

Bindraban Vs. Sri Godamji Maharani Birajman Mandir Sri Rangji Maharaj

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Court : Allahabad

Decided On : Jan-15-1937

Reported in : AIR1937All394

Appellant : Bindraban

Respondent : Sri Godamji Maharani Birajman Mandir Sri Rangji Maharaj

Judgement :

1. This is a Letters Patent appeal arising out of a suit for recovery of possession brought by the plaintiff as trustee of the trust property against the defendant appellant who also claimed to be the trustee. One Brij Lal was the original owner of these properties and on 17th November 1914 he made a gift of these properties in favour of Sri Godamaji Maharani installed in a certain temple and by that deed declared that he himself would remain the manager of the properties during his lifetime, but after his death the trustees of that temple would manage the properties also. Later, on 1st February 1915, he executed another document in the form of a will under which he directed that after his death the management of the dedicated properties should pass to the present appellant, Bindraban. On Brij Lal's death Bindraban obtained possession as the trustee which gave occasion for the suit by the trustee of the temple. In the deed Brij Lal had not reserved to himself the right of changing the trustees or managers but had distinctly provided that he himself would be the manager during his lifetime and after his death the trustees of the temple of Sri Rangji Maharaj would manage the property. The sole question which arose for consideration was whether Brij Lal had any power to alter the

succession of the trusteeship of this debuttar property. The courts below took the view that there was such authority left in him but on appeal a learned Judge of this Court has come to a contrary conclusion. We think that his opinion is right. The learned Counsel for the defendant relies solely on a Calcutta case which has not been followed even in Calcutta in later cases. In Macnaughten's Principles of Hindu Law, Vol. 2, p. 305, it was stated that:

It is now settled law that the appointment and succession to the office of a shebait must follow the line laid down in the original grant and in the absence of special direction and usage the heirs of the donor succeed.

2. This obviously meant that if a rule of succession to the office of shebait was laid down in the deed of trust itself, then the succession must follow the line and the provision was binding even on the donor. In *Gourikumari Dasi v. Ranimoyi Dasi* A.I.R. 1923 Cal 30 the question arose before Woodroffe and Cuming, JJ. and the learned Judges distinctly laid down that the creator of a debuttar is not entitled to make a change in the order of succession of shebaits unless he made a reservation to that effect in the deed of gift. In that case the donor had provided that after his death his wives in order of seniority would be the shebaits and that after their deaths if a son was born, he would be the shebait or an adopted son and in the case of failure of any such son, the shebait or she-baits would be selected by him by a will or other document. Even then it was held that the donor could not make any change in the order of succession of she-bait and accordingly he could not appoint his second wife as shebait in preference to the eldest. In *Sripati Chatterjee v. Khudiram Benerjee* : AIR1925 Cal442 the point did not directly arise but one of the learned Judges discussed the law at considerable length. He quoted with approval the rule of law laid down in Macnaughten's Principles of Hindu Law already referred to. In particular on p. 445 the learned Judge quoted:

The rules laid down for the appointment of she-baits and their succession in the deed of endowment are binding.

3. On p. 446 he referred to *Gaurikumari Dasi's* case *Gourikumari Dasi v. Ranimoyi Dasi* A.I.R. 1923 Cal 30 and pointed out that learned Judges had

held that even the creator could not make a change in the order of succession unless he had made a reservation to that effect in the deed; but he remarked that on principles and some authorities he was inclined to think that the power should be presumed to exist unless expressly given up. He however did not express his dissent from the previous ruling of that Court, and inasmuch as in the deed in that case the donor had precluded himself from making any further change, it was held that the rule of succession could not be validly altered. That case is therefore no real authority in support of the defendant's contention. In two cases *Nagendra Nath Palit v. Rabindra Nath Deb* A.I.R. 1926 Cal 490 and *Lalit Mohan Seal v. Brojendra Nath Seal* A.I.R. 1926 Cal 561, another learned Judge of the Calcutta High Court clearly expressed his dissent from *Sripati Ghattejee's* case *Sripati Chatterjee v. Khudiram Benerjee* : AIR1925 Cal442 . It is thus clear that even the Calcutta view is definitely against the appellant. In this Court it was remarked by Bannerji and Ryves, JJ. in *Sidhan Lal v. Gauri Shankar* A.I.R. 1917 All 264 that it is not open to the creator of the trust after the trust has been created to nominate new managers who were to take his place after his death because subsequently to the creation of the trust his position is merely that of a manager and he is not competent to revoke the trust or to alter it or to appoint new managers. No doubt in that case inasmuch as the newly appointed trustees had taken possession of the trust property as such, they were treated as trustees de son tort who could, along with the real trustees, sue under Section 92, Civil P.C. In that way it may be said that the observation was an obiter dictum, but is entitled to weight.

4. It seems to us that when the property has been dedicated by a donor and he has thereby divested himself of all interest in the property, then unless he reserves to himself a right of changing the line of succession laid down by him in the deed of trust, that rule must be binding even on him. The rule of succession to the office of shebait is of considerable importance in the case of trust and if laid down by the donor at the time of the dedication must be deemed to be a part of the rules governing the management of the trust, and in the absence of any reservation, the rule is not capable of being altered by the donor at his will. We therefore think that the view taken by the learned Judge of this Court is sound. The appeal is dismissed with costs.

