

(1960) 07 PAT CK 0013
In the Patna High Court
Case No : A.F.O.D. No. 75 of 1954

Janki Raman Pd. Mishra and Another	Vs	APPELLANT
Koshalyanandan Pd. Mishra and Others		RESPONDENT

Date of Decision : 19-07-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145
Evidence Act, 1872 — Section 21
Limitation Act, 1908 — Article 124, 131

Citation : AIR 1961 Patna 293

Hon'ble Judges : S.C. Misra, J; Anant Singh, J

Bench : Division Bench

Advocate : Advocate General and Rewati Raman Singh, for the Appellant;
Sreenath Singh, Madhusudan Singh and Girish Narayan Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Anant Singh, J.—This is an appeal by defendants 1 and 2, being defendants first party, against the judgment and decree, dated the 12th December, 1953, of the Additional Subordinate Judge, Darbhanga, decreeing the plaintiff's suit for recovery of possession of his right to manage periodically the affairs of the deity and its properties.

2. The plaintiffs grandfather was Sarjug Pd. Misser. He had two other brothers, Rajendra Pd. Misser and Tribeni Pd. Misser. The two appellants-defendants, Janki Raman Pd. Misser and Ramnan-dan Pd. Misser, are the sons of Rajendra Pd. Misser. The other defendants of the first party are the sons and grandsons of the two appellants-defendants. Defendants 16 and 17 who are the second party are the two widows, and defendant No. 18, the third party is the daughter of Tribeni Pd. Misser.

3. The plaintiff's case is that Sarjug Pd., Rajendra Pd. and Tribeni Pd, constructed a temple from the joint family funds in mauza Jagdishpur, also called Raghunathpur, in the district of Darbhanga. and installed therein the idols of Shri

Sitaramji Mithila Behari. For the expenses in pujapath and Rajbhog etc. of the deity, they dedicated the properties shown in schedule I of the plaint conferring therein an absolute right on the deity. The properties were estimated to yield an income of Rs. 900/- per year.

4. It was agreed among the three brothers that each of them, and on the death of any one of them, his heir or representative, would carry on the management of the affairs of the deity and its properties by turn for a term of three years, commencing from the 1st of Chait 1332 Fs., equivalent to March 1925. Tribeni Pd. was to be the first manager, Rajendra Pd. to be the second and Sarjug Pd. to be the third. The management of the affairs of the deity and its properties was thus first taken up by Tribeni Pd., whose term expired by the end of 1335 Fs. equivalent to 1928, when the turn of management of the appellants' father commenced.

Tribeni Pd. executed a will dated the 11th October, 1931, under which he appointed Jankiraman Pd. (defendant No. 1), one of the sons of Rajendra Pd. as the executor to manage the affairs of the deity also on his behalf after his death. Tribeni Pd. died on the 30th August, 1936. Defendant No. 1 was the karta of his own branch, and after the death of his father and uncle Tribeni Pd., he became entitled to manage the affairs of the deity for a term of six years, three years as an heir of his father and for the next three years as the executor of the will of Tribeni Pd.

5. The turn of management of the affairs of the deity by the plaintiff's grandfather, Sarjug Pd. was due for three years from the 1st March 1931, but he died before it in 1929, when the plaintiff was still a minor, his father Raghunandan Pd, having predeceased his father Sarjug Pd. One plaintiff attained the age of majority on the 19th November, 1946, when defendant No. 1 was in charge of the management of the affairs of the deity. The plaintiff asked defendant No. 1 to hand over the management of the temple to him, but he was informed that his turn would come after the 30th Phagun 1357 Fs.

But even after the expiry of that period, he was not given charge of the management in spite of repeated demands. The plaintiff thereafter filed the present suit asking for a relief that the defendants be directed to make over charge of the temple, its properties and the papers to the plaintiff within a reasonable period to be fixed by the court, and in the event of the failure, the plaintiff should be delivered possession of the same. There was also a prayer for accounts from the defendants.

6. The suit was contested by defendant No. 1 alone. There were several pleas taken, such as limitation, estoppel, acquiescence and waiver. The main plea, apart from limitation, was one of re-linishment in 1927 by the plaintiff's grandfather Sarjug Pd. himself of his periodical right of shebaitship to manage the affairs of the deity. It was said that although the construction of the temple began in 1329 Fs., it could not be made complete in full, when the idols, because

of auspicious moments, had to be installed in Ashar 1330 Fs. in only one room, known as Garbh-Man-dir

The rest of the temple including Jagmohan, Sabhamandap etc. still remained to be constructed. Tribeni Pd. and Rajendra Pd. wanted to have the Garbh Mandir, in which the idols had been already installed, and Jagmohan and Sabhamandap etc to be made of marble stones. This plan involved considerable expenses, but Sarjug Pd., who had separated in mess by that time, did not approve of the idea. He dissociated himself altogether from the intended plan and gave up his right of shebaitship in the management of the temple.

Tribeni Pd. and Rajendra Pd. alone completed the construction at huge expenses of their own. They further furnished and provided the temple with various sorts of costly articles like Singhasan, Ivory palang, mosquito curtain, Gangi Jamuni Palang etc. Sarju Pd. did not contribute anything towards the new construction of the temple and its furnishing. He severed his connection altogether with the temple and its management so much so that he even refused to receive "Prasad" distributed on behalf of the deity, being a coveted right of the shebait.

On his death, the plaintiff's mother as his guardian also cut off all connections with the temple and did not receive "Prasad". The plaintiff attained majority, not on the 19th November, 1946, as alleged, but in September 1944, whereafter also the plaintiff kept no connection with the temple and its affairs. In short, it was said that the plaintiff's right of management of the deity and its properties was lost as a result of relinquishment as also on account of adverse possession.

7. The learned Subordinate Judge framed a number of issues, and have decided all of them in favour of the plaintiff except his claim for accounts which has been disallowed.

8. The learned Subordinate Judge, under Issue No. 7 has decided that the plaintiff has his subsisting title to manage the disputed property as shebait, and that his grandfather did not relinquish his periodical right of shebaitship of the deity and the properties dedicated to it. He has further held under Issue No. 4 and Issue No. 8 that the plaintiffs claim for the office was not barred by limitation or adverse possession of the defendants. The findings of the learned Subordinate Judge have, however, been challenged before us on various grounds.

9. The parties are agreed that the temple was constructed on a land belonging to the joint family. They are also agreed that the idols were installed in one room, known as Garbh Mandir of the temple, in Ashar, 1330 Fs. when the parties were still joint. They are further agreed that the management of the temple and the properties dedicated to it was to be done by rotation for three years by each brother or his heir, as is the plaintiffs case.

The difference, however, is that according to the plaintiff, the whole construction of the temple was complete before the installation of the idols in Ashar, 1330 Fs., whereas according to the appellants, only one room had been constructed by

then, and the other additions in the temple made of marble stones and all furnishings with costly materials were done later by the other two brothers Tribeni Pd. and Rajendra Pd. purely out of their own funds after Sarjug Pd. had refused to contribute his quota and severed his connections from the temple and its management.

10. It is admitted that the properties belonging to the three brothers were partitioned by metes and bounds by an award, Ext. 3, dated the 4th August, 1926, given by certain arbitrators, Pandit Girindra Mohan Misser and Babu Sonelal Choudhary. It makes a reference to an order-sheet recorded previously on 9-3-25 by the two previous arbitrators, Babu Harbanshi Sahay and Braj Kishore Prasad, whose appointment was later cancelled by the parties.

This ordersheet is Ext. 1. It confirms the plaintiffs case regarding the chain of periodical shebait-ship of the deity and its properties mentioned therein. The award is significant to show that until it was filed in Court on the 3rd February, 1927, equivalent to 1334 Fs., there was no question raised that the construction of the temple was, in any way, incomplete by then. The parties had partitioned all the properties by metes and bounds, and if there was any construction to be still added to the temple, it was expected that the three brothers would have asked the arbitrators to set apart some joint properties for the completion of the temple just as a provision had been made for meeting the recurring expenses towards the management of the affairs of it by setting apart certain properties yielding an annual income of Rs. 900/-.

This however, was not done. Thus, it would support the plaintiff's case that the construction of the temple was complete in every manner before the installation of the idols in Ashar 1330 Fs. At any rate, nothing remained to be done towards the construction of the temple before the partition proceeding was pending before the arbitrators. The learned Subordinate Judge has referred to the various discrepancies made by some of the defence witnesses regarding the time of completion of the temple and has rightly come to the conclusion that the plaintiff's version in this regard that it was all complete before the installation of the idols in Ashar 1330 Fs. was correct.

11. Evidence was led on behalf of the appellants that it was after partition in 1927 that Tribeni Pd. and Rajendra Pd. alone had provided for the idols various costly articles from their own funds like Singhasan, two palangs one of ivory and the other of Gangi Jamuni. It was said that Sarjug Pd. had not only refused to contribute his quota towards the expenses for those articles, but had even charged Tribeni Pd. a price of Rs. 140/15/6 for the two big ivories recovered from his elephant under receipt, Ext. H, dated the 7th October, 1927.

The palang for the idols was made of the same ivory purchased from Sarjug Pd. The sale of the ivory by Sarjug Pd. was admitted by some of the P. Ws. but as the receipt, Ext. H, would show, it was after partition. If Tribeni Pd. or Rajendra Pd. had donated any article out of his own funds for the deity after partition or

even before it, and Sarjug Prasad had refused to contribute his quota, it would not show his cessation of his connection with the temple and Ms right to shebaitship.

It is possible that he did not like to incur any extra expenditure over the temple after the mode of devolution of shebaitship had been settled before the partition. Evidence on behalf of the appellants" was also led by filing, after arguments before the trial court, a copy of Register D., Ext N, to show that a certain estate bearing tauzi No. 1086 of village Madhopatti which had been allotted to Tribeni Pd. was later, by a deed of Samar-pannama of 1929-30, dedicated by him alone to the temple.

Any donation of any article or property made for the shrine by any of the brothers was obviously voluntary and without any reservation, and it would not affect any of the rights of any of the shebaites even with respect to the donated articles or property, if any, unless the donor had reserved to himself any exclusive right of management thereof. There was no evidence led that any new addition made to the temple or any donation made in the shape of any article or property for it by Tribeni or Rajendra was with any reservation that to such newly added construction or donated article or property, the donor alone would have the right of management to the exclusion of any of the other shebaites.

Not even the Samrpannama deed by which the aforesaid tauzi was dedicated to the idols by Tribeni was filed to show the terms of donation-In these circumstances, the appellants cannot claim any exclusive right of management even over the newly added construction of the temple and the donated articles or property, if any. They would be all deemed to be the properties of the deity, and the shebaites would have the management of them as well.

12. The moot question to be considered is; whether the plaintiff's grandfather Sarjug Pd. had relinquished his right of shebaitship in favour of the other two brothers to the exclusion of his heir in his own line, for, under the terms of the endowment, the right of shebaitship was to devolve by inheritance on heir of each of three respective shebaites after the death of any one of them. The appellants, in support of their plea of relinquishment by Sarjug Pd. relied upon a letter, Ext. A, dated the 9th Chait 1334 Fs. equivalent to 27th March 1927, said to have been written by Sarjug to Tribeni Pd.

13. This letter is to the following effect:

"Blessings of Shree Sarjug Pd. to Shree Babu Tribeni Pd.

Awdhi Choudhary had come to demand (my) share in the expenses of the temple. I will not be able to cope with you in the princely expenses of the temple. I have been thinking for some time past to install another Thakurjee in my house. You may carry on the expenses of the temple as you like with effect from today. I have no connection with it Dated 9th Chait 1334 Fs."

The genuineness of this letter was called in question on behalf of the plaintiff,

and the learned Subordinate Judge has not accepted its genuineness. This letter (Ext. A) was proved by D. W. 1. He said that he was working for all the three brothers until they lived in a state of jointness till 1330 Fs., and that after separation he was working for Tribeni Pd. and Rajendra Pd. only, and on the date of his evidence, he was working for Jankiraman Pd. (defendant No. 1).

He said that in 1334 Fs. Tribeni Babu consulted Sarjug Babu through a letter and that Awadh Bihari Choudhary arrived with it when Sarju Babu said that he would not spend money on marbles as he could not afford it. He wrote the reply Ext. A which was written by Sarju Babu. He further added that at the time he wrote the letter Ext. A, nobody else was present except the three of them, i.e., the witness, Awadh Bihar and Sarjug Pd. D. W. 3 said in his evidence that he had seen the letter written by Sarju Babu at Tribeni Babu's place, whereafter at the request of Tribeni Babu, he also approached Sarjug Babu once again and asked him to contribute his quota towards the construction of the temple. He saw Sarjug Prasad who gave him also the same reply that he was not prepared to contribute towards the construction of the temple in a princely style and that he was cutting all his connections with the temple. The witness, however, did not say, if the letter in question was written in his presence by Sarjug Prasad or that it was written in his pen. The person who proved that it was written by Sarjug Prasad was D. W. 1 who was in the exclusive employment of defendant No. 1 on the date of his deposition. None of the two appellants pledged his oath to say that the letter was in the pen of Sarjug Prasad. This letter was not filed along with the written statement. As a matter of fact, not even a mention of it was made in it. The letter was filed on the 21st August 1951, after the written statement had been filed on the 110th April 1951. There was, of course, a plea taken in the written statement that Sarjug Prasad had relinquished his right, but the manner how it was done was not disclosed at all. If the letter, Ext. A, was in existence, one would surely expect a mention of it in the written statement itself. It may be noted that the written statement mentioned about certain notices. Exts. C and G (1) given on the plaintiffs behalf as far back as 11941 and 1947, but it did not mention a word about Ext. A.

14. The date of the letter Ext. A is 9th Chait 1334 Fs, corresponding to 27th March 1927. The date of the award, Ext. 3, is 4th August 1926, and it was filed in court on February 3, 1927. The decree prepared on the basis of the award, Ext. 3, is Ext. L which is dated 30th November 1927-If there had been any relinquishment by Sarjug; Prasad of his right to shebaitship before the decree-Ext. L was drawn up on the basis of the award, Tribeni or Rajendra must have filed an objection for omitting the name of Sarjug Prasad from the list of shebaits. Learned Subordinate Judge in the circumstances, appears to have been quite right when he did not accept the genuineness of the letter Ext. A.

15. The learned Subordinate Judge has further found that even if the letter were accepted as genuine, it did not mean relinquishment of his right of shebaitship which was due to him in the future. He appears to be quite right in his interpretation

of the letter, even if it were genuine: This letter was written when Tribeni was the she-bait. If he planned to spend during his tenure of office anything over the improvement of the temple without the consent of Sarjug Prasad, one of the co-shebait, the letter was not bound to contribute towards the extra expenditure. If he refused his contribution by saying that he would have no connection with the temple, it did not amount to his unequivocal severance of his right of shebaitship and that in favour of Tribeni lowborn the letter was addressed, to the exclusion of the right of his own son and grandson. It may be borne in mind that this letter, if it was written by Sarjug Prasad, was written some four years in advance before his turn of office was due in 1931. As the contents would indicate, it was written in disgust over the huge expenditure Tribeni was making over the improvement of the temple. In the circumstances, it would not appear that he cut off all his connections with the temple for good and gave up his right of shebaitship in favour of Tribeni.

16. The right of shebaitship is a recognised form of property in Hindu Law and any succession to it is like to any other secular property. It is the general law of succession that governs also, the right of shebaitship, vide *Angurbala Mullick Vs. Debabrata Mullick*, . It has been held also in the case of *Kalipada Chakraborti v. Palani Bala Devi* AIR 1953 SG 125 that a shebaitship combines in it both, the elements of office and property and it is heritable. In the present case, apart from the law, under the terms of the endowment itself, it had been admittedly provided that the right of shebaitship would devolve upon and be inherited by the heirs of each of the three-brothers. Thus, it was a hereditary office descending in the direct line from the father to the son and enuring only for the life time of each holder of the office. None had any absolute right to it so as to be able to transfer it by relinquishment or otherwise to the exclusion of his heir in the direct line.

I do not think "that Sarjug Prasad was competent to have relinquished his right) of shebaitship to enure beyond his life time in favour of any of his other two brothers to the exclusion of his own branch, particularly at a time when his term of shebaitship was due four years after. If he could at all relinquish, the right, he could relinquish his own right alone, but he could not relinquish the right for all time to the prejudice of his heirs in his direct line. In point of fact, however, the defendants have failed completely to show any re-linquishment by Sarjug Prasad of his right to she-baitship.

17. On the other hand defendant No. 1 Jankiraman in his deposition, Ext. 4, dated 6-2-50, given in a proceeding u/s 145 Cr. P. C. relating to certain lands of the deity had admitted: "There is a temple of 3 Fariks (obviously meaning the three branches descending from the three brothers) in which some properties have been endowed jointly by us out of joint family pro-parties and for three years each branch acts as a manager by turn". This admission was made on the 6th February 1950, and the plaint was filed on the 30th November 1950. This was an admission of the continuance of the plaintiffs right of shebaitship. It was,

however argued on behalf of the appellants that this statement of defendant No. 1 was not admissible in evidence because his attention was not drawn to it as required u/s 145 of the Evidence Act. But defendant No. 1 never put himself in the witness box. The above statements can very well be used u/s 21 of the Act as admission made by Jankiraman Prasad. when in the same deposition he had admitted that there were litigations going on between his father and Sarjug Prasad, the grandfather of the plaintiff.

18. The plaintiffs father had predeceased his father Sarjug Prasad, who died in 1929 before his turn of office was due from the 1st of March, 1931. The plaintiff at that time was a minor. Evidence has been led on his behalf that during his minority the office of shebaitship was managed on his behalf by Rajendar Prasad at the request of his mother from 1931 to 1934. (After discussion of evidence His Lordship proceeded:)

19-24. Thus, there can be no doubt that the plaintiff acted as manager of the deity through his mother guardian aided by Rajendra Prasad during the first turn of his office from March 1931 to the end of February 1934. It is, however, the plaintiff's own case that he was not given possession in spite of demands when his second turn came in March 1940, and third in March 1949 when he was obliged to file the suit.

25. The question now is, whether the plaintiffs suit was barred by limitation. There are two Articles 124 and 131 of Limitation Act bearing on the point. Article 124 relates to possession of an hereditary office, and prescribes a period of 12 years limitation from the date when the defendant takes possession of the office adversely to the plaintiff. Article 131 relates to a periodically recurring right prescribing the same period of limitation from the date when the plaintiff is first refused enjoyment of his right. The learned Subordinate Judge has applied Article 124, as was sought on the appellants' behalf, but finding that the plaintiff was within 12 years from the date when the defendants took possession of the office adversely to the plaintiff, he has decided the issue in the plaintiff's favour.

26. There is nothing much to choose between the application of either of the two Articles in this case. The only difference is that in one case, the limitation runs when the defendant takes possession adversely to the plaintiff, and in the other, when the plaintiff is first refused enjoyment of the right. In the present case, the plaintiffs turn of office first came in March 1931, and the next in March, 1940, when on both the occasions he was a minor. There is no satisfactory evidence, as has been seen above, that the plaintiff had been refused his possession of the office at the time of his first turn in 1931 or that the defendants had then taken possession of it adversely to the plaintiff. The evidence, on the other hand, is that the plaintiff did exercise his possession through his mother guardian who was aided by Rajendra Prasad. Thus there is no question of any refusal of possession to the plaintiff or the defendants exercising possession of the office adversely to the plaintiff during his first turn from March 1931 to February 1934. Refusal came in at the next turn when even after the notice, Ext. C. dated the

11th March 1941, which had, been served on defendant No. 1 Jankiraman Prasad on the plaintiffs behalf by his mother guardian through a pleader, the possession of the office was not delivered to the plaintiff's guardian. The second notice, Ext. C(1), dated the 11th October 1947, was served by the plaintiff himself through his pleader on defendant No. 1, although this was premature in relation to his third turn, of office which was due from the 1st March 1949. Limitation could not begin to run during the minority of the plaintiff, and he was admittedly minor at least up till 1944 by which time the plaintiffs second turn of the office had also expired. It could, however start running from the time when the plaintiff was refused enjoyment of his right or the defendants began exercising possession adversely to the plaintiff even during his minority in which case the plaintiff had to file the suit within three years of his attaining majority if the full period of limitation had already expired. But as it has been seen, the plaintiff himself had been in possession of his office during 1931 to 1934 or at least the defendants' possession if any was not adverse then. It became adverse since March 1940 when the plaintiff was refused possession in spite of notice of the 11th March 1941, the due date of the office being the 1st March 1940. The period of limitation for this suit was 12 years from the date of refusal of enjoyment of the plaintiffs right or from the date the defendants possession became adverse to the plaintiffs, and this date not being earlier than 1st March 1940, the suit filed on the 30th November 1950, was well within time, being-within 12 years from the 1st March 1940. Thus, there was no limitation. The learned Subordinate Judge has rightly decided the issue against the appellants.

27. The other issues including the issues on estoppel, waiver and acquiescence had not been pressed before the learned trial court. There are no facts proved or disclosed constituting any of such bars. The suit was rightly decreed. There is no merit in the appeal, and it is dismissed accordingly with costs.

Misra, J.

28. I agree.