

14/2010
III

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs.

... Appellant

VERSUS

Mahant Suresh Das & Ors. etc. etc.

... Respondents

AND

OTHER CONNECTED CIVIL APPEALS

PROPOSITIONS ON RELIGIOUS ENDOWMENTS
AND SHEBAITS IN HINDU LAW

BY

DR. RAJEEV DHAVAN, SENIOR ADVOCATE

ADVOCATE-ON-RECORD: EJAZ MAQBOOL

Propositions on Religious Endowments and Shebait in Hindu Law

1. No temples or monastic institutions existed in the Vedic period. Image worship probably started due to a Buddhist influence.
 - B.K. Mukherjea, "*The Hindu Law on Religious and Charitable Trusts*", 5th Edn., P. 13, 20, 21, 24, 148-9.
2. Idols are symbols of the Divinity. In worshipping the idol, the Hindus worship the Supreme Deity and none else.
 - B.K. Mukherjea: P. 26
 - Citing Raghunandan also referred to by Mr. Parasaran from the Impugned Judgment (Vol.I, 1128 (pr.1721))
3. The concept of a juristic personality has varied from legal system to legal system and age to age depending on the purpose it serves.
4. An Idol is a juristic person but a temple is not a juristic person. However, there can be a valid dedication to a temple.
5. Property once dedicated does not become res nullius which means without an owner. A situation may arise where a donor dedicates the property but retains custody whereby ownership is not complete, the donor will have a right under a temporary arrangement to protect the property until ownership is completed to avoid res nullius.
 - B.K. Mukherjea: P. 34-5
6. Dedications in tanks, wells and rivers was permissible for charitable purposes as a common property.
 - B.K. Mukherjea: P. 38, 39-40, 81

7. The ceremonies of sankalp (determination) utsarga (renunciation), pratishtha (replacing utsarga in respect of a temple).

- o *Deoki Nandan v. Murlidhar*, AIR 1957 SC 133
- o B.K. Mukherjea: P. 31, 101, 153

- (a) Deity is owner in a secondary sense or ideal sense through a fiction.
- (b) The fictitious ownership arises from, and represents the intent of the founder.

"(T)he following conclusions I think can be safely draw from them:- (1) According to these sages the deity or idol is the owner of the dedicated property but in a secondary sense. The ownership in its primary sense connotes the capacity to enjoy and deal with the property at one's pleasure. A deity cannot hold or enjoy property like a man, hence the deity is not the owner in its primary sense. (2) Ownership is however attributed to the deity in a secondary or ideal sense. This is a fiction (upchar) but not a mere figure of speech, it is a legal fact; otherwise the deity could not be described as owner even in the secondary sense. (3) The fictitious ownership which is imputed to the deity is determined by the expressed intentions of the founder; the debutter property cannot be applied or used for any purpose other than that indicated by the founder. The deity as owner therefore represents nothing else but the intentions of the founder."

B.K. Mukherjea: p.38-9; *Bhupati v. Ramlal*,
II.R 37 Cal 120

8. The managers are "trustees" but not owners of the property in the English sense but answerable as trustees in terms of their duties.

- B.K. Mukherjea: p.40-41
- *Vidyavargati v. Balusnami*, [348 Indian Appeals 602]
- Note legislation on this in B.K. Mukerjea (at 42-44, 71-2).

9. (i) The Shebait is the human ministrant of the deity.

- *Kumari Debya v. Golab Chand Baboo*, (1875) 2 IA 145

(ii) But the rights of a Shebait are an office blended with some property rights in the sense that:

- (a) The office is heritable including under the circumstances to female heirs.
- (b) The law of perpetuities does not apply to Shebait.
- (c) The personal interest of a Shebait is appurtenant to its deities.
- (d) A founder cannot alter or revoke the appointment unless an express power is retained in that regard.
- (e) A Shebait's right is not alienable
 - B.K. Mukherjea: p.230
- (f) A Shebaiti has a right to offering and right to residence.

10. As far as representing the idol deity /idol the deity it is the Shebait who has the right to represent the deity which means:

- (a) The right to suit for the deities property vests in the Shabait
- (b) He can also claim privileges afforded by the limitation.

(c) In a suit by a Shebait, a deity is not a party

- *Maharaja Jagadindra Nath Roy Bahadur v. Rani Elemanla Kumari Debi*, (1903-04) 31 IA 203
- *Profulla Chorone Requitte v. Satya Chorone Requitte*, (1979) 3 SCC 409, para 52

11. The deity has a right to bring a suit when a Shebait is unable to act, or his acts are questioned or if Shebait is not appointed.

- *Bishwanath v. Thakur Radha Ballabhji*, (1967) 2 SCR 618, para 11
- *Vamereddi Ramaraghava Reddy v. Kondru Sesha Reddy*, AIR 1967 SC 436
- *Tarit Bhushan Rai v. Sri Sri Iswar Sridhar Salagram*, AIR 1942 Cal 99
- *Sushama Roy v. Atul Krishna Roy*, AIR 1955 Cal 624
- *Chamelibai Vallabhdas v. Ramchandrajee*, AIR 1965 MP 167

12. A deity is not a necessary party in all suits relating to a debutter.

- B.K. Mukherjea, "*The Hindu Law on Religious and Charitable Trusts*", 5th Edn., p. 258
- *Profulla Chorone Requitte v. Satya Chorone Requitte*, (1979) 3 SCC 409, para 52

13. A deity is a perpetual infant in some senses but not for all purposes; and not for the purposes of limitation.

- *Chhtar Mal v. Panchu Lal*, AIR 1926 All 392 (at p. 351):
- *Damodar Das v. Lakhan Das*, ILR (1910) 37 Cal 885 (at p. 894);

- *Surendra v. Sri Sri Bhubaneswari*, AIR 1933 Cal 295 (at p. 303) (confirmed by the Privy Council in appeal in AIR 1937 PC 185)
 - *Radhakrishna Das v. Radharamana Swami*, AIR 1949 Ori 1 (at paras 14-15)
 - *Sarangadeva Periya Matam v. R. Goundar*, (1966) 1 SCR 908 (at p. 912)
14. The beneficiaries are the people who have a right to prayer which is a civil right.
15. It is necessary for protecting the interests of the idol that in cases where default of the Shebait is alleged, a suit on behalf of the idol be permitted to be filed by a person claiming to be next friend with the permission of the court and the court might in proper cases issue notice to all persons interested before granting permission.
- *Tari Bhusan Rai v. Sri Sri Iswar Sridhar Salagram*, AIR 1942 Cal 99
 - *Sushama Roy v. Atul Krishna Roy*, AIR 1955 Cal 624
 - *Sri Iswar v. Gopinath*, AIR 1960 Cal 741
 - *Jogesh Chandra Bera v. Sri Iswar Braja Raj Jew Thakur*, AIR 1981 Cal 259
16. The law is summed up in B.K. Mukherjia, "*The Hindu Law on Religious and Charitable Trusts*", 5th Edn., p. 270-271 in the following words:

"(1) An idol is a juristic person in whom the title to the properties of the endowment rests; but it is only in an ideal sense that the idol is the owner. It has to act through human agency and that agent is the Shebait, who is, in law, the person entitled

to take proceedings on its behalf. The personality of the idol might, therefore, in one sense, be said to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interest of the idol, then there must be some other agency which must have the right to act for the idol. In such cases, the law accordingly recognizes a right in persons interested in the endowment to take proceedings on behalf of the idol.

(3) Where the endowment is a private one, the members of the family are the persons primarily interested in its upkeep and maintenance, and they are, therefore, entitled to act on behalf of the deity; but where the endowment is a public one, section 92 of the Civil Procedure Code prescribes a special procedure when the suit is against the trustee, and the reliefs claimed fall within that section. Such a suit can be brought only in conformity with that section, and the rights of the members of the public, who are interested in the endowment as worshippers or otherwise, to institute proceedings on behalf of the idol are to that extent abridged. Where, however, the suit does not fall within the ambit of section 92, the right of the worshippers or persons interested in the endowment to vindicate the rights of the idol under the general law remains unaffected.

(4) Once it is found that the plaintiffs, whether they be Shebait or the founder or the members of his family, or the worshippers and members of the public interested in the endowment, are entitled to maintain the suit—and that is a matter of substantive law—the further question whether an idol should be impleaded as a party to it or whether the action should be brought in its name is one purely of procedure. Such a suit is really the suit of the idol, instituted by person whom the law recognizes as competent to act for it, and the joinder of the idol is unnecessary. Indeed, it may even result in embarrassment. But where the matter in

18. There can be no compromise between the Shebait and the next friend to maintain both their suits without one of them giving up its right to sue on behalf of the idol. An admission by the Shebait that a suit by a worshiper acting as a next friend of the deity is maintainable amounts to an admission by the Shebait that he has acted in dereliction of his duty or has acted contrary to the interests of the idol. In that case, the suit by the Shebait must be dismissed as not maintainable as being without authority to sue on behalf of the idol. Similarly, the next friend cannot maintain a suit for the same relief if he admits on compromise that the Shebait has not acted in dereliction of his duty or acted prejudicial to the rights of the idol.

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