Siddheswar Das and ors. Vs. Dhirendra Nath Das and ors.

Siddheswar Das and ors. Vs. Dhirendra Nath Das and ors.

SooperKanoon Citation : sooperkanoon.com/876642

Court : Kolkata

Decided On : Sep-22-1988

Reported in : (1989)1CALLT419(HC),100CWN1040

Judge : Monoranjan Mallick, J.

Acts : Hindu Law; ;Hindu Succession Act

Appeal No. : Originating Summons 451 of 1986

Appellant : Siddheswar Das and ors.

Respondent : Dhirendra Nath Das and ors.

Judgement :

Monoranjan Mallick, J.

1. In this Originating Summons the plaintiffs seek the determination of the following questions :

(a) Whether after the death the said Bhuban Mohan Das the Office of the Shebait has reverted to the heirs of the said Srinath Das ;

(b) If the answer to question (a) are in the affirmative, whether the plaintiffs and the defendants being the surviving great grandsons of the testator are his only heirs and joint shebaits of the Debutter Estate ;

(c) If the answers to questions (a) and (b) above are in the affirmative, the plaintiffs submit that in view of the large number of shebaits, a scheme should be framed by the Hon'ble Court and/or directions therefor he given and/or such Orders and/or such other direction be given for proper management and administration of the Debutter State as the Hon'ble Court may seem fit;

(d) Perpetual injunction restraining the defendant No. 1 and his servants and agents and each of them from intermeddling with the Debutter Estate exclusively to the prejudice of the rights of the other parties to their Suit.

2. The plaintiffs state as follows :

One Srinath Das, an eminent Vakil and Wealthy inhabitant of Calcutta was a Hindu governed by the Dayabhag School of Hindu Law. He died on 13th September 1907 leaving a Will whereby he, inter alia, created a Debutter Estate and dedicated the properties specified in para 1 of the petition.

By the said Will the said testator and settlor laid down the following line of succession to the Office of the Shebait:

'For the due performance of the seva, puja and for managing Debutter properties, I appoint my youngest son Rajendra Nath Das as shebait; after his death my eldest grandson Jogendra Nath Das alias Uday Kumar Das in the male line, if legally fit and entitled to do the work ; after him my youngest grandson in the male line Jatindra Nath Das alias Arun Kumar Das if legally fit and entitled to do the work and so on my grandsons in the male line by my two sons Surendra Nath Das and Rajendra Nath Das according to seniority in age shall be successive shebaits.

In default of my grandsons in the male line my great grandsons in the male line shall be shebait in the manner stated above and so on forever one grade after another. If at any time the shebait dies without leaving a successor as stated above, the eldest male decendant then living in the male line of my two sons Surendra Nath Das and Rajendra Nath Das shall become the next shebait and the above provision regarding the selection of the shebait shall continue to apply. In the absence of a proper person answering any of the above description the shebaitship shall descend to any body who will appear at the time of the death of the last shebait to be the successor-in-interest to my estate either immediately or mediately by way of inheritance.'

3. After the death of Srinath Das, Rajendra Nath Das acted as shebait until his death on the 29th day of January 1913. After his death Jogendra Nath Das became the shebait and he continued to hold office until the 21st day of May 1972 when he died. After the death of Jogendra Nath Das, Bhuban Mohan Das became the shebait and he continued to hold the office until 18th May 1986 when he died.

4. The said Bhuban Mohan Das was the last person who was in existence at the time of death of the said Srinath Das and who answered the description in the line of succession laid down by the said testator and settlor Srinath Das.

5. The plaintiffs submit that the line of succession laid down by the said testator and settlor in so far as the same related to the persons not in in existence at the time of death of the testator and settlor is invalid in law in asmuch as the same days lays down a line of succession contrary to the general law of inheritances according to Hindu Law.

6. The plaintiffs state that after the death of Bhuban Mohan Das the Office of Shebait has reverted to all the heirs of the said testator or settlor Srinath Das. The plaintiffs and the defendants being the surviving great grandsons of the testator and being heirs according to Hindu Law at the time of the death of the testator are the joint shebaits of the Debuttar Estate. The above proposition is denied and disputed by some of the shebaits being some of the defendants. In particular the defendant No. 1 Dhirendra Nath Das is claiming to be the shebait of the Debuttar Estate being the eldest male member although he was born after the death of the testator and settlor.

7. It is, therefore, necessary for the Court to determine as to who are the present heirs and shebaits of the Debuttar Estate and also an Order for framing scheme for the due and proper management and administration of the Debuttar Estate.

8. The defendant Nos. (2) to (5) and (8) to (11) have supported the case of the plaintiffs by filing an Affidavit-in-opposition, dated 4th August 1986 through defendant No. 2 Anup Kumar Das.

9. The defendant No. 1 has contested the Originating Summons by filing an Affidavit-in-opposition. It is contended that the testator has laid down the succession to the Office of shebait in his Will and the said direction should be strictly followed and has been followed upto date. It is denied that the said direction of the testator is contrary to law or that after the death of Bhuban Mohan Das the Office of Shebait has reverted to all the heirs of the Testator Srinath Das as wrongly and incorrectly contended by the plaintiff. It is stated that after the death of Bhuban Mohan Das, the defendant No. 1 being the senior most great grandson in the line of succession as indicated in the Will of the testator has become the sole shebait in terms of the said Will. He states that the fact of birth after the death of the testator has nothing to do with the right of shebaitship in terms of the directions contained in the said Will. He, therefore prays that the Originating Summons be dismissed.

10. The defendant No. 7 has also contested the Originating Summons. It is contended that shebait Bhuban Mohan Das executed a Deed, dated 16th September 1981 nominating his youngest son Kanchan Kumar Das as the next shebait after him in case the defendant No. 7 being the eldest son disagrees to act as shebait. A Photostat of the Deed is annexed as Annexure 'A'. He also submits that in determining the question of shebaitship the said deed of nomination executed by the deceased shebait be taken into consideration by the Court.

11. By a supplementary Affidavit, the defendant No. 7 has mentioned the names of female heirs of the testators who have been left cut in the Originating Summons and not made parties.

12. It is also contended that Pulin Kumar Das and Sunil Kumar Das who great grandsons of Srinath Das having died, their heirs and legal representatives Samir Kumar Das and others and Rabin Kumar Das and others respectively have not been impleaded in Originating Summons.

13. The first question to be determined in this Originating Summons is whether on the death of Bhuban Mohan Das, the Office of the Shebait has reverted to the heirs of the Srinath Das the founder of the Debuttar Estate.

14. The plaintiffs have urged that in the Will annexed to the originating summons testator Srinath Das laid down the rule of succession to Shebaitship which is contrary to the Hindu Law of Succession and the testator cannot lay down such rule contrary to such rule. In support of the decision of Hiranbala Devi v. Bishnupada, : AIR1976 Cal404 has been cited.

15. I find from the said decision that the Learned Judge has, on considering all the previous decisions including the Privy Council decision in Tagore v. Tagore (1872) Ind. App. Sup. Vol. 47 (PC) and the Full Bench Decision of the Calcutta High Court in Monohar Mukherjee v. Bhupendra Nath AIR 1932 Cal. page 791 (FB) has held that in so far as the Settlor purported to lay down that after the death of Ashutosh Bhattacharyya and Nanilal Bhattacharyya, their male heirs according to seniority would become the shebait, the settlor was laying down a line of succession repugnant to Hindu Law and the said provision is void and on their death the Shebaitship would revert back to the heirs of the Settlor. From a perusal of the Will of Late Srinath Das, I find that by the Will the testator appointed the following shebaits one after another by name. He appointed his youngest son Rajendra Nath Das as shebait and after his death his eldest grandson Jogendra Nath Das alias Uday Kumar Das and after his youngest grandson in the male line Jatindra Nath Das alias Ram Kumar. After appointing three shebaits by name he has stated in the Will as follows 'and so on my grandsons in the male line by my two sons Surendra Nath Das and Rajendra Nath Das according to seniority in age shall be successive shebaits. In default of my grandsons in the male line my great grandson in the male line shall be successive shebaits in the manner stated above and so on for ever one grade after another. If at any time a shebait dies without leaving a successor in the manner stated above, the eldest male descendant then living in the male line of my two sons Surendra Nath Das and Rajendra Nath Das shall become the next shebait and the above provisions regarding the selection of the shebait shall continue to apply. In the absence of a person answering any of the above descriptions, the shebaitship shall descend to any body who will appear

at the time of the death of the last shebait to be the successor in interest to my estate either immediately or mediately by way of inheritance. If any of the persons qualified to become a shebait under the above provisions and upon whom the shebatship devolves, refuses to accept the office, relinquishes it, or subsequently disqualifies himself, any other person, who may happen to be the next qualified successor to the last shebait shall be entitled to the Office.'

16. The relevant portion of Section 419 of Mulla's Hindu Law 15th Edition at page dealing with the devotion of Shebaitship reads thus :

'The devolution of the Office of shebait depends on the terms of the deed or will by which it is created. Where there is no provision in the deed or will as to the succession or where the mode of succession prescribed in the deed or will comes to an end, the title to the property or to the management and control of the property, as the case may be, follows the ordinary rules of inheritance according to Hindu Law, in other word, it follows the line of inheritance from the founder and passes to his heirs unless there has been some usage or course of dealing which points to a different mode of devolution, e.g. devolution on a single heir.'

17. In this respect the Division Bench Judgment of this Court reported in : AIR1979 Cal168 Anath Bandhu De v. Krishna Lal Das and others appears to be very relevant. M.M. Dutt, J. as His Lordship then was delivering the judgment for the Division Bench has observed at page 171 as follows:

'It is no doubt true that shebaitship is property and it is heritable like any other property, subject to the condition that the founder of the Debutter has not laid down any mode of devolution of the Office of Shebait. In case such a mode is laid down, the Office of Shebait would devolve according to that mode. In the absence of any disposition of shebaitship, it will devolve in accordance with the Hindu Law of succession, and, in that case, the office of shebait will be a hereditary Office.'

18. In Bhabatarini v. Ashalata ILR (1943) 2 Calcutta page 137 (PC) Sir George Rankin delivering the judgment of the Privy Council has observed as follows :

'It must now be taken that the shebaiti is property, that is not a catena of successive life estate (Gnanasambanda's case) but is heritable property which in the first instance is vested in the founder. It must further be accepted that the founder may direct that a designated person should hold the office during the person's life either immediately or on the death of a previous holder and that such direction subject to the relevant conditions as to perpetuity, whatever these may be will be good although it carries no right to the heirs of the grantee and does not amount to a complete disposal of the shebaiti. If then, on the death of the grantee, the Shebaiti goes to the founder or his heirs, this is because the right of the founder is heritable and he has not completely disposed of the interest which he has therein.'

19. Regard being had to the above well settled principles I have no doubt in my mind that after the death of last shebait appointed by the testator namely, Jogendra Nath Das on 21st May 1972 the claims of shebaits appointed by the testator broke down. Jatindra who has been designated in the Will as to hold the Office of Shebait after the death of Jogendra predeceased Jogendra as he had died on 25.9.1967 (vide) the geneological table annexed with the originating summons. The line of succession for the appointment of the shebait after the death of Jogendra Nath Das contravened the rules of succession under the Dayabhag School of Hindu Law to which the testator belonged. Even Bhuban Mohan Das who according to the plaintiff was lawfully appointed shebait under the Will in my view, was not lawfully appointed because he was not named as shebait by the testator, i.e., he was not a designated shebait under the Will. His appointment being the eldest male member of the family in the male line also was against the law of succession. Shebaitship is now held to be not only office but also property and it shall devolve under the general law of succession. Thus after the death of Jogendra Nath Das in 1972 the shebaitship would devolve upon the all heirs of the testator. According to the plaintiffs as Srinath died in 1907 before Hindu Succession Act came to force only male decendants would inherent the shebaitship. But in my view the question of devolution of shebaitship under the Hindu Law opened only in 1972 when the Hindu Succession Act had already come into force. The shebaitship would, therefore, devolve upon all male and female heirs living on the 21st May, 1972.

20. The contention of the defendant No. 1 that on the death of Bhuban Mohan he being the eldest male member of the family has become the shebait is not correct. The defendant No. 7 cannot also claim as the sole shebait by virtue of the deed created by Bhuban Mohan. I have already held that under the law Bhuban Mohan could not have been the validly appointed shebait. Even it he be conceded that shebaitship validly devolved upon him, he cannot by any deed nominate his successor as no power has been given to him by the will of the testator.

21. In the result, my answer to question No. (a) is as follows :

After the death of Jogendra Nath Das and not after the death of Bhuban Mohan Das, the Office of the Shebait reverted to all the heirs of Srinath Das, the Testator as on 21st May 1972.

22. Regarding the question No. (b) my answer is that the plaintiffs and the defendants and other female heirs of late Srinath Das are the Joint shebaits of the Debuttar Estate.

23. Regarding the question No. (c) my answer is that in this Originating Summons all the parties not having been impleaded it would not be proper to frame any scheme for which the shebaits, if they feel it necessary, may file appropriate Suit or legal proceedings.

24. Regarding the question No. (d) I restrain the defendant No. 1 and his servants and agents from exclusively performing the seva puja of the deity excluding the other shebaits of the Debuttar Estate. I declare that all the shebaits shall act jointly for the seva puja of the deity till an appropriate scheme is framed by a Competent Court of Law.

25. All parties shall bear the respective costs of this Originating Summons themselves. Receiver shall continue till the 31st December, 1988. Liberty to the shebaits to apply for framing scheme by and impleading all the shebaits. All parties and the Receiver to act upon the signed copy of the operative portion of the judgment.