holder, namely, her husband. Such a

question fell for consideration before their Lordships of the Supreme Court in Kalipada Chakraborti and Another Vs. Palani Bala Devi and Others, wherein B.K. Mukherjee, J., while rejecting the contention that as alienation of Shebaitship by Rajlaxmi, a widow being illegal the possession of transferees was adverse from the date of alienation, made the following observations :

.....Whatever might be said about the office of a trustee, which carries no beneficial interest with it, Shebaitship, as is now well settled, combines in it both the elements of office and property. As the Shebaiti interest is heritable from the founder, obviously when the heir as a female, she must be deemed to have, what is known as widow's estate in the Shebaiti interest. Ordinarily, there are two limitations upon a widow's estate. In the first place, her rights of alienation are restricted and in the second place, after her death the property goes not to her heirs but to the heirs of the last male owner.

In that case, it was held that although the alienation of a religious office in favour of stranger was void as Rajlaxmi only took a widowed estate in the office, the possession of the alienee did not become adverse during her life time and the suit was accordingly in time. The position, in the present case, is not different. During the life time of Saraswatibai, the alienee could not prescribe the rights in question by adverse possession. The suit having been brought within 12 years of her death has, therefore, been rightly held to be within time by the lower appellate Court. I confirm that finding and hold that the suit is not barred by adverse possession regarding right to worship and manage the temple.

15. The only question which now remains to be decided is whether Sabhagraha, as shown in the plaint map (Ex./5), is part of the temple, while discussing what the temple is, I have earlier pointed out that it is usual to have a meeting hall or a Sabhagraha for ordinary darshan of the deity, such Sabhagras are usually insparable part of the temple. From the evidence adduced in the case and from the structural design of the temple, it cannot be said that the part of the temple where the deity is situate is severable from the temple. It appears to me that the temple includes the Sabhagraha as its integral part and, therefore, I disagree with the finding of the trial Court and not set aside by the lower appellate Court that the Sabhagraha is not part and parcel of the temple but has a separate entity of its own. Instead, my finding is that the part of where the deity is installed and the Sabhargaha both constitute the temple and form an integral whole.

16. The result is that the appeal succeeds and is partly allowed. While dismissal of the claim for all other reliefs is maintained, it is declared that plaintiff Madhav Ramchandra Agashe has a right to worship the deity and to manage the temple which includes the Sabhagraha. To this existent the decree passed by the Courts below is modified. Under the circumstances of the case, the parties are directed to bear their own costs throughout. Hearing fee Rs. 200/-.