Nandlal and ors. Vs. Kesarlal and ors.

LegalCrystal Citation : legalcrystal.com/753680

Court : Rajasthan

Decided On : Jul-28-1975

Reported in : AIR1975Raj226; 1975()WLN613

Judge : S.N. Modi, J.

Acts : Hindu Law

Appeal No. : Second Appeal No. 46 of 1967

Appellant : Nandlal and ors.

Respondent : Kesarlal and ors.

Advocate for Def. : H.M. Lodha, Adv.

Advocate for Pet/Ap. : R.N. Surolia, Adv.

Disposition : Appeal dismissed

Judgement :

S.N. Modi, J.

1. This second appeal by the plaintiffs is directed against the judgment and decree of the District Judge, Bhilwara, dated 24-8-1966 whereby he accepted the appeal of the defendant-respondent Kesarlal and reversed the judgment and decree of the Civil Judge, Shahpura dated 26-2-1965.

2. The relevant facts which are no longer in dispute may briefly be stated as follows:

The parties to the appeal consist of 2 appellants and nine respondents. All of them are descendants of a common ancestor Radhakishen. The Former Mewar State in ancient times appointed Radhakishen and one Sitaram as shebaits of the temples of Chaturbhujji alias Charbhujaji and Mahadeoji Manaraj situated at village Dhod, The Former Mewar State also allotted certain agricultural lands to these deities and it is common ground between the parties that those lands were divided in equal shares by Radhakishen and Sitaram. The Sewapuja of the deities was performed by pala system in alternate months that is, sewapuja for one month was performed by the descendants of Radhakishen and in another month by the descendants of Sitaram, The offerings during the month used to be received by the shebaits as per turn of the sewapuja. The last descendant of Sita Ram was Bhuralal. On 29-12-1961 Bhuralal by means of a gift-deed transferred his right of shebaitship and the lands possessed by him described in para 6 of the plaint, in favour of the defendant Kesarlal who is, as

already stated above, one of the descendants of Radhakishen. Kesarlal thus stepped into the shoes of Bhuralal. He took possession of the lands described in para 6 of the plaint. He also commenced performance of sewapuja of the deities and received offerings just like Bhuralal from the date of the gift-deed, that is, 29-12-1961. Bhuralal expired issueless some time in February 1962. The appellants Nandlal and Bansilal then instituted the present suit on 22-10-1962 against Kesarlal and his father Badrilal claiming the following main reliefs :--

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On an objection by the defendants, the remaining descendants of Radhakishen were impleaded as defendants Nos. 3 to 9. The main allegation as disclosed in the plaint was that Bhuralal had no right to execute the gift-deed and transfer his right of shebaitship and the lands possessed by Mm in favour of Kesarlal. The suit was contested by the defendants Kesarlal and Badrilal. The trial Court framed as many as 13 issues and after evidence decreed the suit holding that Bhuralal had no right or authority to alienate his right of shebaitship under the gift-deed dated 29-12-1961. On appeal by the contesting defendants, the learned District Judge, Bhilwara, set aside the decree passed by the trial Court and dismissed the suit on three-fold grounds. In the first instance, he held that the suit was not triable by the Civil Court as it related to the agricultural lands. Secondly, it was held that Kesarlal being in exclusive enjoyment of the share of Bhuralal in respect of the worship of the deities and the agricultural lands, the plaintiffs who are not in any way related to Bhuralal, have no right to bring the suit, inasmuch as none of the rights of Bhuralal devolved upon the plaintiffs. It was further held that even if Kesarlal is treated as trespasser, he can be ousted by the true owner, namely, the State which is the founder of the religious endowment and not by anybody else. Lastly, since the plaintiffs did not claim relief for possession of the agricultural lands possessed by Kesar Lal, the suit for mere declaration is barred under Section 42 of the Specific Relief Act (old). The plaintiffs have now preferred this second appeal.

3. The main point which arises for decision in this appeal is whether a shebait can lawfully alienate his right of shebaitship by gift under the Hindu Law.

4. Mr. Surolia, the learned advocate for the plaintiff appellants, has argued that under the Hindu Law, no alienation of shebaiti right by gift is permissible and therefore the

gift-deed executed by Bhuralal in favour of Kesarlal is void.

5. Mr. Lodha, on behalf of the respondents, has argued that apart from the fact that the plaintiffs are not the heirs of Bhuralal and as such they are not entitled to shebaiti rights of Bhuralal, there is no absolute bar to alienate shebaiti right under certain limitations. According to him, in the circumstances of the case, the alienation, of shebaiti right in favour of defendant Kesarlal, who is none else than one of the descendants of Radhakishen, is valid.

6. The law on the subject is well discussed by Mr. P.B. Mukherjea in his book 'The Hindu Law of Religious and Charitable Trusts', 3rd Edition. Reference may be made to his observations in the said treatise at page 178--

'Although shebaiti right is heritable like any other property, it lacks the incident of proprietary right, viz. the capacity of being freely transferred by the person in whom it is vested. The reason is that the personal proprietary interest which the shebait has got is ancillary to and inseparable from his duties as a ministrant of the deity, and a manager of its temporalities. As the personal interest cannot be detached from the duties, the transfer of shebaitship would mean delegation of the duties of the transferor which would not only be contrary to the express intentions of the founder but would contravene the very policy of law. A transfer of shebaitship or for the matter of that of any religious office, has nowhere been countenanced by Hindu lawyers.'

The learned author then discussed the general principles laid down in several decided cases. He then pointed out certain exceptions to the general rule against alienation at page 180. The relevant observations are--

'Though the general proposition laid down in the cases referred to above has never been disputed, yet there are decisions of different High Courts in India, in which the rule against alienation of shebaiti right has been relaxed to some extent by reason of certain special circumstances, These circumstances may be conveniently grouped under three heads: (1) Where the transfer is not for any pecuniary benefit, and the transferee is the next heir of the transferor or stands in the line of succession of Shebaits and suffers from no disqualification regarding the performance of the duties. (2) When the transfer is made in the interests of the deity itself and to meet some pressing necessity. (3) When a valid custom is proved sanctioning alienation of shebaiti right within a limited circle of purchasers, who are actual or potential shebaits of the deity or otherwise connected with the family.'

The learned author then discussed various authorities on the above exceptions formulated by him.

7. In Sm. Sovabati Dassi v. Kashi Nath Dey AIR 1972 Cal 95, Masud J, has summarised the different views expressed by the various High Courts in India in Para 8 of his judgment which runs as under:---

'On the question of transfer of a shebaiti right the learned judges in the past have expressed different views on the matter which may be enumerated as follows:

(a) A shebaiti right cannot be transferred inasmuch as such transfer would mean delegation of the duties of the delegated authority and as such, contrary to public

policy; vide Rajah Vurmah v. Ravi Vurmah (1876) 4 Ind App 76 (PC).

(b) A shebait is not bound to accept his office and he can transfer his right to the shebaitship in favour of his next heir by way of 'renunciation', 'surrender', 'resignation' or 'abdication' of his entire interest: Vide ILR 53 Cal 132 = (AIR 1926 Cal 490), Pan-chanan Banerji v. Surendranath, AIR 1930 Cal 180 and AIR 1951 Cal 490.

(c) A shebaiti right can be transferred if there is a valid and reasonable custom allowing such transfer: vide AIR 1915 Cal 161 (2), AIR 1957 Cal 685.

(d) A shebaiti right can be transferred to a person in line of succession who is not otherwise disqualified or unfit to perform the religious or spiritual duties: vide (1946) 50 Cal WN 272.

(e) Alienation of the office of shebait inter vivos in favour of a closely connected member of the family who seems to have more interest in the worship of the deity and without any idea of personal gain is valid: Nirod Mnhini Dassi v. Shibadas Pal (1909) ILR 36 Cal 975.

(f) Sale of a shebaiti right for valuable consideration is invalid unless such sale was made in favour of all the immediate successor shebaits: vide (1869) 6 Bom HCR 250. The transfer in the case was held to be valid also on the ground of custom.

(g) A shebaiti right can be transferred by gift inter vivos on the basis of the doctrine of necessity or benefit of deity only: vide (1908) ILR 35 Cal 226. The decision was also justified on the special circumstances in that case following (1890) ILR 17 Cal 557.

(h) The transfer of a shebaiti right by will has also been held valid in law even in favour of a possible successor shebait: vide (1882) ILR 6 Bom 298.'

Masud J. in the aforesaid case expressed his opinion on the character of shebaiti right and also on its alienability. He observed in para 9 as under :--

'In my view, as stated above, shebaitship comprises a distinctive category of property, the transfer of which is permissible unless such transfer is repugnant to the principles of Hindu Law. Shebaitship, being an amalgam of office and property, it will not be correct to say that it is absolutely alienable like any other property or that it is not alienable under any circumstances. The general limitations under which such transfer is permissible may be set out as follows:

(a) The transfer of a shebaiti right is permissible if such transfer is not contrary to the intentions of the founder as expressed in the Deed of Endowment unless an ancient or reasonable custom or usage has been followed to the contrary.

(b) Where there is a perpetual or hereditary line of succession of shebaitship pre-scribed by the founder in his Deed of Endowment a particular shebait cannot change the line of succession by any Deed of transfer unless the shebait transfers the totality of his rights in favour of the succeeding shebait or shebaits during the lifetime.

(c) A transfer of a shebaiti right is also permissible for the benefit of the idol or the deity or for imperious necessity under special circumstances.'

I entirely agree with the principles laid down by Masud J. in Sovabati Dassi's case. Applying the said principles to the facts of the present case, I hold that Bhuralal has lawfully transferred his shebaiti right along with the lands possessed by him under the gift deed dated 29-12-1961. The gift-deed shows that Bhuralal alienated his entire light and interest in favour of Kesarlal who is admittedly one of the co-shebaits. It is not in dispute that Kesarlal is a person who is in no way disqualified from holding the office of the Shebait.

8. Mr. Surolia urges that a Shebait cannot transfer his shebaiti right to one single shebait when there are in existence more than one co-shebait. In other words, his contention is that the gift-deed is invalid because it is in favour of one of the descendants of Radhakishen, namely, Kesarlal and not in favour of all the descendants of Radhakishen. Reliance is placed on Bameswar Bamdev v. Anath Nath AIR 1951 Cal 490 wherein S.R. Das Gupta J. has expressed his view that the Shebait cannot transfer his shebaiti right unless there is complete renunciation of his right in favour of all the succeeding shebaits, A careful reading of the judgment in that case would show that the learned Judge made the said observation with reference to the facts and circumstances of that case. I may further add that the learned Judge followed the earlier decisions which were based upon the concept that shebaiti office is more a religious office than a property. A new situation, however, arose when a Full Bench of the Calcutta High Court in Manohar Mukher-jee v. Bhupenoranath Mukherjee, AIR 1932 Cal 791 (FB) expressly laid down that shebaiti right is a property. This principle was then followed by their Lordships of the Privy Council and Supreme Court in Bhabatarini Debi v. Ashalata Debt AIR 1943 PC 89 and Sm. Angurbala Mallik v. Debabrata Mallik AIR 1951 SC 293 respectively. In my opinion, it is within the competence of the shebait to make a gift of his office to a single person Standing in the line of succession in exclusion to other successors provided he is not otherwise disqualified by personal unfitness. I am supported in my view by the decisions in Official Receiver v. Sm. Jogmaya Dassi (1946) 50 Cal WN 272 and Nirode Mohini Dassi v. Shibadas Pal (1909) ILR 36 Cal 975.

9. In this view of the matter, it is unnecessary for me to deal with the reasons given by the learned District Judge in dismissing the suit. I would, however, like to throw light on one point. The learned District Judge has held that since the plaintiffs were not related to Bhuralal, none of the rights of Bhuralal had devolved on the plaintiffs and as such the plaintiffs have no right to bring the suit. That, in my opinion, is not the correct position of law, The plaintiffs, the defendants and Bhuralal were all co-shebaits of the deities. The shebaits of a deity when more than one form one body in the eye of law. See Sree Sree Iswar Lakshi Durga Har Tatneswar v. Surendra-nath Sarkar ((1941) 45 Cal WN 665) and Ncmai Chakrabarty v. Bansbidhar Chakravarty. It therefore cannot be said that the plaintiffs had no right to bring the suit to challenge the validity of alienation which, according to them, was invalid.

10. For the reasons stated above, I dismiss the appeal and affirm the judgment of the learned District Judge though on different grounds. Looking to the circumstances of the case, I leave the parries to bear their own costs in this appeal

11. The learned counsel for the ap-prllants prays for Leave to Appeal to a Division Bench under Section 18 of the Rajasthan High Court Ordinance, 1949. The Leave is refused.