

Shahzad Kunwar (Smt.) Deceased & After ... vs Raja Ram Karan Bahadur & Ors on 16 December, 1963

Equivalent citations: AIR 1965 SUPREME COURT 254

Bench: A.K. Sarkar, M. Hidayatullah, K.C.D. Gupta

CASE NO. :

Appeal (civil) 350 of 1958

PETITIONER:

SHAHZAD KUNWAR (SMT.) DECEASED & AFTER HER LRS.

RESPONDENT:

RAJA RAM KARAN BAHADUR & ORS.

DATE OF JUDGMENT: 16/12/1963

BENCH:

B.P. SINHA (CJ) & A.K. SARKAR & M. HIDAYATULLAH & K.C.D. GUPTA & N.R. AYYANGAR

JUDGMENT:

JUDGMENT 1965 AIR (SC) 254 The Judgment was delivered by : DAS GUPTA DAS GUPTA, J. : Brindaban in northern India is rich in temples. Amongst the many temples that adorn this holy place of the vaishnavas is a temple of Thakur Radha Manoharji. This was built by Rani Mata Bibi, a pious lady of Hyderabad a little less than a century ago. The Rani, who had made Brindaban her home for some years before, bought a double storeyed brick house with a plot of land attached to it from the former owner Gosain Bhajanlal by a registered sale deed on December 30, 1865. soon after her purchase she built thereon a temple and installed in it the idol of Thakur Radha Manoharji. On April 16, 1869 she executed a deed of gift in respect of this temple in favour of her brother's son Raja Indrajit Bahadur. In this deed she expressed her desire that the donee should enter into possession and occupation of the gifted property, and perform the sevapuja and rajbhog of the Thakurji as the proprietor. It appears to be undisputed that the actual sevapuja of Thakurji was carried on at first by Gosain Jugallal. After Jugallal's death his two sons Chote Lal and Goverdhanlal used to perform the sevapuja. Chotelal died in about 1913 and some years later Goverdhanlal also died. When both of them were dead their widows carried on the sevapuja. After some years Goverdhanlal's widow also died. Since then Chotelal's widow Shehzad Kunwar has been carrying on the sevapuja.

2. The controversy that has arisen is whether Shehzad Kunwar is herself the Shebait of the deity or whether, as is the plaintiff's case, Raja Dharam Karan is the Shebait, and Shehzad Kunwar has been carrying on the sevapuja and looking after the property only as the Raja's agent and the appointed pujari.

3. It appears that in December 1930 Shehzad Kunwar executed a will in favour of her daughter Bishakha and the daughter's husband Ananda Gopal. In this will she asserted a proprietary right to the temple of Radha Manoharji though stating at the same time that the management of the temple was carried on under her mutwaliship. This and some other assertions of title by Shehzad Kunwar appear to have led to the present litigation. The first plaintiff Raja Dharam Karan Bahadur claims to be the Shebait of the idol Radha Manoharji. The second plaintiff is the idol itself. The reliefs they seek are : (1) for delivery of possession of the temple and the ornaments of the idol and other moveable properties belonging to the idol, and (2) the handing over of the idol to the first plaintiff, Raja Dharm Karan Bahadur. Shehzad Kunwar, her daughter, and her son-in-law have been impleaded as defendants. The first defendant Shehzad Kunwar, who alone contested the suit denied Raja Dhararn Karan's claim to Shebaitship and pleaded that Thakur Radha Manoharji was an ancestral idol of Jugallalji and neither Raja Indrajit Bahadur nor any of his descendants became its Shebait. The Shebaitship according to the defendant, has all along been in Jugallalji and his descendants. Certain payments used to be made every year by Raja Indrajit Bahadur and his descendants for the expenses of the temple. These however gave them no. right to the temple nor made them the Shebaits of the idol. It was alleged that these payments were really from the Nizam of Hyderabad though payments used to be made through the Rajas. Another plea raised by the defendant was that in any case the plaintiff No. 1 or his predecessors had not been in possession of the temple in dispute or the office of Shebaitship at any time within 12 years next before the suit and so their claim was barred by limitation and that the defendant No. 1 had acquired a right of Shebaitship of Radha Manoharji and title to the temple by adverse possession. Certain other pleas which were raised need not be mentioned as they no. longer survive after the decisions of the courts below.

4. The Civil Judge, Mathura, held that the plaintiff was neither de facto nor de jure Shebait of the temple and that the de facto Shebait was the first defendant. The Court also held that the defendant No. 1's possession was not as an agent of the first plaintiff or anybody else, but that she had been in adverse possession for over 12 year against plaintiff No. 1 and that the suit was barred by limitation. On these findings the Trial Judge dismissed the suit.

5. On appeal by the plaintiffs, the High Court of Allahabad has come to contrary conclusions on all these points. The High Court held that Raja Indrajit Bahadur and after him his successors, viz., Raja Sheoraj and then Raja Dharam Karan were the Shebaits of the temple and that Jugal Lal, Goverdhanlal and Chotelal were mere pujaris and the defendant Shehzad Kunwar had also no. higher title. The High Court was also satisfied that she never asserted any title in respect of this property except as a pujari prior to 1938 and so the suit was not barred. Accordingly, the High Court allowed the appeal and decreed the suit in part. It declared the movable and immovable properties in suit to be the dedicated property of which deity Radha Manoharji was the owner; but as regards "movable properties mentioned at the foot of the plaint" gave the plaintiffs a decree for recovery of only the articles mentioned in the list filed by the first defendant in the Court on April 9, 1942. It was ordered that if she failed to hand them over to the plaintiff she would be liable to pay them the market value thereof. It may be mentioned that Raja Dharam Karan died when the appeal was pending in the High Court and his heirs and legal representatives were brought on the record.

6. All the three defendants have appealed to this court on the strength of a certificate granted by the High Court.

7. The real controversy in this appeal, as it was in the earlier stages of the litigation, is whether the first plaintiff, Raja Dharam Karan was the Shebait of the deity or Shehzad Kunwar.

8. The plaintiffs case is that after the deed of gift of Rani Mata Bibi, Raja Indrajit the donee became the Shebait of the idol Radha Manoharji and thereafter his son Sheoraj Bahadur became the Shebait and after Sheoraj's death Raja Dharam Karan who succeeded to the estate became the Shebait and was the Shebait at the time of the suit.

9. The defendants case, on the other hand, is that Jugal Lal was the Shebait and after him his sons Goverdhan Lal and Chotelal became the Shebait; after both, of them were dead their widows Brij Rani and Shehzad Kunwar became the Shebait and on Brij Rani's death, Shehzad Kunwar became the only Shebait. The plea in the written statement that Thakur Radha Manoharji was the ancestral idol of Gosain Jugal Lal and its sevapuja was carried on by Jugal Lal even before Rani Mata Bibi purchased the property was not pressed before us by Mr. Mishra on behalf of the appellants. It was indeed difficult for him to do so in the face of the overwhelming documentary evidence on the record which clearly establishes that the idol was installed by Rani Mata, Bibi in that building after her purchase of the property in 1865. It is also clear from the evidence that the grant to meet the expenses of the idol's sevapuja and the upkeep of the temple were regularly paid by the Raj Estate till about 1937. This is not however of much assistance to show that the Rajas were the Shebait. For, the grant of such financial assistance from the estate is not inconsistent with the defence case that the Gosains were the Shebait. It is also not possible to place any reliance on the oral testimony in the case. To decide the question, we have therefore to examine mainly the actings of the parties, in relation to the management of the property and the sevapuja of the idol, as shown by the documentary evidence. The earliest document which deserves mention is a copy of a Sanad granted in 1872. This shows Raja Indrajit Bahadur making an appointment of a pujari for the idol Radha Manoharji in this temple at Brindaban. Ex. 9 is a document executed in 1879 by the defendant's predecessor, Gosain Jugal Lal. In this document he stated that he was residing in the temple built by Rani Mata Bibi with the permission of Raja Sheoraj Bahadur of Hyderabad on condition that whenever the Raja Saheb would order him to vacate the temple he would vacate the temple without any objection. Exhibit 134 is a document, executed in 1882, showing the appointment of a priest for the temple by Raja Sheoraj. In 1886 Gosain Jugal Lal executed a document making a declaration in these words :-

"Maharaja Sahib Raja Sheoraj Bahadur, resident of Hyderabad Deccan is the owner of all the ornaments, clothes and utensils, dedicated to Thakur Radha Manoharji, installed by Mata Bibi Saheba. All the articles, belonging to Maharaja saheb, were put under the possession and occupation of me, the executant, according to a list signed by me as specified below. They have remained under my custody so far."

10. In this document he also undertook that " Whenever the Maharaja aforesaid would make a demand of the articles, mentioned in the list, whether all or any number of them, I shall, without

any objection, hand them over forthwith to the Raja Saheb aforesaid."

11. Coming nearer to the present times we find that in 1926 when a question arose about the re-appointment of a constable attached to the temple, the Executive Committee of Raja Dharam Karan was approached and one Mohan Das Brahman was appointed to the post under orders of the Committee. When all these documents are considered together there remains little doubt that Raja Indrajit, after him Raja Sheoraj and thereafter Raja Dharam Karan was looking after the management of the property and making arrangements for the sevapuja of the temple in the way a Shebait would do. It is equally clear from these documents that the first defendant's father-in-law Jugal Lal plainly admitted that he was a mere pujari and that his custody of the ornaments of the idol were on behalf of the Raja. Mention must also be made of the fact that in the very will in which Shehzad Kunwar claims a proprietary interest in the property, adding that she was the Mutwali of the idol, she stated that this temple was known as the temple of Hyderabad. There can be little doubt therefore that the Rajas considered themselves as the Shebaits of the idol and managed the property in that capacity and appointed pujaris and others for the sevapuja of the idol and for the proper upkeep of the temple.

12. Mr. Mishra however contends that there could be no legal basis for this claim for Shebaitship as the deed of gift executed by Rani Mata Bibi could not pass any interest to the donee. It is urged that the property being Devottar, could not be transferred in this way by Rani Mata Bibi nor could it create any Shebaiti right in the donee. As Mata Bibi was herself the founder of the Devottar, the Shebaiti right would descend to her heirs under the Hindu law and not to her brother's son Indrajit. In any case, it is contended, Indrajit's heirs would not become Shebaits.

13. The argument that no interest passed to Raja Indrajit by the deed of gift of 1869 proceeds on the erroneous assumption that the property had already been dedicated. For this assumption we can find no basis in the evidence on the record. As we read the documents it seems reasonable to think that no dedication had taken place before this deed of gift and that really it was after this transfer that Raja Indrajit by his own actings made the property Devottar, constituting himself the Shebait of the deity. Consequently, after his death his heir Raja Sheoraj and after Sheoraj's death, Raja Dharam Karan became the Shebaits in law.

14. We have already pointed out that Jugal Lal's conduct clearly shows that he did not claim to be anything more than a pujari. There is nothing to indicate that any of his sons Goverdhan Lal or Cheddilal alias Chote Lal ever claimed any higher right. As the Shebaits lived far away from Brindaban it was natural that the Gosains appointed for the purpose of Sevapuja of the deity would exercise greater control over the management of the property than they would otherwise have done. There is no doubt however that whatever they did in the way of the management of the property was done with the permission of the Shebait, the Raja.

15. We find no material on the record to justify Mr. Mishra's contention that whatever might have been the position at the time of Jugal Lal and his sons Shehzad Kunwar started exercising full rights as a Shebait. The fact that certain payments to some officers of the temple were made by her is quite consistent with the position that she was acting as the agent of the Raja, the Shebait. Indeed, she

does not appear to have made any clear assertion of her title to Shebaitship before the date of execution of the will.

16. Our conclusion, on a consideration of the materials on the record, is that the High Court rightly held Raja Dharam Karan Bahadur to be the Shebait and the defendant Shehzad Kunwar to be only the pujari and was also right in rejecting the defence plea of limitation.

17. The appeal is accordingly dismissed with costs.

Appeal dismissed.