

BISHWANATH AND ANR.

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v.

SHRI THAKUR RADHABALLABHJI & ORS.

February 6, 1967

[K. SUBBA RAO, C.J. AND J. M. SHELAT, J.]

B

Code of Civil Procedure (Act 5 of 1908), s. 92—Shebait of Hindu idol alienating idol's property—Suit by worshipper on behalf of idol for declaration of title and recovery of said property—Suit whether governed by s. 92.

Hindu Law—Shebait acting adversely to interests of idol or not protecting its interests—Right of worshipper to file suit.

C

The Manager of a temple alienated the idol's property. A worshipper of the idol who also assisted the Manager in his duties, filed a suit as next friend of the idol challenging the alienation. The reliefs sought were a declaration that the property belonged to the idol and recovery of possession. The trial court's decree in favour of the plaintiff was upheld by the High Court. The defendants came to this Court, with certificate.

It was urged on behalf of the appellants that s. 92 of the Code of Civil Procedure was a bar to the suit, and that no one but the Shebait was entitled to file the suit and represent the deity.

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HELD : (i) The suit was filed by the idol for possession of its property from the person who was in illegal possession thereof and therefore it was a suit by the idol to enforce its private right. The suit also was for a declaration of the plaintiff's title and for possession thereof, and was not therefore a suit for one of the reliefs mentioned in s. 92. In either view this was a suit outside the purview of s. 92 of the Code and therefore the said section was not a bar to its maintainability. [621 D-E]

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Abdur Rahim v. Barkat Ali, (1928) L.R. 55 I.A. 96 and *Mahant Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhaj Narsibhai*, [1952] S.C.R. 513, relied on.

Mukhda Mannudas Bairagi v. Chagan Kisan Bhawasar, I.L.R. 1957 Bom. 809, *Darshan Lal v. Shibji Maharaj Birajman*, (1922) I.L.R. 45 All. 215 and *Madhavrao Anandrao Reste v. Shri Omkareshvar Ghat*, (1928) 31 Bom. L.R. 192, referred to.

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(ii) An idol is in the position of a minor; when a person representing it leaves it in the lurch, a person interested in the worship of the idol can certainly be clothed with an *ad hoc* power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and complicated one and the interest of the idol may irreparably suffer. That is why a worshipper is permitted in such circumstances to represent the idol and to recover the property for the idol. [622 G-623 B]

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A *Kunj Behari Chandra v. Sri Sri Shyam Chand Thakur*, A.I.R. 1938 Pat. 394 and *Artatran Alekhagadi Brahma v. Sudersan Mohapatra*, A.I.R. 1954 Orissa 11, disapproved.

Pramatha Nath Mullick v. Pradyumna Kumar Mullick, (1925) L.R. 52 I.A. 245 and *Kanhaiya Lal v. Hamid Ali*, (1933) L.R. 60 I.A. 263, applied.

B In the present case the suit was brought on behalf of the idol by a worshipper and therefore in the circumstances of the case the High Court rightly held that it was maintainable. [624 D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 780 of 1964.

C Appeal from the judgment and decree dated December 21 1959 of the Allahabad High Court in First Appeal No. 87 of 1948.

M. S. Gupta, Lalit Kumar and S. N. Varma, for the appellants

J. P. Goyal and Raghunath Singh, for respondent No. 1.

The Judgment of the Court was delivered by

D **Subba Rao, C.J.** This appeal by certificate is preferred against the decree of the High Court of Judicature at Allahabad decreeing the suit filed by the respondents for possession of the plaint schedule property.

E Shri Thakur Radhaballabhji, the deity, represented by Yasodanandan as next friend, filed O.S. No. 61 of 1946 in the Court of the 2nd Civil Judge, Kanpur, against the appellants for a declaration that the deity was the proprietor of house No. 49/54 situate in Ban Bazar in the City of Kanpur, for possession thereof and for mesne profits. The case of the plaintiff (1st respondent herein) was that Lala Jagan Prasad, the 2nd defendant to the suit, was the manager and Sarvarakar of the deity, that the said manager executed a sale deed dated January 13, 1942, conveying the said property to one Lala Behari Lal, the 1st defendant to the suit, for a consideration of Rs. 10,000 and that the sale, not being for necessity or for the benefit of the idol, was not binding on the deity. It was further alleged that, as the 2nd defendant had taken no steps to recover the property, in order to safeguard the rights of the idol the suit was filed through Jagan Prasad, who was one of the devotees and worshipper of the deity and who had been taking keen interest in the management of the temple where the deity is installed. To that suit the alienee was made the 1st defendant and the manager, the 2nd defendant.

H The 1st defendant set up the case that the suit property did not constitute the property of the idol but was the property of the 2nd defendant purchased by him out of his own funds. He further alleged that the suit house was in a dilapidated condition, that its rebuilding would involve the idol in heavy and unprofitable expen-

diture, that therefore the second defendant as its manager, acting as a prudent man, sold the same for a good price to the 1st defendant and that, as the sale transaction was for the benefit of the idol, it would be binding on the plaintiff. He also questioned the right of Yasodanandan to represent the idol and to bring the suit on its behalf. Both the learned 2nd Civil Judge, Kanpur, in the first instance, and, on appeal, the High Court concurrently held that the sale was not for the benefit of the deity and that the consideration was not adequate. They also held that in the circumstances of the case the idol had the right to file the suit represented by Yasodanandan, who was a worshipper of the deity and was helping the second defendant in the management of the temple. In the result the trial court gave a decree for possession and for recovery of Rs. 1,400 as past mense profits against the 1st defendant on condition that the plaintiff returned a sum of Rs. 10,000 to the 1st defendant within two months from the date of the decree and also that the plaintiff would be entitled to future mesne profits at Rs. 45 p.m. till the date of delivery of possession of the property. The High Court confirmed the same. Hence the present appeal.

Mr. M. S. Gupta, learned counsel for the appellant, canvassed the correctness of the findings of both the courts on the questions of fact as well as of law. On the questions of fact, namely, whether the impugned transaction was binding on the idol and was supported by consideration, we do not think we would be justified to permit the appellant to question their correctness, because the said findings are concurrent and are based upon appreciation of the relevant evidence. We accept the said findings.

The only outstanding question, therefore, is whether the suit is maintainable by the idol represented by Yasodanandan, who is a worshipper as well as a person who had been assisting the 2nd defendant in the management of the temple.

Two obstacles are raised against the maintainability of the suit, namely, (1) s. 92 of the Code of Civil Procedure is a bar to the maintainability of the suit, and (2) a suit for possession of the property of the idol, after setting aside the alienation, could only be filed by the Shebait and none else could represent the deity.

It is settled law that to invoke s. 92 of the Code of Civil Procedure, 3 conditions have to be satisfied, namely, (i) the trust is created for public purposes of a charitable or religious nature; (ii) there was a breach of trust or a direction of court is necessary in the administration of such a trust; and (iii) the relief claimed is one or other of the reliefs enumerated therein. If any of the 3 conditions is not satisfied, the suit falls outside the scope of the said section. A suit by an idol for a declaration of its title to property and for possession of the same from the defendant, who is in possession thereof under a void alienation, is not one of the reliefs

A found in s. 92 of the Code of Civil Procedure. That a suit for declaration that a property belongs to a trust is held to fall outside the scope of s. 92 of the Code of Civil Procedure by the Privy Council in *Abdul Rahim v. Barkat Ali*(¹) and by this Court in *Mahant Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai*(²) on the ground that a relief for declaration is not one of the reliefs enumerated in s. 92 of the Code of Civil Procedure. So too, for the same reason a suit for a declaration that certain properties belong to a trust and for possession thereof from the alienee has also been held to be not covered by the provisions of s. 92 of the Code of Civil Procedure: See *Mukhda Mannudas Bairagi v. Chagan Kisan Bhawasar*(). Other decisions have reached the same result on a different ground, namely, that such a suit is one for the enforcement of a private right. It was held that a suit by an idol as a juristic person against persons who interfered unlawfully with the property of the idol was a suit for enforcement of its private right and was, therefore, not a suit to which s. 92 of the Code of Civil Procedure applied: see *Darshan Lal v. Shibji Maharaj Birajman*(³); and *Madhavrao Anandrao Raste v. Shri Omkareshvar Ghat*(⁴). The present suit is filed by the idol for possession of its property from the person who is in illegal possession thereof and, therefore, it is a suit by the idol to enforce its private right. The suit also is for a declaration of the plaintiff's title and for possession thereof and is, therefore, not a suit for one of the reliefs mentioned in s. 92 of the Code of Civil Procedure. In either view, this is a suit outside the purview of s. 92 of the said Code and, therefore, the said section is not a bar to its maintainability.

The second question turns upon the right of a worshipper to represent an idol when the Shebait or manager of the temple is acting adversely to its interest. Ganapathi Iyer in his valuable treatise on "Hindu and Mahomedan Endowments", 2nd edn., at p. 226, had this to say in regard to the legal status of an idol in Hindu law:

"The ascription of a legal personality to the deity supposed to be residing in the image meets with all practical purposes. The deity can be said to possess property only in an ideal sense and the theory is, therefore, not complete unless that legal personality is linked to a natural person."

It would be futile to discuss at this stage the various decisions which considered the relationship between the idol and its Shebait or Manager *qua* the management of its property, as the Privy Council in *Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi*(⁵) has settled the legal position and stated thus:

(1) [1928] L. R. 55 I. A. 96.

(3) I. L. R. 1957 Bombay 809.

(5) [1928] 31 Bom L. R. 192.

(2) [1952] S.C.R. 513.

(4) [1922] I. L. R. 45 All. 215.

(6) [1904] L. R. 31 I. A. 203, 209, 210

"There is no doubt that an idol may be regarded as a juridical person capable as such of holding property, though it is only in an ideal sense that property is so held."

Dealing with the position of the Shebait of such an idol, the Privy Council proceeded to state:

".....it still remains that the possession and management of the dedicated property belong to the Shebait. And this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the Shebait, not in the idol."

This was a case where the Shebait filed a suit for eviction from the dedicated property within three years after attaining majority and the Board held that, as he had the right to bring the suit for the protection of the dedicated property, s. 7 of the Limitation Act, 1877, would apply to him. The present question, namely, if a Shebait acts adversely to the interests of the idol whether the idol represented by a worshipper can maintain a suit for eviction, did not arise for consideration in that case. That question falls to be decided on different considerations.

Three legal concepts are well settled : (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense. It has also been held that persons who go in only for the purpose of devotion have, according to Hindu law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage : see *Kalyana Venkataramana Ayyangar v. Kasturi Ranga Ayyangar*(1). In the present case, the plaintiff is not only a mere worshipper but is found to have been assisting the 2nd defendant in the management of the temple.

The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves it in the lurch, a person interested in the worship of the idol can certainly be clothed with an *ad hoc* power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can

(1) (1916) I.L.R. 40 Mad. 212, 225.

A file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment; see *Radhabai Kom Chinnaji Sali v. Chinnaji Bin Ramji*(¹) *Zafaarab Ali v. Bakhtawar Singh*(²) *Chidambaranat Thambiran (a) Sivagnana Desika Gnanasambanda Pandara Sannadhi v. P. S. Nallasiva*(³) *Mudaliar, Dasondhay v. Muhammad Abu Nasur*(⁴), *Kalavana Venkataramana Aiyangar v. Kasturi Ranga Aiyangar*(⁵) *Sri Radha Kirshnaji v. Rameshwar Prashad Singh*(⁶) *Manmohan Haldar v. Dibbendu Prosad Roy Choudhury*(⁷)

There are two decisions of the Privy Council, namely *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*(⁸) and *Kanhaiya Lal v. Hamid Ali* (⁹) wherein the Board remanded the case to the High Court in order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from a Shebait, under certain circumstances, the idol can be represented by disinterested persons. B. K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 2nd Edn., summarizes the legal position by way of the following propositions, among others, at p. 249.

"(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol.

(1) [1878] I. L. R. 3 Bom. 27.

(2) [1883] I. L. R. 5 All. 497.

(3) (1917) 6 Law Weekly, 666.

(4) [1911] I. L. R. 33 All. 660, 664.

(5) A. I. R. 1917 Mad. 112.

(6) A. I. R. 1934 Pat. 584.

(7) A. I. R. 1949 Cal. 199.

(8) [1925] L. R. 52 I.A. 245.

(9) [1933] L. R. 60 I. A. 263.

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This view is justified by reason as well as by decisions. A

Two cases have been cited before us which took a contrary view. In *Kunj Behari Chandra v. Sri Sri Shyam Chand Thakur*⁽¹⁾ it was held by Agarwala, J., that in the case of a public endowment, a part of the trust property which had been alienated by the Shebait or lost in consequence of his action could be recovered only in a suit instituted by a Shebait. The only remedy which the members of the public have, where the property had been alienated by a person who was a Shebait for the time being was to secure the removal of the Shebait by proceedings under s. 92 of the Code of Civil Procedure and then to secure the appointment of another Shebait who would then have authority to represent the idol in a suit to recover the idol properties. So too, a division Bench of the Orissa High Court in *Artatran Alekhagadi Brahma v. Sudersan Mohapatra* ⁽²⁾ came to the same conclusion. For the reasons given above, with great respect, we hold that the said two decisions do not represent the correct law on the subject. B

In the result, agreeing with the High Court, we hold that the suit filed by the idol represented by a worshipper, in the circumstances of the case is maintainable. The appeal fails and is dismissed with costs. C

G.C.

Appeal dismissed. D

(1) A. I. R. 1938 Pat. 394.

(2) A. I. R. 1954 Orissa, 11.