

Ashish Kumar Chakraborty & Ors - Petitioners

In the Court of the Ld. District Judge, South 24-Parganas, Alipore

Misc. Case No. 384 of 2019 (R-384)

Present : Chaitali Chatterjee Das (WB01056), District Judge, South 24-Pgs at Alipore

Order No.08, dated 20.03.2021

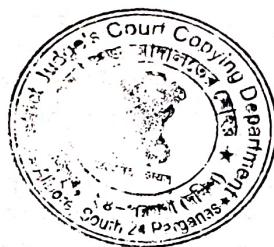
The record is taken up for hearing.

The shebait of Sree Sree Narayan Jew Thakur have filed an application u/s 34 of the Indian Trust Act with the prayer to grant permission for construction of the new building at premises No.6, Apurba Mitra Road, Kolkata-26 for the purpose of preservation, protection and maintenance of deity's establishment as well as the deity and for reestablished of resettlement of the deity in separate newly temple on the 3rd floor of the new building.

The fact submitted is that one Nepal Chandra Bhattacharyya was the owner for a land measuring about 2 bighas 3 cottahs more or less in Division 6, Sub-Division-F, Holding No.215 (formerly Holding No.7) within Dihi Panchanangram, Pargana-Khaspur, Mouza-Kalighat under P.S. Bhowanipore, Dist.-24-Pgs.(S), now known and renumbered as 20/9, Iswar Ganguly Lane and he transferred such property in favour of one Babu Ananda Prosad Chandra and Shaik Asgar Ali by virtue of a registered Deed of Bengali Kobala dated 15th Kartick, 1318. Accordingly, both of them became the joint owner of such properties. Their names were mutated in the Office of Kolkata Municipal Corporation. Subsequently, they mortgaged that property in favour of one Tarit Bhuan Roy while taking loan from him and being unable to pay the aforesaid loan of them decided to sale their aforesaid property with the concurrence of said Tarit Bhuan Roy and accordingly divided the entire property into several plots of land with an intention to sell the plots to different prospective buyers.

One Chandra Kanto Bhattacharyya purchased one of such plot measuring 3 cottah 12 chitaks and he also transferred such property in favour of Sreemutty Nalini Bala Dassi by virtue of registered Deed of Bengali kobala dated 11.08.1930 and she also transferred such property in favour of one Sreemutty Charanjit Kaur. The said Sreemutty Charanjit Kaur in order to sell such property entered into an agreement with one Sardar Garmukh Singh Kumar. But she sold and transferred the property in favour of one Jagadish Chandra Chakraborty by virtue of a registered Deed of Conveyance in the year 1944. It is the further case of the petitioner that after such purchase said Jagadish Chandra Chakraborty became the sole and absolute owner of such 3 cottahs 12 chitaks of land and he made a trust in respect of such by way of execution dedicating the same in favour of family deity Sree Sree Narayan Jew Thakur and accordingly appointed himself as his shebait.

(contd.....)



(contd...order no.08 dt. 20.03.2021 in Misc.Case No.384/19)

After demise of Jagadish Chandra Chakraborty and his wife the five sons became shebait of the said trust and continued to deal with the seba puja and other maintenance of such deity.

Out of said five sons, all of them died and pursuant to the terms living shebait are continuing with the said seba puja of the said deity and presently a sum of Rs.3,72,000/- (Rupees Three Lakhs Seventy Two Thousand) only requires annually to perform such daily puja.

In view of the lack of proper maintenance of the old one storeyed building where such deity is established and also the ill health of shebait nos. 1 and 3 it is very much needed that the property to be developed and for that purpose they have come before this Court.

Heard submissions.

In course of hearing ld. lawyer for the petitioners submits that since it is a private deity property there is no necessity of specific order to be passed by this Court granting permission, but as the municipal authority are insisting for the same this application has been filed before this Court.

In view of the judgement reported in AIR 1966 Supreme Court 878 (The Chairman of M.A.P.P.A.-Vs-M.N.Mahantha Devaru and others) and the judgement delivered by the Hon'ble Division Bench of Calcutta High Court in Subhash Ch. Basu and others - vs- State of West Bengal and others reported in 2011(3) ICC 309 ~~where~~ it is held that a permission to sell u/s 34 of the Indian Trust Act in a private debottar property is not at all necessary and also that sec. 92 of the Civil Procedure Code is not applicable. This Court is of the view that no permission is necessary for selling the private trust property by the shebait.

In view of the above discussion it is,

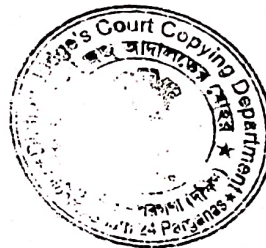
Ordered

that the instant misc. case and the same is dismissed on merit with the observation that no permission of this Court is required to sell the private debottar property.

Dictated and corrected by me

District Judge

District Judge
(WB01056)



Examined and found to be a true
copy and correctly stamped
Ratnendu Mishra
Alipore
Date 02/6/22 District Judge's Court

Certified to be True Copy
Sandip Chatterjee
Head of Department
Copying Department, District
District Judge's Court
Alipore
Accepted on 10 Oct. 1 of 1800

02.06.22