Shambhu Charan Shukla vs Thakur Ladli Radha Chandra Bmadan ... on 19 March, 1985

Equivalent citations: 1985 AIR 905, 1985 SCR (3) 372, AIR 1985 SUPREME COURT 905, (1985) 98 MAD LW 692, 1985 UJ (SC) 802, (1985) SIM LC 249, 1984 SCC (SUPP) 77, (1985) 11 ALL LR 289, 1985 (2) SCC 524

Author: A. Varadarajan

Bench: A. Varadarajan, Sabyasachi Mukharji

PETITIONER:
SHAMBHU CHARAN SHUKLA

Vs.

RESPONDENT:
THAKUR LADLI RADHA CHANDRA BMADAN GOPALJI MAHARAJ & ANR

DATE OF JUDGMENT19/03/1985

BENCH:
VARADARAJAN, A. (J)
BENCH:
VARADARAJAN, A. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1985 AIR 905 1985 SCR (3) 372
1985 SCC (2) 524 1985 SCALE (1)503

ACT:
Hindu Law
Religious endowment-Founder by will making his wife shebait-No disposition in will regarding the shebaiti right-On death of founder widow succeeding to the shebaiti right-Whether widow could transfer the shebaiti right by her will.
Hindu Succession Act 1956-Section 14(1).
Shebaitship-Right to- Limited right of Hindu female whether enlarged to the absolute right of the holder.

HEADNOTE:
The idol of Gopalji was installed by one Purshottam Lal in his house at Vrindavan, which later became the temple of the deity. The founder who had no issue, performed Seva Puja of the deity so long as he was alive and thereafter it was

performed by his wife. By his will Ex. A-2, he dedicated his entire property to the deity, and made his wife the Mohatmim/ Shebait without any power to transfer any property. In accordance with the directions of her husband, the wife adopted the second respondent by a registered deed after performing the necessary religious ceremonies. After the death of the wife, the appellant in the appeal worked as Pujari in the temple with the consent of the second respondent's guardian and natural father. Later he denied the rights of the second respondent and contended that the founder's wife executed her last will and testament Ex. A-6 bequeathing her bank deposits, government bonds, household articles, utensils etc. to the appellant to be kept by him in his custody, so long as the second respondent was a minor and to be responsible for the seva puja and raj bhog of the deity and the management of the deity's properties.

A suit was filed by the respondents, for recovery of possession of the idol and temple of Gopalji and for the money lying in deposit with the bank, the zamindari abolition compensation etc.

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The trial court held the adoption of the second respondent to be duly authorised and valid and found that the founder's wife had validly executed the will Ex. A-6, but could not transfer the shebaiti rights to the second respondent thereby and that the second respondent had, however become the Mohatmim/Shebait by reason of the adoption, and found that the movable properties and the cash claimed by the appellant under the will were the personal properties of the wife and that the appellant had become entitled to them as a legatee under the will and that the other properties belong to the first respondent-Gopal Ji, and decreed the suit in part.

In the appeal by the appellant, and the cross-objections filed by the second respondent, the additional district judge found that as the adoption was without the authority of the husband to adopt, it was invalid in law and following this Courts' decision in K.K. Ganguli v Pama-Banerjee, AIR 1974 S.C R. 1932 held that the second respondent had not become shebait under the will and allowed the appeal and dismissed the corss-objections and the suit in full.

In the second appeal, the High Court following this Courts' decision in Angurbala Mullick v. Debabrata Mullick, [1951] 2 S.C R. 1125 that shebaiti is heritabal property, held shebaiti is property & found that no restriction had been placed in the will of the founder in regard to the shebaiti, and therefore the wife had succeeded to the limited right of shebait as the heir of her husband and it became enlarged into an absolute right under section 14(1) of the Hindu Succession Act, 1956 and that as there was on other heir or successor to the founder, the wife's appointment of the second respondent as the shebait under

her will Ex. A-6 was valid in law. The second appeal was accordingly allowed in part except in respect of certain items enumerated in the plaint, and cash in - fixed deposit with a bank.

Dismissing the appeal, to this Court.,

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HELD: (Per Varadarajan J.)

1. The text of Hindu Law and the two decisions of this Court in Profulla Choronl Requittee v. Salya Chornal Requittee [1979] 3 S.C.R. 431 and Ram Rattan v. Bajrang Lal JUDGMENT:

Angurbala Mullick v.Debabrata Mullick, [1951] 2 S,C R 1125 show that shebait ship is in the nature of immovable property heritable by the widow of the last male holder unless there is an usage or custom of a different nature in cases where the founder had not disposed of the shebaiti right in the endowment created by him. [382B-C] In the instant case, the founder (Purshottam Lal) had not made any disposition regarding shebaiti right in his will, Ex. A-2 dated 14-4-1944 where-by he created the endowment. No custom or usage to the contrary had been pleaded. Therefore, the widow (Asharfi Devi) had succeeded to the shebaiti right held by him on his death as a limited owner and that right had become enlarged into an absolute right by the provisions of Section 14(1) of the Hindu Succession Act, 1956 and she could transfer that right by a will in favour of a person who is not a non-Hindu and who could get the duties of shebait per formed either by himself or by any other suitable person. [382C-D]

2. The second respondent has acquired the shebaiti right under the will Ex. A-6. No interference is called for with the judgment of the Single Judge of the High Court in the Second appeal. [382E] (Per Sabyasachi Mukharji J. 'concurring)'

1. It is well settled that shebaitship is heritable. This Court in Angurbale Mullick v. Debabrata Mullick, 119511 2 S.C.R. 1125 recognised the right of a female to succeed to the religious office of shebaitship in view of the Hindu Women's Right to Property Act 1937. Section 14(1) of the Hindu Succession Act 1956 enlarged the limited right of a Hindu female to the absolute right of the holder. [382H; 383A] In the instant case, the property in the nature of shebaitship devolved on Smt. Asharfi Devi under the will of her husband, Shri Purushottam Lal dated April 14, 1944. This will had not restricted the property in any manner in shebaitship bequeathed to Smt. Asharfi Devi could therefore make a will in respect of shebaitship. [383B-C]

2. It is not necessary, to express any opinion on the correctness or otherwise of the views expressed in K.K. Ganguli v. Panna Banerjee, [1975] 1 S.C.R. 728. [383D] & CIVIL APPELATE JURISDICTION: Civil Appeal No. 1372 of 1979.

From the judgment and decree of the Allahabad High Court dated March 2,1979 in Second Appeal No. 626/76.

P.K. Chatterjee and P.K Mukherjee for the Appellant, G. ViswanathaIyer and M.V. Goswami him for the Respon- dents.

The Judgment of the Court was delivered by VARADARAJAN, J. This appeal by special leave is by the defendant-respondent in Second Appeal No. 626 Of 1976 on the file of the Allahabad High Court and directed against judgement of the learned Single Judge of that High Court in so far as it relates to the appointment of the second respondent/second plaintiff Man Mohan as the Mohatmim/Shebait of the first respondent Shri Thakur Ladli Radhachandra Madan Gopalji Maharaj (for short "Gopalji") and the properties belonging to that idol.

The second appeal was filed by the respondents Gopalji and Man Mohan, plaintiffs 1 and 2 respectively. The second respondent who is the son of one Shyam Sundar claimed to have been adopted by Asharfi Devi, widow of one Purushottam Lal by the document A-24 dated 20-11-1956. The High Court has not gone into the question of this adoption in its judgment. Therefore, it is not necessary to refer to the case of the parties and the judgment of the courts below in detail in regard to the question of the adoption. The suit was filed by both the respondents for recovery of possession of the idol and temple of Gopalji described in the plaint and the money lying in deposit with the Punjab National Bank at Vrindavan, the zamindari abolition compensation and the rehabilitation grant bonds specified in the plaint. The trial court decreed the suit except as regards items 1 to 25 and 37 to 41 of list I of Schedule "Ba" and the sum of Rs. 1004.97. The appellant filed an appeal in the District Court and the respondents filed a cross-objection in that appeal in regard to the money claim disallowed by the trial court. The learned Second Additional District Judge, Mathura allowed the appeal and dismissed the cross objection and the suit. Therefore, both the respondents filed the second appeal.

The respondents' case was that the idol of Gopalji was installed by Purushottam Lal in his house at Vrindavan which later became the temple of the deity. Purushottam Lal, who had no issue, performed seva puja of the deity so long as he was alive and it was performed thereafter by his wife Asharfi Devi. By his will Ex. A-2 dated 14-4-1944 he dedicated his entire property to the deity and made his wife the Mohatmim/Shebait without any power to transfer any property. In accordance with the directions of her husband, Asharfi Devi adopted the second respondent by a registered deed dated 21-11-1956 by performing the necessary religious ceremonies. After the death of Asharfi Devi the appellant worked as Pujari in the temple of Gopalji with the consent of the second respondent's guardian and natural father Shyam Sunder. Later, he denied the rights of the second respondent contending that Asharfi Devi executed her last will Ex. A-6 dated 21-12-1957 bequeathing her bank deposits, government bonds, household articles etc. to the appel-

lant Shambhu Charan and all her jewellery including those kept by her in the custody of Shyam Sunder to the second respondent and declaring that so long as the second respondent was a minor the appellant shall act as Mohatmim of Gopal ji and be responsible for the sewa puja and raj bhog of the deity and the management of the deity's properties. They will further declare that the appellant shall continue to live in the house at Bengal Bindala, Vrindavan and act as the guardian of the second respondent in view of his natural father Shyam Sunder's refusal to do so and that on the second respondent attaining majority the appellant shall hand over the sewa puja and raj bhog and he shall have all the rights of Mohatmim which Asharfi Devi held, without any right to alienate any of the properties. But this will was not duly executed by Asharfi Devi and she had no right to execute such a will and it does not confer any right on the appellant.

Besides denying the adoption of the second respondent the appellant contended in his written statement that Asharfi Devi validly executed the will dated 21-12-1957 inter alia bequeathing items 1 to 25 and 37 to 41 of Schedule "Ba" and items 3 and 4 of the plaint Schedule, namely, the fixed deposit in Punjab National Bank, Vrindavan, the zamindari abolition compensation bonds and the rehabilitation grant bonds which were all her personal properties, i- and not endowed properties, to the appellant and he has thereby become the absolute owner of those properties. In that will Shyam Sunder had got certain provisions alleged to confer certain rights on the second respondent inserted by exercising undue influence on Asharfi Devi, and they are not binding on the appellant.

The trial court held the adoption of the second respondent by the Asharfi Devi to be duly authorised and valid and found that she had validly executed the will Ex. A-6 dated 21-12-1957 but could not transfer the shebaiti rights to the second respondent thereby and that the second respondent has, however, become the Mohatmim/ Shebait by reason of the adoption and that the appellant had spent the sum of Rs. 1004.97 towards sewa puja and raj bhog of Gopal Ji. The trial court further found that the movable properties and the cash claimed by the appellant under the will were the personal properties of Asharfi Devi and that the appellant has become entitled to them as a legatee under the will and that the other properties belong to the first respondent Gopal Ji and thus decreed the suit in part.

In the appeal by the appellant and the cross-objections filed by the respondents the learned Second Additional District Judge. Mathura found that the adoption made in November 1956 was without the authority of Asharfi Devi s husband to adopt and, therefore, invalid in law. In the event of the adoption not being upheld the respondents wanted to fall back on the will to support the second respondent's claim to shebaitship. That was naturally opposed by the appellant as the respondents did not raly upon the will in the plaint and based the second respondent's claim to shebaitship only on the adoption. The learned Second additional District Judge rejected that contention as also the contention of the respondents that Asharfi Devi as the heir of her husband could appoint her successor shebait by her will on the ground that it could not be done by will following this Court's decision in KK Ganguli v. Panna Banerjee(l) and he held that the second respondent has not become shebait under the will. In this view the learned Additional District Judge allowed the appeal and dismissed the cross-objection and the suit in full.

In the second appeal also the question whether the appointment of the second respondent as shebait of the first respondent deity by Asharfi Devi's will was valid in law was the only question considered by the Single Judge. The learned Judge expressed the view that it cannot be disputed that prior to the commencement of the Hindu Succession Act a successor to shebaitship could not be appointed by will unless it be that the will was executed by the founder who had created the endowment by dedicating his own absolute properties to the deify. In the light of this Court's decision Angurbala Mullick v. Debvbrata Mullick (2) in which it has been held that if a shebait dies leaving behind him a widow and no son she would succeed to the shebaiti right - under the ordinary law but her rights in the shebaiti would be restricted in the same manner as they would have been if the successor was the son, which view reiterates the view expressed by the Privy Council in Bhabe Foririe Devi v. Ashalata Devi (3) that shebaiti is heritable property, the learned Single judge held that shebaiti is property and found that no restriction had been placed in the will of Asharfi Devi's husband

Purushottam Lal in regard to the shebaiti and, therefore, Asharfi Devi had (1) AIR .1974 SC 1932 (2)(1951) S. C.R. 1125 (3) AIR 1943 PC 89 succeeded to the limited right of shebait as the heir of her husband and it became enlarged into an absolute right by s. 14(1) of the Hindu Succession Act, 1956 and that as there was no other heir or successor to Purushottam Lal, Asharfi Devi's appointment of the second respondent as the shebait under her will Ex. A-6 dated 21-12-57 is valid in law. The learned Judge found that the zamindari abolition compensation and rehabilitation grant bonds go with the shebaiti and could not be claimed by the appellant. Thus he allowed the second appeal in part except as regards items l.to 25 and 37 to 41 and the cash of Rs. 1004.97 and the fixed deposit lying with the Punjab National Bank at Vrindavan.

In this Court, the only question to which the arguments were confined by the learned counsel for the parties is whether the shebaiti right could be bequeathed by Asharfi Devi by her will Ex. A-6.

It has to be noticed at the outset that the respontents had based their claim to the . properties and the shebaiti right only on Purushottam Lal's last will and testimony Ex. A-2 dated 14A 1944 whereby he created the endowment constituting himself as the shebait and on the adoption deed Ex. A-24 dated 10-11-1956. That adoption which has been held to be valid by the trial court has been found by the first appellate court to be invalid in law for want of authority of the husband to make the adoption prior to the commencement of the Hindu Succession Act, 1956, and the High Court has not gone into that question. The respondents attacked the genuineness of the will Ex. A-6 in toto in their plaint while the appellant had relied upon it in part to the extent that it purports to confer on him absolute right in regard to certain properties including items 1 to 25 and 37 to 41 of list 1 of Schedule "Ba". He contended that the remaining position of that will which purports to confer shebaiti rights on the second respondent had been fraudulently introduced by the second respondent's natural father Shyam Sunder by the exercise of undue influence on Asharfi Devi and that portion of the will is not, therefore, binding on him. However, the learned Judge of the High Court has allowed the second appeal in part stated above only on the basis of that will. It may be stated that it was not contended by Mr. P.K. Chattrjee, learned Senior Advocate appearing for the appellant that it was not open to tho High Court to grant relief to the second respondent on the basis of the will on which no reliance had been placed in the plaint. A8 stated earlier the only question regrading which Mr. Chatterjee appearing for the appellant and Mr. G. Viswanath Iyer, learned Senior Advocate appealing for the respondent advanced their arguments was as regards the validity of the appointment of the second respondent as shebait by Asharfi Devi's will, Ex. A-6.

Mr. Chatterjee conceded in the course of his arguments that shebaitship is heritable property but submitted that heriditary succession to shebait is not mentioned in Purushottam Lal's will, Ex. A-2 and, therefore, after the death of Asharfi Devi shebaitship right will revert to the heirs of the founder Purushottam Lal and that the second respondent could not, therefore, claim to be shebait of the first respondent-temple. In this connection, Mr. Chattarjee invited our attention to the judgment of A.N. Ray, J., and K.K. Mathew, J. Of this Court in K.K. Ganguli v. Panna Banerjee (Supra) where at page 737, Chief Justice Ray speaking for the Bench has observed that the transfer of shebaitiship by will is not permitted because nothing which the shebait has can pass by his will which operates only after his death. Earlier at page 733 the learned Chief Justice has observed:

> "The rule against alienation of shebait right has been relaxed by reason of certain special circumstances. These are classified by Dr. B.K. Mukherjee at page 231 in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trust, First Edition under three heads. The first case is where 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. Second, when the transfer is made in the interests of the deity itself and to meet some pressing necessity. Third, 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."

This decision rendered in a case of sale of shebaitiright for pecuniary consideration appears to support the stand taken by Mr. Chatterjee. But later decisions of this Court have taken a different view which appears to be consistent with the principles of Hindu Law. We find the following passage in para 419A of Mulla's Hindu Law, Fifteenth Edition:

> "Though a female is personally disqualified from officiating as a Pujari for the shastraically installed and consecrated idols in the temples, the usage or a female succeeding to a priestly office and getting the same performed through a competent deputy has been well recognised and it is not contrary to textual Hindu Law nor opposed to public policy. In Raj Kali Kuer v. Ram Ratan Pandey(1) the Supreme Court upheld such usage.' In the next para 420 we find the following passage:
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> "A sale by a shebait or mohunt of his right to manage debutter property is void, even though the transfer may be coupled With an obligation to manage the property in confirmity with the trust attached thereto. Nor can the
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> -right be sold in execution of a decree against him".

At page 158 of Mukherjee's Hindu Law of Religious and Charitable Trusts, Third Edition, it is stated thus:

> "Unless therefore the founder has disposed of the shebait ship in any particular way and except when an usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder. Where the founder of a temple had died without having appointed a shebait, it was held that his widow on whom the right to appoint had developed was entitled to appoint a shebait for the temple, and such appointment was not open to attack as an alienation of the office of a trustee. And the rule that shebaitship devolves like and other species of pro. party has been applied to the office of archaka, as well, where emoluments were attached to it." In the decision in Profulla Choronl Requittee v. Satya Choronl Requittee(2), Sarkaria, J, speaking for himself and Tulzapurkar, J. has observed at page 440 thus:

(1) [1955] 2 S.C.R. 186.

(2) [1979] 3 S.C.R. 431.

> "Office and property are both blended in the conception of shebaitship.. Apart from the obligations and duties resting on him in connection with the endowment, the shebait has a personal interest in the endowed property. He has, to some extent, the rights of a limited owner. Shebaitship being property, it devolves like any other species of heritable property. It follows that, where the founder does not dispose of the shebaiti rights-in the endowment created by him, the shebaitship develves on the heirs of the founder according to Hindu Law, if no usage or custom of a different nature is shown to exist."

A similar view has been expressed in an earlier decision of Chandrachud, C.J. and Desai and Pathak, JJ. in Ram Rattan v. Bajrang Lal & Ors.(1) where Desai, J. speaking for the Bench has observed thus:

> "This hereditary office of shebait is traceable to old Hindu texts and is a recognised concept of traditional Hindu Law. It appears to be heritable and partible in the strict sense that it is enjoyed by heirs of equal degree by turn and transferable by gift subject to the limitation that it may not pass to a non-Hindu. On principles of morality and propriety sale of the office of shebait is not favoured ... Both the elements of office and property, of duties and personal interest are blended together in - the conception of shebaitship and neither can be detached from the other ..A full Bench of the Calcutta High Court in Manohar Mukherjee v. Bhupendra Nath Mukherjee and Ors. held that the office of shebait is , hereditary and is regarded in Hindu Law as immovable property. This court took note of this decision with approval in Angurbala Mullick's case (supra).. Office of shebait is hereditary unless provision to the contrary is made in the deed creating the endowment. In the conception of shebait both the elements of office and property, duties and personal interest are mixed up and blended together and one of the elements cannot be detached from the other.. It is, therefore, safe to conclude that the hereditary office of shebait which (1) (1979) 3 S.C.R. 963.
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> " would be enjoyed by the person by turn would be immovable property. The gift of such immovable property must of course be by registered instrument."

The text of Hindu Law and the aforesaid two decisions of this Court and the earlier decision in Angurbala Mullick's case (supra) show that shebaitship is in the nature of immovable property heritable by the widow of the last male holder unless there is an usage or custom of a different nature in cases There the founder has not disposed of the shebaiti right in the endowment created by him. In the present case Purushottam Lal has not made any disposition regarding shebaiti right in his will, Ex. A-2 dated 14.4.1944 whereby he created the endowment. No custom or usage to the contrary has been pleaded. Therefore, the widow Asharfi Devi had succeeded to the shebaiti right

held by him on his death as a limited owner and that right has become enlarged into an absolute right by the provisions of s. 4 (l) of the Hindu Succession Act, 1956 and she could transfer that right by a will in favour of a person who is not a non-Hindu and who could get the duties of shebait performed either by himself or by any other suitable person. In these circumstances I hold that the second respondent has acquired the shebaiti right under the will Ex.A-6 executed by Asharfi Devi on her death on 7.3.1963. No interference is called for in this appeal with the judgment of the learned Single Judge of the High Court. The appeal is accordingly dismissed with costs.

SABYASACHI MUKHARJI, J. I agree that the appeal should be dismissed with costs. I would, however, like to explain the reasons why I come to that conclusion. In my opinion it is well-settled by the authorities that shebaitship is a property which is heritable. The devolution of the office of Shebait depends on the terms of the deed or the will or on the endowment or the act by which the Deity was installed and property consecrated or given to the Deity, where there is no provision in the endowment or in the deed or will made by the founder as to the succession or There the mode of 6 succession in the deed or the will or endowment 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- As Shebaitship is property, this Court in the case of Angurbala Mullick v. Debabrata Mullick(1) recognised (1)- [1951] 2 S.C.R. 1125.

the right of a female to succeed to the religious office of shebaitship in view of the Hindu Women's Rights to Property Act, 1937.

Section 14 (1) of the Hindu Succession Act, 1956 enlarged the limited right of a Hindu female to the absolute right of the holder. As in this case there was no bar against alienation imposed by the founder, the property in the nature of shebaitship in this case was devolved on Smt. Asharfi Devi under the will of her husband Shri Purushottam Lal dated 14th April, 1944. This will, the wordings of which have been set out in the judgment in the Second Appeal of the High Court, has not restricted the property in any manner in shebaitship bequeathed to Smt. Asharfi Devi. The High Court found and I respectfully agree with the High Court that the first sentence of the will makes an absolute bequest of shebaitship to Smt. Asharfi Devi. The subsequent words only describe the rights and duties. In the premises, in view of the law as laid down in Angurbala's case (supra), she could make a will in respect of shebaitship-

On the aforesaid reason, in my opinion, the appeal should fail. It is not necessary, therefore, to express any opinion on the correctness or otherwise of the views expressed by this Court in K K. Ganguli v. Panna Banerjee(1). Appeal dismissed with costs.

N.V.K. Appeal dismissed

(1) [1975] 1 S.C.R. 728.