

(1940) 10 PRI CK 0001

In the Privy Council

Case No : Privy Council Appeal No. 7 of 1939

Sri Sri Iswar Ram Chandra Bigrha Thakur and another

APPELLANT

Vs

Bengal Duars Bank Ltd.

RESPONDENT

Date of Decision : 30-10-1940

Acts Referred:

Citation : (1941) AIR(PC) 33

Hon'ble Judges : George Rankin, Lord Thankerton, Lord Atkin, JJ.

Advocate : Dold, Douglas Grant, T.L. Wilson and Co., W. Wallach, C. Bagram, Sir Thomas Strangman, for the Appearing Parties.

Judgement

Lord Thankerton

The appellant, Prasanna Deb Raikat, sues for himself and as shebait for an Idol, Sri Sri Iswar Ram Chandra Bigrha, who is thus in name a plaintiff and appellant, in the five suits which are the subject of the five consolidated appeals against a judgment and five decrees of the High Court of Judicature at Fort William in Bengal, dated 16th June 1936, which affirmed a judgment and five decrees of the subordinate Judge of Jalpaiguri, dated 23rd December 1932, dismissing the five suits with costs. In three of the suits Prasanna Deb Raikat, who may be referred to as the appellant, seeks to set aside permanent leases at fixed rents granted by Sitaram Bairagi, whom the appellant - in view of the findings of the Courts below - does not now dispute to have been hereditary shebait of the Idol. In the other two suits the appellant seeks ejectment of temporary tenants, on whom notice to quit has been served.

The appellant's original grounds of suit were that the Idol had been installed by an ancestor of his, who had endowed it with property which included the lands in suit, and had placed a priest in charge of the Idol and the property, but that the ancestor retained control and that there was no hereditary right of succession in the priests. It was stated that Sitaram had succeeded his father as priest, but that, about 1883, the Rajah, being dissatisfied with Sitaram, had removed him and had appointed Budhu, Sitaram's stepmother, in his place; that, in 1909, on

Budhu's death, while the estate was under the Court of Wards Sitaram had got back into possession and had subsequently created these five tenancies; that on Sitaram's death in 1925, he had been succeeded by his son, Khagendra, who had executed a deed of surrender of the Idol and the property to the appellant on 15th November 1925, and that the appellant had removed the idol to his own house and had given the notices to quit and had filed the five suits at various dates in 1929 and 1930. As regards the property in suit, the appellant claimed that it was debuttar property of the Idol and that, as shebait, he was entitled to recover possession and, if it was not debuttar property, that it belonged to the appellant personally. At the hearing before this Board, mainly by reason of the facts concurrently found by the Courts below, the appellant had to concede that the Idol was installed by one of Sitaram's ancestors and that Sitaram and his ancestors were shebait of the Idol; that an ancestor of the appellant, who had endowed the Idol with the property, had imposed no conditions as to its management or as to the appointment of shebait, at the time of the endowment; and that the so-called deed of surrender by Khagendra was a nullity and that the appellant was not the shebait of the Idol.

In these circumstances the appellant was driven to find some ground to justify his insistence in these suits on behalf of the Idol and he accordingly sought to maintain that he was entitled to insist as de facto shebait of the idol, and he relied on two decisions of this Board : ("33) 20 AIR 1933 PC 75 : 142 IC 214 : 12 Pat 251 : 60 IA 124 (PC), Ram Charan Das v. Naurangi Lal and ("35) 22 AIR 1935 PC 44 : 153 IC 1100 : 57 All 159 : 62 IA 47 (PC), Mahadeo Prasad Singh v. Karia Bharti. This ground is not raised in the appellant's pleadings, and was submitted for the first time in the High Court. The High Court distinguished these cases on the ground that they related to the mohantship of a math and not to a shebaitship of an endowment, and on the facts of the cases, and pointed out that the complaints were not based on the appellant's possession as de facto shebait. They rejected the contention. While distinction may well be drawn between the case of a math and that of a private Idol their Lordships find it unnecessary to consider the question in these appeals, for not only are the pleadings silent on the matter, but the appellant had also to admit that there was no evidence of his having in fact acted in management of the Idol's property, as, for instance, by the collection of rents. This contention accordingly fails. Their Lordships will therefore humbly advise His Majesty that the judgment and decrees of the High Court should be affirmed and that the consolidated appeals should be dismissed with costs.