

**Sri Sri Iswar Kalimata Thakurani Vs. Shebaites of Sri Sri Iswar Kalimata Thakurani and ors.**

**LegalCrystal Citation :** [legalcrystal.com/861153](http://legalcrystal.com/861153)

**Court :** Kolkata

**Decided On :** Jan-24-1985

**Reported in :** AIR1985Cal366

**Judge :** Amitabha Dutta, J.

**Acts :** [Specific Relief Act, 1963](#) - Section 34

**Appeal No. :** A.F.A.D. No. 44 of 1971

**Appellant :** Sri Sri Iswar Kalimata Thakurani

**Respondent :** Shebaites of Sri Sri Iswar Kalimata Thakurani and ors.

**Advocate for Def. :** Pradipta Moitra, Adv.

**Advocate for Pet/Ap. :** Ashok Sengupta, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

Amitabha Dutta, J.

1. This is an appeal by the defendant 1 from an appellate decree and it arises out of a suit for a declaration and permanent and mandatory injunctions.

2. The immovable property described in 'Ka' schedule and the movables described in 'Kha' schedule to the plaint are debutters of the property of the deity Sri Sri Kalimata Thakurani of Ghutia Bazar in the town of Chinsurah in the district of Hooghly. 'Ka' schedule property comprises of temple of the deity and other structures within the temple compound. Three brothers Amulya, Puma and Prafulla Gangopadhyay were the shebaites of the deity. Purna transferred his 1/3rd share in the shebaitship to Prafulla who thereafter had 2/3rd share and Amulya had the remaining 1/3rd share in the shebaitship of the deity. By a written agreement between Prafulla and Amulya the pala or turn of worship was divided. Prafulla was to perform sheva puja of the deity for two years from Magh to Pous each Bengali year and Amulya was to do so in the third year. Thereafter Amulya died on 12th Falgun 1370 B. S. (29-3-1963) leaving a daughter (the plaintiff No. 1) and two widows (plaintiff 2 and the pro forma defendant No. 2).

3. The plaintiffs brought the present suit against Prafulla alleging that when their pala began from 1st Magh 1372 B. S. Prafulla the defendant 1 did not make over to

them the 'Kha' schedule movables required for worship of the deity and refused to allow them to perform sheva puja. He also prevented the plaintiffs from entering into the rooms of the deity for worship.

4. The defendant 1 contested the suit by filing written statement contending that Amulya shortly before his death had renounced his share in the shebaitship in favour of the defendant 1 and that the plaintiff being out of possession of the defaulter properties the suit for declaration and injunctions without a prayer for recovery of possession is not maintainable.

5. Both the courts below have after considering the evidence disbelieved the defence case that Amulya renounced his share in the shebaitship in favour of the defendant 1. They have for different reasons held that the suit is maintainable. So the decree passed by the trial Court declaring the plaintiffs' 1/3rd share in the shebaitship restraining the defendant 1 from interfering with the plaintiffs' performance of sheva puja according to pala for one year in every three years and directing him to deliver item Nos. 1 to 21 of schedule 'Kha' to the plaintiffs for performing the worship of the deity has been affirmed by the first appellate Court.

6. The only point raised on behalf of the appellant defendant 1 in this appeal is that as the plaintiffs co-shebait were out of possession of the debutter properties at the time of the suit the present suit for a declaration and injunctions without claiming the further relief of recovery of possession is barred by Section 34 of the [Specific Relief Act, 1963](#). In support of this contention Mr. Sengupta has relied on three Bench decisions viz. Kumud Ranjan v. Manabendra, : AIR1974Cal342 , Radha Govinda v. Kewala Devi, : AIR1974Cal283 and Panna Banerji v. Kai Kinkor, : AIR1974Cal126 . But in : AIR1974Cal342 no question of shebaitship of a deity was involved. It reiterates the settled law that a suit for a declaration of title and injunction in respect of immovable property by the plaintiff who is out of possession is not maintainable and is barred by Section 34 of the [Specific Relief Act, 1963](#) for not claiming recovery of possession as the further relief. In : AIR1974Cal283 the question was whether a suit by the deities through their shebait for declaration of title and permanent injunction in respect of one of the items of debutter property illegally transferred by an ex-shebait to a third party was maintainable when the plaintiffs were out of possession of the suit property in the absence of a prayer for recovery of possession and it was answered in the negative. In : AIR1974Cal126 it was held that shebait right can be acquired by adverse possession under a void sale. In my view none of the aforesaid cases deals with the point which arises in this case viz. whether a co-shebait suing another co-shebait for a declaration of his share in the shebaitship and permanent injunction restraining the defendant co-shebait from interfering with the performance of the sheva puja by the plaintiff according to pala is maintainable when the plaintiff co-shebait is prevented from entering the rooms of the deity. In my view such a suit is not barred by Section 34 of the [Specific Relief Act, 1963](#) as possession of one co-shebait of the debutter properties is possession of another unless there is ouster. It has been held by Bijoyesh Mukherji J. in Lakshmi Kanta Roy v. Nishi Kanta Roy (1967) 71 Cal 362 at p. 378 that possession of some of the co-shebait whether of hereditary office or of endowed property is to be considered as the possession of all the shebait in the absence of evidence pointing to ouster. It has been observed by the learned Author B.K. Mukerjee's Hindu Law of Religious and Charitable Trust 4th Edn. at page 241 that though some sort of division among the shebait inter se by means of performance of duties of the office and enjoyment of emoluments by different shebait in rotation is allowed on ground of convenience yet the shebait can only

remain one body in the eye of law. The deity is represented by all of them acting together and no one shebait can be said to represent the deity in part or to possess any interest in any fractional share of the idol's property. This statement of law implies that shebait which is office and property blended together, when held by a number of persons is akin to co-ownership so far as the property element is concerned although there cannot be any physical partition thereof and the only division permissible is by way of separate management and worship in different periods according to palas or turns of worship. In the instant case there is no evidence of ouster of the plaintiffs as co-shebait by the principal defendant co-shebait from the debutter properties. There is breach of the terms of the written agreement regarding pala or turn of worship of the deity binding of the parties for which injunction is the appropriate further relief.

7. I, therefore, overrule the only contention raised on behalf of the appellant.

8. The appeal is dismissed. The judgment and decree of the appeal below are affirmed. No order is made as to costs.

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