

Supreme Court of India

Shyam Sundar Pramanick vs Moni Mohan Sadhukhan And Ors. on 21 August, 1975

Equivalent citations: AIR 1976 SC 977, (1975) 4 SCC 668, 1975 (7) UJ 716 SC

Author: N Untwalia

Bench: A Alagiriswami, N Untwalia, S M Ali

JUDGMENT N.L. Untwalia, J.

1. This is an appeal by special leave from the appellate judgment of the Calcutta High Court affirming the decision of a learned single Judge of that Court.

2. We are concerned in this case with only two points-one in relation to the interpretation of the will dated the 23rd August, 1930 executed by one Nandalal Paramanick and the other as to the interpretation and effect of a compromise Decree dated the 13th July, 1939 passed by the Calcutta High Court in Suit No. 1639/1936.

3. Nandalal Paramanick was the owner of considerable properties. By his last will dated the 23rd August, 1930 he gave and bequeathed his properties to his family deity Sree Iswar Sridhar Jieu. He also laid down a line of succession of Shobiate in the will. Probate of the will was granted by the High Court to Nandalal's widow Smt. Chamatkarini Dasi on the 9th July, 1936. Shyam Sundar Paramanick the sole appellant in this appeal filed Suit No. 1539 in the High Court on 26-8-1936 for self and as the next friend of the deity. The suit was an Administration suit. In this suit apart from Smt. Chamatkarini Dasi, Krishna Chandra Sadhukhan father of respondent No. 1 was also impleaded as the defendant. Krishna Chandra Sadhukhan was the son of one of the daughters. The appellant was the foster son of Shri Nandalal Paramanick. Krishna Chandra died during the pendency of suit No. 1639. Respondent No. 1, then a minor, was substituted in his place and was put under the guardianship of Smt. Chamatkarini Dasi. The said suit was disposed of by a compromise between the appellant and Chamatkarini Dasi apparently acting for self and also as guardian of respondent No. 1. Smt. Chamatkarini Dasi died on 12-10-1947 and it appears thereafter the appellant acted as a Shobiat of the properties of the deity. Respondent No. 1 alongwith plaintiff respondent No. 2 filed a suit on 12-4-1958 impleading the appellant as defendant No. 1 Sree Sree Iswar Sridhar Jieu, the deity, respondent No. 3 as defendant No. 2 for construction of the will and for a declaration that respondent No. 1 was entitled to be the Shebiat of the deity and trustee in respect of the debuttar estate in any event, to act as a joint Shebiat with the appellant. Certain other reliefs were also claimed in the suit which was contested by the appellant. The Trial Judge decreed the suit on April 2, 1971 and declared that respondent No. 1 was entitled to be the Shebiat of the deity alongwith the appellant in accordance with the terms of the will. Certain other reliefs were also granted with which we are not concerned in this appeal. The appellant's appeal has been dismissed by a Bench of the High Court.

4. Mr. S.T. Desai, learned Counsel for the appellant submitted that on a correct interpretation of the will and especially Clause 9 it ought to have been held that after the death of Smt. Chamatkarini Dasi the appellant was entitled to act as the sole Shebiat as Krishna Chandra Sadhukhan pre-deceased Chamatkarini. Counsel further submitted that even if it be not so the compromise decree in the earlier suit was binding on respondent No. 1 as it was entered into on his behalf also.

Under the terms of the compromise the appellant alone was entitled to act as Shebiat during his life time, Mr. A.K. Sen, learned Counsel for respondent No. 1 submitted that the judgment of the High Court on both the points was correct and ought not to be interfered with.

5. The High Court in its Appellate judgment has quoted the relevant clauses of the will in question. It has rightly held that giving of the properties to the deity and laying down the line of Shebiatship was done by Clause 3 of the will. The matter of succession to Shebiatship was clearly provided in Clause 10. Clause 9 of the will on which great reliance was placed on behalf of the appellant was not laying down by different line of shebiatship from the one mentioned in Clauses 3 and 10. Reading the will as a whole the High Court in our opinion has rightly come to the conclusion that so long Smt. Ghamatkarini Dasi was alive she was to be the sole Shebiat and after her death the appellant and Krishna Chandra Sadhukhan were to be the joint Shebiats. On the death of either of them his male heirs were to succeed the deceased.

6. We shall read Clause 3 of the will in full and portions of Clauses 9 and 10. There are as follows :

Whatever immovable (movable) properties I have or whatever movable and immovable properties shall have at the time of death shall be regarded as the estate of my family deity established by me Sree Sree Iswar Sridhar Jieu Thakur or in other words, the entire estate of mine shall belong to the said deity. My said wife and after her demise my said foster son and the said grandson (daughter's son Sriman Krishna Chandra Sadhukhan shall remain down to their male heirs succession as the shebiat or trustees of the said Thakur) and his estate and shall look after and reserve the said estate according to the directions noted below.

"After the death of my said wife the said foster son and the said grandson (daughter's son Sriman Krishna Chandra Sadhukhan shall jointly or one of them on the demise of the other as the joint or the sole shebait and trustee of the said estate make expenses etc." "My said foster son and the said grandson (daughter's son) Sriman Krishna Chandra Sadhukhan also shall remain the trustees of the said estate during their life time and shall act as stated above. Upon their demise all their male heirs such as son and son's son etc., shall be the shebait and trustees in their places manage the said estate."

7. It is clear on reading the relevant words of the three clauses of the will extracted above that the intention of the testator was, after bequeathing the properties to the deity, to appoint his wife as the sole shebiat during her life time and to treat his foster son Shyam Sundar and his daughter's son Krishna Chandra on equal footing so that so long both were alive they may act as joint shebiats and after the death of either his male heirs may step into his shoes. It was not the intention of the testator to make either of the survivors, the foster son or the daughter's son. to be the sole shebiat for his life. It is not correct to say, as was argued on behalf of the appellant, that the heirs were to come in the picture only after the death of both. In Clause 9 a direction was given to the Shebiat or the Shebiat to whether one was the sole Shebiat or a joint Shebiat to do certain things according to the will of the testator. In the event of one of the two dying without leaving any male heir, the surviving one could have become the sole Shebiat. But he would be a joint Shebiat with the male heirs of the deceased Shebiat in case he left such heirs. It is on that account that in Clause 9 it was

said "one of them on the demise of the other as the joint or the sole Shebiat", to meet both the eventualities.

8. The High Court has read in full the terms of the compromise decree. According to Clause 3 Smt. Chamatkarini Dasi "will continue to act as such Shebiat during the time of her natural life. On her death the plaintiff Shyam Sundar Paramanick will act as the Shebiat of the said Deity." The High Court has rightly pointed out that although the compromise was entered into also on behalf of respondent No. 1 who was then a minor, but the declaration in the various clauses of the compromise was confined to as between two persons namely Smt. Chamatakarini Dasi and the appellant. The High Court has also pointed out that even in accordance with Clause 3 the appellant was not to act as the srle Shebiat and that any different construction did not fit in with what was recited in Clause 4 of the compromise. We do not find any reason to persuade as to take a view different from the one taken by the High Court as respects the effect of the compromise decree. Since the previous suit was an Administration suit one may at best say in favour of the appellant that according to the compromise (and this is on the footing that the compromise was binding on respondent No. 1 also) the appellant was to act as the sole shebiat so long respondent No. 1 was a minor. On his attaining majority, there was nothing to prevent him from becoming a joint Shebiat with the appellant. Respondent No. 1 filed the suit in the year 1958 indisputably after attaining majority. In any view of the matter the appellant cannot succeed.

9. For the reasons stated above we dismiss this appeal with cost to plaintiff respondent No. 1 alone.