

(1911) 02 CAL CK 0053
In the Calcutta High Court

Tulsi Das Bairagi

APPELLANT

Vs

Siddhi Nath Misser and Others

RESPONDENT

Date of Decision : 23-02-1911

Acts Referred:

Citation : 9 Ind. Cas. 650

Hon'ble Judges : Cox, J

Bench : Single Bench

Judgement

1. This was a case for recovery of certain land on the ground that it belonged to an idol named Iswar Lakhmi Narayan of which the plaintiff was a shebait. It appears that this debuttar or so-called debuttar, land was originally administered by one Radha Charan. Radha Charan had a son, Sarup, who had two sons Tiluk and Balahari. The plaintiff is the son of Tiluk. One Brindaban was the son of Balahari. The plaintiff alleges that there was a partition, or something in the nature of a partition, between his branch of the family and that of Brindaban. And as Brindaban died leaving no male issue he is entitled to recover this land.

2. It does not appear to me that any point, of law arises in the case. It was held in the case of Gobinda Kumar Roy v. Debendra Kumar Roy 12 C.W.N.98, that "properties dedicated to a family idol may be converted into secular property by the consensus of the family," and also that "in dealing with a question as to whether properties alleged to be debuttar are really debuttar or only nominally so the manner in which the dedicated properties have been held and enjoyed is the most important point." It appears clear that there have been a certain number of sales of this property and that the lands have been dealt with to a certain extent, as private lands. It is also found that both the branches of the family acquiesced in these alienations for about 20 or 25 years. The inference which the Munsif drew from these facts was that if the land were debuttar at all, it was only nominally so and this finding was upheld by the learned District Judge in appeal. The case which I have cited is an authority for the view that if property is dealt with as private property the Court may come to a conclusion as to

whether it is really debuttar or not. That is what has been done in this case. So far as I can see, the decision is one purely of fact with which I cannot interfere in second appeal.

3. It has been argued that the learned District Judge is wrong to rely upon the partition between the parties as being evidence that the land is not really debuttar. In the first place the learned District Judge does not rely upon the partition. In the second place it is argued that though debuttar property cannot properly be partitioned yet parties may lawfully divide the property among themselves for enjoyment and control. If this argument is accepted it does not help the appellant. In such a case, no doubt, the title of all the parties in all the lands would continue to subsist and if the title continued to subsist, that fact would double the effect of the circumstance that both the branches of the family acquiesced for 20 or 25 years in the sales made by one branch. The only questions that arise are whether the land is really debuttar or only nominally so; and whether the shebait put an end to its debuttar character by consent. Both questions seem to be questions of fact with which I cannot deal in second appeal. Accordingly, the appeal is dismissed with costs.