
(1946) 09 PAT CK 0016

In the Patna High Court

Sri Sankareswar Mahadeb and Others

APPELLANT

Vs

Bhagabati Dibya and Others

RESPONDENT

Date of Decision : 04-09-1946

Acts Referred:

Citation : AIR 1949 Patna 193

Hon'ble Judges : Ray, J; Meredith, J

Bench : Full Bench

Judgement

Ray, J.—This is a plaintiffs' second appeal in a suit for having it declared that the transfer of the shebaiti right along with the properties attached thereto by the widow of the last shebait, Chemai Kar, who died nine years ago, is void, and that on account of such transfer the widow had committed a breach of trust which disentitled her to continue as a trustee any longer and in that event for recovery of the shelat right of the plaintiffs. The transfer was in favour of one of the co-shebaitis, belonging to the Kar family, that is, the descendant of the original donee in whose favour the endowment was made. The suit was resisted on the ground that the plaintiffs, who are daughters of Chemai, had no locus standi to bring the suit, that the transfer was justified by legal necessity, and that, in any event, the suit was not maintainable as the plaintiffs were not members of the Kar family and as such had no right of inheritance with regard to the right of shebaitship.

2. While considering issue No. 2 as framed by the trial Court which runs: "Have the plaintiffs any locus standi to file this suit?", the learned Munsif came to a finding, on consideration of the evidence adduced by the parties, that since the establishment of the endowment, which took place in the year 1754, the shebaiti right had never gone out of the Kar family either by inheritance or by any means whatsoever; and secondly, he found that it was the custom or usage prevalent in this institution that nobody other than a member of the Kar family can perform the sheba puja, or, in other words, the services of the deity. Because of this finding in combination with the finding that there has been no instance of any

succession by an outsider to the shebaitship, he held that the plaintiffs had no locus standi to bring the suit. On the other issue, namely, whether the sale was valid, he came to a finding that it was void, there being no necessity for such a sale.

3. The plaintiffs took up an appeal against this decree of the learned Munsif, and the learned District Judge agreed with the learned Munsif that the plaintiffs had no locus standi to bring the suit as they had no vested or contingent right of succession to the shebaitship. It would be worth while to quote a passage from the judgment of the learned District Judge by which he disposed of this issue before him:

The next point to be considered is whether as these appellants have married out of the Kar family they have no locus standi to file this suit. The learned Munsif has discussed this matter at some length and a certain amount of evidence has been let in. It does not seem that this evidence is particularly conclusive. In point of fact the appellants have not been able to show that any woman born in the Kar family but married out of it ever became a shebait and the respondents have not been able to show that any such woman has ever been definitely excluded. There was evidence by a number of people on behalf of the respondents that no person other than members of the Kar family could be shebait. It is clear that the shebayati right has never got out of the Kar family and it is hardly likely that in the course of the 200 years during which this temple has existed that the case of a member of the Kar family dying leaving only daughters behind him has never arisen. The balance of the evidence is against the appellants. Further it is the view of any legal system, not solely the Hindu system, that a woman who marries becomes a member of her husband's family and ceases to be a member of her father's family. I think it is reasonably clear that people who have ceased to be members of a family have no further connexion with it. I therefore uphold the finding of the learned Munsif that the appellants could not maintain the suit.

4. The plaintiffs have come up in second appeal against this decision. It should be borne in mind that the learned District Judge, having taken this view, did not think it worth while to consider the correctness or otherwise of the learned Munsif's finding as to the validity of the sale; nor was it necessary for him to find whether there has been a breach of trust which will entitle the plaintiffs to come in and to take possession of the shebaiti right.

5. The only point that has been argued in this appeal before us is whether the plaintiffs are legitimate heirs of Chemai Kar in respect of the shebaiti right, or, in other words, whether they have got the locus standi to bring the suit. The learned Counsel appearing for the appellants contends very strenuously that if a widow is entitled to perform the sheba puja through a deputy, there is absolutely no reason why the married daughters should not be allowed to do so. He next contends, relying upon a decision of this Court in *Mt. Anuragi Kuer v. Parmanand Pathal* AIR 1939 Pat. 1, that in the absence of any usage or any other mode of devolution to the contrary, succession to a shebaiti right should be governed by

ordinary rules of succession applicable to devolution of any secular properties, and he, therefore, contends that the daughters being the legitimate heirs under the Hindu law, of the estate of their father, and it having been found by both the Courts below that there has been no instance occurring in which daughters or such other female heirs who have gone out of the family or such, male heirs as do not belong to the Kar family have ever been excluded from succession, it should be held that the plaintiffs are entitled to succeed and are, therefore, entitled to maintain the suit.

6. I am afraid, I cannot accede to this contention, and the position, it seems, has been definitely settled by their Lordships of the Privy Council. The earliest dictum of the Privy Council which was expressed as the general proposition of law governing the question of succession of the shebaiti right or debattar properties was, the case of Qossamee Sree Qreedharreejeev. Ramarilalji Qossamee 16 I.A. 187 where Lord Hobhouse delivering the Judgment of the Board, said as follows:

According to Hindu law, when the worship of a thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution.

In the case of Mohan Lalji v. Qobardhan Lalji Maharaj 85 All. 283 the question of succession to the shebaiti right came up for consideration. The facts relevant to the case were that the temple was a temple of Ballavacharya Gossain, and the members of the sect had the particular right to perform the services in the said temple, and the right to perform such services was not available nor open to any outsider. In that temple also there were instances in which widows and daughters used to hold the position of shebaits. So far as the daughters were concerned, the custom of the family was that they used to, notwithstanding their marriage, continue to be members of their father's family and to reside there for all practical purposes; but the question was quite different with regard to their sons who used to be considered not belonging to their gotra, of the Ballavacharya Gossain, but to the family of their fathers, namely, the Bhats. It was the established practice of this institution that the Bhats were as such not entitled to perform the services of a shebait in the temple. The plaintiffs in that case were daughter's sons by one of the shebaits. They claimed that as they were the heirs by ordinary rule of inheritance under the Hindu law and that there was no custom to the contrary, they must be held entitled to succeed. Their Lordships dealing with this question after quoting from the judgment of Lord Hobhouse, which I have already quoted, said:

This rule must, from the very nature of the right, be subject to the condition that the devolution in the ordinary line of descent is not inconsistent with or opposed to the purpose the founder had in view in establishing the worship. This qualification is in fact covered by the words used by Lord Hobhouse.

In coming to the facts of that case, their Lordships said:

Starting from this point, the first question to determine is whether the plaintiffs suing for the joint exercise of the right of shabait ship to the temple in suit have established their competency for the office.

Then they dealt with the evidence and came to the finding that as Bhats, the plaintiffs were not competent to perform the services attached to the office Their Lordships further observed:

But to allow the plaintiffs' claim to an admittedly Ballav temple, where the rites are performed according to Ballav ritual, which, it is clearly established, they cannot perform, would, in their Lordships' judgment, defeat the purpose for which the worship was established.

7. This takes me back to consider the very document on which this endowment is based. The document is a short one which reads:

Under orders of Santa Mahasya I Biswambar Pat-naik hereunto execute this chop Sananda to Purushottam Karand the reasons for execution of this chop sanad of gift is that for offering of water, Plantain, and Pada to Sankarsan Muhadeva I make a gift of 10 mans of land in village Harisingpur and in that laad building house and inducting enants to get it cultivated (sic), you will perform Seba of Mahadev and pray for welfare of Santa for ever.

It is quite clear that the purpose of the endowment is to perform certain services, and to make certain offerings to Sankarsan Mahadev, and to pray for welfare of the endower and his family for all time to come. If it has been established, in this case, by concurrent findings of both the Courts below that these services cannot be performed by anybody other than a member of the Kar family, to use the words of their Lordships of the Privy Council, "to allow the plaintiffs' claim...would defeat the purpose for which the worship was established." It is further to be seen that according to the contention of the learned Counsel for the appellants it was for the defendants to establish the custom negating their right to succession, but this is not the real line of approach in view of what their Lordships have laid down, namely, that in a suit where the plaintiffs sue for the exercise of the right of shebaitship to a temple, it is for them to establish their competency to the office. In this view there can be no manner of doubt that not only the plaintiffs have failed to establish their competency to worship, but the defendants have succeeded in establishing definitely that they (the plaintiffs) are incompetent to perform such a service. Under the circumstances, not on the ground of succession but on the fact of their marriage, they have gone out of the Kar family, and as such, they are incompetent to perform the shebaiti services, and they are, therefore, not entitled either to maintain the suit or to recover possession of the shebaiti right.

8. Lastly, the learned Counsel for the appellants has tried to contend that whatever may happen to the performance of the services, they are, at any rate, entitled to the property. It has been very clearly laid down by their Lordships of the Privy Council in the case of Jalandhar Thakur v. Jharula Das AIR 1914 P.C. 72

that a shebaiti right cannot be conceived of without a right of performance of its services, and they clearly laid down that mere possession of the properties, for howsoever long it may have been being {sic} more than the statutory period, would not give a right of shebaiti-ship to anybody. It is only by performance of services that shebaiti right can be either exercised or acquired, and, therefore, in a suit in which the question is whether the plaintiffs are entitled to the right of shebaitship, we cannot divert our attention to the question of property from the real question of their competency to per-form the services. In this view of the matter, the learned Courts below were perfectly right in holding that the plaintiffs were not entitled to succeed and therefore, they were not entitled to maintain the suit. The suit was rightly dismissed as not maintainable. In this view, the question of commission of breach of trust by defendant 1 and the question of validity or otherwise of the sale do not arise for consideration.

9. In my judgment, this appeal has no merit, and must be dismissed with costs.

Meredith J.

I agree.