CASE NO.:
Appeal (civil) 6535 of 1997

PETITIONER:
KACHA KANTI SEVA SAMITY AND ANR.

RESPONDENT:
SHRI KACHA KANTI DEVI AND OS.

DATE OF JUDGMENT: 28/03/2003

BENCH:
S. RAJENDRA BABU & DR. AR. LAKSHMANAN

JUDGMENT:
JUDGMENT

2003(3) SCR 99

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. This appeal is directed against the judgment and order dated 1.4.1997 passed by a single Judge of the Gauhati High Court in Second Appeal No. 136 of 1985 filed by the appellants herein challenging the judgment and order dated 17.4.1985 passed by the Assistant District Judge No. 11 at Silchar allowing Title Appeal No. 90 of 1983 filed by the respondents herein against the judgment dated 16.5.1983 of the Sadar Munsif No. II at Silchar dismissing Title Suit No. 88 of 1982 filed by the respondents herein.

The respondents herein filed Title Suit No. 88 of 1982 against the appellants herein for declarations that deity Sri Sri Kachakanti Devi installed in a temple at Udarband in Cachar District is their private deity gifted to one of their forefathers 200 years ago by the then King of Cachar-Maharaja Krishna Chandra Dhevaj Narayan; that they are the shebaits of the said deity which they inherited from their forefathers and that the defendants in the suit, namely, the appellants herein have no right to form appellant No. 1 Samity. They also prayed for permanent injunction against the principal defendants.

In support of their claim of shebaitship, the respondents/plaintiffs produced two documents, Exhibits 1 and 2, executed by the said Maharaja in 1824 in favour of one Sonaram Sarma. The respondents/plaintiffs further stated that in 1970 general public of Udarband formed a Committee known as "Mandir Construction Committee" and this Committee constructed boundary walls and temple for the deity and that the appellants/defendants were interfering with the enjoyment of their rights as shebaits of the said deity.

Defendant Nos. 1 and 2, i.e. the appellants herein, filed a joint written statement denying all material allegations in the plaint. According to them, the deity in question was dedicated to the public in general and hence it was and still is a public endowment and that the documents filed by the respondents/ plaintiffs have been created for the suit and that the seat of the deity is situated at a public place on a Government land and that the suit has been filed at the instigation of some disgruntled politicians.

The learned Munsif dismissed the suit of the respondents herein holding that they were not shebaits and there was nothing to show that the deity was established by Cachar King or that forefather of the plaintiffs was appointed as a shebait. The learned Munsif further held that the deity and its temple were public endowments and the public used the same as a matter of right.

The respondents/plaintiffs herein filed Title Appeal No. 90 of 1983 before the Assistant District Judge, Silchar against the judgment of the Trial Court. The learned Assistant District Judge allowed the appeal and set aside the judgment of the Munsif. The defendants/appellants herein filed Second Appeal No. 136 of 1985 before the Gauhati High Court against the judgment of reversal passed by the First Appellate Court. The High Court dismissed the Second Appeal holding that since there was a finding of shebaitship by the First Appellate Court, the impugned judgment required no interference. The respondents have examined as many witnesses while the contesting defendants have examined none.

We heard Shri S.B. Sanyal, learned senior counsel appearing for the appellants and Shri N.R. Choudhary, learned counsel appearing for the respondents. Both the learned counsel reiterated the contentions raised by the respective parties before the courts below. Our attention was also drawn to the pleadings and all the evidence both oral and documentary.

The question of law involved in this appeal which requires our consideration is, when there being no appointment as shebait by any authority, whether pujari of a deity can become a shebait of such deity only because of the fact that the pujari performed pujas and acted as purohit for a long time. We have carefully gone through the pleadings, the evidence adduced-both oral and documentary and the arguments advanced by the counsel appearing for the respective parties. Learned counsel for the appellants, while reiterating the contentions raised before the courts below, has submitted that both the Appellate Court and the High Court have committed a grievous error in interfering with the well-considered judgment of the learned Munsif who for the cogent and convincing reasons recorded in his judgment has dismissed the suit. He would further submit that the claim of the shebaitship of the deity made by the plaintiffs is quite unknown and that it is in evidence that the public in general are offering seva/puja to the deity since its inception and there is absolutely no evidence to show that the public offered the puja with the permission of the respondents/plaintiffs. The learned counsel for the appellants would further urge that the judgment of the learned Single Judge of the High Court is a result of total non-application of mind. According to him, the evidence adduced in this case would show that the Durga Mandap and a Chowkidar shed, a charitable dispensary and an office building have been constructed by the defendants Samity by the donations of the public within the compound of the temple of the deity and, therefore, the respondents/ plaintiffs have no manner of right of shebaitship to the temple in question. Learned counsel for the respondents/plaintiffs would submit that the findings rendered by the lower Appellate Court and also by the High Court are unassailable and that the plaintiffs have proved beyond any doubt that they were in enjoyment of the right of shebaitship for a considerable period of time undisturbed and to the exclusion of all other claimants.

The question as to whether a religious endowment is of a private nature or of a public nature has to be decided with reference to the facts proved in each case. It is difficult to lay down any test or tests, which may be of universal application. In the context of their right to shebaitship, the respondents/plaintiffs have two ancient documents, Exhibits 1 and 2. Both the documents have been produced from proper custody. The originals of these documents were also seen by the Appellate Court. The documents Exhibit 1(1) and Exhibit 2(1) show that the name of Sonaram Sarma Deshmukhya appears to be there and that these are appointment letters showing the appointment of Sonaram Sarma in the post of Deshmukhya with some magisterial powers by the king. Since these two documents have been produced from proper custody, these two documents were admitted in evidence. The presumption under Section 90 of the Evidence Act was also available to the respondents/plaintiffs. It is proved in evidence that the right claimed by the respondents/plaintiffs to shebaitship is in exclusion to all others. The respondents/plaintiffs have adduced oral evidence of witnesses PW-3, PW-5, PW-6, PW-8 and PW-9. They are the persons from

different walks of life residing in the locality where plaintiff No. 1 is established. They have categorically stated that since the time of their maturity they have seen the present respondents/plaintiffs performing the puja and offering other services to the deity and were receiving the offerings made to the Goddess by the devotees. PW-8 is a person from Muslim community who has also subscribed to the same view. Even in cross-examination nothing has been elicited from them to discredit their evidence and, in particular, regarding possession and the services rendered by them as shebaits.

Exhibit No. 1 is dated 1731 Sakabda 25 Kartika which corresponds to 1819 AD. Exhibit No. 2 is dated 1746 Sakabda month of Jaistha corresponding to 1231 BS which again corresponds to 1824 AD. It is an admitted position on the basis of the oral evidence given by the PWs, that the King Krishna Chandra ruled Cachar from the year 1780 to 1813 AD. The defendants have also not adduced any evidence to show that the job of shebaitship was performed by any other individual or group of individuals as against the claim of the respondents/plaintiffs. The defendants/appellants could not adduce evidence to show the accrual of rights in their favour rather they admitted the joint possession of the respondents/plaintiffs till 1980, i.e., about two years next before the date of the suit, as the suit, was filed on 5.5.1983. We are, therefore, of the opinion that the respondents/plaintiffs are entitled to the relief prayed for as they were in continuous possession and enjoyment of the property in question and offering their services and pujas and it should be regarded in law as to de facto shebaitship. Under no circumstances they can be held as trespassers. Justice, in our opinion, would demand protection of their rights aforesaid. But it is in evidence that all the movable properties and other constructions of the building, tanks, well and electrification, etc. were done by the public by receiving donations from various persons and the properties were donated by the public to the deity and, therefore, the deity has become the absolute owner of those properties as to be held by the respondents and defendants as caretakers. We are, therefore, of the opinion that both the Appellate Court and the High Court have partially decreed the plaintiff suit by declaring that the respondents/plaintiffs are the de facto shebaits of the temple in question and are entitled to maintain such position and status without any interruption unless held guilty of any misconduct. As rightly held by the Appellate Court, the public in general including the contesting defendants/appellants would, however, have free access to the suit premises in order to offer worship in the temple and for other religious and spiritual activities. We make it clear that the respondents/plaintiffs have no right to restrain the defendants/appellants and the public from offering worship in the temple and from making incidental development works etc. in the temple in question and offer the same as a gift to the temple.

In the instant case, the respondents/plaintiffs, as de facto shebaits, have proved their possession of the endowed property and exercised all functions of a shebait though the legal title to property is lacking.

For all the aforesaid reasons, we allow the appeal in part and decreed the suit insofar as the respondents/plaintiffs right to shebaitship of the suit temple is concerned. However, we order no costs.