
(1938) 02 CAL CK 0032
In the Calcutta High Court

Manickchand Agarwalla

APPELLANT

Vs

Pareshnathji and Others

RESPONDENT

Date of Decision : 17-02-1938

Acts Referred:

Registration Act, 1908 — Section 17(2)(vi)

Citation : AIR 1939 Cal 23

Hon'ble Judges : Lort-Williams, J; Lord-Williams, J; Costello, J

Bench : Full Bench

Judgement

Lort-Williams, J.—This is an appeal by the defendants against a judgment of Ameer Ali J. The plaintiffs were Pareshnathji, a Digambari Jain deity located at the Mandirji at No. 1, Bysack Lane, in the town of Calcutta, by its next friend Baldeodas Serowjee, and certain trustees. The claim was for a declaration that premises No. 35-B, Brojo Dulal Street, belonged to the plaintiff deity and for the other plain, tiffs as trustees for the plaintiff deity. The defendants were the heirs of the original founder of the alleged trust. The material facts are as follows : One Hulashilal, a wealthy Digambari Jain resident of Calcutta, by his will dated 20th December 1826 dedicated inter alia the premises No. 35, Brojo Dulal Street now known as Nos. 35-A and 35-B, Brojo Dulal Street, in favour of the plaintiff deity. In that will there are many references to religion or religious purposes and inter alia the following statements:

To the Manderji at Sri Calcutta of the Tairopuntee Amnyo I have given and cause to be given thus:

The Puccoka house for my own dwelling, situate in a Sootaluttee...which said house I give in the Mundirji. As long as Babu Hurshahay shall live in this, so long he will pay rent at 16 (sixteen) rupees per month, expenses for repairs are at the charge of Babu Hushahay, if he does not pay rent then the value of Rs. 6000, (in letters) six thousand, as the consideration for this house, he will pay in the Mundirji; if he pays neither the price nor rent, then he will vacate the place. Whatever repairs are necessary to be made of breaches in the premises, the

expenses thereof shall be defrayed out of the profits of the two annas share that Mundirji has in the shop.... The rent or interest that is obtained from the aforesaid House and lane, shall be expended for the Mundirji's Poojairy, Tailooba, Repairs, Poojapats and articles for the Poojahas et cetera, Mooktears for making these disbursements, are the Tairopuntee Jainee Brethren of Calcutta . After this manner I have put the Mundirji at Sri Calcutta under the charge of the Tairopuntee Amnio Jainee Brothers.

2. There were two executors, one of whom was Harsahay who had married Hulasi lal's daughter Mannoo Bibi. He died in 1858 and was succeeded by his son Inder Chandra. He died in 1871 and the evidence seems to show that in his lifetime a division was made between two portions of the premises, one being made into a Thakurbari and in it was installed an image or representation of Pareshnathji. Inder Chandra left two sons, Nanoo and Chanoo, and a daughter Shyam Bibi. Nanoo did not long survive Inder Chandra, but Chanoo lived until 1912. During his lifetime, there was a partition suit between Chanoo and Nanoo's son Dhanoo for the partition of the estate of Inder Chandra. This suit is of importance because the proceedings show that the family property on partition was assumed to exclude the estate of the Thakur, i.e. Pareshnathji, and that the property in the present suit was omitted from the list of properties to be partitioned. It was thus acknowledged by the parties that the property in question was dedicated and belonged to the Thakur Pareshnathji.

3. In 1877 a suit was filed in which the plaintiffs were the members of the Panch who looked after the property of the Jain temple at Calcutta including the property in suit, their intention being to obtain a declaration from the Court regarding the Thakur's rights. The suit was dismissed in the lower Court. There was an appeal, followed by a remand, but apparently nothing further was done. The suit is of importance, because in the written statement of Chanoo there was an acknowledgment that there existed a religious estate of the Thakur Pareshnathji. In that suit, there was no suggestion that there was no estate belonging to Pareshnathji or that Pareshnathji was incapable of holding any estate or that the immovable property was not the property of the Thakur. The suit really turned upon a question about the share of profits and the matter of the dedication of the house does not seem to have-been discussed.

4. After this Chanoo remained in control of the house. There is a minute dated 1st September 1881 to which Chanoo, Dhanoo and others were signatories recognizing the rights of the Panch and the Mandir to receive the revenues of the house. From the evidence it is clear that Chanoo, who was a prominent member of the sect and a member of the Panch, used to look after the property. He and others were in charge of the affairs of the temple including this property. These people, including Chanoo were called either shebaites or members of the Panch, and apparently there were five Panches in Calcutta at that time. Chanoo was not a shebait in the sense in which the term is generally used, and in those days there was not very much business to be-done in respect of the temple and its

properties. But there was one ceremony "Kartick. Mahotsav" which was organized annually when a large procession used to be taken-out, and the trustees used to make arrangements with regard to that procession. It appears therefore that Chanoo was associated with a number of others, who were in the position of trustees in control of the various properties connected with the main Thakur in No. 1, Bysack Lane, as well as the property in suit. There was no regular, legal arrangement made with regard to these matters until after the death of Chanoo. When he died, Dhanoo took possession and at the same time took up a, different attitude. He seems to have contended that the property was in the nature of a private debutter or family endowment, the object being the image of Pareshnathji set up in the Thakurbari in the premises in suit. The result was that a suit was brought in 1917 which was eventually compromised, and a consent decree made in 1922.

5. The issue in the present suit and appeal turned upon the terms of settlement then arrived at. In para. 1 of those terms, the defendant Dhanoo was declared entitled to the house and premises No. 35-B, Brojo. Dulal Street, but only during the period of his natural life. Para. 2 provided that after the demise of Dhanoo, the said premises were declared as dedicated by the defendant, to the Jain temple of the Digambari deity Pareshnathji at No. 1, Bysack Lane in Calcutta, and formed part of the trust estate of the said deity of the Jains of the Digambari sect to be used as a dharamsala in the name of Dhanoo's mother Champa Devi and vested in certain persons therein named as trustees with power to nominate future trustees. Para. 3 provided that the premises No. 35-A, Brojo Dulal Street were declared as dedicated to the said deity, and the said Digambari Jain Community were to be entitled to use the same as a Thakurbari as at that time used. It was further provided that in case the defendant let out or transferred the said premises, that is to say the premises No. 35-B, Brojo Dulal Street, and inconvenience was felt by the Thakurbari, certain windows should be screened off. Such lease or transfer, if any, should not be made except to a Hindu for residential purposes only.

6. The main argument raised by the defendants with regard to these terms of settlement was that Dhanoo was declared entitled to the premises No. 35-B, Brojo Dulal Street, and that after his death the premises were dedicated by him to the Jain temple of Digambari deity Pareshnathji at No. 1, Bysack Lane; therefore the dedication of these premises, if at all, was by him, and there was no provision in the terms of settlement divesting him of the property to which he was declared entitled in para. 1. A further argument was that the dedication, if at all, was to a Mandir and not to a deity, and that such a dedication is a nullity according to Hindu law. Further it was argued that Pareshnathji is not a deity in the sense in which the term is used in Hindu law, and is not regarded by the Jain Community as a God.

7. The first argument, it appears to us, is based upon a fallacious reading of the terms of settlement. In these terms the paragraphs, if read separately, might

conceivably, support the argument raised by the defendants. But they must be read together in order to arrive at a correct construction. If so, it is clear in the first place that the parties intended that it should be recognized that the property was dedicated to the deity. This is not disputed by the defendants. But the argument raised on their behalf is that whatever the parties intended, they did not succeed in carrying out that intention. In our opinion, this contention is unsound. If the terms of settlement are read as a whole, it is clear that the parties intended that the terms agreed upon should embody a recognition that the property had already been dedicated to the deity, but that, as a compromise, the defendant Dhanoo would be allowed to occupy No. 35-B, Brojo Dulal Street, during the term of his natural" life. Further, it was agreed apparently that Dhanoo should have the satisfaction of purporting to dedicate No. 35-B as a dharamsala in memory of his mother Mt. Champa Bibi. In para. 1, it is true that the defendant is declared entitled to No. 35-B, and it is true that in para. 2 it was he who was declared to have dedicated the property to the deity. But he was only declared entitled for the period of his natural life." It is clear therefore that he had no power of dedication except possibly for the period of his natural life. Moreover, the dedication in para. 2, though by the defendant, is declared as from the date of the terms of settlement, though it was to take effect only after his demise. The effect, in our opinion, was that the terms of settlement in reality only recognized a previous dedication, namely the dedication made by Hulashilal in 1826.

8. With regard to the contention that the dedication was made to a Mandir, again this is a matter of construction and we agree with the learned Judge in the conclusion to which he came that the original dedication by Hulashilal was really a dedication to the deity and not to the Mandir and therefore was a valid dedication. With regard to the contention that Pareshnathji is not a deity or a God, a great deal of evidence was given and there was considerable discussion before the learned Judge and he came to the conclusion that there was a great deal of historical and philosophical foundation for the line of argument advanced by the defendant with regard to remote ages, but that according to the existing Jain system and Jain thought which has existed for many hundreds of years, Pareshnathji is to be regarded as a deity and capable of holding a property, though not necessarily exactly similar to a Hindu deity. Though the learned Counsel who appeared for the appellants did not abandon this part of his case, he did not press it.

9. He raised however two further arguments : first, that the so-called dedication in the terms of settlement really amounted to something in the nature of a will, because it was to take effect only after the demise of Dhanoo, and that as it was not in proper form, it was of no effect. This argument is disposed of by the finding which I have already indicated that the terms of settlement amounted to a declaration of a prior dedication and were not in the nature of a will. Secondly he argued that, in any case, the terms of settlement effected a transfer of property and therefore required registration. This argument however is unsound

because the terms of settlement were embodied in a decree of the Court and clearly come within the provisions of Section 17(2)(vi), Registration Act. Moreover, it is provided by Section 2(d), T.P. Act, that any transfer in execution of a decree or order of a Court of competent jurisdiction is not affected by the provisions of that Act. The learned Counsel half-heartedly raised a further argument that the terms of settlement amounted to an instrument of gift and therefore were not affected by the provisions of Section 17(2)(vi) of the Act and therefore required to be registered. But, in our opinion, it is quite clear that it cannot be contended that the dedication contained in para. 2 of the terms of settlement amounted to a gift or that the decree can be considered to be in the nature of a deed of gift. His further contention that there could be no dedication because there was no divestment of the proprietary rights of the defendant in the premises in suit is disposed of by what I have already said. The defendant never, in fact, was vested with any proprietary rights in any part of the property. The result is that this appeal is dismissed with costs. The order for stay of execution is vacated and the respondent is at liberty to proceed against the security and otherwise against the appellant.

Costello, J.

10. I agree.