

(1985) 05 PAT CK 0016
In the Patna High Court
Case No : A.F.A.D. No. 132 of 1977

Mahajan Mahto and Others		APPELLANT
	Vs	
Gopi Nath Jee and Others		RESPONDENT

Date of Decision : 08-05-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1

Citation : AIR 1986 Patna 3

Hon'ble Judges : S.S. Sandhawalia, C.J;N.P. Singh, J

Bench : Division Bench

Advocate : S.C. Ghosh and Kalyan Kumar Ghose, for the Appellant; Kumar Bahadur, for the Respondent

Final Decision : Partly Allowed

Judgement

N.P. Singh, J.—Defendants are appellants in this second appeal. The plaintiff-respondents filed the suit in question for declaration of their title and recovery of possession of the suit lands on the ground that the Shebait had no authority to exchange the lands which belonged to the plaintiff-deity, with the lands belonging to the defendant-appellants.

2. According to the plaintiffs one Mukund Lal had dedicated the lands, which are the subject matter of controversy, along with other lands to the deity Shri Gopi Nath Jee, plaintiff 1. Said Mukund Lal used to look after the management of Shri Gopi Nath Jee's properties. After his death, according to the plaintiffs, plaintiff 2 was looking after the management of the properties. It is the case of the plaintiffs that one Ramdeo Singh, claiming to be the Shebait, executed deeds of exchange in favour of the defendants on 9-9-1960 and 6-10-1960 transferring the lands in question to the defendants in exchange of lands conveyed by them in favour of the deity, which, according to the plaintiffs, are sham, collusive and illegal.

3. The defendants contested the said suit. According to them, after the death of

Mukund Lal, Ramdeo Singh aforesaid became the Shebait of the Thakurbari and he had exchanged the lands in question taking the interest of the deity into consideration. The claim of plaintiff 2 being the Shebait was also resisted saying that he was a mere Pujari of the temple.

4. The suit was dismissed by the trial Court holding that plaintiff 2 was a Pujari of the deity and not a Shebait, and, as such, a suit at his instance was not maintainable. It was also held that the transfer was for the benefit of the deity, and, as such, there was no occasion to declare it null and void.

5. On appeal, the suit of the plaintiffs has been decreed on the finding that the transfer was not for the benefit of the deity and, as such, not binding upon it. The finding that plaintiff 2 was the Pujari of the temple and not the Shebait was, however, affirmed. It was held by the Court of appeal below that a suit at the instance of Pujari was maintainable. On the aforesaid findings, the plaintiffs title to the suit land has been declared and recovery of possession of the suit lands has been ordered.

6. Learned counsel appearing for the defendant-appellants submitted that the Court of appeal below having affirmed the finding of the trial Court that plaintiff 2 was a mere Pujari and not the Shebait of the deity, should have dismissed the suit filed at his instance. It was submitted that the deity can be represented only through the Shebait who can file a suit on behalf of the deity before any Court of law; this power cannot be extended to a stranger. In this connection reference was made to Mukherjee's Hindu Law of Religious and Charitable Trusts where it has been pointed out that "the idol is the owner of Debuttar property only in an ideal sense; this idea! personality is always linked up with the natural personality of the Shebait". Reliance was also placed on the following observation of the Privy Council in the case of Maharaja Jagadindra Nath Roy v. Rani Hemanta Kumari (1904) 31 IA 203 :-

"The possession and management of the dedicated property belong to the Shebait; and this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the Shebait and not in the idol."

If it is well-known that idol is a juristic person, and, as such, it can hold property and can sue or be sued in respect thereof, but it has to act through the Shebait. Justice Mukherjee in the Mukherjee's Hindu Law of Religious and Charitable Trusts, has pointed out while referring to the case of Maharaja Jagadindra Nath Roy (supra) that the view underlying the aforesaid decision seems to be that "as an idol suffers from perpetual incapacity to engage itself in juridical acts, the natural personality of the Shebait supplies this legal deficiency in the idol. For all juridical purposes, it is the Shebait and Shebait alone that has the right to represent the idol and this creates what may be said to be a personality right in the Shebait to institute a suit in respect of the idol's property."

7. But when a Shebait declines to bring a suit or by his conduct places himself in

such a position that he could not be expected to bring a suit, a question arises whether any other person or persons can file a suit to protect the interest of the deities. The present case is obviously one of such cases where an alienation made by the Shebait in favour of the defendants is being questioned by the Pujari of the deity. Whether the suit at the instance of the Pujari for [he reliefs sought for is maintainable? In the case of Sri Veerabhadraswami at Samayawallur through Subramania Ayyar v. Mayakone. AIR 1940 Mad 81 it was observed that a suit by certain persons on behalf of all the villagers for a declaration that the suit property belongs to the temple and that the alienations thereof were void and not binding on the institution was maintainable apart from the provisions of Section 92 of the Civil P. C. A Full Bench of the Madras High Court in the case of Venkataramana Ayyangar v. Kasturi Ranga Ayyangar ILR 40 Mad 212 : AIR 1917 Mad 112 and Privy Council in the case of Abdur Rahim v. Abu Muhamed Barkal Ali 55 I A 96 : AIR 1928 PC 16 held that suits filed by villagers or worshippers in the representative capacity challenging the alienations made by the Shebail were maintainable. Recently, in the case of Veerbasavaradhya v. Devotees of Lingadagudi Mutt AIR 1973 Mys 280 same view was reiterated that a suit by some of the devotees in representative capacity for possession of the properties belonging to the deities against the transferee was maintainable.

8. On behalf of the appellants it was pointed out that in the cases referred to above, suits had been filed in representative capacity under Order 1. Rule 8 of the Civil P. C. after necessary permission from the Court which is not the position in the instant case, Here, plaintiff 2 filed the suit claiming himself to be the Shebait, but has been found to be just the Pujari of the deity, and, as such, a suit in his individual capacity is not maintainable. In the case of Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others, where the plaintiff was a worshipper and was assisting in the management of the temple, a question arose: can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard the interest. It was observed (para 10) : --

"On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation, Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably

suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment:"

The decree passed by the trial Court for recovery of possession in a suit filed through worshipper of an idol was held to be maintainable. In the case of *Vemareddi Ramaraghava Reddy v. Konduru Seshu Reddy* AIR 1967 SC 436 it was observed (Para 10) :-

"The legal position is also well established that the worshipper of a Hindu temple is entitled, in certain circumstances, to bring a suit for declaration that the alienation of the temple properties by the de jure Shebait is invalid and not binding upon the temple."

In my opinion, there should not be any difficulty in holding that a suit filed by the Pujari challenging the alienations made by the Shebait on the ground that it was not in the interest of the deity is maintainable.

9. Learned counsel for the appellant could not challenge the finding of the Court of appeal below that the transfer by way of exchange was not in the interest of the deity. He, however, submitted that in case the decree of the Court of appeal below is affirmed then there should be also a direction to the plaintiffs to restore possession of the land to the defendants which had been given to the deity by way of exchange. It was pointed out that the Court of appeal below has only passed a decree for recovery of possession of the land which belonged to the deity and was given in exchange to the defendants, but has given no direction to the plaintiffs to restore the land which had been given in exchange by the defendants. In my opinion, when the Court of appeal below decreed the suit for recovery of possession of the lands in question it should have also directed the plaintiffs to restore possession of the lands taken in exchange to the defendants. Even in the case of *Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others*, the trial Court while passing a decree for recovery of possession and mesne profits had directed the plaintiffs of that suit to refund Rs. 10,000/- to the defendant which the defendant had paid as consideration for the alienation made in his favour. Accordingly, while affirming the judgment and decree passed by the Court of appeal below I further direct the plaintiff-respondents that after they get possession of the land which had been transferred to the defendants by way of exchange, to restore possession of the lands which had been given in exchange to the plaintiff 1, deity, to the defendants.

10. The appeal is, accordingly, allowed in part to the extent indicated above, but without costs.

S.S. Sandhawalia, C.J.

11. I agree.