
(2004) 01 CAL CK 0046
In the Calcutta High Court
Case No : C.S. No. 620 of 1982

Sri Sri Lakshmi Janardan Thakur and Others

APPELLANT

Vs

Prabhat Kumar Paul and Others

RESPONDENT

Date of Decision : 08-01-2004

Acts Referred:

Evidence Act, 1872 — Section 91

Citation : (2004) 2 CHN 270

Hon'ble Judges : Alok Kumar Basu, J

Bench : Single Bench

Advocate : S.K. Mitra, for the Appellant; Sujit Addi, for Defendant No. 1(A), S. Ghosh, for Defendant No. 2, S.N. Sanyal, for Defendant No. 5, Someswar Chakraborty and A.N. Bhattacharjee for Defendant Nos. 7 to 10 and 12, for the Respondent

Judgement

Alok Kumar Basu, J.—This is a suit at the instance of the receiver on behalf of the three deities namely, Sri Sri Lakshmi Janardan Sila Thakur, Sri Sri Vairabeswar Shib Thakur and Sri Sri Kailash Nath Shib Thakur appointed by this Court in connection with Administration Suit No. 2491 of 1948 for a declaration that premises No. 13, Sitaram Ghosh Street, Calcutta-9 (hereinafter to be mentioned as suit property) belonged to the deities and for cancellation of the deed of lease executed by defendant Nos. 2 to 4 in favour of original defendant No. 1 Padma Rani Paul since deceased and for further declaration that defendant No. 1(A) of the present suit never acquired any right of possession in any manner also for recovery of possession of the suit property from the said defendant. The plaintiffs have also prayed for injunction against defendant No. 1(A) restraining him or any other person claiming under him from interfering with the peaceful possession of the deities over the suit property and also for order holding enquiry as to ascertain damages/mesne profit to which the deities are entitled for wrongful possession of the suit property by original defendant No. 1 and thereafter by the substituted defendant No. 1(A).

2. The plaint case may be stated briefly in this way that one Kailash Chandra Dey by a deed of Arpannama dated 11th April, 1903 dedicated both immovable and movable properties of his own in the name of three deities already mentioned including the suit property and it was mentioned in the said Arpannama that during the life-time of Kailash Chandra Dey, he would be in charge of the seba puja of the deities and the properties dedicated as seba and after his death one Haridas jointly with other successors of Kailash Chandra Dey would function as seba in respect of seba puja and also look after the properties as per terms of the Arpannama.

3. Sometime in the year 1948 dispute arose regarding right of seba puja amongst the heirs of Kailash Chandra Dey which resulted in filing of Administration Suit No. 2491 of 1948 for removal of Krishna Chandra Dey and Kanai Lal Dey from the post of seba and also for directions from the Court in the matter of administration of debutter estate and other ancillary matters.

4. The said administration suit as indicated above was ultimately settled and following the settlement on 24th July, 1958 a consent decree was passed under which the right of seba was divided among Kanai Lal Dey, Krishna Chandra Dey and the present defendant Nos. 2 to 4 and it was decided that Kanai Lal Dey will have the first term of seva puja or pala for one year from the date of decree followed by the present defendant Nos. 2 to 4 for one year from 8th October, 1959 and thereafter Krishna Chandra Dey will have the term of worship for the next year. It was further indicated in the compromise decree that management of debutter properties would be in accordance with the scheme annexed to the decree and subject to the provisions of the deed of Arpannama.

5. According to the terms of the consent decree as mentioned above defendant Nos. 2 to 4 got their term of seba on and from 8th October, 1958 and on 30th August, 1960 they executed a deed of lease in favour of their full sister Padma Rani Paul who was asked to collect arrear rent from the erstwhile tenants in occupation and Padma Rani Paul was given the right of eviction of those tenants, for making petty repair of the suit premises and also for making addition and alteration with a liberty to let out the premises on sub-lease and to make profit thereof. Padma Rani Paul was initially given the lease for a period of five years with a liberty to renew the same for another five years.

6. It is the case of the plaintiffs that upon the submission of the parties to the administration suit, this Court appointed several receivers over the debutter estate and upon the submission of defendant Nos. 7 to 12, one of the receivers namely, G.K. Dutta was asked to make spot inspection in respect of the suit property and to submit a report before the Court.

7. It is the case of the plaintiff that G.K. Dutta informed this Court through his report that the suit property is being used for letting out for different ceremonial purposes and thereby the occupant of the suit premises have been collecting huge money while the deities being the actual owner of the suit property were

getting a paltry rent of Rs. 60 per month and thus, the interest of the deities are being seriously affected by occupation of the suit property by defendant No. 1 and further it was mentioned before the Court by the receiver that defendant Nos. 2 to 4 had no authority to execute the deed of lease and the deed of lease was not binding against the deities.

8. This Court on perusal of the report of said receiver G.K. Dutta and upon hearing all the parties of the administrative suit, ultimately directed G.K. Dutta by an order dated 13th April, 1982 to institute appropriate proceeding for recovery of possession of the disputed property and also to realise damages/mesne profit from the persons in occupation of the suit property.

9. G. K. Dutta, pursuant to the order of this Court, ultimately instituted the present suit in July, 1982 against defendant No. 1 and on the death of defendant No. 1, the defendant No. 1(A) was substituted as a legal heir of deceased defendant No. 1 since inspite of paper advertisement no other heir of deceased defendant No. 1 came forward to be added as party defendant.

10. It has been urged on behalf of the plaintiff deities that the deed of lease executed by defendant Nos. 2 to 4 in favour of defendant No. 1 since deceased was void ab initio since defendant Nos. 2 to 4 as per terms of the deed of Arpannama and the consent decree had no authority to execute the said deed and further the deities being the owner of the suit property and their being no legal necessity for alienation of the suit property, the deed of lease was totally illegal and inoperative. It has been further urged on behalf of the plaintiff deities that Padma Rani Paul and on her death defendant No. 1(A) did not acquire any right or interest in the suit property and occupation of the suit property by defendant No. 1 and thereafter by defendant No. 1(A) has been that of occupation by a mere trespasser all along and when the receiver was directed by this Court to institute proper proceeding for recovery of the possession of the suit property on behalf of the deities, the deities also entitled to get all the reliefs mentioned in the plaint.

11. Defendant No. 1 during her life-time appeared in this suit and filed her written statement to oppose the reliefs of the plaintiff deities and on her death the substituted defendant No. 1(A) adopted the said written statement. The stand of the defendant No. 1(A) is that her mother was never a party in the administration suit and whatever may be the orders passed in that administration suit that cannot have any impact on the status of her mother as tenant of the disputed property.

12. Defendant No. 1(A) has stated that neither in the deed of Arpannama nor in the consent decree there was any embargo restricting the right and capacity of defendant Nos. 2 to 4 for execution of the deed of lease and defendant Nos. 2 to 4 executed the deed of lease in favour of Padma Rani Paul as there was urgent necessity to meet the expenses of the daily seva puja and also to get rid of the previous tenants who were defaulters in payment of rent for a long period.

Defendant No. 1 has further stated that by accepting tenancy right over the suit property through the deed of lease Padma Rani Paul in fact protected the suit property against a pending suit filed by the Calcutta Municipality for realisation of arrear tax and hence, the deed of lease was legal and valid document. The further case of defendant No. 1 is that even if the deed of lease is adjudged to be a document not binding against the deities, still, Padma Rani Paul acquired valid right as a tenant as one of the receivers namely, P. C. Sen accepted Padma Rani Paul as a tenant of suit property by accepting rent from her which was approved by all the sebaits of the debutter estate by their act and conduct. The defendant No. 1, therefore, contends that as Padma Rani Paul acquired legal right by way of tenancy save and except by filing a regular suit of eviction, neither Padma Rani Paul nor any other person claiming tenancy right after her could have been evicted and hence, the present suit is not maintainable in its form and reliefs. The defendant No. 1 has also raised question about the maintainability of the present suit.

13. Defendant Nos. 2 and 3 are also contesting this suit by filing a separate written statement. These defendants have challenged maintainability of the suit on the ground that one of the deities was not in existence at the time of filing of the suit and hence, the suit is not maintainable in the manner it has been filed. These defendants have also challenged the locus standi of the receiver G. K. Dutta to file this suit claiming himself as next friend of the deities when in fact he was never next friend of the deities as per orders of the administration suit.

14. These defendants contend that as paladar or sebaite "for the time being" as per terms of the consent decree they had right and authority to execute the deed of lease during their term of worship and that was done in pursuant to the terms and conditions of the deed of Arpannama.

15. These defendants submit that as per terms of Arpannama for the seba puja of the deities and for protection of any property of the debutter estate, the sebaits "for the time being" had the authority to let out any property of the debutter estate and in this particular case for protection of the suit property against the pending litigation of the Calcutta Municipality, for urgent repair of the suit property and also for realisation of arrear rent from the previous tenants, the lease deed in question was executed which was for legal necessity of the deities and hence, there is no reason whatsoever to call in question the legality and validity of the said deed of lease.

16. Defendant Nos. 7 to 11 and 12 have also filed a written statement in this suit supporting the case of the plaintiff deities.

17. Upon the pleadings of the parties and after considering issues suggested by the parties, this Court ultimately framed the following issues for adjudication of the suit.

Issues :

1. Is the suit maintainable in its present form?
2. Were the sebaits/defendant Nos. 2, 3 and 4 competent to execute the deed of lease dated 30.8.1960 in favour of the lessee Padma Rani Paul (since deceased) on behalf of the plaintiffs/deities?
3. Is the deed of lease dated 30.8.1960 and subsequent renewal thereof in respect of the debutter property being premises No. 13, Sitaram Ghosh Street, Calcutta legal and valid?
4. Are the plaintiffs/deities entitled to recover possession of premises No. 13, Sitaram-Ghosh Street, Calcutta, which is debutter property, from the lessee Padma Rani Paul (since deceased) and/or her legal heirs?
5. To what reliefs, if any, are the plaintiffs entitled?

Issue No. 1 :

18. Mr. Addi, the learned Counsel representing defendant No. 1(A) submits that Mr. G. K. Dutta representing himself as next friend of the deities instituted the suit, but, it would appear from records of the administration suit that Mr. Dutta was never appointed as next friend of the deities and hence, in the present suit the deities have gone unrepresented and it is settled legal position that the Hindu deities must sue either through sebaite or through next friend or at least through any person having interest in debutter estate. Mr. Addi contends that receiver G.K. Dutta cannot be stated to be person having any interest in the debutter estate and hence, the suit is not maintainable in the present form.

19. Mr. Addi next submits that admittedly at the time when the present suit was instituted there was no existence of Sri Sri Lakshmi Janardan Thakur as the same was reported to be missing and a replacement was made long after filing of the suit and hence, when one of the deities was non-existent, the receiver had no authority to file the suit on behalf of the three deities and on this ground also the suit is not maintainable in its present form.

20. Mr. Ghosh, appearing, on behalf of defendant No. 2 contends that the plaint in the present case is required to be rejected outright since G. K. Dutta, receiver did not approach the Court with a clean hand. Mr. Ghosh contends that knowing fully well that one of the deities namely, Lakshmi Janardan Thakur was not in existence and knowing fully well that G. K. Dutta was not next friend of the deities, G. K. Dutta filed the present suit showing existence of all the three deities and depicting himself as the next friend of the deities. Mr. Ghosh submits that receiver knowing fully well the factual position has made false statement through the plaint and hence, following the decision of the Hon'ble Supreme Court reported in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, the plaint filed by Mr. G. K. Dutta is liable to be rejected outright.

21. Mr. Ghosh in order to strengthen the argument of Mr. Addi further contends

that according to settled legal position Hindu idol can be represented either by next friend or by sebaite or when there is any conflict among the sebaits by any other person having interest in the debutter estate. Mr. Ghosh contends that admittedly G. K. Dutta did not have any interest in the debutter estate and thus, without being appointed next friend of the deities as a disinterested person in the debutter estate, Mr. Dutta had no authority to file the present suit.

22. On the question of maintainability, Mr. Addi next submits that the claim of the plaintiff deities is barred by limitation because one of the reliefs has been for cancellation of the deed of lease and under the relevant provisions of the Limitation Act such a suit is required to be filed within three years from the execution of the instrument and admittedly in this case while the lease deed in question was executed in 1960 the suit has been filed in 1982 and hence, the prayer for cancellation appears to be hopelessly barred by limitation and if the prayer of cancellation does not stand, the entire suit of the plaintiff deities is bound to fail. Mr. Addi in this context submits that under the Limitation Act the Hindu deity does not enjoy any special protection and hence, there is no escape for the deities from the law of limitation.

23. Mr. Mitra, appearing for the plaintiffs submits that there is no merit in the points raised by defendant No. 1(A) and by defendant Nos. 2 and 3 on the question of maintainability. Mr. Mitra contends that the Arpannama was executed dedicating both immovable and movable property in the name of three deities and in view of the terms and conditions of the Arpannama and when the dedication was complete and absolute in the name of three deities, it is immaterial whether all the three deities were existing or not at the time of institution of the suit because the suit is for recovery of property dedicated in the name of deities and non-existence of the mere symbolic form of deity cannot affect the maintainability of the suit.

24. Mr. Mitra contends that there is no denying of the fact that G. K. Dutta was not appointed next friend of the deities and G. K. Dutta was also not a sebaite, but, G. K. Dutta filed the present suit on behalf of the deities under the leave and authority derived from an order of this Court passed in the administration suit where defendant Nos. 2 to 4 along with other sebaits took part in the proceeding. Mr. Mitra submits that when there is conflict of interest among the sebaits including the sebaite who was once appointed as next friend, to protect the genuine interest of the deities the receiver may come forward in presenting a suit to protect the interest of the deities as an officer of the Court and in this case the receiver was instructed by the Court itself to take appropriate steps for institution of appropriate proceeding to protect the interest of the deities regarding the suit property and naturally, there is no scope to challenge the authority of the receiver in the matter of filing of the present suit. Mr. Mitra submits that a similar question was raised in the case of Jogendra Nath Naskar Vs. Official Receiver and Others, and it was held by the Division Bench that receiver had the full authority to file the suit when there was an order from the

Court empowering the receiver to file such suit and when there was conflict of interest among the sebaits.

25. On the question of limitation, Mr. Mitra submits that when the deed of lease was void ab initio the limitation would run from day to day and that apart in this particular case the question of filing the suit arose only upon the order of this Court and when the receiver filed the suit soon after getting order of the Court, the reliefs claimed by the plaintiff deities cannot be stated to be barred by limitation.

26. Mr. Sanyal, appearing for some of the defendants supporting the case of the plaintiff deities reiterated the points taken up by Mr. Mitra on the question of maintainability.

27. Having regard to the submissions made by the respective parties on the question of maintainability and limitation and after considering the facts and circumstances of the present case, I am of the view that there is no merit in the point raised by defendant No. 1(A) and defendant No. 2 for the following reasons.

28. On a careful reading of the Arpannama executed by Kailash Chandra Dey it is very much clear that the dedication in the name of three deities was absolute and unconditional. The Arpannama made provisions for seba puja of all the three deities from the income of the debutter property.

29. After considering the objections raised by Mr. Addi and Mr. Ghosh I am of the view that when the dedication of the debutter estate was complete and such dedication was for three deities, temporary absence of a symbolic form of deity cannot affect the basic terms and conditions of the Arpannama and it has been clearly laid down in the Arpannama that appropriate proceeding can be instituted to protect the interest of the deities over the debutter estate. Thus, in my view the receiver Mr. G. K. Dutta did not make any mistake in presenting the suit in the name of the three deities.

30. Admittedly, the next friend appointed by the Court in the administration suit did not file the present suit, but, it is equally admitted fact that there is conflict of interest among the sebaits themselves including the appointed next friend and in that background if there is any necessity of filing a suit to protect the interest of the deities over the debutter estate, anybody having interest in the debutter estate or deriving authority can file the suit. In this particular case on hearing the parties of the administrative suit and after considering a report submitted under order of this Court, this Court granted leave to G.K. Dutta to file appropriate proceeding for recovery of the suit property on behalf of the deities and following the principle of law decided by the Division Bench of this Court in the case of Jogendra Nath Naskar (supra), I find no infirmity in the matter of presenting the suit by G. K. Dutta as receiver and in a wider sense without being appointed next friend in the given facts and circumstances Mr. G.K. Dutta can be treated to be the next friend of the deities when he came forward to protect the interest of the deities over the debutter estate.

31. On the question of limitation it would be sufficient to mention that even being aware of the legal position that a Hindu idol does not enjoy any special protection, still, there would be no question of limitation in the present suit only because the suit was filed under leave of the Court in a peculiar facts and circumstances and when the suit was filed within a specific time after getting the leave of the Court, the reliefs claimed by the deities cannot be considered to be barred under law of limitation.

32. Accordingly, after considering the submissions of the respective parties I am of the view that there is no merit in the contention of Mr. Ghosh appearing for defendant No. 2 that the plaint is liable to be rejected on the ground of false statement made by the receiver Mr. G. K. Dutta. I am of further opinion that the suit is maintainable in its present form and Mr. G. K. Dutta as receiver of the debutter estate and being equipped with the order of this Court was competent to file the suit and the prayers of the plaintiff deities is not barred by limitation. Issue No. 1 is, therefore, decided in favour of the plaintiff deities.

Issue Nos. 2 and 3 :

33. These issues are taken up together for the sake of convenience, brevity and also for the reason that those issues are inter-linked with each other.

34. The undisputed fact leading to filing of the present suit is that defendant Nos. 2 to 4 during their term of pala and just two months prior to termination of their pala executed a deed of lease on 30th August, 1960 in favour of Padma Rani Paul (since deceased) for a period of five years at a rental of Rs. 60 per month. Defendant Nos. 2 and 3 who are contesting this suit by filing written statement have taken the stand that their authority to execute the lease deed cannot be questioned in view of the terms and conditions of the deed of Arpannama and also the consent decree passed in connection with the administration suit. Defendant No. 1(A) has taken the similar stand in support of the lease deed. The plaintiffs, on the other hand, contend that defendant Nos. 2 to 4 had no authority to execute the deed of lease and that apart there was no legal necessity for execution of such deed and in fact the deed was executed only to favour Padma Rani Paul "in lieu of some consideration for defendant Nos. 2 to 4.

35. Mr. Addi, appearing for defendant No. 1(A) contends that it is settled position of law that sebaity is empowered to alienate the property of debutter estate temporarily for the benefit of the estate and also for the benefit of the deities and there cannot be any permanent embargo against such temporary transfer which would go against the provision of Section 10 of the Transfer of Property Act. Mr. Addi contends that defendant Nos. 2 to 4 being paladar "for the time being" under the terms of the compromise decree and as per terms of the deed of Arpannama were competent to execute the deed of lease without participation of other sebaits because the spirit of the deed of Arpannama was never for jointness of sebaityship and sebaity "for the time being" had authority to alienate the property of the estate for the legal necessity of the estate. Mr. Addi contends

that the objection raised on behalf of the deities that defendant Nos. 2 to 4 had no authority to execute the lease deed is absolutely devoid of any merit.

36. Mr. Addi next contends that once it is proved that defendant Nos. 2 to 4 had the legal authority to execute the lease deed, the next question would come up for consideration whether the property being a part of debutter estate, there was any legal necessity for such alienation in the form of deed of lease by defendant Nos. 2 to 4. Mr. Addi contends that the act of defendant Nos. 2 to 4 could not be judged considering the facts and circumstances prevailing now, but, that should be judged considering the facts and circumstances prevailing in the year 1960. Mr. Addi contends that the disputed property was in possession of tenants who were defaulters in payment of rent for a period of 28 months. Mr. Addi contends that the Calcutta Municipality already filed a suit in respect of the disputed property for realisation of its arrear tax and there was threat of auction sale of suit property and finally the condition of the suit property was not at all satisfactory and it required urgent repair and only defendant No. 1 at that relevant time came forward to take lease of such encumbered property only to protect the interest of the deities and naturally the deed of lease was executed by persons having authority and for legal necessity of the deities.

37. Mr. Addi in order to substantiate his above points has referred to the decisions of Division Bench of Patna High Court reported in Ramchandraj Maharaj and Others Vs. Lalji Singh and Another, and 1992(2) Supreme Court Cases page 376 and contends that "legal necessity" has never been clarified by the Courts, but, it has been made clear that such necessity would certainly mean and imply the existence of such a situation where without alienation of the property the interest of the debutter estate could not be fully protected which would include threat of hostile litigation and requirement of urgent repair of the property.

38. Mr. Ghosh, appearing on behalf of the defendant No. 2 has reiterated the points taken by Mr. Addi and contends that defendant Nos. 2 to 4 being paladar or sebaite "for the time being" had the full authority to execute the deed to lease in accordance with the terms of consent decree of the administration suit and also as per terms of the deed of Arpannama. Mr. Ghosh further contends that from the documents exhibited in this case it has been amply proved that there was a threat of litigation from the side of Calcutta Municipality and the property in dispute also required urgent repair and the property was in possession of some defaulting tenants and for all these reasons for the best interest of the deities the deed of lease was executed in favour of the Padma Rani Paul who came forward to make good the loss of deities for non-payment of rent by previous tenants and who came forward to pay the arrear tax of the municipality and thereby to protect the property being sold in auction.

39. It has been urged on behalf of the plaintiffs as also from other defendants participating in the suit supporting the stand of plaintiffs that both under the letter and spirit of the deed of Arpannama a single group of sebaits had never

any authority to execute any lease deed or to alienate any portion of the debutter estate and such alienation in whatever form may be, should have been done by all the sebaitis jointly. It has been argued on behalf of the plaintiff deities that in Clause 2 of the deed of Arpannama the settlor made it clear and unambiguous that after his death the function of the sebait shall be joint and in the compromise decree or in the scheme attached to the said decree there is nothing empowering any individual sebait or group of sebaitis to alienate property without consent and participation of other sebaitis.

40. Mr. Mitra, appearing for the plaintiff deities contends that a wrong interpretation has been given regarding paladar "for the time being" would be in charge of seba puja of the deities and day to day management of the estate because that did not confer any power on the paladar "for the time being" for alienation of the suit property or any part of the debutter estate and that would be totally against the letter and spirit of the deed of Arpannama. Mr. Mitra in this context submits that soon after the deed of lease, there was resistance from other sebaitis and even defendant No. 4, one of the executant of the lease deed subsequently filed an affidavit challenging the act of defendant Nos. 2 and 3 in the matter of execution of the lease deed in favour of Padma Rani Paul.

41. Mr. Mitra contends that even if it is accepted for the sake of argument that defendant Nos. 2 to 4 had the authority to execute the lease deed, there was no legal necessity for alienation of the suit property even temporarily in the form of lease deed in favour of Padma Rani Paul. Mr. Mitra has referred to the terms of the lease deed and contends that nowhere in the lease deed it was mentioned that for legal necessity of the deities the document is being executed. Mr. Mitra contends that on a plain reading of the lease deed it appears that the deed was executed empowering Padma Rani Paul to collect the arrear rent from the previous tenants, to evict the previous tenants and to take physical possession thereafter and to hire out the entire property for fetching profit in the manner which she would like by giving a paltry amount of Rs. 60 as monthly rent in favour of the estate.

42. Mr. Mitra contends that it is an accepted legal position that parties must be guided by the terms of the written documents and following such principle it would appear that there was no legal necessity so far the written deed is concerned and the parties cannot be allowed to rely on any document to establish their case of legal necessity which was not mentioned in the lease deed. Mr. Mitra submits that from the documents exhibited in this case and from the oral testimony of the witnesses examined by the parties it would appear that at the time of execution of the lease deed there was no threat for auction sale of property in dispute and there was no urgency of repair of the suit premises and hence, the story put forward by defendant No. 1(A) and by defendant Nos. 2 and 3 is all concocted and fabricated for the purpose of the suit.

43. Mr. Mitra contends that as the lease of deed is void ab initio both on the ground that defendant Nos. 2 to 4 had no authority to execute the document and

there was no legal necessity for execution of such document, the possession of Padma Rani Paul from the very beginning was unauthorised and that of a trespasser and hence, no question of renewal of the lease deed would arise and in fact there is no document before this Court showing renewal of the said lease deed. Thus, Mr. Mitra concludes that having regard to the fact and evidence of this suit a reasonable conclusion would be that defendant Nos. 2 to 4 were not competent to execute the deed of lease dated 30th August, 1960 in favour of Padma Rani Paul, since deceased, on behalf of the plaintiff deities and further as the deed of lease was void ab initio there would be no question of renewal of the same and if any such renewal was made that would be equally illegal and not binding against the deities.

44. I have heard and considered submissions of both Mr. Addi and Mr. Ghosh and also Mr. Mitra and Mr. Sanyal, appearing for defendant No. 1(A), defendant No. 2, plaintiff deities and for other seba defendants respectively. The main question for determination in the suit is whether the deed of lease was executed by competent person and whether that lease was executed for legal necessity of the deities because admittedly the deities were owners of the property and alienation of the property could have been made only for legal necessity of the deities and the estate.

45. From the decision of the Division Bench of this Court rendered in the case of Jogendra Nath Naskar (supra), it is found that under the Hindu law alienation of debutter property can be made by all the sebaits acting jointly, but, the position becomes different when the debutter estate is operating under a scheme framed by the Court and in such case the provisions of Hindu law regarding the rights of the sebaits acting jointly is modified to the extent as provided for in the scheme (see para 8 of judgment).

46. From the submissions made on behalf of the defendant No. 1(A) and defendant No. 2, I find that the main point of argument has been that under the consent decree and the scheme annexed to the decree paladar or seba "for the time being" had the authority to alienate the part of debutter property and it was in total conformity with the terms of the Arpannama. My attention has been drawn to Clauses 3, 9 and 14 of the deed of Arpannama and all the clauses of the consent decree and of the scheme to substantiate this point.

47. On close examination of the relevant clauses of the deed of Arpannama as pointed out by the rival parties, I am of clear view that according to the terms of the Arpannama after the death of settlor, the act of settlor, the act of management of the debutter estate could have been made only jointly and not a single seba or a particular group of sebaits had the authority to alienate any part of the debutter property. Now, looking at the consent decree I find that paladar or seba "for the time being" was given the charge of seba puja for one year and for that one year such paladar or seba was given further charge of management of the debutter estate, but, there was nothing in the consent decree or in the scheme empowering the paladar or seba "for the time being"

to alienate the debutter estate, I think that to understand this point one has to read the deed of Arpannama and the consent decree together with the scheme simultaneously and on such reading it would appear that there was no intention of the settlor to empower any single sebaite or a group of sebaits to alienate any part of the debutter estate and it was the clear intention of the settlor that such alienation must be done jointly by all the sebaits and no exception of this rule was made by the consent decree or the scheme attached to it. Thus, the very foundation of the case of the defendant No. 1(A) and defendant Nos. 2 to 4 appears to be very weak and not legally acceptable when admittedly defendant Nos. 2 to 4 during their term of pala or seba puja executed the lease deed without consent of other sebaits. It is pertinent to mention here that on this point there has been already a judicial pronouncement duly upheld by Court of Appeal when Padma Rani Paul during her life-time filed a suit for realisation of arrear rent from previous tenants of the suit property.

48. Be that as it may, from the deed of Avpannama as well as from the consent decree and also having regard to the submissions made on behalf of the rival parties and keeping in mind the decision rendered in the case of Jogendra Nath Naskar (*supra*), I am of clear view that defendant Nos. 2 to 4 had no authority to execute the deed of lease in favour of Padma Rani Paul.

49. Now, I would like to come to the second part of the question whether there was any legal necessity for execution of the lease deed by defendant Nos. 2 to 4 in favour of Padma Rani Paul. It is admitted position of law that when a document is reduced to writing parties are bound to go by the terms of the document. On examination of the lease deed it appears that there is not a single line indicating any legal necessity for making the document. On reading of the document it is available that the document was executed to authorise Padma Rani Paul to collect arrear rent from the previous tenants, to evict the previous tenants, to make petty repair of the premises in dispute and also to make addition alteration to whatever extent required so that she could earn profit by hiring out the property to third party. It was laid down in the document that estate would get a sum of Rs. 60 as monthly rent. It was provided in the document that the period of lease would be five years for the present subject to renewal for a period of five years.

50. At the time of trial, both defendant No. 1(A) as well as defendant No. 2 tried their best to convince from documentary as well as from oral evidence that for want of money the seba puja of the deities was hampered and Padma Rani Paul by making a lump sum payment at a time helped the performance of seba puja. It was also sought to be established that there was a threat of auction sale of the suit property in connection with a suit filed by Calcutta Municipality in connection with a suit filed by it for realisation of arrear municipal tax of the disputed property and that apart there was urgent necessity of repair of the suit property.

51. I have given my anxious consideration to the relevant documents relied on by defendant No. 1(A) and defendant No. 2 in the above context and after

considering those documents along with deposition of defendant No. 2 and defendant No. 1(A), I am compelled to hold that practically speaking there is no evidence either oral or documentary to hold that at the time of execution of the lease deed there was any threat for sale of the disputed property in auction or there was any urgent necessity for repairing of the suit property. I have indicated earlier that there is nothing in the lease deed showing any legal necessity for execution of the document.

52. Thus, having regard to the submission of the rival parties and after taking into account the documents and oral testimony of the parties, I am of the view that the deed of lease is totally silent about legal necessity behind alienation and that apart there is no tangible evidence to substantiate the point that at the time of execution of the lease deed there was any legal necessity for execution of the document. Thus, having regard to the submissions of the parties I am of the view that the execution of the lease deed in favour of the Padma Rani Paul by defendant Nos. 2 to 4 must be held void ab initio and not voidable and no question of renewal of the same lease deed would arise in the eye of law and in fact there was no renewal of such deed and at least parties have not been successful to place any document showing renewal of the lease deed.

53. I, therefore, on hearing the parties and after considering the facts and evidence come to the conclusion that both the issues must be decided in favour of the plaintiff deities.

Issue Nos. 4 and 5 :

54. These issues are also taken up together for the sake of convenience and brevity.

55. Mr. Addi has argued on behalf of the defendant No. 1(A) that plaintiff deities are not entitled to recover possession because Padma Rani Paul acquired a valid tenancy right in the suit property since Mr. P. C. Sen as receiver accepted the rent from her and such acceptance was approved and ratified by all the sebaits of the debutter estate. Mr. Addi in this context has referred to several rent receipts and letters of Mr. P.C. Sen.

56. Mr. Addi contends that since the status of Padma Rani Paul was that of a tenant in the suit property after Padma Rani Paul, her legal heir also assumed the same status and in order to evict a tenant one must take recourse to the provisions of the West Bengal Premises Tenancy Act, 1956. Mr. Addi contends that admittedly no notice of eviction u/s 13(6) of the said Act was served either upon Padma Rani Paul during her life-time or upon defendant No. 1(A). Mr. Addi further contends that no ground of eviction as laid down in Section 13 of the said Act has been mentioned in the plaint and hence, considering the status of the defendant No. 1(A), he cannot be evicted through the present suit and hence, plaintiff deities are not entitled to get any relief as prayed for.

57. Mr. Mitra on behalf of the plaintiff deities has strongly refuted the above

contentions of Mr. Addi. Mr. Mitra contends that once it has been proved that the deed of lease executed in favour of Padma Rani Paul was void ab initio, the possession of Padma Rani Paul was that of a trespasser in the suit property and naturally present defendant No. 1(A) cannot claim a better title than his predecessor-in-interest.

58. Mr. Mitra contends that first of all there is no truth behind the contention of defendant No. 1(A) that all the sebaits approved acceptance of rent by Mr. P. C. Sen from Padma Rani Paul as it will appear from evidence. Mr. Mitra contends next that as a receiver of the debutter estate Mr. P. C. Sen had certainly right to induct a tenant during his tenure, but, in this case there is no document to show induction of Padma Rani Paul as a tenant by Mr. P.C. Sen in the suit property. Mr. Mitra contends that even if it is accepted that Mr. P.C. Sen accepted rent from Padma Rani Paul, the status of Padma Rani Paul would be that of a licensee and not a tenant and on the discharge of the receiver, the licence would come to an end. Mr. Mitra in this context has relied on the decision of the case of Som Sunder Dutta v. Baikuntha Nath Banerjee and Ors., reported in .

59. Mr. Mitra submits that in this case the deed of lease was a void document and there is no proof of renewal of the said deed of lease and there is no proof of induction of Padma Rani Paul as tenant in the suit property and following the principle of law settled by the Hon"ble Supreme Court in the case of Som Sunder Dutta (supra) it can be stated that status of Padma Rani Paul was licensee at best and that licence continues till Mr. P.C. Sen was in office and as it has come out from evidence that after Mr. P.C. Sen no other receiver till date accepted any rent regarding the suit property, the licence of Padma Rani Paul certainly came to an end with discharge of Mr. P. C. Sen and occupation of Padma Rani Paul and thereafter occupation of present defendant No. 1(A) in the suit property is that of occupation of mere trespasser without having any right, title or interest in the suit property. Mr. Mitra, therefore, contends that there is no legal impediment in granting the reliefs prayed for on behalf of the plaintiff deities. Mr. Mitra also contends that the defendant No 1(A) has already earned a huge amount of money by letting out the suit premises on different ceremonial occasions and hence, the plaintiff deities are also entitled to recover damages/mesne profits from the illegal occupants.

60. Having regard to the submissions made on behalf of the contesting parties and on examination of the reported decision of Som Sunder Dutta (supra), I am of the view that since there is no evidence on record to show that there was any renewal of the lease deed and Padma Rani Paul was inducted as tenant by previous receiver Mr. P. C. Sen, the status of Padma Rani Paul was mere licensee at best during the tenure of Mr. P. C. Sen and as no other receiver accepted rent from Padma Rani Paul or on her death from defendant No. 1(A), the possession of Padma Rani Paul after discharge of Mr. P. C. Sen became that of a trespasser and naturally defendant No. 1(A) must be considered to be a trespasser in the suit property.

61. The contention of Mr. Addi that the suit is liable to be dismissed as it was not filed following the procedure prescribed in the West Bengal Premises Tenancy Act has got no significance at all since the status of Padma Rani Paul and after her defendant No. 1(A) is that of a trespasser.

62. Thus, having regard to the submissions made on behalf of the parties and on proper consideration of the evidence on record both oral as well as documentary, I am of the view that plaintiff deities are entitled to recover peaceful possession of the suit property from defendant No. 1(A) and plaintiff deities are also entitled to recover damages/mesne profits from defendant No. 1(A) through a separate proceeding, I, therefore, dispose of both these issue"s in favour of the plaintiff deities.

63. In view of my above discussions regarding all the issues framed in this suit I hold that plaintiff deities are entitled to get a decree declaring thereby the deed of lease dated 30th August, 1960 executed in favour of Padma Rani. Paul since deceased by defendant Nos. 2 to 4 a void and illegal document and the same is not binding against the plaintiff deities.

64. The plaintiff deities are also entitled to recover possession of the disputed property from defendant No. 1(A) who is a mere trespasser in the suit property and defendant No. 1(A) is hereby directed to deliver peaceful possession of the suit property to the receiver of the plaintiff deities within two months from the date of this judgment and order failing which the receiver is entitled to recover possession in accordance with law.

65. Defendant No. 1(A) or any other person claiming under him is hereby restrained by an order of permanent injunction from interfering with the peaceful possession of the plaintiff deities over the suit property.

66. The receiver is entitled to institute an appropriate proceeding for recovery of damages/mesne profits from defendant No. 1(A) on behalf of the plaintiff deities.

67. There will be no order as to costs.

68. The receiver and all parties to act on the signed copy of the operative portion of this judgment on usual undertaking.

69. Certified copy of this judgment, if applied for, may be supplied as expeditiously as possible on compliance of all formalities.

Alok Kumar Basu, J.: