

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

Misc. Case No. 390 of 2023 (R-390)

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

Order No.25, dated 15.07.2026

Today is fixed for passing order.

Petitioner files hazira.

The record is taken up for passing order.

The petitioner/shebait namely, Sri Raja Sardar filed an application u/s 34 of the Indian Trust Act, 1982 with a prayer for granting permission to sell out the schedule debuttar property being a piece and parcel of sali land measuring about 83.33 decimals be the same a little more or less within Mouza Dighirpar Bakultala, RS Khaina no. 4815, RS no. 4164 followed by LR Dag no. 4571 under PS-Raidighi, District-South 24 Parganas.

The case of the petitioner/shebait is that one Sumati Bala Sardar on 25.06.1960, purchased the schedule property vide a registered deed of sale being no. 7237 for the year 1960. Said Sumati Bala Sardar subsequently mutated the said plot of land in the name of the Deity Sri Sri Saraswati Mata Thakurani and maintained the said trust for a long period of time. Thereafter, due to her inability to perform the duties of the trust on account of her old age and related ailments, by a registered deed of substitution of trustee dated 06.08.2018, being no. 161504101 for the year 2018, substituted the name of the present petitioner as sebait of the said Deity. After taking charge as the sebait of the said trust, the petitioner came to know that the trust estate is suffering from acute paucity of funds which is adversely affecting the daily seva puja of the said Deity. The surplus schedule property is currently lying vacant without any income being generated from the same and as such, selling the same would not harm the interest of the Deity and would, in fact, benefit the estate instead. Hence, this case.

As per order dated 26.11.2024, newspaper publication was made in daily Bengali newspaper "Anandabazar" on 27.09.2024. But none has appeared to contest this case.

The petitioner himself/Sri Raja Sardar being the sole sebait, has been examined as P.W.1 on 13.12.2024. He has proved the documents which are marked exhibits-1 to 4 respectively i.e. the Deed being no. 7237 of 1960, the web generated copy of information of the land vide Dag no. 4815 under Dighirpar, Bakultala, the deed being no. 4101 of 2018 and the self-attested photocopy of the Aadhar Card of PW1.

Having considered the exhibit-1, this Court is of the opinion that the Trust involved of this case is as a private Trust and now the present petitioner being the sole shebait has applied for permission to sale the property in view of Section 34 of the Indian Trust Act. In the original registered Deed of Trust being no. 7237 for the year 1960, it appears that originally Sumati Bala Sardar purchased the schedule property being the sole sebait of the said Deity and continued to perform the duties of sebait since long therefrom. However, due to old age and related ailments, she handed over her sebaitship to the petitioner vide registered deed of substitution of trustee dated 06.08.2018, being no. 161504101 for the year 2018, whereby she also

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handed over the schedule property to him thereby stating that neither she nor any of her legal heirs or successors would have any further claim over the same.

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 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 private debattar property and the trust is a private trust.

On such factual backdrop, it is made clear that the petitioner as the sole shebait of the aforesaid deity, do not require any permission to sell or transfer any portion of the said debattar 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]