
(1956) 10 AHC CK 0018
In the Allahabad High Court
Case No : S.A. No. 149 of 1948

Ram Gopal Pandey

APPELLANT

Vs

Sri Thakurji Asthapit

RESPONDENT

Date of Decision : 03-10-1956

Acts Referred:

Citation : (1957) 27 AWR 39

Hon'ble Judges : R.N. Gurtu, J

Bench : Single Bench

Advocate : S.K. Varma, for the Appellant; Sarvsri K.N. Gupta, A.P. Pandey and G.P. Bhargava, for the Respondent

Judgement

R.N. Gurtu, J.—This second appeal arises under the following circumstances:

2. The Plaintiff Sri Thakurji through Ram Badan Pande, sarbarakar filed a suit for a declaration that Sri Thakur Ji was entitled to receive the sum of money deposited in connection with suit No. 421 of 1941 in the court of the Munsif of Ghazipur and suit No. 23 of 1943 in the court of Sub-Judge of Ghazipur through Ram Badan Pande, sarbarakar.

3. The Plaintiff's case was that Ishwari Pande had advanced some money in the name of Thakur Ji on a usufructuary mortgage obtained in Sri Thakur Ji's favour. The mortgage was of agricultural property. Ishwari Pande died several years prior to the suit leaving three brothers, Kali Pande, Mahatam Pande and Deoraj Pande and children of the said three brothers. The pedigree given below will show the names of the members of the family of Ishwari Pande:

4. According to the Plaintiff, Ishwari Pande at the time of hi death declared that Ram Badan Pande, son of Kali Pande, who was living at the place where Sri Thakurji was installed in Calcutta and was looking after him, should act as sarbarakar after his death and the said lam Badan Pande had been acting as sarbarakar since that time and had been managing the idol.

5. Defendants 1 to 3 filed a similar defence. They pleaded, inter alia, that Sri Thakur Ji was not entitled to withdraw the amount through Ram Badan alone. They alleged that Ram Badan never asserted himself as a sole sarbarakar in previous litigation.

6. The learned Munsif came to the conclusion that Sri Thakurji was not entitled to realise the amount of deposit only through Rain Badan, but through Ram Badan and the Defendants acting as sarbarakars jointly.

7. In appeal the court below stated as follows in the end of the judgment:

I have, therefore, come to the conclusion that Rambadan Pande alone should be held and deemed to be the sarbarakar or shebait of Sri Thakur Ji and not the Respondents.

8. The court below also observed as follows:

In the present case, I am satisfied from the oral evidence led by the Plaintiff that in fact the protection and management of the property of Sri Thakurji has been in the hands of Rambadan Pande and it is he who can be said to have acted as shebait of Sri Thakurji. He has not only performed the Puja of Sri Thakur Ji and managed its property but has also fought out the cases brought by the mortgagor against Sri Thakur Ji and through his effort Sri Thakur Ji made a profit, otherwise, the whole mortgage would have been wiped off merely on payment of Rs. 168.

9. In examining the case of the Plaintiff the learned court below has correctly pointed out that "in the absence of any deed or will as to the devolution of the office of she-bait, the title to the property or to the management and control of the property follows the line of inheritance from the founder. In other words, it passes to his heirs, unless there has been some usage or course of dealing which points to a different mode of devolution". The court below has said that there is no document on record wherein any provision for devolution of the office of shebait has been set out, and then it refers to Ram Badan's statement that he had been appointed as sarbarakar and pointed out that the trial court did not believe the evidence of Rambadan Pande nor that of his corroborative witness on this point. Then it has adverted to the fact that in the mortgagors suit No. 421 of 1941 for accounts and redemption of the mortgaged property, although all the living members of the family of Ishwari Pande were impleaded, the suit was defended by Sri Thakur Ji only through Rambadan Pande and Deo Sahai Pande and the other impleaded members of the family kept quiet and that they did not contribute to the expenses of that suit. It has adverted to the fact that redemption was ordered on the mortgagor paying Rs. 168 and then Sri Thakur Ji, through Rambadan Pande and Deo Sahai Pande, alone filed an appeal in consequence of which the amount payable before redemption was increased to Rs. 1,597. It has also adverted to the fact that the decrees showed that Rs. 74/12 were costs incurred by Sri Thakurji through Rambadan Pande and Deo Sahai Pande in the trial court and Rs. 499/4 were shown as having been incurred

in the appellate court. These decrees, it is to be noted, were allowed to be brought on the record after remand by the court below. It then adverts to the fact that Sri Gopal Pande, brother of Ram Gopal Pande admitted in his statement that Rambadan Pande used to look after Sri Thakurji and that Rambadan Pande had said that he used to do Puja of Sri Thakur Ji and used to manage the property of Sri Thakurji. Then it adverted to the fact that Deo Sahai Pande managed the property of Sri Thakurji and used to pay Rs. 100 for the expenses of Sri Thakurji and Rambadan, in a particular year, had to file a suit against Deo Sahai Pande and obtained a decree for Rs. 300. It then says that "bearing in mind, the course of dealing in respect of Sri Thakurji after the death of Ishwari Pande, and also bearing in mind the fact that all along it was Rambadan Pande who looked after Sri Thakur Ji and performed worship, there is not the least doubt that Rambadan alone has been looking after Sri Thakur Ji and his property and performing his Puja and no other Defendant ever did the same," and then it says that the oral evidence of Rambadan should have been believed by the trial court. Then it brushes aside the submission made on behalf of the Defendant that in the written statement filed in the redemption suit, it was definitely denied by Sri Thakurji through Rambadan Pande that there was any dispute between the sarbarakars impleaded. It brushed aside the submission that at no stage in that suit was it alleged that Rambadan alone was the sarbarakar and that other members of the family were not so and should be struck off the record. It does not seem to have considered the fact that Deo Sahai was also acting along with Rambadan in representing Sri Thakurji in the redemption suit and in the appeal. In other words, that they were both jointly setting themselves up as sarbarakars on the date of the suit and the appeal. Then it states that since the other Defendants did not file their written statements in the earlier suit and did not assert their claim, it must be deemed that they conceded that Rambadan and Deo Sahai alone were the sarbarakars and then it quotes a passage from Mulla that the right of suit in the case of temple property is vested in a shebait. It seems to me upon reading the judgment of the court below that it was only concerned to find whether or not Rambadan had been performing the duties of sarbarakar. It does not appear to have kept in view the fact that this dispute has arisen within the life time of the person who claims to be the first holder of the office of sarbarakar after the founder and that even though Rambadan alone was performing the duties of sarbarakar, the other sarbarakars, who were inactive, would not lose their rights merely because they had not performed any of the duties of sarbarakar concurrently with Rambadan. Until there is a clear renunciation of the sarbarakarship mere inaction would not destroy the right. Merely because certain sarbarakars have been inactive for sometime or have allowed the other sarbarakars to solely manage the affairs for the time being, would not establish that the sarbarakars who had been active were alone entitled to act. It is not an uncommon feature for some sarbarakars to act while others just allow them to go on acting unless the former dispute the latter's right to act. Usage also must take time to be established. In this case, the court below itself has pointed out that Deo Sahai was in the management of the agricultural

property which was mortgaged; that he used to pay Rs. 100/ - per year to Rambadan and that both Deo Sahai and Rambadan had joined as sarbarakars in the appeal preferred in the redemption suit, and indeed had filed a written statement on behalf of Sri Thakur Ji as co-sarbarakars. The court below did not examine Rambadan's statement that he had been declared to be the sole sarbarakar by Ishwari Pande in the light of the fact that Rambadan had not solely acted as sarbarakar but had acted jointly with Deo Sahai. From all this it is apparent to me that what the learned judge was deciding in the case was merely whether Rambadan was the sarbarakar who was principally managing the property or not. That is why he says that Rambadan alone should be held and deemed to be the sarbarakar and that is why he also says that it is Rambadan who could be said to have acted as shebait. In fact, it was not sufficient in this case to say that Rambadan must be deemed to be the sarbarakar or that Rambadan can be said to have acted as sarbarakar. The question in this case is whether the said acting as sarbarakar was due to his being the sole sarbarakar in law to the exclusion of all other members of Ishwari Pande's family on whom the sarbarakarship would ordinarily devolve. In my view, therefore, the real issue in the case has not been answered. The real issue is not whether Rambadan alone was active as sarbarakar and that the other members of Ishwari Pande's family were not active sarbarakars, but the real issue is whether Rambadan is in law the sole sarbarakar of Sri Thakur Ji. If Rambadan is found to be the sole sarbarakar of Sri Thakur Ji, then obviously, Sri Thakur Ji would be entitled to collect the redemption money through Rambadan alone but if he was not, then Sri Thakur Ji could not prevent the sarbarakars from exercising their joint right. In my view, this judgment suffers from an incorrect legal approach and that the finding required to be recorded has not been recorded in this case.

10. In these circumstances, I allow the appeal and set aside the judgment and decree of the court below and send this appeal back for rehearing in the light of the observations made by me. The court below is not, of course, bound by any tentative appraisal of evidence by me and will come to its own independent conclusion. It was conceded by Mr. Varma that the two decrees which were brought on the record in the court below could also be taken into consideration now for the purpose of the decision of the appeal by the court below. The record of this case will be sent to the court below which will restore the appeal to its original number and proceed to deal with it according to law. The costs will abide the result.

11. The appeal should be disposed of by the court below within three months of the arrival of the record.