

(1937) 02 CAL CK 0005
In the Calcutta High Court

Sashi Mohan Basak and Others

APPELLANT

Vs

Shebaita of the Gods Sri Sri Lakshmi Narayanjee Thakur and
Others

RESPONDENT

Date of Decision : 18-02-1937

Acts Referred:

Letters Patent Act, 1865 — Section 15

Citation : AIR 1937 Cal 331 : 173 Ind. Cas. 885

Hon'ble Judges : Derbyshire, C.J.; D.N. Mitter, J

Bench : Full Bench

Judgement

D.N. Mitter, J.—This is an appeal u/s 15, Letters Patent from a judgment of Rupendra Coomar Mitter, J., by which he modified the concurrent decrees of the Courts below. The appeal before us was preferred on behalf of the defendants and arises out of a suit in ejectment. Stripped of all details, the fact on which the questions of law which fall for determination in this Letters Patent Appeal depend are these: The disputed premises from which ejectment is sought represent a part of a Haveli or a pucca building which in subsequent partition proceedings of the said Haveli constituted allotment No. 1. This allotment No. 1 which is the subject matter of the present suit was made in respect of a 9 annas 10 gandas 2 karas 2 krants share of the idols—the plaintiffs represented by the Shebaita, namely plaintiffs 1 Ka and 1 Kha and of plaintiff 2. Of this share 8 annas 6 gandas 2 karas and 2 krants was by the partition held to belong to the Bigras or idols and the remaining 1 anna 4 gandas share to plaintiff 2 in his secular right. It is necessary to give the history of the endowment in order to understand the points which arise. It appears that about 400 years ago one Krishnadas founded the worship of certain idols. Nearly 300 years after such worship was founded some properties were dedicated to the said idols or Bigras and in the year 1908—it is the case of the plaintiffs in the plaint—dedication of certain properties was made to the same idols by one Jadunath whose heirs are plaintiffs 1 Ka and 1 Kha. The suit has been instituted by the said plaintiffs along with plaintiff 2 to eject the defendants on the allegation that they are holders of a tenancy which is

liable to be annulled on service of a proper notice to quit.

2. In the defence to the suit various points have been raised. It is contended on behalf of the defendants that the suit is not maintainable unless all the shebait, namely the heirs of the original founder Krishnadas, are impleaded as plaintiffs in this litigation. Questions have also been raised with regard to the sufficiency of the notice and with regard to the defect in the service of the notice; and a further question has been raised in this Court having regard to the finding arrived at by Rupendra Coomar Mitter, J. that the tenancy really belongs to the idols in certain shares and that plaintiff 2 has got no interest in the tenancy. That point is that the notice, in view of the finding by the learned Judge, must be regarded as insufficient notice. We will advert to this later. The Courts below have come to the conclusion, after framing several issues which are about nine in number, that the suit is not bad and that the plaintiffs alone can maintain the suit to eject the defendants. The lower Courts have also come to the conclusion that the properties in question were dedicated by Jadunath by an instrument which has been marked as Ex. 3 in the suit and that dedication imposed a condition in the deed that the shebait of the deities were to be the heirs of Jadunath in the male line-a condition which is not according to the authorities quite in consonance with Hindu law. The lower appellate Court has also adopted the same view after coming to the conclusion that whoever may be the shebait in view of the fact that the original founder of the worship was Krishnadas, by custom Jadunath who dedicated the properties in the year 1908 must be regarded as the sole shebait entitled to sue in ejectment. The suit was accordingly decreed and that judgment was affirmed by the lower appellate Court.

3. An appeal was taken to this Court and was heard by Rupendra Coomar Mitter, J. He has come to the conclusion, so far as the question of custom and usage is concerned, that there was no evidence to justify the finding of the lower appellate Court that by custom or usage Jadunath or his heirs could be regarded as the sole shebait; but he has reached the conclusion that in view of the deed of dedication of the year 1908 it must be taken that the shebait accepted the condition which was attached to the deed, namely, that the shebaitship was to descend to the heirs of Jadunath in so far as such condition is not repugnant to Hindu law. Before the learned Judge it seems the contention was raised by Mr. Chakravarti, as it has been raised before us now, that the property belonged to the idols prior to the year 1908 having been purchased by Jadunath in the name of the idols and for the benefit of the idols by two documents Exs. 2 and 2(d), and that consequently the condition which was attached to the deed of dedication, Ex. 3, could have no effect because the property had already vested in the idols by reason of these two deeds of sale which imposed no condition with regard to shebaitship. Mr. Chakravarti has relied on the finding of the lower appellate Court, which finding was certainly binding on this Court in second appeal, to the following effect (see p. 20 of the judgment of the lower appellate Court):

Though the purchase in the names of the Bigras alone did not by itself confer title upon them when the money was provided by Jadunath it is not accurate to say that Jadunath was ever in possession in his own right. From the very beginning he treated the property as belonging to the Bigras and even instituted suit No. 1 of 1907 in their names. Plaintiffs 1 ka and 1 kha claim to be the sole shebait of this particular property.

4. Upon this finding the appellants have contended before us that it was not open to the learned Judge of this Court to come to a contrary finding of fact, namely that the property did not belong to the idols after the sale in the year 1900 by Ex. 2 and Ex. 2(d). It would be difficult to accept this reading of the lower appellate Court's judgment in view of the other findings to which I will presently refer. At the same page 20 the lower appellate Court finds "the money must have been paid by Jadunath. I agree in finding that the property was purchased with money belonging to Jadunath" and there is a subsequent finding to which our attention has been drawn by Mr. Chakravarti which really amounts, in my opinion, to this that the purchase was really made benami by Jadunath in the names of the idols. Stress is laid on the circumstance that suit No. 1 of 1907 was instituted in the names of the idols; but it is quite consistent with the benami nature of the transaction and I do not think that Mitter, J. has displaced any finding of fact arrived at by the lower appellate Courts on the evidence that was properly before it. The sole question before us, therefore, is, whether the dedication was by Ex. 3. We are of opinion, in agreement with the learned Judge, that the dedication was by Ex. 3 which contained the following term so far as is material to the present controversy. At page 3 of the papers supplied to us in Ex. 3 this is what is stated with regard to shebaitship and the descent of shebaitship:

During my lifetime I myself and on my demise religiously minded male descendants such as sons, grandsons, great-grandsons, etc., and on failure of male heirs to their sons they up to their line shall in accordance with the prevailing custom of the family, manage and superintend the said property as shebait; but never shall any daughter or daughter's son of mine engage in shebaitship or have any right so to engage.

5. The gift to the idols by this document contained this condition as to the devolution of shebaitship. It is true, having regard to the decision of the Privy Council in *Gnanasambanda Pandara Sannadhi v. Velu Pandaram* (1900) 23 Mad 271, which has been followed by a Pull Bench of this Court in *Monohar Mukherjee v. Bhupendra Nath* AIR 1932 Cal 791, that the provision with regard to shebaitship, in so far as it is restricted to the male line, is contrary to Hindu law; but we are not concerned at present with that because there can be no question that the sons of Jadunath are entitled under this deed of dedication to be the proper shebait and the sons of Jadunath are suing in ejectment. When occasion arises the question as to the validity of the entire clause about descent of shebaitship might have to be determined. It is not disputed that so far as the sons are concerned they have a right under this deed to succeed to the

shebaitship. I agree, therefore, that the sons of Jadunath have a right to sue in ejectment.

6. Then comes the question as to whether there has been a proper notice to quit having regard to the finding of the learned Judge in this Court that plaintiff 2 has got no interest in the tenancy. It has been contended, and very strenuously contended, that the notice to quit was given on the footing as if the idols as plaintiff 1 were the sole owners of the demised premises and the notice directed that the tenants should vacate from the entire premises. It is said now that the finding is that the idols have got an undivided share in the premises and the notice must be regarded as bad. We are unable to accede to this contention because it seems clear that if the notice is sufficient with regard to the whole of the demised premises one fails to see any reason why it should not be sufficient with regard to a portion of the demised premises, namely an undivided share, even if the property from which ejectment is sought may be an undivided portion of the said premises. Indeed no authority has been cited by Mr. Chakravarti in support of this contention which he has raised. I do not see there is either reason or authority in support of this contention and I have no hesitation in rejecting it. This point therefore fails. These substantially were the two points which were raised before us and both of them fail. The appeal must therefore be dismissed with costs.

Derbyshire, C.J.

7. I agree.