

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

Misc. Case No. 185 of 2020 (R-185)

Present : Sri Biswarup Bandyopadhyay (WB01133), District Judge, Alipore

Order No.34, dated 30.07.2026

Today is fixed for passing order.

Petitioner files hazira.

The record is taken up for passing order.

The petitioner/shebait namely, Sahadeb Banerjee filed an application u/s 34/36 of the Indian Trust Act, 1982 with a prayer for granting permission to sell the schedule property being all that piece and parcel of 68 decimals of land situated at Mouza-Sashan, RS & LR dag nos. 1215, 1223 & 2608 of RS Khatian nos. 408 & 598 corresponding to LR Khatian no. 1678, PS-Baruipur, District-South 24 Parganas.

The case of the petitioner became one of the Sebayets/Trustees of the Deities namely "Sree Sree Bishalaxmi Mata" and "Narayan Thakur Jiew". The said Deities are the family Deities of the petitioner and their idols were established by the predecessors of the petitioner generations back and the said Deities have been worshiped and special festivals have been continued to be performed since then. The schedule property in the nature as "Sali" was dedicated in favour of the Deity by execution of a deed of will in the year 1942 by the then predecessor of the petitioner and presently, the said land has been duly recorded in the Record of Rights under the names of petitioner and others as trustees. As per instruction of the settler, the income from the said property would be utilized for "Nitya Seva Puja" of the Deities and/or performance of festivals and other parbans. However, with the progress of time, such income decreased to a great extent as the condition of soil deteriorated and cultivation was hampered on the same greatly, thereby adversely affecting the Daily Seva Puja of the Deities concerned. At present, such income has become virtually nil forcing the sebayets to perform the Daily Seva Puja of the Deities out of expense from their own pockets. Furthermore, the temple is more than 40 years hold and has become dilapidated and unsuitable for habitation of the Deities and the boundary walls have also collapsed making the same totally unprotected. As such, the same are urgently required to be repaired and/or renovated for which, it has been unanimously decided by the Trustees/Sebayets to sell the schedule property so that such funds could be utilized for the benefits and/or welfare of the Deities. Hence, this case.

As per order dated 19.09.2022, newspaper publication was made in daily Bengali newspaper "Sangbad Pratidin" on 27.07.2022. But none has appeared to contest this case.

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The petitioner/Sahadeb Banerjee has been examined as P.W.1 on 03.05.2025. He has proved the documents which are marked exhibits-1 to 7 respectively i.e. the order dated 19.04.1949 granting probate in OS no. 19/1948, the record of rights/parcha in the name of Sri Sri Bisalaxmi Mata @ Narayan, the deed of appointment of trustees being Deed no. 7058 for the year 1987, the estimate for renovation of two and three storied building of Lord Sri Sri Bishalaxmi Jew Trust dated 15.06.2020, the meeting resolution book and the minutes of the meeting of Sri Sri Bishalaxmi Jew Trust, the Sangbad Pratidin newspaper dated 27.07.2022 and the self-attested photocopy of the Aadhar Card of PW1 respectively.

On perusal of exhibit no. 1, it appears that vide a Will dated 30.11.1943 executed by Late Bibhuti Bhusan Banerjee created a Trust and transferred all his properties in favour of Sri Sri Iswar Bisalakshmi Jew and the said Will as also duly probated by the competent Court of law on 19.04.1949. It further appears from the said Will that vide Clause-6, it has been mentioned that the Joint Executors shall do the needful for development of the property and also for the benefit of the Estate which they would think fit and proper. Further, having considered the exhibit-3, this Court is of the opinion that the Trust involved of this case is as a private Trust and now the present petitioner being one the shebait of the said Trust, has applied for permission to sell the property in view of Section 34 of the Indian Trust Act. Furthermore, the said exhibited document also reflect that the petitioner herein was appointed as one of the Trustees/Sebayets of the Trust Estate alongwith others. Moreover, on perusal of exhibit-5 being the resolution book of the trust estate, it appears that vide resolution dated 11.09.2020, it has been unanimously decided by the sebayets that the temple has become dilapidated due to extreme old age and as such, repairing and/or renovation of the same is urgently required for which, huge sum is required and as such, it has been decided that the schedule property is required to be sold and the petitioner has been entrusted to do the needful in this regard.

Under section 34 of the Indian Trust Act, the court has power only to give opinion, advice or direction on any present question respecting the management or administration of the trust property and not on any other matter. It further appears that the trust created is a private one and in view of the provision of sec.1 of the Indian Trust Act the interference of this court is not necessary till the managerial shebait and the co-shebait who are entrusted by the Arpannama to deal with the estate are at liberty to deal with the properties of the deities keeping in view the best interest and benefits of the deities and the trust estate of the deities.

To reiterate as per savings clause of Section 1 of Indian Trust Act, 1882, no provision of Indian Trust Act is applicable in a case where the property relates to a private Debattor Estate. The petitioners have claimed themselves as shebait of the deities. If that be so, they being the manager of

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a Debattor property can take their independent decision. We may be benefited to quote a decision cited in 2011(3) CLJ page 201 (Moloy Kumar Das ...vs... Krishna Chandra Adhikary and another) passed on 13.07.2011 by the Hon'ble Division Bench of Calcutta High Court and also in another decision, passed by Hon'ble Justice Jayanta Kumar Biswas on 20.11.2009 in W.P. No.9660(W) of 2006 (Shakuntala Dalmia ..vs.. H.M.C.), it has been held that there is no provision that obliges a shebait to take prior permission to any Court for alienating the property owned by a Deity, it is only if alienation is challenged at a future date, the alienee in spite of order will have to prove a fact that there was legal necessity for transfer or that he made enquiries and was reasonably satisfied that such necessity existed."

Accordingly, on perusal of the averments of the application and the Trust Deed, it goes to show that the case property is a debuttar property and the trust is a private trust.

On such factual backdrop, it is made clear that the petitioner being one of the shebait of the present Trust, do not require any permission to sell or transfer any portion of the said debuttar property to any third party for the overall best interest and benefit of the deity and trust estate of the deity.

In view of the above discussion it is,

O r d e r e d

that the instant Misc. Case be disposed of on the basis of the observations, made herein above.

D/c by me
Sd/- B. Bandyopadhyay
District Judge

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(WB01133)