

(1923) 04 CAL CK 0025
In the Calcutta High Court

Kali Santa Chatterjee and Others

APPELLANT

Vs

Surendra Nath Chakravarty and Others

RESPONDENT

Date of Decision : 28-04-1923

Acts Referred:

Citation : 95 Ind. Cas. 769

Hon'ble Judges : N. R. Chatterjea, J; Cuming, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for declaration of the plaintiff's right as a co-sharer shebait of the deity Ugra Tara at Shikarpur (District Backerganj), for a decree for recovery of possession of the said share jointly with the pro forma defendants according to the terms of worship, for an injunction, to restrain the principal defendants from interfering with the plaintiffs right and for other reliefs. The pro forma defendants are said to be the, co-sharer shebait.

2. The defence, among other things, was that the plaintiff has no right as a shebait of the deity installed in 1319, and that he is not entitled to the reliefs claimed.

3. The Court of first instance declared the plaintiff's right as a co-sharer shebait, gave a decree for possession of one-fifth share, but disallowed the claim for injunction and mesne profits. That decree was confirmed on appeal by the Court of Appeal below. The defendants have appealed to this Court.

4. It appears that there is a shrine at Shikarpur in the District of Backerganj. It is one of the well-known 51 (or 52) Mahapittas scattered all over India. There was an image of the deity Tara installed in a temple at the place. The image was broken about 40 years ago by some ruffians, fragments of which were subsequently recovered from a tank. The temple also fell down at that time. Thereafter the worship of the deity was carried on with a ghot (earthen pot) on an adjoining piece of land. The worship appears to have been neglected, and the shrine lost its popularity. In 1319, the defendant No. 2 who had been a co sharer

of the taluk within which the site of the old temple was situated, conceived the idea of restoring the glory of the shrine, and it was mainly by his exertions that subscriptions were raised from the public (he himself contributing largely from his own pocket), a new temple was erected and a new image was brought from Benares and installed in the new temple. A board, of trustees was constituted consisting of several respectable people including some Pleaders and the defendant No. 2 himself. The plaintiff and his co-shebaits of the old temple were at that time carrying on the worship with the earthen pot on the adjoining land when the new image was installed in the new temple, the plaintiff and his co-sharers repudiated the new image and gave out that the real shrine was at the place where the ghot was being worshipped. The co-sharers of the plaintiff, however, came to an arrangement with the defendants, and they agreed to "carry on supervision and necessary arrangements for the worship" and to perform under the guidance of the trustees all things necessary for the convenience of the pilgrims and every other business connected with the temple, in consideration of their getting a certain share of the profits. The plaintiff, however, though at first disposed to, did not execute the agreement.

5. A question was raised in the Court of first instance as to whether the plaintiff and his co sharers were shebaits of the deity represented by the old image. But that question was found in favour of the plaintiff and that finding has not been questioned. The main contentions raised before us are (I) that the deity represented by the new image installed in 1319 is not the same as that represented by the old one; (II) that there could be no restoration of the old image in the present case according to the Shastras; (III) that in any case the decree passed is bad.

6. With respect to the first contention it is urged that the old image was that of "Ekjata," and the present image is that of "Ugra Tara." The distinction between the two is based upon the difference in the form of the two images, and in their Mantras and Dhyan. There is no clear evidence as to the form of the old image except what appears from the Dhyana, but it was known as Ugra Tara. Now the Maya Tantra speaks of 8 different forms (or varieties) of the deity Tara, though only three of them are more well-known than the others, viz., Tara, Ugra Tara, and Nil Sarasvati. The name Ekjata does not appear among the 8 forms mentioned in Maya Tantra., But Ekjata is the name of the first form Tara, and in the Pooja ritual the expression Ekjata is used throughout and she is addressed as such. I may, therefore, refer to Tara as Ekjata.

7. The Dhyana of the old image is said to have been as follows.

8. An argument appears to have been founded on the expression. "Lock of hair" in Dhyana in the Court below as in this Court time it refers to Ekjata but the word "Ek" does not refer to but to Nag (Serpent) Ek Nag. Besides the Dhyana mentioned above is used in the worship of Ekjata also, as will appear from the detailed rituals for the worship of Tara (Ekjata) described at pages 16 to 20 (ending with line 3 at 21) of Tara Rahasy (Rasik Mohan Chatterjee edition). A

different Dhyan of Ugra Tara is mentioned at page 21 (lines 13 to 22) but the Mantras for the poojah of Ugra Tara appear to be the same as those for Tara (i. e., Ekjata Tara). The Matrika Dhyan of Ekjata Tara is as follows.

9. The expression Ekjata is mentioned in this Dhyan, but it does not appear that this Dhyan was used in the poojah of the old image. The Vijmantra of Ekjata Tara consists of five letters while that of Ugra Tara consists of three letters, and the Gayatree of the two appears to be different. It does not appear what Gayatree was used in worshipping the old image. If the old image was worshipped with the Vjjmantra of five letters, then it was not Ugra Tara, but Ekjata Tara. It was known, however, as Ugra Tara, and the defendant No. 2 when appealing for subscription from the public also referred to it as Ugra Tara. He ordered the image of Ugra Tara to be prepared at Benares, and it was only the learned Brahman performing the installation cere-money of the new image who found out from the old Dhyan that it was different from the present image. There is a difference in the pose of the legs of the new image with that of the former image as would appear from the Dhyan of the latter, but the difference is very slight.

10. There are, therefore, some differences in the form of the present image as compared with that of the Dhyan of the former, and if as stated above the Vijmantra of the former consisted of five letters, the deity formerly worshipped was the Ekjat Tara, and not Ugra Tara. But the question of the Vijmantra of the old image as consisting of five letters does not appear to have been urged in the Courts below, there is nothing to show that the Giyatri or the Matrka Mantra of Ekjata Tara (mentioned above) was used in the worship of the old image. The deity Tara is one and the same, though worshipped in different forms, the significance of which may be different from spiritual standpoint, but evidently the old image was worshipped as. Ugra Tara, the people concerned knew it to be so and the appeal for funds mentioned it as Ugra Tara. The question we have to consider is whether the new image was meant to be and treated by the people concerned as a restoration of the old one. It is found that the new temple is on the old site in which the plaintiff has admittedly a share, the new image represents the deity Ugra Tara by which the old image was known, the pedestal used for the new image is the same as the one used for the old image, and the earthen ghot and old stone bull were used at present installation, and as already stated the appeal for funds was for restoration of the old deity, and the image ordered was that of Ugra Tara. The learned Munsif observes "that the new idol is treated by the people as renewal of the old one is proved by the fact that they offer puja to it in the same way as before. Defendant's Witness No. 9 says that after the installation of the idol the plaintiff and his brother were requested to throw away the ghot which up to that time had stood for the old deity. This request would not have been made unless the deity represented by the ghot and the new idol were regarded as the same." From these circumstances it is held by the Courts below that the present installation, is not independent of the old and I am unable to hold that they were wrong in so holding.

11. With regard to the second contention, viz., that there could be no restoration of the old image in the present case according to the Shastras, it is urged that the image is admitted in the plaint to be self revealed and reliance is placed upon a passage in the Nirnaya Sindhu (see also Dharma Sindhu) which runs as follows.

10. Now Renewal of Decayed (Image is considered) that is to be performed when a Linga and the like are burnt or broken removed (from its proper place). But this is not to be performed with respect to a Linga or like which is established by a Sadhu or one who has become successful in the highest religious practices, or which is Anadi, i.e., of which the commencement is not known or which has no commencement. But there Mahabhishika or the ceremony of great anointment should be performed:---this is said by Tre-Vikrama"---Nirnaya Sindhu of Kamalakara Bhatta, Bombay, Edition of 1900, page 254 (See Golap Chandra Sarkar's Hindu Law, 4th Edition 473). But according to the plaintiff the image was installed by some remote ancestor of his, while according to the defendants it was installed by one Jantridhar. The image, therefore, does not appear to be Anadi. It is than urged even if the image had a commencement, the restoration had not been made within the time prescribed. But the text from Haya Sirsha upon which reliance is placed, while layingdown that the restoration after the prescribed period is blameworthy does not say that it is altogether invalid.

12. Here again I think the question to be considered is whether it was meant to be, and treated by the people concerned as restoration of the old image.

13. The last question is whether the form of decree is a proper one. The ordering portion of the judgment of the Munsif runs as follows:

It is, therefore, ordered that the suit be decreed in part, that the plaintiff's right be declared in respect of one-fifth share in the temple of Ugra Tara and the idol installed in it, and in the rights and profits appurtenant thereto, and the plaintiff be put into possession of the same, that the plaintiff's prayers for injunction and mesne profits disallowed, and each party to bear his own costs.

14. It will be seen that the plaintiff's shebaiti "rights and profits appurtenant thereto" have been declared and the plaintiff has been ordered to be "put into possession of the same". Now the expenses of the poojah and the temple must come out of the profits, and I do not see how the plaintiff will be put into possession of such profits. The learned Munsif was of opinion, that it may be done either by keeping a joint account, and taking a share of the profits periodically or dividing the months into Palas or some festival days such as Durga Pujah, Shyama Puja, Sivaratri, may be kept ijmal, and that if the parties could not come to some mutual arrangement about the mode of enjoyment of plaintiff's share, the division will be made in execution proceedings. I do not think that these are matters which should be left for execution proceedings.

15. The learned Munsif observes:---"I should note here that I fully appreciate the noble and benevolent intention of the trustee defendants and specially of defendant No. 2 when the old temple fell down, and the idol was lost, the pujah

evidently became greatly neglected and the place ceased to attract pilgrims and visitors like before. A famous ancient shrine of the Hindu community was going to ruins. The she-baits who were in possession of debutter properties being divided into large number of co-sharers did not exert themselves to improve matters. It was then that defendant No. 2 Narayan Chandra Das Gupta, although he was not a man of very large means formed the idea of restoring the institution. By his own exertions and with the aid of some gentlemen of religious turn of mind, with money partly paid from his own pocket and partly raised by public subscriptions, he has re-built the temple, restored the image, excavated tanks, made rest-houses for pilgrims and effected, other improvements in the surroundings. In these matters he does not appear to have received much help from the old shebaites among whom plaintiff's brother Rajani alone seems to have rendered occasional service. Under the circumstances it is very natural, that he would desire that the management of the temple should remain in the hands, of such persons as would not allow it to fall into ruins again."

16. The defendant No. 2 succeeded in coming to an amicable arrangement with the other co-sharers of the plaintiff, but the plaintiff is not disposed to settle matters amicably. The Court, therefore, should see that its decree may be framed in such a way that the work of restoration of such an ancient shrine and the improvements made by the laudable efforts of the defendant No. 2 and the other trustees may not be wrecked. The Court should settle the mode in which the right of the plaintiff would be exercised and worked out before passing the decree, and should not leave such matters to be determined in execution proceedings. The case is accordingly remanded to the Court of first instance to be dealt with in accordance with the observations made above. No order as to costs up to this stage. Future costs to be dealt with by the Court of first instance.