

(1955) 07 CAL CK 0018
In the Calcutta High Court
Case No : A.F.A.D. No. 844 of 1950

Probir Chandra Pal and Others

APPELLANT

Vs

Panchanan Choudhury
 Panchanan Choudhury Vs
Probir Chandra Pal and Others

RESPONDENT

Date of Decision : 05-07-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 10

Citation : AIR 1957 Cal 117 : (1956) 1 CALLT 70 : 60 CWN 197 : (1957) 2 ILR (Cal) 738

Hon'ble Judges : K.C. Das Gupta, J;Guha, J

Bench : Division Bench

Advocate : A.D. Mukherjee, Barun Kumar Roy Choudhury, Rishindra Nath Sarkar and Sudhansu Kumar Hazra, for the Appellant;

Final Decision : Dismissed

Judgement

K.C. Das Gupta, J.—This suit was brought by several deities through Panchanan Choudhury described as their shebait. Though in a part of the plaint, language was used drawing distinction between fee shebait plaintiff and the deity plaintiffs, it appears clear, taking the plaint as a whole, that the suit was brought by the deities through Panchanan Choudhury as shebait and that the prayer that Panchanan's shebaiti right be declared was only for the purpose of establishing the maintainability of the suit. The relief sought was the declaration of the deities' title to the lands described in the schedule and for possession on eviction of the defendants. The previous shebait Hem Chandra had put the defendants in possession on giving a permanent lease in their favour; in a previous litigation brought by Panchanan as prospective shebait of the deity the permanent lease has been declared invalid and that is no longer disputed. The plaintiff's case is that the right of the defendants to be on the lands came to an end at least on the death of the previous shebait Hem Chandra and that the defendants are continuing in possession after Hem Chandra's death wrongfully and that the deities are entitled to get possession on evicting them. As to how Panchanan

became shebait, it was stated in the plaint that when Hem Chandra and his brother's daughter Basanbala were the only shebait, Basanbala surrendered her own shebaiti right to him and on behalf of her minor son Bholanath transferred Bholanath's shebaiti right also to Hem Chandra so that Hem Chandra became the sole shebait with the consequence that on Hem Chandra's death, Panchanan being Hem Chandra's heir as a sister's son became shebait of the deity.

2. The defendants pleaded that the suit being brought by Panchanan only was not maintainable as there were other shebait, one being Bholanath's widow Jatanbala. It was further pleaded that in any case the defendants had acquired an occupancy raiyati right in the lands and were not liable to eviction. Several other defences including the denial of the deities' title to the lands appear to have been taken at the trial but we are no longer concerned with them as the findings thereupon have not been disputed. The suit was decreed by the trial Court & the appeal has been dismissed. Both the Courts have rejected the plea that the occupancy raiyati right was acquired by the defendants. On the question whether there was any other shebait the trial Court did not come to any conclusion, but held that in the absence of evidence that the persons who have not been made parties, managed the properties and carried on the worship of the idol, the suit could not be held to be not maintainable. The court of appeal found that Jatanbala was also a shebait, but Panchanan was the de facto shebait and so the suit was maintainable.

3. It is urged before us on behalf of the defendants who are the appellants here that the Courts below have erred in law in holding that the suit was maintainable arid in rejecting the defence plea that the defendants had acquired occupancy raiyati right.

4. As regards the defence claim of occupancy raiyati right it has to be remembered that on Hem Chandra's death the defendants ceased to have any tenancy whatsoever in the lands. They were no longer rayats, but became trespassers. Consequently the question of their acquiring occupancy raiyati right does not arise at all.

5. There remains the question whether the suit brought as it is by Panchanan in the name of the deities is maintainable. The Arpannama lays down that the first shebait, were the three brothers, Hem, Kartick and Puma and that the shebaiti right would thereafter go to the heirs of the brothers in accordance with the Hindu Law of inheritance. It is not disputed that after the death of Puma and Kartik, Hem and Kartik's daughter Basan became shebait. When that was the position Basan executed in the year 1929 a Nadabinama, surrendering her own Shebaiti interest and transferring her son Bholanath's shebaiti right on his behalf, as he was a minor, to Hem. Her surrender of her interest must be held effective in law so that so long as she was alive, Hem became the sole shebait. If Bholanath predeceased Basan, Bholanath never became the shebait and consequently Jatanbala acquired no interest in the shebaiti. If, on the other hand Bholanath survived Basan, he became a shebait on Basan's death, as the

transfer of his interest by his mother was ineffective in law; and on Bholanath's death Jatanbala has become the shebait. No evidence was adduced by either side on the question whether Bhoianath predeceased or survived Basan and the finding of the Court of appeal that Jatanbala was a shebait being based on no evidence must be held to be erroneous in law. The position therefore is that on the evidence on record it is not possible for the Court to decide whether the deities had any other shebait than Panchanan.

6. A long line of cases, viz. *Kokilasari v. Rudranand Goswami*, 5 Cal LJ 527 (A) *Nirmal Chandra Banerjee and Another Vs. Jyoti Prosad Bandopadhyaya and Others*, ; *Sri Lakshi Durga v. Surandra Nath*, 45 Cal WN 665 (C) and *Sree Sree Sreedhar Jew Vs. Kanta Mohan Mullick and Others*, -- to mention only a few -- has laid down the rule that all the shebaits of a deity must join for the purpose of representing the deity and if any shebait is unwilling to join as plaintiff, he must be impleaded as defendant. On examination of the facts of these cases, it is clear that this rule contemplates the position that the court knows who the shebaits are. In my judgment this rule has no application to a case where the Court is unable to find out for certain whether in addition to persons who have instituted the suit as representing the deities and those impleaded as defendants, there is any other shebait. While, therefore, it is clear on the authorities -- leaving out of consideration the case of *Sri Sri Iswar Sridhar Jieu Thakur* represented by his shebait *Jyoti Prosad Bandopadhyaya Vs. Jahor Lal Mukhopadhyaya and Others*, , that when some only of several shebaits have brought the suit in the name of the deity and others who are found to be shebaits have not been impleaded as defendants, the suit would be dismissed, it does not follow that where the Court cannot find that any shebait has been left out, but only finds that it may be that some shebaits have been left out, the suit would fail on that account. The proper view to take in such a case would in my view be that the known shebaits are competent to bring the suit in the name of the deity and for the purpose of the particular suit must be held to represent the deity completely; but that would not affect the interest of any other person who may be shebait. Where a dispute arises on the question of whether or not there are other shebaits in addition to those mentioned in the plaint, it may sometimes be proper for the court to appoint at the outset some person or persons as the next friend of the deity to carry on the litigation, instead of allowing the delay in deciding the dispute on the question who are the shebaits, to defeat the deity's interest. It is not necessary, however, to decide in the present case whether such a course would generally be advisable. In the present case after both sides have adduced evidence we find that it was impossible for the Court to decide whether there are other shebaits of the deity. The suit by Panchanan who is the only known shebait must, therefore, be held to be maintainable.

7. It is not necessary for the present case to express any opinion on the proposition laid down in *Sri Sri Iswar Sridhar Jieu Thakur* represented by his shebait *Jyoti Prosad Bandopadhyaya Vs. Jahor Lal Mukhopadhyaya and Others*, that even if some known shebaits are left out, the suit may still be held to be

maintainable in the special circumstances of a case in order to protect the deities" interest.

8. I would, accordingly, dismiss this appeal with costs.

Guha, J.

9. I agree.