

(1998) 07 SHI CK 0024

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 105 of 1995

Khekh Ram

APPELLANT

Vs

Yub Raj

RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:

Himachal Pradesh Hindu Public Religious Institutions and Charitable Endowments Act, 1984 — Section 21

Citation : (1998) 2 ShimLC 472

Hon'ble Judges : P.K. Palli, J

Bench : Single Bench

Advocate : Ajay Kumar, for the Appellant; Ashwani Kumar Sharma, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Palli, J.—Khekh Ram, Appellant/Defendant has laid challenge to the judgment and decree passed by the first appellate Court. The suit filed by the Respondent/Plaintiff was dismissed by the trial Court. The first appeal filed by him stands allowed and this is how the Defendant is in second appeal before this Court. The parties, hereinafter in this judgment shall be referred to as "Plaintiff and "Defendant".

2. The dispute pertains to the office of "Kardar" of Devta Kartik Swami of Simas, Phati Nasogi, Kothi Manali, Tehsil and District Kullu. The Plaintiff has sought a declaration to the effect that he is the "Kardar" of the Devta and the Defendant, who is his real uncle, be restrained from interfering in his right, title and interest.

3. The father of the Plaintiff-Bhag Chand was, admittedly the "Kardar" of the Devta who died on May 8, 1973. The Plaintiff was born on April 11, 1964 and was a minor at the time of the death of his father. According to the Plaintiff, he was in a legal disability to perform the functions and other rituals connected with the office of "Kardar" and for that purpose the Defendant who was his real uncle, started managing the affairs on behalf of the Plaintiff and after the Plaintiff

having become major, he started managing the affairs and as per "Wajab-ul-Arz" of the "Illaq" as well as under the custom, he being the eldest son alone was entitled for the said office and succeeded to it. Challenge has been further made by the Plaintiff to the entries appearing in the revenue record projecting the Defendant as Kardar" of the Devta. The Plaintiff agitates that these entries have been brought on the surface in a clandestine manner and in collusion with the revenue officials and have no effect on his rights of office. The entries are said to be incorrect.

4. The Defendant apart from raising some preliminary objections, on merits has contested the suit on the ground that in fact he is the "Kardar" of the Devta and is managing its affairs. It has been denied that the Plaintiff is managing the affairs after having become major. The Defendant has based his claim on his appointment having been made by the Deputy Commissioner, Kullu. The applications are said to have been invited by the Tehsildar, Kullu for the appointment of new "Kardar" and after due inquiry by the Deputy Commissioner, he was appointed as an office-holder on October 1, 1977 and mutation to this effect was sanctioned on July 26, 1978. He claims himself to be a de-facto and de-jure "Kardar" of the Devta as having been appointed by the State. It is denied that the entries in the record have been brought about in a clandestine manner or in collusion with the revenue agency.

5. The trial Court, on appreciation of the material placed on record by the parties, concluded that the Defendant came to be appointed after due inquiry and in accordance with the terms contained in the "Wajab-ul-Arz". It was further found that there was no material on record to show that the order passed by the Deputy Commissioner Ext. DA suffers from any infirmity or illegality and further that the Plaintiff is not the "Kardar" of the Devta and the entries in the record showing the Defendant as "Kardar" are correct.

6. On re-appraisal, the first appellate Court has reversed these findings and it has been held that the Plaintiff is entitled to succeed to the office of "Kardar" according to the terms contained in the "Wajab-ul-Arz". It has been further found that the order Ext. DA passed by the Deputy Commissioner, Kullu appointing the Defendant as "Kardar" has no effect whatsoever on the rights of the Plaintiff. The appeal having been accepted, the suit filed by the Plaintiff consequently stands decreed.

7. Mr. Ajay Kumar, learned Counsel appearing for the Defendant while opening his address of arguments has taken me through the terms of the "Wajab-ul-Arz" Ext. P-1. It is being urged that the word "Mauroosiat" as appearing in the "Wajab-ul-Arz" would not necessarily mean that the eldest male lineal descendant of the last office-holder is to succeed to the office. Any person according to the learned Counsel, who can claim collateralship, is entitled to succeed to the office.

8. The next argument being put forth is that the appointment has to be made by

the Deputy Commissioner after consulting the devotees.

9. It is also being said that the provisions of the Himachal Pradesh Hindu Public Religious Institutions and Charitable Endowments Act, 1984 are not even remotely attracted and the first appellate Court has gone wrong in applying the principles to the facts of the present case.

10. The learned Counsel, thus, contends that the Defendant derived his title to the office from the appointment which was rightly made by the Deputy Commissioner and the same is in accordance with the terms of the "Wajab-ul-Arz" and the judgment passed by the first appellate Court deserves to be set aside.

11. Mr. Ashwani Kumar Sharma, learned Counsel appearing for the Plaintiff, in reply, adopts the reasonings given by the first appellate Court in the impugned judgment. It is further said in reply that the Plaintiff would succeed to the office of "Kardar" as per terms contained in the "Wajab-ul-Arz" and the Defendant was only acting as his guardian and performing the duties of "Kardar" during his minority and the Deputy Commissioner had no right or authority to make any appointment bestowing the office of "Kardar" on the Defendant. The impugned judgment, according to the learned Counsel, is based on correct appreciation of the evidence on record as well as the "Wajab-ul-Arz" Ext. P-1 and it has been said that pure and simple findings of fact have been recorded on proper appreciation which do not call for any interference by this Court in second appeal.

12. I have gone through the impugned judgments as well as the record with the help of the learned Counsel appearing for the parties and for the reasons appearing hereinafter in this judgment, I do not find that there is any merit in this appeal which deserves to be dismissed.

13. Both the learned Counsel appearing for the parties have tried to read the "Wajab-ul-Arz" giving their own interpretations. On a careful reading of the copy of the "SHARAIT WAJAB-UL-ARZ" of the year 1948-49 Ext. P-1, I find that the owners of the land divested themselves of their title and dedicated the land as "MUAFI" in favour of the Devta and accepted their status as tenants. The "Wajab-ul-Arz" further reads that these tenants are of two kinds, one who perform services to the Devta and are known as "Kardar", "Pujari" and "Purohit", "Baja Nawajan", and the persons who offer flowers, is the other. Some land, has been given to these persons by the Devta in lieu of the services being rendered by them and they are also exempted from payment of land revenue or the land revenue is charged from them with caution.

14. The document further reads that for appointment of a person to the office of "Kardar", hereditary right is invariably kept in view and if it is found that the "Kardar" has committed a theft of the property belonging to the Devta or is of a bad-character or is not performing his duties ritualistically as well as faithfully, he can be removed. The management of the Devta as well as its income and expenditure are vested in him and he is responsible for it.

15. The same condition applies in respect of "Pujaris". It is said that when the office-holder is removed, then out of his family some other person who is found capable of performing the rituals and ceremonies of the "Pooja" of the Devta, is appointed. In case no suitable person is found in the family (KHANDAN), then a person of that community is appointed in consultation with the devotees and other worshippers of the Devta. The document further adds that the office of "Guru" to "Chela" is not hereditary. Thereafter are specified the duties and other obligations which are to be performed by the office-holders.

16. The document further reads that "Baja Nawajan" (persons who play bads and other instruments which are ceremonious with the rituals) are occupancy employees. Their duties are to go along with the Devta whenever the Devta is taken in procession to other place. They too are liable to be removed if not found performing their duties faithfully.

17. It is further incorporated that those who bring flowers, are assigned this job on day-to-day basis. Thereafter is given the description of various Devtas and Kartik Swami is mentioned therein.

18. The document further provides that when the office of the "Kardar", "Pujari" or "Guru" to "Chela" falls vacant on the removal, then the worshippers and devotees of that Devta move an application and the other competent person is appointed. For that purpose general consensus is obtained and according to the custom, whosoever is found competent, is appointed as "Kardar" by the State. The document further provides that these servitors in case of legal necessity can mortgage the land but the possession of the mortgagee would last only till the life-time of the office-holder and till he performs his duties and other obligations in accordance with the set custom. Alienation of the land by way of sale is completely prohibited. The document also reads further but the rest of the contents are not relevant for the decision of the controversy in issue.

19. Ext. P-2 is the Jamabandi of the year 1954-55 and there in the column of ownership, "DEVTA KARTIK SWAMI BA-EH-TMAM, BHAG CHAND WALD DHALU" is recorded. In the column of cultivation, the words "MAKBOOJA MALIK" appear. The entries are identically the same in the Jamabandi of the year 1945-46 Ext. P-3 except that the management is "Ba-eh-Tamam Dhalu wald Khub Ram". The Plaintiff is admitted, to be the son of Bhag Chand who was the office-holder earlier and before him his father Dhalu was holding the same office.

20. Ext. P-3/A is the writing on behalf of 80 worshippers and devotees who are tenants under the Devta Kartik Swami. They have testified that Bhang Chand was the "Kardar" earlier and on his death, his eldest son Yub Raj is the "Kardar" and it is he who is performing the functions of the office and looking-after the management and control of the Devta and that they all are happy with his act and conduct.

21. Ext. DA is the order passed by the Collector, Kullu dated October 1, 1977 whereby Khekh Ram, Defendant was appointed as Kardar of Devta Kartik Swami

of Seounsa. The order reads that the present Plaintiff as minor has also applied for the office through his grand-father Jai Ram. The order records that the Tehsildar, Kullu examined the followers and tenants of the deity and by consensus, they opted for the appointment of Khekh Ram, brother of the deceased "Kardar" as none favoured the minor son of the deceased, i.e. Yub Raj, the present Plaintiff. The case on behalf of the Plaintiff was put forward that his grand-father Jai Ram be appointed as "Sarbarah Kardar" till the Plaintiff attains the age of majority but during the course of investigation at the level of Tehsildar, the said Jai Ram died and Yub Raj, minor, failed to suggest an alternative.

22. The order makes an interesting reading that after the death of the grand-father of Yub Raj, Plaintiff, he should have submitted a fresh application suggesting Anr. person as his substitute for the period of his minority and as Yub Raj, minor, failed to prefer a fresh claim and was a minor, the followers had contested to the appointment of Khekh Ram as "Kardar".

23. Ext. DB is the mutation sanctioned in favour of the Defendant on July 20, 1978. This was done in pursuance of the order Ext. DA passed by the Collector.

24. Rest of the evidence consists of the statements of the witnesses examined by the parties who have supported their respective claim. This evidence need not be appreciated as the office of the "Kardar" has to be filled up in accordance with the provisions laid down in the "Wajab-ul-Arz" Ext. P-1. No second opinion can be formed that once the office of the Kardar falls vacant, the claim of the next incumbent is to be considered on the basis of hereditaryship. The father of the Plaintiff as well as his grandfather were earlier holding the office as such as per Jamabandis Ext. P-2 and Ex. P-3 noticed above. The word "MAUROOSIAT", i.e. hereditary, is not to be assigned any special meaning and as commonly understood, would mean "inheritance by law". In the Black's Law Dictionary the word "hereditary" has been defined:

That which is the subject of inheritance. Genetically transmitted or transmittable from parent to offspring.

The word "hereditary succession" is defined as:

Inheretance by law; title by descent. The title whereby a person, on the death of his ancestor, acquires his estate by right of representation as his heir at law.

In the Chambers Dictionary, the word "heredity" is defined as:

The transmission of recognizable characteristics to descendants; the sum of such characteristics transmitted, heritability.

25. As I understand from the plain reading of the above noticed two dictionaries, I find that it would mean a succession from ancestor to an heir at law. The office-holder would be the person who is holding the office for the time being or till his death or removal, whichever is earlier. When the two words are joined,

hereditary, would mean the office which devolves on the incumbent from an ancestor and the holder of that office would be the person known as "hereditary office-holder".

26. The language employed in the "Wajab-ul-Arz" makes it amply clear that the office-holder or the "Kardar", in the given situation, is liable for removal once it is found that he has mis-conducted himself or has committed theft of the property of the Devta or has otherwise gone a bad-character. In that situation, a person from that family would be traced out who fulfils the qualifications for being appointed as a "Kardar" and prior to his appointment the consensus of the followers and devotees of the Devta would be taken. If no other person from the family is available, the choice is to be made out from the persons belonging to that community. By that community would mean the worshippers and devotees at large. In that contingency applications would be made to the Tehsildar or invited by him, then processed after due inquiry and ultimate appointment rests with the Collector/Deputy Commissioner of that area.

27. It was this situation which had been created by the death of the last incumbent Bhag Chand who was father of the Plaintiff. He died when the Plaintiff was minor. Succession, as too well-known, never remains in abeyance. According to the "Wajab ul-Arz", the Plaintiff immediately succeeded his father as "Kardar" on his death. It was purely a matter of arrangement amongst the family members or other relations to see that some-one found responsible would perform the functions of the office of the Kardar" during the period of minority of the Plaintiff.

28. As I look at the matter, the agency of the Tehsildar or the Collector/ Deputy Commissioner would come into operation only when the office-holder, i.e. "Kardar", is removed on the ground of mis-conduct or other grounds mentioned in the "Wajab-ul-Arz" and not in any other situation. Here the succession to the office of the "Kardar" on the basis of hereditary claim, being something automatic, the Plaintiff immediately succeeded to the office which fell vacant on the death of his father.

29. The Court cannot refrain itself from commenting on the manner in which the proceedings were conducted by the Deputy Commissioner in his order Ext. DA. The Plaintiff did forward his claim through his grandfather. Unfortunately, the grand-father died during the investigation. The Tehsildar and the Deputy Commissioner, in the given situation, should have seen to it that a responsible person is appointed as a "Sarbarah Kardar" during the minority period of the Plaintiff and on his becoming major, he would have automatically assumed the office of "Kardar". In my considered opinion, the Tehsildar or the Collector/ Deputy Commissioner had no role to play in the facts and circumstances of the present case when the office did not fall vacant on the removal of Bhag Chand but had fallen vacant on his death and in this situation the Plaintiff alone had the right to succeed.

30. It is true that the provisions as contained in the Himachal Pradesh Hindu Public Religious and Charitable Endowment Act, 1984 are hardly relevant for the purposes of deciding the present controversy involved in the suit as this case is to be governed under the terms as contained in the "Wajab-ul-Arz", yet for the purposes of clarification or drawing aid, the provisions can certainly be taken notice of. The Act prescribes two types of offices, one "hereditary trustee" and the other "non-hereditary trustee". Whenever a permanent vacancy occurs in the office of a hereditary trustee, it is the person next in the line of succession who is entitled to succeed to that office and provision in this respect has been made in Section 21 of the said Act. When this definition is read with the provisions contained in the "Wajab-ul-Arz", it can safely be held that the State and its functionaries have no role to play even remotely. The continuation of Defendant No. 2 as "Kardar", at best, can be accepted as "Sarbarah" during the minority of the Plaintiff. By no stretch of imagination, he can claim any title to that office.

31. Learned Counsel appearing for the Plaintiff has placed before this Court a copy of the order passed by the Tehsildar, Kullu on June 8, 1998. Some inquiry has been held in the conduct of the Defendant working as "Kardar" of the Devta. All the devotees and worshippers are on one side whereas the Defendant is on the other side. He has been found not performing his duties ritualistically, faithfully and according to the well-set custom, so much so, he is said to have embezzled an amount of Rs. 23,000/-. He is said to have cut two trees of the Devta and utilized its timber for his personal house. He is further found not to have taken the "RATH" of the Devta in the procession on the relevant functions held in the area. Recommendations have been made by the Tehsildar, Kullu to the Deputy Commissioner seeking removal of Defendant Khekh Ram from the office of "Kardar".

32. Though, as said above, the Tehsildar or the Deputy Commissioner has no right or authority to intervene in the present case, yet they certainly have the jurisdiction when any misconduct on the part of the office-holder comes to or is brought to their notice. The Deputy Commissioner is directed to find out the truth in the report of the Tehsildar and if it is found that the Defendant has caused any loss to the property of the Devta or has embezzled any amount belonging to it, the same should be got recovered and entrusted to the Plaintiff. The Plaintiff is also directed to keep true and faithful accounts of the income and expenditure and conduct himself in the manner which is dignified and is expected from the office-holder of a religious institution. The Tehsildar shall have the right to check the accounts and also the functioning of the Plaintiff as Kardar".

33. In view of what has been said above, I do not find that the impugned judgment suffers from any illegality, infirmity or error of jurisdiction. The appeal is ordered to be dismissed "subject, however, to the observations/ directions made above. There shall be no order as to costs.