

(1928) 06 CAL CK 0035
In the Calcutta High Court

Upendra Nath Ghose and Others

APPELLANT

Vs

Baikuntha Nath Ghose and Others

RESPONDENT

Date of Decision : 01-06-1928

Acts Referred:

Citation : AIR 1929 Cal 237

Hon'ble Judges : Mukerji, J;Garlick, J

Bench : Full Bench

Judgement

Mukerji, J.—This appeal arises out of a suit which was instituted by the plaintiffs for certain reliefs which are of a somewhat unusual character. The-plaintiffs" case shortly stated was that their grandfather, Raj Krishna Ghose and Sri Ballav Ghose, the grand father of the defendants 1 to 8 and Kali Charan Ghose who was ths great-grandfather of defendant 10 and grandfather of the husband of defendant 9 were three brothers whose ancestor had installed a deity in their ancestral dwelling house, and the deity according to the plaintiffs went by the "name of " Dayal " and according to the defendants " Sridhar, " that the deity is a Saligram Bigraha and there is daily worship of the deity at, the place where it was installed and that the said three brothers used to worship the deity every day as well as on special occasions, according to their shares which were equal. The plaintiffs alleged that in consequence of certain events that took place it is they and the principal defendants and one Rama Nath Ghose who are now solely interested in the said " Deity " and that they exercised their right of worship of the deity down to 1327 when the principal defendants denied their right and interfered with the exercise thereof.

2. The prayers that were made in the plaint were very unusual in their character and purported to treat the deity as a moveable chattel, in the nature of property which is capable of being owned and possessed by them and also of being partitioned in accordance with their respective shares. There was a prayer which was of a more reasonable character, namely, for a declaration of the plaintiff" right to worship the deity and for an arrangement being made as regards the

turns of worship as between the different cosharers so that the right of worship might be exercised in accordance with such turns. This prayer, however, appears not to have been pressed eventually and the relief that was claimed by the plaintiffs was confined more or less to the deity being treated as moveable property. Defendant 1 who was the only contesting defendant in the trial Court denied, the plaintiffs' right altogether.

3. The trial Court decreed the suit in the following terms:

That the suit be decreed with costs and future interest at 6 p.c.p.a. Plaintiffs' title to the disputed deity as stated in the plaint be declared, and they be free to bring the deity to their new bare on the occasions of annual parbas and ceremonies such as Puspa Jatras, Puskarni Pratistas, Sradhs, marriages, Kali Pujas, Mansha Pujas, Radhastamis, Durga Pujas, Tulashi offerings in the month of Kartick, Nabannas in Agrahayan, Uttarayan Sankrantis, Sri Panchamis, Basanti Pujas, Dhaja Dwadasis, Sasthi Pujas, Annaprasans and Griha Prabeshas without interfering with the worship of the deity by the principal defendants and performance of ceremonies at their (moaning the defendants') bari : that a perpetual injunction be issued on the principal defendants not to interfere with plaintiffs' right to worship the deity as indicated above.

4. The above is an extract from the ordering portion of the judgment ; but in the decree that was drawn up it was clearly stated that the plaintiffs' title to the disputed deity was one-third. There was an appeal preferred by the defendant 1 from the decree as passed by the trial Court and the plaintiffs also "preferred a cross-appeal. The learned "Subordinate Judge dismissed the appeal and the cross-appeal and affirmed the decree of the trial Court. Defendants 1, 2 and 3, have thereupon preferred a second appeal to this Court and the plaintiffs have preferred a memorandum of cross-objection.

5. The appeal of the defendants is pressed upon five distinct grounds. The first of these grounds is to the effect that the decree should be set aside as the suit "was not maintainable without the deity being properly represented therein and because the female members of the family who were also interested in the deity were not made parties to the said suit. In support of this ground reliance has been placed upon the decision of the Judicial Committee in the case of Pramatha Nath Mullick v. Pradyumnakumar Mullick . Now the facts of the present case are that the deity was, upon the allegations of the parties, installed by some ancestor of the parties themselves but it is not suggested that anybody else than the members of the family to which the parties belonged is interested in the deity or that there is any property of the deity which is likely to be interfered with by the arrangement which is asked to be made. The suit in its essence appears to be one for adjustment of th6 rights as between the parties themselves in relation to the deity. In that way the case seems to be entirely distinguishable from the case of Pramatha Nath Mullick v. Pradyumnakumar Mullick . In that case there was an installation of the deity with a fixed abode; and for the idol so established as well as for the other idols ancestral, a fund

was created by a will for performing their worship. In such a case their Lordships of the Judicial Committee pronounced the opinion that if the idol was not otherwise represented in the proceedings result might ensue which might, conceivably, vitally affect its interests and also that the interest of the female members of the family might need special protection. Upon these considerations their Lordships observed that it would be in the interests of all concerned that the idol should appear by a disinterested next friend appointed by the Court and that the female members of the family should also be joined and a scheme should be framed for the regulation of the worship of the idol. The scope of that suit was entirely different from the scope of the present one.

6. In the present case it is really and substantially a case of dispute between two contesting parties, one claiming to have a right jointly with the other to perform the worship of the deity and to have the possession of the deity for the performance of such worship and the other party claiming an exclusive possession of the deity with a denial of a right of the former to perform any worship at all. I am of opinion that the observations of their Lordships of the Judicial Committee cannot be said to apply to a case of the present nature and they are not to be treated as authority for the purpose of holding that in the absence of the deity or of the female members of the family the present suit is not maintainable. The female members, who may be interested in the deity and are not parties to the suit, will not be bound by the result of the present litigation. That, however, is quite a different matter; but in so far as the parties who are parties to the suit are concerned it cannot be contended that the suit is not maintainable. This ground, therefore, in my opinion, fails. It may be noted also that this objection does not appear to have been taken on behalf of the defendants in any of the Courts below.

7. The next ground is to the effect that a suit of this character or rather a prayer of this character is not maintainable. The objection is unquestionably correct and well founded if the wording of the plaint is taken at its face-value. As I have already stated, the plaintiffs appear to have entertained a very curious conception of the deity but the learned Subordinate Judge has pointed out in his judgment that although many of the expressions used in the plaint are extremely unhappy what in substance is asked for on behalf of the plaintiff³ is a declaration of their right of worship which is a very valuable right and a permanent Injunction restraining the principal defendants from interfering with the exercise of that right by and on the part of the plaintiffs. Ground 2, therefore, must also be overruled .

8. It is urged in the next place that upon the facts found by the Courts below it should be held that the plaintiffs have got no subsisting right or interest in the deity, in respect of which he can possibly get any declaration or relief from the Court. As regards this matter the findings at which the Courts below have arrived, more or less concurrently, seem to be these: that the deity was installed by the ancestors of the plaintiffs as well as of the contesting defendants, that

after certain incidents, into the details of which it is not necessary to enter, the ancestors of the plaintiffs and the principal defendants and Rudranath Ghose became the sole worshippers of the deity quite a long time ago and that they all along exercised the said right, giving rise to the presumption that they had acquired the sole right to worship the deity either on a grant or by mutual arrangement: that in 1305 when the plaintiffs removed to their new house in which there was already installed another deity of the name of Lakshminarayan there was an arrangement between the father of defendant 1 and the plaintiffs in which the females of the family or at any rate some of them also took part, and the arrangement was that the plaintiffs would leave the deity at their ancestral "house, namely, the homestead of the defendants, liberty being reserved to them to bring the deity to their new homestead according to necessity; that the plaintiffs used occasionally to exercise their right of worship of the deity and to bring the deity to their new house on festive and ceremonial occasions and that they continued to do so till Baishak 1327 after which date their right to worship the deity was denied. On these findings it seems somewhat difficult to conceive how it can reasonably be said that the plaintiffs had no longer any subsisting right or interest in the deity. This contention must also be overruled.

9. The next contention is to the effect that in any event the plaintiffs are not entitled to a decree entitling them to remove the deity from the place where it is to their new house. This contention overlooks the terms of the arrangement which have been found by both the Courts below, the arrangement being that the plaintiffs would be competent to remove the deity on occasions on which such removal would be necessary.

10. The last ground urged on behalf of the appellants relates to the form of the decree that was passed by the trial Court and has been upheld on appeal by the learned Subordinate Judge. The trial Court, as I have already stated, has declared the plaintiffs' right to the extent of a 3rd share in the deity. Such a declaration is one that can scarcely be passed in a suit of this nature. One could have understood if any question as to turns of worship had arisen in the suit and a declaration limiting the right of the plaintiffs to a certain fraction of the entire worship had been made by the Court. But the Courts below, as appears from the judgment of the learned Subordinate Judge, did not deal with any question of the turn of the worship at all, the plaintiffs having given up the claim they had made on that footing. The declaration which the plaintiffs should get as regards their right in connexion with the deity would be to the effect that their right to worship the deity will be declared. The other declarations that have been made in the decree of the learned Munsif will stand. What the practical effect of these declarations will be is a matter which it is somewhat difficult to comprehend, but with that we are not concerned so long as the plaintiffs would care to have the decree passed in their favour. The plaintiffs no doubt have in their cross-objection sought to get a decree free from certain conditions which appear in favour of the defendants, but we are not inclined to accede to the plaintiffs' request in this connexion.

11. The result is that the appeal and the cross-objection both fail and they are both dismissed, subject only to this that in lieu of the words in the decree that has been passed in this suit that the plaintiffs proprietary right to one-third share in the deity be declared" the words "it be declared that the plaintiffs are entitled to worship the deity" be substituted. There will be no order as to costs either in the appeal or in the cross-objection.

Garlick, J.

12. I agree.