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(1945) 12 PAT CK 0001

In the Patna High Court

Lakshmi Prapannachari and Others APPELLANT

Vs

Satruhana Chari and Others RESPONDENT

Date of Decision : 06-12-1945

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1946 Patna 347

Hon'ble Judges : Manohar Lall, J;Das, J

Bench : Full Bench

Judgement

Das, J.—This is a second appeal by the plaintiffs from a decision of the learned Second Subordinate Judge of Patna, dated 29th April 1944, by which decision the learned Subordinate Judge has substantially reversed the judgment and decree passed by the learned third Munsif of, Patna in Title Suit No. 5 of 1940.

2. The suit out of which the appeal has arisen was a suit for a declaration that a sale deed executed by defendant 1, Satruhana Chari (respondent 1 in this appeal) on 30th April 1988, in favour of defendant 2 (respondents here) was invalid, inoperative and illegal, and for setting aside the said sale and recovery of possession of 1.23 acres of raiyati land, conveyed by the said sale deed.

3. The suit was originally brought by plaintiffs 1 to 6 as members of a Managing Committee in respect of certain debottar properties (comprising the land in dispute), which I shall presently describe. Plaintiff 7 Mahanth Lakshmi Prapannachari was originally made defendant 3, but was subsequently transposed as plaintiff 7. It was alleged that he was the shebait of the deity to which the properties were dedicated. The case of the plaintiffs-appellants was that one Swami Rajendrachari had founded four thakurbaris, one after the other, at (1) mauza Muhammadpur Uchaili, (2) mauza Abdhara, (3) mauza Badrabad and (4) mauza Ibrahimabad Terait. In the said thakurbaris: Swami Rajendrachari had installed idols off Sri Thakurji Maharaj and had dedicated properties acquired by him to each of the thakurbaris. Swami Rajendrachari is stated to have executed a deed of trust for the purpose on 31st August 1911. By the said trust

deed Swami Rajendrachari constituted a Committee of Management for the purpose of managing and supervising the properties of the thakurbaris. Though Swami Rajendrachari himself became the first shebait or gaddinashin of the said thakurbaris, he gave the Committee of Management power to retain him in the said office at their will, and also gave them power to appoint a shebait or gaddinashin from amongst his disciples in the event of death, resignation or moral incapacity of the existing shebait. Swami Rajendrachari died in 1915. After his death, Basudeo. Brahmachari was appointed shebait by the Committee. Basudeo Brahmachari, how ever, mismanaged the properties, and surreptitiously executed a deed of nomination, dated 10th June 1935, in favour of the respondent Satruhana Chari, his nephew, by virtue of which he abdicated in favour of his nephew. The appellants alleged that this deed of nomination was executed fraudulently, surreptitiously and without any authority: therefore, respondent 1 derived no title by it. Then on 30th April 1938, respondent 1 transferred 1.23 acres of land belonging to the deity, and lying in village Dhibra in favour of respondent 2 without any legal necessity. Basudeo Brahmachari died during the pendency of the suit, and Mahanth Lakshmi Prapannachari was appointed shebait by the Committee, on the death of Basudeo Brahmachari. The appellants'' case is that Lakshmi Prapannachari is the rightfully appointed shebait. So the appellants prayed for a declaratory relief to the effect that no title to the disputed property had passed to respondent 2 by the said sale deed, and that the property in question should be restored to the rightful shebait.

4. The respondents raised various defences, only some of which are now relevant and need be stated. It was contended that the suit was not maintainable; that Swami Rajendrachari had no authority to execute the deed of trust, dated 31st August 1911; that it was not a deed of trust at all, and was never acted upon; that Basudeo Brahmachari succeeded Swami Rajendrachari as his heir in the ordinary line of succession, and was not appointed by the Committee; that he managed the properties well and by his deed of nomination, dated 10th June 1935, he nominated his chela Satruhana Chari (respondent l) as his heir; that Satruhana Chari succeeded Basudeo Brahmachari as his heir, and was the rightful shebait; that the sale deed in question was for legal necessity, the necessity being payment of a decree for rent and arrears of rent; and that Lakshmi Prapannachari was never the shebait. The learned Munsif found that Swami Rajendrachari was the founder shebait of the Asthal or thakurbaris, and that he had authority, to execute the deed of trust.

5. He further found that the deed of trust was acted upon, and Basudeo Brahmachari himself had accepted its terms as binding on him. He further found that Satruhana Chari, respondent 1, was not the shebait and that the sale deed executed by him in favour of respondent 2 was not for legal necessity and did not convey any title to respondents. On these main findings, he decreed the Suit, and gave the plaintiffs the reliefs they had asked for. On appeal, the learned Subordinate Judge has affirmed the finding of the learned Munsif to the effect that the sale deed in question was a sham transaction and was not justified by

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any legal necessity. He, however, reversed the findings of the learned Munsif that Swami Rajendrachari was the founder-shebait and had authority to execute the deed of trust. He has found that Swami Rajendrachari was not the founder and could not, therefore, lay down the line of succession; alternatively, he has found that even if Swami Rajendrachari was the founder, he had not, on a true construction of the deed of trust, disposed of the shebaiti right, therefore, the devolution of the office of shebait, after the death of Swami Rajendrachari, would follow the ordinary course of law.

6. On these main findings, he has held that the plaintiffs-appellants have no locus standi to bring the suit; they are merely well meaning members of the public, and if they have any grievance against respondent 1, their remedy lies in a suit u/s 92, Civil P.C. The learned Subordinate Judge has, therefore, dismissed the suit, even though he has found that the sale deed in question was a sham transaction. As stated above, the present second appeal is directed against the aforesaid decision of the learned Subordinate Judge.

7. The first and foremost question for consideration is if Swami Rajendrachari was the founder-shebait of the worship of the idol Sri Thakurji Maharaj installed in the four thakurbaris. Both the Courts below appear to have considered this question with reference to the pleadings of the parties. The learned Munsif held, on a consideration of the pleadings of the parties, that the respondents had not denied in their written statements the statements made in the plaint that Swami Rajendrachari had founded (sthapit kia) four thakurbaris and had installed idols of Sri Thakurji Maharaj in the said four thakurbaris, and had dedicated properties acquired by him to the said idols. Though the respondents had stated in their written statements that the mahanth or shebait had no legal right to execute a deed of trust or to appoint trustees, they did not specifically challenge the allegation that Swami Rajendrachari had founded the four thakurbaris and installed the idols of Sri Thakurji Maharaj therein. The learned Munsif further considered the evidence, particularly the evidence of certain witnesses for the respondents, and came to the finding that Swami Rajendrachari was the founder of the worship of the idol of Sri Thakurji Maharaj installed in the four thakurbaris. The learned Subordinate Judge appears to have come to a contrary finding; but in arriving at his finding he appears to have misconceived the pleadings of the parties and misdirected himself as to what was actually stated by the plaintiffs in the plaint and what was necessary for them to state. It has been stated in Ananda Chandra v. Broja Lal Singha AIR 1923 Cal. 142 that in the application of the rule that the shebaitship is vested in the founder and his heirs, it may not he always easy to determine who are the founders.

8. As has been observed in that case, one person may provide the site of the temple, another may build the temple and establish the idol, while a third may dedicate property for the performance of the daily services of the idol. Where the owner of the site relinquishes his right in the land, he may not be a founder, unless he indicates, at the time, expressly or impliedly, that he will associate

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himself with the others in carrying out the object of the foundation.

9. I have carefully considered the pleadings of the parties in this case, and I have come to conclusion that the learned Munsif is right in his view that the respondents did not challenge the allegations made in the plaint that Swami Rajendrachari had founded the four thakurbaris and had installed the idols in them. The learned Subordinate Judge appears to have taken a very narrow and restricted view of the expression "sthapit kia," which is not warranted by what has been stated in para. 1 of the plaint. It is significant that nowhere did the respondents allege that anybody else was the founder of the worship of the idols installed in the four thakurbaris. Learned Counsel for the respondents has emphasised before us two points in this connexion. He has drawn our attention to the statements alleged to have been made by a witness, which statements have been referred to by the learned Subordinate Judge, that the idol installed at Ibrahimabad Terait was brought from another village Rustamganj and that the idol was holding 2 to 21/2 bighas of land there. It has been contended--this was also the contention before the learned Subordinate Judge?that this showed that Swami Rajendrachari could not be the founder of the worship of the idol which was installed at Ibrahimabad Terait. I am unable to accept this contention. It is not the case of any of the parties that the worship of the idol which was brought from Rustamganj was founded by anybody else. It may even be that the idol at Rustamganj was a family deity of Swami Rajendrachari, and he brought it to Terait, installed it in a temple and dedicated it to the public. I am, therefore, unable to infer from the statements made by one of the witnesses that the idol installed at Terait was brought from Rustamganj, that Swami Rajendrachari was not the founder of the worship of that idol, when it was installed in a thakurbari and dedicated to the public for the first time by the trust deed of 31st August, 1911. Secondly, learned Counsel for the respondents has referred to the following statements contained in the deed of trust itself:

The properties entered in Schedule A appertaining to the thakurbari at mauza Ibrahimabad Terait and the properties entered in Schedule B to the thakurbari at mauza Muhammadapur and which properties were acquired with my labour and effort as well as with the income from the profits of the properties belonging to the thakurbaris and some of which are the gifts of persons having faith in and regard for me by way of debottar properties and all of which, properties have come in possession and occupation of the Thakurji Maharaj and are in his possession through me as manager.

10. It is contended that the aforesaid statements show that the idols in the thakurbaris were in existence from before the execution of the deed of trust. Reference has also been made to certain entries in the record-of-rights finally published in 1910 which showed that the Thakurji was recorded in respect of some properties in villages Uchaili and Abdhara. The learned Advocate. General has rightly pointed out that the aforesaid statements or entries do not necessarily militate against the claim of the appellants that Swami Rajendrachari

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was the first founder-shebait. The idols might have been family idols which Swami Rajendrachari installed for the first time in 1911 in four thakurbaris which he dedicated to the public by the aforesaid trust deed. He would then be the first founder-shebait and the original donor, and would be competent to lay down rules governing the management of the trust; vide Bindraban Vs. Sri Godamji Maharani Birajman Mandir Sri Rangji Maharaj . The learned Subordinate Judge was in error when he thought that it was necessary for the appellants to give such details as to the place where from the idols were brought, the person who brought them, who was the presiding priest of the ceremony, etc. In view of the clear statements made in the plaint that Swami Rajendrachari had founded the four thakurbaris in question and had installed the idols therein, which statements were not contradicted by the respondents; it is clear to me that the learned Munsif correctly found that Swami Rajendrachari was the first founder-shebait and was competent to lay down rules governing the management of the trust. He was also competent to dispose of the shebaiti right. The finding of the learned Subordinate Judge to the contrary is vitiated by the erroneous view which he has taken of the pleadings of the parties.

11. Then, there is another aspect of the matter. I have already stated that the respondents did not plead that anybody else was the founder of the worship of the idols; nor did they give any evidence to show that somebody else was the founder. On the contrary, the learned Munsif has referred to the evidence of some of the witnesses of the respondents who had stated that Swami Rajendrachari was the founder. Assuming that Swami Rajendrachari had founded the worship of the idols at some date earlier than 1911, the question would arise if he had reserved to himself the right to alter the line of succession or to interfere in the management subsequently. It has been very strongly contended before us by learned Counsel for the respondents that Swami Rajendrachari not having reserved such a right, it was not competent for him to lay down the rules of management by the trust deed executed in 1911. It is the admitted position that there is no earlier deed of endowment. The dedication or endowment of an earlier date, if any, must, therefore, have been oral. Whether Swami Rajendrachari had reserved to himself the right or not would then be a matter of oral evidence and of inference from subsequent conduct.

12. The statements made in the deed of trust show that Swami Rajendrachari had reserved to himself the right to make rules for the management of the trust. In that view also, the rules laid down in the trust deed are valid and binding. I am, however, of the view that by the trust deed of 1911 Swami Rajendrachari for the first time installed the idols, and dedicated the property and divested himself of all interest therein and the rule of succession to the office of shebait laid down by him at the time of the dedication must be deemed to be a part of the rules governing the management of the trust. The learned Subordinate Judge has alternatively found on a construction of the deed of trust that Swami Rajendrachari had not disposed of the shebait right. Here again I think, the learned Subordinate Judge is in error. Paragraph 2 of the trust deed states as

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follows:

At present, I, the declarant, am the gaddinashin of the said thakurbaris. The members of the committee are and will be competent to retain me as gaddinashin as they wish.

Paragraph 8 of the deed states that:

In case any gaddinashin becomes of loose moral character or dies or leaves the post himself, the members of the committee will be competent to dismiss the gaddinashin of loose moral character from the post and to appoint some competent and capable disciple of me as his successor etc.

13. The two aforesaid paragraphs clearly show that Swami Rajendrachari had disposed of the shebaiti right in a particular way. Full authority is given, to the committee of management to appoint a new shebait and remove an existing one. The three contingencies mentioned in the document are death, resignation (or abdication) and moral incapacity. On either of these three contingencies happening, the Committee of Management is authorised to appoint a new shebait. I find it very difficult to understand how the learned Subordinate Judge thinks that Swami Rajendrachari had not disposed of the shebaiti right. Learned Counsel for the respondents has contented before us that there is no clause prohibiting the shebait from nominating his own successor. I have quoted above the statements in paras. 2 and 3 of the deed. Obviously, there cannot be two appointing authorities, and it is clear to me that the appointing authority in accordance with the terms of the deed of trust is the Committee of Management. Swami Rajendrachari as the founder was entitled to lay down the rule of succession to the office of shebait and the rule so laid down by him must be deemed to be a part of the rules governing the management of the trust. In my view, the learned Subordinate Judge was in error in thinking that Swami Rajendrachari had not disposed of the shebaiti right by the deed of trust.

14. It has been contended on behalf of the respondents that the appellants could not maintain the suit. Reliance has been placed on Maharaja Jagindra Nath v. Hemanta Kumari Dasi 32 Cal. 129 and Kunj Behari v. Shyam Chand AIR 1938 Pat. 394 In Maharaja Jagindra Nath v. Hemanta Kumari Dasi 32 Cal. 129 it has been observed by their Lordships of the Judicial Committee that the right to sue is vested in the shebait, although an idol may be regarded as a juridical person capable as such of holding property. Learned Counsel for the respondents has contended that the suit as originally brought by the members of the committee was not maintainable and Lakshmi Prapannachari who was originally a defendant should not have been transposed as a plaintiff. Reliance has been placed on the case in John Boisogomoff Vs. Manmatha Nath Mullick and Another, , where it has been observed that if the title of the plaintiff is altogether bad, it is improper to allow an amendment transferring a defendant to the category of plaintiff in order to make the suit good. The facts of that case were, however, entirely different, and the principle laid down therein has no application to the facts of the present

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case.

15. In that case, the plaintiff claimed title to the property as mortgagee-purchaser thereof on a mortgage from Nanimohan. The defendant who was transferred to the category of plaintiff was one Prabhabati who claimed the property as the widow of Nanimohan and as the administratrix pendente lite to his estate. In the present case it can hardly be said that the Committee of Management had no right to suit at all. According to the deed of trust it is the committee of management which manages and supervises the property and appoints the shebait. The expression "shebait" is sometimes loosely used to connote two different things: a shebait is, by virtue of his office, the administrator of the property attached to the temple of which he is the shebait; as regards the property of the temple, he is in the position of a trustee; but as regards the service of the temple and the duties that appertain to it, he is rather in the position of the holder of an office or dignity. In the case under our consideration the Committee of Management is the trustee and administrator of the property, whereas the shebait looks after the service of the temple and the duties that appertain to it. In any case the shebait is also a co-plaintiff now. The question as to whether the shebait Lakshmi Prapannachari could be transposed as a plaintiff came up to this Court, and it was by an order of this Court that he was transposed as a plaintiff. I can see no defect in the frame of the suit, and I concur in the view taken by the Courts below that the appellants could maintain the suit for a declaration that respondent 2 had acquired no title by the sale deed dated 30th April 1938, and for recovery of possession of the property conveyed by that sale deed.

16. Lastly, it has been contended before us on behalf of the respondents that it was conceded by learned Counsel for the appellants in the Court of appeal below that the property in dispute, namely, the Dhibra property, was the personal property of Swarni Rajendrachari; therefore, on that concession the appellants are not entitled to claim that property as debottar property. In para. 8 of the plaint it was specifically stated that the property was the debottar property appertaining to the thakwbari. This was not denied in the written statement. In para. 12 of the written statement it was stated that the disputed property was sold on account of legal necessity to pay off debts and decrees passed against Sri Thakurji. It is clear, therefore, that both parties went to trial on the footing that the disputed Dhibra property was the personal property of Swami Rajendrachari. It appears that in putting forward an alternative argument learned Counsel for the appellants had stated in the Court of appeal below that even if Swami Rajendrachari was considered to be the full owner of the Dhibra property, the appellants had a right to challenge the sale deed. I am satisfied that no concession on a question of fact was really made by learned Counsel for the appellants. It was the case of both parties that the Dhibra property was debottar property of the thakurbari of which Swami Rajendrachari was the founder-shebait. The pleadings of the parties showed that though this property was subsequently acquired it was acquired from the income of the endowed

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properties. In accordance with the terms of para. 9 of the trust deed all properties acquired from the income of the endowed properties would be dedicated to the thakurbaris and would be managed by the members of the Committee. The very sale deed, Ex. A(1), executed by respondent 1 shows that the property in dispute was debottar property and not personal property.

17. Learned Counsel for, the respondents has also contended before us that the trust deed of 31st August 1911, was not acted upon. He has placed reliance on Exs. C(5), C(6) and C(7). The Courts below have considered this question with reference to the evidence as it exists in the record and they have concurrently found that the deed of trust was acted upon and was operative. I see no reason to dissent from that finding.

18. For the reasons given above, I would allow this appeal, and set aside the decision of the learned Subordinate Judge, and restore that of the learned Munsif. Besides the costs of the trial Court as directed by the learned Munsif, the appellants would be entitled to costs of the Court of appeal below and of this Court.

Manohar Lall, J.

I agree.

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