BADRI NATH & ANR.

v.

MST. PUNNA (DEAD) BY LRS & ORS.

February 15, 1979

[V. R. KRISHNA IYER, D. A. DESAI AND A. D. KOSHAL, JJ.]

Hindu Succession Act, 1956—S. 4—Scope of—Share of a baridar (turn-holder) in the offerings of a temple—If a heritage right nature of office of baridar—Custom that offerings should go to specified sub-castes—if valid.

The plaintiff's (respondent's) father and the defendants (appellants) were entitled to receive a defined share in the offerings made at a holy shrine. On her father's death the plaintiff claimed his share in the offerings alleging that both under the law of inheritance and by virtue of her father's will executed in her favour, she was entitled to his share; but the defendants interfered with her right to collect that share.

In the plaintiff's suit the defendants contended that only members belonging to four specified sub-castes were entitled to receive the offerings and the plaintiff having lost her sub-caste by reason of her marriage outside those sub-castes she was not entitled to her father's share. But this argument was rejected by the trial court which held that on the death of the *baridar* (turn-holder) his heirs inherited his right to receive offerings just as they inherited his other property and that therefore, the plaintiff was entitled to the offerings both under the Hindu Succession Act and the will executed by her father.

On appeal a Division Bench of the High Court held that where offerings were received by persons independently of any obligation to render services, they were alienable and attachable and that the custom which restricted the right to a share in the offerings only to members of the four specified sub-castes, could not be given effect to in view of the provisions of the Hindu Succession Act and that therefore, the plaintiff was entitled to succeed to the right though she did not belong to any of the sub-castes.

On further appeal to this Court it was contended on behalf of the appellants that (1) the right of the *baridar* was not a transferable right and (2) the right to a share in the offerings and the duties attached to it must be regarded as an office like that of a *shebait* and cannot be regarded as heritable property.

Dismissing the appeal,

HELD : The right of the *baridar* was a transferable right.

1. To begin with, the right to a share in the offerings, according to the settlement record prepared for the village and a resolution passed by the Dharmarth Committee, was restricted to the four sub-castes, and similarly the *baridars* did not perform any duties in return. Sometime later, however, certain obligations, such as to provide permanent servants, to look after visitors and the like, were superimposed on that right. Though the right to receive a share in the offerings was subject to the performance of those duties, none of them

A was in nature priestly or required a personal qualification. All of them were of a non-religious or secular character which could be performed by the *baridar's* agents or servants incurring expense on his account. When the right to receive the offerings made at a temple is independent of an obligation to render services involving qualifications of personal nature, (such as officiating the worship) such a right is heritable as well as alienable. [217 B-H]

B *Balmukand & ors.* v. *Tula Ram & ors.*, AIR 1928 All. 721 approved.

2. (a) The right of the *baridars* cannot be equated with the right and duties of a *shebait.* The *baridars* were not managers of the shrine in the sense that a *shebait* is in relation to a temple in his charge. The overall management of the temple vested in the Board of Trustees known as Dharmarth Committee. [218 E]

C (b) It is not correct to say that shebaitship is neither more nor less than an office and is not heritable property. Shebaitship cannot be described as a mere office. In addition to certain responsibilities it carries with it a definite right to property. It is well-established that in the concept of *Shebait,* both the elements of office and property, duties and personal interest are mixed up and one element cannot be detached from the other. Old texts as well as courts have recognised heriditary office of shebaitship as immovable property. D [218 F; 220 A-B]

Angurbala Mullick v. *Debabrata Mullick,* [1951] SCR 1125; *Ram Rattan* v. *Bajrang Lal & ors.* [1978] 3 SCR 963 followed.

3. The right to share the offerings being a right coupled with duties other than those involving personal qualifications and being heritable property, it E will descend in accordance with the dictates of the Hindu Succession Act in supersession of all customs to the contrary in view of s. 4 of that Act. [220 E]

In the instant case, in the light of s. 4 of the Hindu Succession Act the requirement that the right could not be exercised by a person not belonging to any of the four sub-castes becomes ineffective. [220 H]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1118 of 1972

(Appeal by Special Leave from the Judgment and Order dated 18-1-72 of the Jammu and Kashmir High Court in L.P.A. No. 6 of 1969.)

L. N. Sinha, Satish Gupta, K. J. John and *P. P. Singh,* for the appellant.

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R. K. Bhat and *D. C. Anand* for respondent 1B--1K.

The Judgment of the Court was delivered by

KOSHAL, J.—This appeal by special leave has arisen out of a suit brought by Smt. Punna, respondent No. 1, against the two appellants H and respondent No. 2 for the issuance of a perpetual injunction restraining the three defendants from interfering with her right to recover her father's share of six annas in a rupee in the offerings made

at the sacred shrine of Shri Vaishno Devi Ji which is situated on the Trikutta Hills. The suit was decreed by the trial court whose judgment was upheld in first appeal by the District Judge, in a second appeal by a learned Single Judge of the High Court of Jammu & Kashmir and in a Letters Patent Appeal by a Full Bench of that Court. It is the judgment of the Full Bench (which is dated the 18th of January, 1972) that is impugned before us.

2. The averments made in the plaint may be summarised thus. The plaintiff is the daughter of one Bagu who died in or about the year 1959. During his life time Bagu and the three defendants were entitled to receive the offerings made at the shrine of Shri Vaishno Devi Ji on certain days falling within every seventh Bikrami year so that Bagu would have 6/16th share therein and the defendants collectively a similar share. After the death of the plaintiff's father the parties were entitled to receive the offerings in the shares abovementioned on every eighth day in the Bikrami year 2019, the plaintiff having succeeded to the share of her father both under the law of inheritance and by virtue of a will executed by him in her favour. The plaintiff had to resort to the suit as the defendants had started interfering with her right to collect her share of the offerings.

3. The defendants contested the suit. They challenged the will set up by the plaintiff as a forged one and further pleaded that only members of four sub-castes *namely,* Khas Thakars, Darora Thakars, Manotra Thakars and Samnotra Brahmins were entitled to receive the offerings and that while Bagu was entitled to a share in the same, the plaintiff was not as she had lost her original sub-caste by marriage outside the four sub-castes mentioned above. The offerings, according to the defendants, were also not liable to devolve by inheritance or demise.

4. The findings arrived at by the trial court were these :

(i) On the death of a *baridar* (which expression, when literally translated, means turn-holder) belonging to any of the aforementioned sub-castes, his heirs inherited his right to receive offerings just as they inherited his other property.

(ii) Under section 4 of the Hindu Succession Act, any custom or usage inconsistent with the provisions of that Act becomes ineffective.

(iii) Even under section 6 of the Hindu Succession Act read with the Schedule appended therto the pro-

A perty of Bagu would devolve on the plaintiff in case Bagu died intestate.

(iv) Gagu executed a valid will in favour of the plaintiff devising to her the right to receive the offerings, apart from other properties.

B (v) The plaintiff was entitled, in view of the above four findings to inherit the right to receive offerings not only by reason of the provision of sections 4 and 6 of the Hindu Succession Act, but also because of the will.

C (5) At the hearing of the Letters Patent Appeal by the Full Bench, the following four contentions were raised on behalf of the defendants :

(i) The chance of future worshippers making offerings to the deity is a mere possibility of the nature referred to in clause (a) of section 6 of the Transfer of Property Act and is not property which can be transferred or inherited.

D

(ii) The right to receive offerings is not a transferable or heritable right.

E (iii) The provisions of the Hindu Succession Act do not apply to the case in hand.

(iv) According to the custom governing the shrine of Shri Vaishno Devi Ji, only the abovementioned four subcastes were entitled to share the offerings.

F All these contentious were rejected by the Full Bench as untenable. In regard to the first of them the Full Bench followed *Balmukand and Others* v. *Tula Ram and Others*(1) in which it was held that the right to receive offerings when made is a definite and fixed right and does not depend on any possibility of the nature referred to in clause (a) of section 6 of the Transfer of Property Act, because the fact G that offerings whether large or small are bound to be made is a certainty.

In relation to the second contention, the Full Bench noted the contents of paragraph 422 of "Principles of Hindu Law" by Mulla which states, *inter alia,* that where offerings, though made to idols, H are received by persons independently of any obligation to render ser-

(1) AIR 1928 Allahabad 721.

vices, they are alienable and attachable. Reference in this connection was also made to *Balmukand and Others* v. *Tulla Ram* and *Others* (supra) wherein the following passage occurs :

> "but when the right to receive the offerings made at a temple is independent of an obligation to render services involving qualifications of a personal nature, such as officiating at the worship we are unable to discover any justification for holding that such a right is not transferable. That the right to receive the offerings when made is a valuable right and is property, admits of no doubt and, therefore, that right must, in view of the provisions of section 6 of Transfer of Property Act, be held to be transferable, unless its transfer is prohibited by the Transfer of Property Act or any other law for the time being in force."

In view of these observations which were adopted and followed in *Nand Kumar Dutt* v. *Ganesh Dass,*(1) the Full Bench, being in agreement therewith, proceeded to determine whether the right to receive the offerings in the present case was or was not independent of services of a priestly or personal nature. The following translation of an extract from the Wajib-ul-Arz relating to village Purana Daiur wherein the holy shrine is situated, was then taken up for consideration :

> "Leaving aside cash, whatever is the 'Charatth' at the temples of 'Ad Kanwari' and 'Sri Trikutta Devi' the entire Darora community distributes that among itself and of (?) other attached areas of Pangal, Sarron, Batan, Kotli, Gran, Parhtal etc. according to hereditary shares. And the castes 'Thakar Khas' and 'Minotra' are included in it. Darora caste take two shares and Manotra and Khas castes also take one equal share of Charatth'. That is divided as per hereditary shares. There is no service in lieu thereof. Only it is described as the blessings of Goddess. Rupees twenty one hundred (two thousand one hundred rupees) go to the Government. Every *baridar* keeps his man present in the temple who receives the 'Charatth'. Pujaries get pay from us."

and it was interpreted to mean that the right to share in the offerings made at the holy shrine had no connection with any priestly functions or with other services involving qualifications of a personal nature and therefore was a heritable as well as allenable right. This very con-

(1) A.I.R. 1936 Allahabad 131.

A clusion was reached by the Full Bench on a consideration of the deposition of the Patwari of the concerned circle and the *Ain-i-Dharamarth* which purports to be the constitution of a Board of Trustees appointed by the State to manage the shrine.

In relation to the third contention, the Full Bench noted that the B properties to which the Hindu Succession Act does not apply are only those which find enumeration in section 5 thereof, that the right to share the offerings is not one of those properties and that, therefore, such a right could not but be governed by the provisions of the Act.

In repelling the last contention the Full Bench relied upon the C provisions of the Hindu Succession Act which over-rides all customs or usage being part of the Hindu Law as in force immediately prior to the commencement of the Act and concluded that the custom of the right to share in the offerings being restricted to members of the four sub-castes abovementioned could not be given effect to and that the plaintiff was fully entitled to succeed to that right in spite of the D fact that she did not belong to any of those sub-castes.

It was in these premises that the Letters Patent Appeal was dismissed by the Full Bench.

6. At the very outset Mr. L. N. Sinha, learned counsel for the appellant, has drawn our attention to the fact that the extract from E the Wajib-ul-Arz taken note of by the Full Bench of the High Court relates not to the temple of Shri Vaishno Devi Ji but to a couple of other temples situated in its vicinity, *namely,* the temples of 'Ad Kanwari' and 'Sri Trikutta Devi' and has urged that the extract could not possibly relate to the temple of Shri Vaishno Devi Ji which was the main temple in the complex and a reference to which could not F have been omitted from the extract in case it was intended to apply to that temple also. A careful perusal of the extract shows that Mr. Sinha's contention is well-founded because there is not so much as a hint to the main temple in the extract. According to Mr. Sinha, the duties to which the right to share the offerings is subject are detailed G in the settlement record prepared for village Dalur (Shri Vaishno Devi Ji) for the year 1965-66 Bikrami and a resolution passed by the Dharamarth Committee on Sawan 27, 1983 Bikrami. These documents may be set out *in extenso* :

Settlement Record

H "In the column of ownership, the State is entered as owner; in the column of possession-Dharmarth Trust entered as in possession. 'Mandir Gupha' situate on land compris-

ing 7 marlas bearing Khasra No. 166 and 'Bhawan' situate on land comprising 4 marlas bearing Khasra No. 167. The sub-caste Thakar Darora, Manotra, Khas, and Brahmin Samnotra have been sharing the offerings according to the shares mentioned below from the very beginning. Thakar Daroras and Brahmin Samnotra are entitled to three shares and one share respectively out of 2/3 of the total offerings whereas Thakar Manotras and Khas are entitled to share equally in the rest 1/3 of the total offerings.

"Darora Thakars are sub-divided into further four sub-castes namely; (i) Darora Sunk (ii) Darora Jaga (iii) Darora Pai and (iv) Darora Deoch and each one of them has one equal share. Similarly Brahmin (Samnotra) have also divided their share into four shares which are received as under :

Samnotra Brahmins from the branch of 'Darya' one share, Brahmins from the branch of 'Bairaj' one share; Brahmins from the branch of 'Gobind' one share; and Brahmins from the branch of 'Ganesh' one share. Therefore 'Darora Sunk' and Samnotras from the branch of 'Bairaj' have their turn together in one year and they divide the offerings for that in the proportion of 3.1 (i.e. 3 shares of Darora Sunk and 1 share to Samnotras from the branch of Bairaj). Similarly Brahmins from the branch of 'Darya' have their turn with 'Darora Jaga' Brahmins from the branch of 'Ganesh' with 'Darora Parath' and Brahmins from the branch of 'Gobind' with 'Darora Deoch' and Brahmins in each case receive 1/4th share and Darora Thakars have 3/4th share.

"In the beginning nothing was taken from these persons (*baridaran*) in consideration of their receiving the offerings. But because the Sadhus would often go to the shrine and due to the mismanagement of their stay and meals over there, there were always riots at the shrine. Therefore, in the year 1907 Bikrami during the regime of Maharaja Gulab Singh an amount of Rs. 1150/- was fixed as 'Aian' to be paid by the *baridars* for the management of stay and meals for Sadhus at the shrine. The said amount was to be deposited in the State Treasury. Thereafter in 1920 Bikrami another hundred rupees were added to the above said amount and thenceforth Rs. 1250/- were fixed per annum which was being deposited in the State Treasury. After 1940 Bikrami the said

A amount of Rs. 1250/- was being deposited with the Dharmarth Trust and this continues till today. The said amount is recovered from Thakar sub-castes. Besides this, so many other things (such as silk *chunis* etc.) are received from the said Thakar *baridars*. Thakar *baridars* are also liable to provide three permanent servants and six more peons during the season and will be liable to pay them. The said Thakars are liable to arrange the carriage and pay for the 'Parshad', etc., from Katra to Vaishno Devi temple. With regard to the cattle kept by the Dharmarth Trustees, the said Thakars are liable to arrange for taking them from one place to another. If any Government servant visits the shrine the said Thakars will be liable to arrange for the carriage of his luggage, etc. The said Thakars are also liable to perform the following duties :

(1) Cleanliness of the Gupha (Vaishno Devi temple) and the compound appurtenant thereto.

(2) To carry Puja material inside the Gupha (temple along with the Pujari.

(3) If during *mela* season there is any trouble to any pilgrim or he becomes, sick, etc, the said Thakars are liable to make proper arrangements for the removal of any such trouble."

RESOLUTION OF THE DHARMARTH COMMITTEE

"(a) Dharmarth Trust shall charge its usual Aian (rent) from the *baridaran* which shall be paid by them before they distribute their share of the offering. The *baridar* who refuses or avoids the payment of rent to Dharmarth shall not be entitled to receive his share of the offering and the same shall be attached and deposited with the manager, Dharmarth Trust. The *baridar* whose share has been thus attached can receive his share on payment of the rent due to the Dharmarth Trust."

"(b) Unanimously it is passed that the strangers or persons other than *baridars* (i.e. four sub-castes) shall have no right to get the Puja performed in the shrine."

"(c) In case any *baridar* or his legal representative, due to any reason, cannot attend in person then it will be the duty of other co-sharer to deposit the absentee's share with

the Manager, Dharmarth Trust and when that *baridar* comes present, the Manager, Dharmarth Trust shall, after deducting the due, if any, from him to the Dharmarth, pay his share to him. The *baridaran* shall be bound to perform the duties (such as Kah, Kunda, Argi etc. as being performed by them previously)."

According to these documents the right to share the offerings is restricted to members of the four sub castes abovementioned, and although to begin with *baridars* did not perform any duties in return, certain obligations were superimposed on the right from the year 1907 Bikarmi onwards. Those obligations are:

(a) A duty to deposit a fixed annual sum with the Dharmarth Trust to be spent on arrangements for lodging and boarding of Sadhus visiting the shrine.

(b) To provide three permanent servants, in addition to six peons, during the "season".

(c) To pay for the 'prasad' and to arrange its transport from Katra to Vaishno Devi temple.

(d) To arrange for the cattle owned by the Dharmarth Trust being taken from one place to another.

(e) To arrange for the carriage of the luggage of Government servants visiting the shrine.

(f) To keep the temple and the compound appurtenant thereto in a state of cleanliness.

(g) To carry inside the temple the material required for worship by the priest.

(h) To look after visitors to the shrine who fall ill and to make proper arrangements for the restoration or their health.

There is thus no doubt that the right to receive a share in the offerings is subject to the performance of onerous duties. But then it is apparent that none of those duties is in nature priestly or requiring a personal qualification. On the other hand all of them are of a non-religious or secular character and may be performed not necessarily by the *baridar* personally but by his agents or servants so that their performance boils down to mere incurring of expense. If the *baridar* chooses to perform those duties personally he is at liberty to do so. But then the obligation extends merely to the making of necessary arrangements which may be secured on payment

of money to others, the actual physical or mental effort involved being undertaken by those others. The right is, therefore, a transferable right as envisaged in the passage above extracted from *Balmukand and other* v. *Tula Ram and others* (supra) which has not been challenged before us as erroneous and which we regard as laying down the law correctly. The contentions raised by Mr. Sinha to the contrary is thus repelled.

7. Another challenge made by Mr. Sinha to the impugned judgment is that the right to share offerings coupled with the duties to which it was subject must in its totality be regarded as an office (like that of a shebait) only and not as property and that therefore no question of its heritability could arise. In this connection reference was made to the following observations made by Mukherjea, J., who delivered the judgment of the majority of this Court in *Angurbala Mullick* v. *Debabrata Mullick.*(1)

> "In a Hindu religious endowment on the other hand the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person and the shebait or mahant is a mere manager."

There is nothing to indicate that *baridars* in the present case are the managers of the shrine in the sense that a shebait is in relation to the temple in his charge. On the other hand it appears that the overall management of the shrine vests in the Board of Trustees known as Dharmarth Committee and it would not be correct therefore to look at the right of the *baridars* in the light of the rights and duties of a shebait. However, it may be pointed out that shebaitship cannot be described as a mere office because apart from certain responsibilities, it carries with it a definite right to property. This is a proposition on which emphasis was laid by this Court in *Angurbala's case* (*supra*) itself. Mukherjea, J., observed in this connection :

> "But though a shebait is a manager and not a trustee in the technical sense, it would not be correct to describe the shebtaitship as a mere office. The shebait has not only duties to discharge in connection with the endowment, but he has a beneficial interest in the debutter property. As the Judicial Committee observed in the above case, in almost all such endowments the shebait has a share in the usufruct of the debutter property which depends upon the terms of the grant or upon custom or usage. Even

(1) [1951] SCR 1125.

where no emoluments are attached to the office of the shebait, he enjoys some sort of right or interest in the endowed property which partially at least has the character of a proprietary right. Thus, in the conception of *shebaiti* both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other. It is the presence of this personal or beneficial interest in the endowed property which invests shebaitship with the character of proprietary rights and attaches to it the legal incidents of property. This was elaborately discussed by a Full Bench of the Calcutta High Court in *Monohar Mukherji* v. *Bhupendra Nath Mukherji*(1) and this decision of the Full Bench was approved of by the Judicial Committee in *Ganesh Chunder Dhur* v. *Lal Behary*(2), and again in *Bhabatarini* v. *Ashalata*(3). The effect of the first two decisions, as the Privy Council pointed out in the last case, was to emphasise the proprietary element in the *shebaiti* right, and to show that though in some respects anomalous, it was an anomaly to be accepted as having been admitted into Hindu Law from an early date. "According to Hindu law," observed Lord Hobhouse in *Gossamee Sree Greedharreejee* v. *Rumanlollji Gossammee*(4) "when the worship of a Thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different dealing, or some circumstances to show a different mode of devolution." Unless, therefore, the founder has disposed of the shebaitship in any particular manner—and this right of disposition is inherrent in the founder or except when 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."

Angurbala's case was followed by this Court in a recent decision reported as *Ram Rattan* v. *Bajrang Lal & Others*(5) wherein Desai, J., who delivered the judgment of the Court observed :

(1) I. L. R. 60 Calcutta 452.
(2) 63 I. A. 448.
(3) 70 I. A. 57
(4) 16 I. A. 137
(5) [1978] 3 S.C.R. 963

A "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. Old texts, one of the principal sources of Hindu law and the commentaries thereon, and over a century the Courts with very few exceptions have B recognised hereditary office of *shebait* as immovable, property, and it has all along been treated as immovable property almost uniformly. While examining the nature and character of an office as envisaged by Hindu law it would be correct to accept and designate it in the same C manner as has been done by the Hindu law text writers and accepted by courts over a long period. It is, therefore, safe to conclude that the hereditary office of *shebait* which would be enjoyed by the person by turn would be immovable property."

D These observations as also those made in *Angurbala's* case and extracted above demolish the contention of Mr. Sinha that shebaitship is nothing more or less than an office and is not heritable property.

8. The right to share the offerings being a right coupled with E duties other than those involving personal qualifications and, therefore, being heritable property, it will descend in accordance with the dictates of the Hindu Succession Act and in supersession of all customs to the contrary in view of the provisions of section 4 of that Act, Sub-section (1) of which state:

F (a) Save as otherwise expressly provided in this Act—any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act:

G (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provision's contained in this Act."

The requirements of the custom relied upon by the appellants to the H effect that the right could not be exercised by a person who is not a member of any of the four sub-castes mentioned above becomes wholly ineffective in view of these provisions, being contrary to the

order of succession laid down in Chapter II of the Hindu Succession Act under which the right devolves on the plaintiff-respondent. A

7. The only contention raised by Mr. Sinha is that the plaintiff had not stated in any part of the pleadings that she was prepared to carry out the services to the performance of which the right to share the offerings is subject and that therefore she was not entitled to a decree. B This contention must be repelled for the simple reason that it was not raised before the High Court. Besides, there being no repudiation on her part of the obligations to render the services abovementioned, her claim must be regarded for the enforcement of that right coupled with those services and the decree construed accordingly even though it may be silent on the point. C

9. In the result the appeal fails and is dismissed, but the parties are left to bear their own costs throughout.

P.B.R. *Appeal dismissed.*