JADU GOPAL CHAKRAVARTY (DEAD) AFTER HIM HIS LEGAL REPRESENTATIVES

v.

PANNALAL BHOWMICK AND ORS.

May 2, 1978

[R. S. SARKARIA AND N. L. UNTWALIA, JJ.]

Construction of deed of settlement where property dedicated is very large and the religious ceremonies cannot exhaust the entire income—Though the property may on the face of it to be an out and out dedication of the entire property, but if the actual scrutiny reveals intention of the settlor to reserve some for the benefit for his family relations, the debuttar is partial—Powers of High Court to scrutinise under section 103 *of the Civil Procedure Code.*

One Indra Narayan Biswas executed a deed called "Declaration of Trust Deed" on April 9, 1904 dedicating 26 items of his immovable property, mostly houses and buildings situated in Calcutta and other places, to the family deity Sree Sree Iswar Lakshmi Janardan. As per term 8, after his death Sarvashree Abinash Chandra Bhowmick and Jogendra Nath Biswas were to be the joint Shebaits and trustees with equal rights. On the same day, *i.e.* 9-4-1904 Indra Narayan Biswas executed a will, bequeathing his movable and immovable properties to his relations. In this will, he further provided that in case the deed of Declaration of Trust fails, Abinash Chandra Bhowmick, his sister's son, would get the properties included in the said deed.

Indra Narayan Biswas died on 7-8-1905. Jogendra Nath Biswas predeceased him. Indra Narayan was survived by his sister's son, Abinash Chandra Bhowmick, and Bipin Bihari Biswas and Girindra Biswas, both brothers of Jogendra Nath and sons of another brother of Indra Narayan. After the death of Indra Narayan, Girindra, Bipin and Abinash executed on February 2, 1906 an Ekrarnama [deed of agreement Ex. 3] whereby it was agreed *inter alia*, that the three executants and their respective heirs would be in equal rights shebaits and trustees of the debuttar estate and each would receive Rs. 900/- per annum from the debuttar estate. By a subsequent deed, dated 24-3-1916 (Ex. 2), all the three agreed among themselves that Abinash Chandra Bhowmick and his heirs would have an exclusive right to manage the affairs of the deity and the debuttar estate and neither Bipin, nor Girindra, nor their respective legal heirs would be entitled to interfere in any manner, but would continue to receive the annuity of Rs. 900/- each. The remuneration for Abinash and his heirs were increased to Rs. 1200/- per month. Compensation to the tune of rupees five lakhs and odd, was deposited by the President Calcutta Improvement Tribunal in C.D. case No. 54 of 1922 by the Calcutta Improvement Trust which acquired some of the debuttar properties. Girindra died in 1917 survived by his sons and heirs Pulin Behari and Palton Behari. Abinash Chandra Bhowmick died on April 2, 1936 survived by his sons (respondents 1 to 5 herein and Nandlal Bhowmick original defendant No. 2 since deceased). Bipin Bihari died in December 1941 survived by his son Panchanan Biswas plaintiff-appellant No. 2.

After the death of Abinash, on 8-10-1947 two of his sons Pannalal and Nihar Ranjan Bhowmick instituted a Title Suit 55/47 against their other brothers Nagendra. Nandlal. Panchulal and Benoy Kumar Bhowmick for a declaration of the nature, character and amount of rights of the parties in the suit property and for framing a scheme for management of debuttar property. The deity Sree Sree Lakshmi Narain Janardan Jiew was also impleaded through guardian *ad litem* Sri Ishwar Vidyalankar The Trial Court, on an interpretation of the terms of the Trust, held that it did not create an absolute debuttar, but only charged the properties with the expenditure of the worship of the deities and the idol mentioned in the trust deed. The Trial Court did not accept the scheme of arrangement filed by the parties, and directed further that the compensation lying in deposit in C.D. case No. 54/1922 shall be utilised "for erection

A of a temple and Thakurbari" as desired by the founder and the "surplus income of the property shall be utilised in purchasing Government promissory notes, but the interest whereof shall be given over to the descendants of Abinash, according to shares". Against that decree dated 21-4-1949 the plaintiffs Pannalal and Nihar Ranjan in their capacity as Shebaits of the deity preferred an appeal to the Calcutta High Court. On 28-6-1950, on an application seeking permission to compromise the claim on behalf of the guardian *ad litem* of the deity and the appellant plaintiffs, before it the Division bench granted the permission as it appeared to be for the benefit of the deity and a decree was passed in terms B of the compromise and the appeal disposed of accordingly.

On 6-4-1953, the appellant herein being a member of the Guru family of the founder, Indra Narayan Biswas instituted Title Suit No. 31 of 1953 against the respondents for preservation of the debuttar properties from waste and misappropriation, in exercise of the right claimed under Term No. 18 of the Trust deed, and for a declaration that the properties mentioned in schedules 'A' and 'B' of the plaint are the absolute debuttar properties of the deity and the respondents were not entitled to withdraw the money or enter into a compromise C and that 'solenama' or compromise was null and void being collusive. The respondents denied the allegations and pleaded that a suit for bare declaration was hit by Section 42 of the Specific Relief Act. The appelant's *locus standi* to maintain the suit was also questioned. The Trial Court decreed the suit, which was affirmed in appeal by the District Judge. But the High Court allowed the second appeal of the respondents and dismissed the suit. The High Court upheld the findings of the Court below with regard to the maintainability of the suit and the suit property being a debuttar property. While purporting to D proceed on the basis that Bhowmicks obtained the consent decree collusively, it held that the decree did not become null and void and was required to be avoided in proper proceedings. In this connection it propounded the proposition that a collusive and fraudulent decree passed by a Court *in invitum* is "not a decree at all" and does not need setting aside, but a compromise decree being an agreement between the parties to which the sanction of the Court is super-added, stands on a different footing and "even if the sanction obtained by fraud is not sanction in law the agreement between the parties stands and that contract requires to be set aside", that the plaintiff could have sued for E setting aside the compromise decree on the ground of fraud, but he did not, and consequently, he could not treat an earlier judgment even if obtained by fraud and collusion as null and void. The High Court further held : "In the present suit, the Biswases are not represented as Shebaits of the deity and therefore, cannot represent the interest of the deity and they have no personal interest in the matter. So far as the plaintiff Jadugopal is concerned, he has filed the suit for the interest of the deity and he cannot raise pleas which the deity could not, because he really represented the interest of the deity. Therefore, we must hold that the compromise decree is binding upon the deity and unless F set aside, it operates as estoppel." A prayer for the amendment of the plaint on behalf of the deity, who had been re-transposed as co-plaintiff, for setting aside the decree was declined. In the result, the appeal was allowed with costs, and the suit was dismissed.

Dismissing the appeal by certificate, the Court

HELD : 1. When the property dedicated is very large and the religious G ceremonies which are apparently prescribed by the Settlor cannot exhaust the entire income, some portion of the beneficial interest may be construed as undisposed of and cannot but vest as secular property in the heirs of the settlor, where, although the document purports; on the face of it to be an out and out dedication of entire property to the deity, yet a scrutiny of the actual provisions reveals the fact that the donor did not intend to give the entire interest to the deity, but reserved some portions of the property or its profits for the benefit of his family relations. In all such cases, the debuttar is partial and incomplete and the dedicated property does not vest in the deity as a H judicial person. It remains with the grantee or secular heirs of the settlor, subject to a trust or charge for the religious uses. [872 D-F]

Sri Sri Iswari Bhubaneshwari Thakurani v. *Brojo Nath Dey* and Ors., 64 Indian Appeals 203 referred to.

2. There is no statutory rule according to which, it was obligatory for the Court to issue notices to all persons which could possibly have an interest in the subject matter of litigation, before granting leave to the guardian of the deity to compromise the case. [875 C-D] A

3. In the instant case :

(a) The plea of collusion and fraud set up by the plaintiff appellants is said to be founded on two primary circumstances : (i) that the suit property was absolute *debuttar* and (ii) that no notice or opportunity was given to Panchanan, who had an interest in Shebaitship. The existence or non-existence of both these primary facts depends on a construction of the basic documents : Deed of Trust (Ex. 1) Deeds Ex. 3 and Ex. 2. Construction of these basic documents which go to the root of the matter, is a question of law and could be gone into in Second Appeal. [871 A-C] B

(b) The deed of trust (Ex. 1) prescribes no destination of the growing income which will become surplus after meeting the expenses prescribed by the Settlor for the worship of the deities, the performance of the specified religious festivals and the building of the Thakurbari temple. [873 E-F] C

(c) The Deed of Trust (Ex. 1) was capable of two possible constructions (i) It created only a partial dedication and not an absolute debuttar, the properties being charged for *seva puja* or other religious purposes to the extent specified therein and (ii) It created an absolute debuttar in favour of the deity, The former construction was expressly adopted in the previous suit (Title Suit 55/47) by the Trial Court and presumably by the High Court in F.A. 257/49 while granting leave to the guardian *ad litem* of the deity to compromise the case on terms embodied in the compromise decree. [873 F-G] D

In the present round of litigation, the Courts below have adopted the latter construction. The view taken by the Courts in the previous litigation as to the nature of the dedication was not beyond the orbit of reasonable possibility. Thus the existence of the first primary circumstance, *viz.*—that the suit properties belonged to the deity as absolute debuttar—from which an inference of collusion and fraud was sought to be drawn—had not been clearly and indubitably established. [873 G-H, 874 A] E

(d) Panchanan Biswas was not a necessary party to be impleaded in the previous suit or F.A. 257/49. His right to receive the fixed quit-annuity as per the second Ekrarnama (Ex. 2) dated 24-3-46, was in no way affected by the compromise decree. On the contrary, it had been expressly safeguarded. The name of Iswar Chandra Vidyalankar or his successor as guardian *ad litem* of the deity. though put forth by the plaintiffs in that litigation was accepted by the Court. [875 C-D]

(e) The failure of the Bhowmicks to impleaded Panchanan Biswas in the previous suit or in F.A. 257/49 or of the guardian *ad litem* to give him notice of the application for leave to compromise the case was not a circumstance of a definite tendency which could inevitably lead to an inference of fraud being practised on the Court. The High Court was, therefore, entitled in exercise of its powers under section 103 of the Code of Civil Procedure to go into that question and there was no evidence to show that the compromise decree in question was obtained by fraud. [875 D-F] F

(f) The compromise was not destructive of the endowment or the object of the dedication. The terms of the compromise were *prima facie* not unreasonable. By no stretch of imagination, it could be said that no prudent Court would have granted leave to the guardian of the deity to compromise the case on these terms. The High Court is presumed to have perused the record including the Trust deed, and considered the terms of the compromise before sanctioning it and allowing a decree in terms thereof. [876 A-B] G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1251 of 1968. H

From the Judgment and Decree dated the 4th March, 1966 of the Calcutta High Court in Appeal from Appellate Decree No. 626 of 1959.

A *P. K. Chatterjee, G. S. Chatterjee, A. K. Sen* and *D. P. Mukherjee* for the Appellant.

A. K. Sen, D. N. Mukherjee and *N. L. Choudhary* for Respondents Nos. 1 to 3

The Judgment of the Court was delivered by

B SARKARIA, J.—This appeal by certificate under Article 133(b) of the Constitution, is directed against a decree, dated March 4, 1966, of the High Court of Judicature at Calcutta, passed in Second Appeal No. 626 of 1959.

It arises out of these facts :—

C One Indra Narayan Biswas owned considerable property. On April 9, 1904, he executed a deed called "Declaration of Trust Deed", dedicating 26 items of his immovable property, mostly houses and buildings situated in Calcutta and other places, to the family deity. Sree Sree Iswar Lakshmi Janardan Jiew, which is installed and located at Darhatta, Police Station Ranghat, District Nadia, which was the D ancestral home of the founder.

Since a good deal of argument before us centered on a construction of this Trust Deed, it will be appropriate to extract here its material terms :—

"1. All that properties in Schedule is vested into the Debuttar and Trust Property completely and permaE nently from today.

2. That from the income of the above mentioned property according to the account and estimate mentioned in Schedule (Kha) the expenditure of Durga puja, Kali puja and Saraswati puja will be made permanently and these properties are hereby encumF bered permanently for the purpose of meeting these expenditures, and under these circumstances, all these properties completely and with all the rights I dedicate to the deity Lakshmi Janardan.

3. The puja and worship etc. of Lakshmi Janardan will be carried on as per list attached in Schedule (ka).

G 4. I shall remain as the sole Trustee and shebait of these properties and Debuttar mentioned above so long as I shall remain alive, and shall be able to sell or settle temporarily or permanently or be able to distribute to the tenants the Trust property or any part thereof. No Trustee excepting me shall be able to encumber the Trust and Debuttar property H or the part thereof excepting letting the property or any part thereof not more than three years. No Trustee of Debuttar shall be able to encumber the

property in any manner or Transfer or shall not be able to do anything which shall in any way diminish the value or Glory of the deity or do any thing which shall decrease the income or loss of the Debuttar property.

5. .....

6. In case of any surplus of fund, after meeting the expenditure mentioned in Schedules (Ga) and (Gha), arrising out of the Debuttar property, security papers (company papers) in the name of Debuttar Trust estate should be purchased from the surplus amount, and it will remain as the property of the Trust estate permanently.

7. .....

8. In my absence after my death Shrijut Abinash Chandra Bhowmick and Shrijut Jogendra Nath Biswas both of them on equal rights shall be the joint Shebait and Trustee for generations and the said each branch shall get as remuneration at the rate of Rupees fifteen per month and the other branch also shall receive respectively at the rate of Rupees fifteen per month, generations together permanently.

9. .....

10. I have a desire to construct one Thakurbari and a Temple, if I cannot do the same, in that event my future Trustee and Shebait shall construct one Thakurbari and a Temple from the income of the property only.

11. .....

12. .....

13. This Trust Debuttar property shall not be encumburred by the individual alone of any Trustee, the Trustee or Shebait shall not be able to transfer their rights and it shall not be so transferred.

14. .....

15. That I shall be able to change the terms of this deed but no other Trustee excepting myself shall be able to change the terms and conditions of the deed.

16. From today onward all Debuttar Trust Estate as per the deed shall be known as "Indra Narayan Trust Estate" permanently, and from today separate khata Book etc. will be kept, and the said Estate shall be separated from our own estate permanently and in that estate myself or my heirs shall have no

A rights or concern or nobody shall be able to claim anything in that estate.

17. .....

18. In case if any Trustee and Shebait attempts to waste or tries to misappropriate the property, any of my
B relations, Priests or any one of my Priest family, shall be able to rectify or shall be able to take such steps required to protect the property, as per Act 20 of 1863 or as per any other Act or laws.

19 to 22.....

23. All the income and other amounts due to Debuttar,
C beside the expenses which I have fixed as per list, shall be used for the purchase of Security "Reserve fund" and will as such go on increasing, and there paper (sic) will have to be purchased in the name of Debuttar Trust fund or in the name of Trustee mentioning the name of Debuttar Trust estate on its behalf.

D

24 & 25.....

26. God forbid, the Trustee and the Shebait of the two branches as divided, if either of them becomes extinct and no heirs remains or any one of the heirs becomes incapable for the Trusteeship and
E Shebaitship, the other branch will become full sixteen annas trustee and Shebait, but if the other branch also become extinct or heirless or become incapable for the Trustee and Shebaitship, then in that event the then the other branch at the relevant time shall become Trustee and Shebait or this Trust and all the terms of this deed will be applicable to
F them and if there is no such heirs at all in that case the Government will appoint Administrator as per the Terms of this deed.

27. .....

28. .....

G In Schedule (Ka) of the Trust Deed, several items of expenditure for worship and religious festivals were prescribed. The total of this annual expenditure fixed in the Deed comes to Rs. 1,430/- for meeting which the income of the Trust properties was encumbered vide Term (2), above.

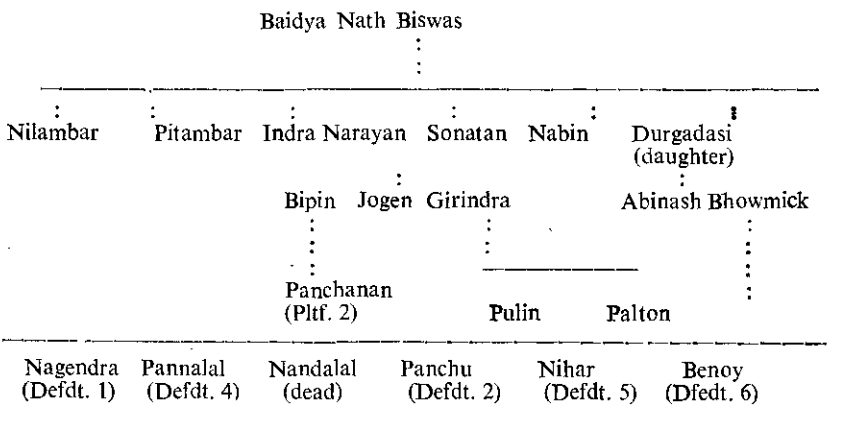
On the same date, i.e. April 9, 1904, Indra Narayan Biswas executed a Will, bequeathing his movable and immovable properties
H to his relations. In the Will, he further provided that in case the Deed of Declaration of Trust fails, Abinash Chandra Bhowmick, his sister's son, would get the properties included in the said Deed.

Indra Narayan Biswas died on August 7, 1905. Jogendra Nath Biswas predeceased him. Indra Narayan Biswas was survived by his sister's son, Abinash Chandra Bhowmick, and Bipin Bihari Biswas, the brother of said Jogendra Nath Biswas, the son of another brother of Indra Narayan Biswas.

Soon after Indra Narayan's death, Girindra Biswas, Bipin Behari Biswas and Abinash Chandra Bhowmick executed on February 2, 1906, an Ekrarnama (Deed of Agreement, Ex. 3), whereby it was agreed, *inter alia,* that the three executants and their respective heirs would be in equal rights Shebiats and Trustees of the Debuttar Estate, and each would receive Rs. 900/- per annum from the Debuttar Estate.

By a subsequent Deed, dated March 24, 1916 (Ex. 2), Bipin Bihari, Abinash Chandra and Girindra Nath agreed among themselves that Abinash Chandra Bhowmick and his heirs would have an exclusive right to manage the affairs of the deity and the Debuttar Estate, and neither Bipin Behari, nor Girindra, nor their respective heirs would be entitled to interfere in any manner, but would continue to receive the annuity of Rs. 900/- each. The remuneration for Abinash Chandra Bhowmick and his heirs was increased to Rs. 1,200/ per annum.

The following geneological table will be useful in understanding the relationship of Panchanan, plaintiff with the defendants/respondents :—



Abinash Chandra Bhowmick died on April 2, 1936, survived by his sons (respondents 1 to 5 and Nandlal Bhowmick original defendant 2, since deceased). Bipin Behari Biswas died in December 1941,

A survived by his son, Panchanan Biswas, plaintiff-appellant 2. Girindra died in 1917, survived by his sons and heirs, Pulin Behari and Palton Behari.

Some of the Debuttar properties were acquired by the Calcutta Improvement Trust in the year 1922, and compensation to the tune B of Rs. 5,00,000 and odd was deposited with the President, Calcutta Improvement Tribunal in C.D. Case No. 54 of 1922.

After the death of Abinash Chandra Bhowmick, there was some trouble among his heirs. On October 8, 1947, Pannalal Bhowmick and Nihar Ranjan Bhowmick instituted Title Suit No. 55 of 1947 in the Sixth Court of the Subordinate Judge, Alipore, against Nagendra C Nath Bhowmick, Nand Lal Bhowmick, Panchu Lal Bhowmick and Benoy Kumar Bhowmick. The deity, Sree Lakshmi Janardan Jiew was also impleaded through guardian *ad litem,* Shri Ishwar Vidyalankar,

After pleading all the material facts, it was stated that Indra Narayan Biswas had doubts that the Declaration of Trust Deed might not be valid, and this doubt was expressed in Term 15 of his Will.

D

The reliefs prayed for in Suit No. 55 of 1947, were :—

(a) a declaration of the nature, character and amount of rights of the parties in the suit property;

(b) a direction of the Court to prepare a scheme for the management of the Debuttar property and worship;

E

(c) a direction of the Court about the surplus money which will remain in excess after performing worship of the deity; and

(d) in case the Court holds the suit property to be qualified Debuttar property, after making some properties at Debuttar, the rest be declared as secular properties.

F

Defendants 1, 3 and 4 in Suit No. 55/47 filed a joint written statement in which they admitted the material allegations in the plaint and stated that they also "pray for the true explanation, meaning and effectiveness of those documents (Declaration of Trust and G Will executed by Indra Narayan Biswas) and fully depend upon the Court for their decision". They also agreed with the plaintiffs that there was a necessity of drawing a scheme for worship of the deity after determining the true character of the said Debuttar property.

On behalf of the deity, its guardian *ad litem,* Shri Ishwar Vidyalankar, filed a separate written statement, in which it was *inter alia,* H stated that "the said Indra Narayan Biswas by the Declaration of Trust Deed, donated absolutely all the properties mentioned in the said Deed to this defendant" and that "it is written in Term No. 1

of the said Deed that all those properties absolutely and permanently (are) converted to Debuttar Trust property from today". Further. the substance of Term No. 2 of the Trust Deed was reproduced in which the founder, *inter alia,* stated "I make gift of all these properties absolutely and permanently to said Lakshmi Janardan Thakur". The guardian of the deity, further denied the plaintiff's allegation that there was no provision in the Trust Deed as to how the surplus income was to be spent. Lastly, it was pleaded : "that this defendant has got no objection in preparing a scheme for the purpose of systematically doing the work of workship and other works of this deity after keeping all the absolute rights in tact of this defendant".

Issues were raised and the suit was contested. The Trial Court heard the counsel for both the sides, and decreed the suit. On an interpretation of the various terms of the Trust Deed, it held that it did not create an absolute Debuttar but only charged the properties with the expenditure of worship of the deities and the idol mentioned in the trust deed. The trial court further directed that the compensation money lying in deposit in the Reserve Bank of India shall be utilised "for erection of a temple and Thakurbari as desired by the testator" and "the surplus income of the property shall be utilised in purchasing Government Promissory Note but the interest whereof shall be given over to the descendants of Abinash according to shares". "In the circumstances, it observed, "the scheme of arrangement (filed) by defendants 1 to 4 and the plaintiff is not accepted".

Against that decree, dated April 21, 1949 of the Trial Court, the plaintiffs, Pannalal Bhowmick and Nihar Ranjan Bhowmick, in their capacity as Shebiats of the deity, preferred appeal to the High Court at Calcutta. Shri Ishwar Chander Vidyalankar, the original guardian *ad litem* of the deity, having died, the deity was, in appeal, represented before the High Court by another guardian. Satish Chandra Bhattacharya.

On June 28, 1950. a petition seeking permission to compromise the claim on behalf of the guardian *ad litem* of the deity and the Bhowmicks was filed in the High Court. A Division Bench (G.N. Das and B. K. Guja, JJ) granted the permission to the guardian *ad litem* of the deity to enter into the compromise as it appeared to be for the benefit of the deity and a decree was passed in terms of the compromise and the appeal disposed of accordingly. The material terms of the compromise decree were as under :

It is declared that :

(a) The trust created by Indra Narayan Biswas, as held by the Court below, by the Deed of Declaration of the Trust dated 7th July 1901 is not an absolute Debuttar of Sri Sri Lakshmi Janardan Jieu Thakur mentioned in the said Deed but is a qualified trust charged with the expenses of the daily sheba and Puja of the said deity Sri Sri Lakshmi Janardan Jiew Thakur, annual

worship of Goddess Durga, Goddess Kali, Goddess Saraswati and Goddess Lakshmi and Ishan Shib Thakur and other religious ceremonies and festivals mentioned in the said deed.

(b) The six sons of Abinash Chandra Bhowmick..... are the present sole Shebaits of the deity Sri Sri Lakshmi Janardan and Trustees to carry out the other trusts of the said Deed of Trust. After them the heirs of Abinash..... are as entitled under the Hindu Law.....

(c) .....

(d) The following (thirteen items of) properties of the Trust would be declared the absolute debuttar of Sri Sri Lakshmi Janardan Jieu Thakur :

(Premises Nos. 110/1, 111/1A, 111/1B, 112, 113, 113/1, 115 situated on Belgachia Road, District 24-Parganas, and Premises Nos. 9, 10, 3 and 7, Uzir Chowdhury Road, District 24-Parganas), and

"(xiii) G. P. Notes of the face value of Rs. 1,11,300 of 3% interest lying in the Land Acquisition Court of 24-Parganas at Alipore in L.A. Cases No. 155 of 1915 (valuation) to the credit of the Trust Estate".

(e) "The fixed deposit amounts with the different Banks as mentioned in the Schedule "B" above aggregating to Rs. 58,103-5 will be utilized and spent by the Shebaits and trustees for the building of the temple and Thakurbati as enjoined in the Trust Deed."

(f) "The Shebaits and Trustees jointly will get a sum of Rs. 1200 per annum as their remuneration from the income of the absolute Debuttar Estate."

(g) "The rest of the properties in Schedules "A" and "B" are the secular absolute properties of the six sons of Abinash Chandra Bhowmick deceased who are the present petitioners 1 to 6 in equal shares under the Will of Indranarayan Biswas."

(h) & (i) .....

(j) "The said annual sum of Rs. 900 payable to the heirs of Bepin Behari Biswas and the sum of Rs. 900 payable to Girindra Nath Biswas will be charged upon the secular immovable properties as included in Schedule "A" only of the heirs of Abinash Chandra Bhowmick. (Amended under Court's order No. 10 dated 1-8-1952)."

On April 6, 1953, Jadu Gopal Chakraborty, being a member of the Guru family of the founder, Indra Narayan Biswas, instituted Title

Suit No. 31 of 1953 against the defendants for preservation of the debuttar properties from waste and misappropriation, in exercise of the right claimed under Term No. (18) of the Trust Deed. The plaintiff prayed for a declaration that the properties mentioned in Schedules "A" and "B" of the plaint are the absolute debuttar properties of the deity, and defendants 1 to 6 are not entitled to withdraw any part of the compensation money lying in deposit with the Calcutta Improvement Trust in the name of the deity in Case Nos. 54/22, 55/22, 59/23, 25/28, 16/49 and 18/49. It was alleged that the entire proceedings commencing with the institution of Suit No. 55 of 1947 and with the compromise decree in F.A. No. 257/49 before the High Court were fraudulent, collusive and designed to misappropriate some of the properties of the deity; that the other co-Shebiats, (i.e. Biswases) of the deity were not made parties; that Ishwar Chander Vidyalankar who represented the deity, acted against the interests of the deity; "that all facts were not placed before the courts and there was material misrepresentation and fraudulent suppression of facts and of notice of suit to all parties"; that in these circumstances the said *solenama* or compromise decree passed by the High Court is void, inoperative and invalid. The reliefs prayed in the plaint were :—

"(1) for declaration that the properties described in Schedules A & B are the absolute Debuttar properties of the deity;

(2) for declaration that the defendants or any of them have no right to sell or dispose of any of the said properties;

(3) .....;

(4) for declaration that the defendants 1 to 6 are not entitled to draw any of the moneys from the Calcutta Improvement Tribunal deposited in the name of Deity Sree Lakshmi Janardan Thakur Jiew in G.D. Case No. 54 of 1922, 55 of 22, 59 of 23, 25 of 28, 16 of 1949 and 18 of 1949;

(5) .....;

(6) for permanent injunction restraining the defendants 2 to 6 from withdrawing any of the money deposited in the Calcutta Improvement Tribunal in C.D. Case No. 54 of 1922, 55 of 22, 59 of 23, 25 of 28, 16 of 49 and 18 of 1949 or any other money of the Debuttar Estate deposited in different Banks or other monies deposited in Calcutta Improvement Tribunal as fully set forth in Schedule 'B' of the plaint;

(7) .....;

(8) for any other relief or reliefs to which the plaintiff may be entitled;

(9) for permanent injunction restraining the defendants from in any way transferring, selling or leasing out or otherwise disposing of any of the Debuttar properties mentioned in Schedules "A" & "B".

A The substance of the case set up by the defendants/respondents in their written statement was that there was no absolute debuttar; that the compromise decree was for the benefit of the minor and was not collusive and was binding on the deity who was a party to the decree. It was further pleaded that the suit for bare declaration was hit by Section 42 of the Specific Reliefs Act. Jadugopal's *locus standi* to maintain the suit was also questioned.

B The defendants/respondents, Panchulal Bhowmick, Benoy Kumar Bhowmick and Pannalal Bhowmick, preferred an appeal to the District Judge, Alipore. The learned District Judge by his judgment, dated October 11, 1958, dismissed the appeal and affirmed the judgment and decree passed by the Subordinate Judge, holding—

C (a) That the Deed of Trust created an absolute Debuttar estate in favour of the deity;

(b) That the entire proceedings commencing with Title Suit No. 55 of 1947 and ending in the compromise decree in F.A. 257 of 1949 were vitiated by collusion between the Bhowmicks, inasmuch as—

D (i) the Deity was not properly represented by a disinterested person appointed by the Court after notice to all interested persons.

(ii) Ishan Chandra Vidyalanker did not properly look after the interest of the deity. He did not prefer any appeal against the trial court's decree declaring E Debuttar properties to be secular. Instead, in the High Court he signed the compromise decree which deprived the deity of a substantial portion of its estate.

(iii) Jadugopal (deceased), Panchanan, Pulin Behari and Palton Behari not being parties to the Suit or to the compromise, the decree did not bind them and the F Suit was maintainable.

(iv) Panchanan was a necessary party, but he was not impleaded and no notice was given to him.

(c) On account of the aforesaid collusion of the worst type the compromise decree passed by the High Court in T.A. 257/59 was a G nullity and did not bind the deity.

Against the decree of the District Judge, the defendants (Bhowmicks) carried a second appeal to the High Court.

A Division Bench of the High Court allowed the appeal and dismissed the Suit. The High Court upheld the findings of the Court H below with regard to the maintainability of the Suit and the Suit property being absolute Debuttar. While purporting to proceed on the basis that Bhowmicks obtained the consent decree collusively, it held that the decree did not become null and void, and was required

to be avoided in proper proceedings. In this connection it propounded the proposition that a collusive and fraudulent decree passed by a Court *in invitum* is "not a decree at all" and does not need setting aside, but a compromise decree being an agreement between the parties to which the sanction of the Court is super-added, stands on a different footing; and "even if the sanction obtained by fraud is no sanction in law the agreement between the parties stands and that contract requires to be set aside"; that the plaintiff could have sued for setting aside the compromise decree on the ground of fraud, but he did not, and consequently, he could not treat an earlier judgment obtained by fraud and collusion as null and void. The High Court further found :

> "We have no evidence before us nor the Court below had any evidence before itself to show what happened in the High Court, how such leave was obtained from the Court and what was the fraud committed by parties to the suit upon the Bench of this Court by which leave was obtained and by which sanction was granted to the deity to enter into the compromise. Even if the guardian was careless and indifferent the High Court had its duty to grant or not to grant leave to a careless or negligent guardian of the deity. But we have nothing on record from which we can say that the leave to enter into a compromise was obtained by fraud. We must, therefore, hold that whether Vidyalankar was competent or not, whether Vidyalankar acted in collusion with the Bhowmicks or whether Vidyalankar acted in fraud of the best interest of the deity, the High Court granted leave to Vidyalankar to enter into the terms of the compromise and finally granted a decree in favour of the deity in terms of the compromise. Therefore, we cannot treat as if no sanction was granted to the deity as if the deity did not enter into the terms of the compromise. Hence we must hold that the consent decree does work as an estoppel and the deity cannot raise pleas conflicting with the rights of the deity as provided in the consent decree."

The High Court further held : "In the present suit, the Biswases are not represented as Shebaits of the deity and therefore, cannot represent the interest of the deity and they have no personal interest in the matter. So far as the plaintiff Jadugopal is concerned, he has filed the suit for the interest of the deity and he cannot raise pleas which the deity could not, because he really represented the interest of the deity. Therefore, we must hold that the compromise decree is binding upon the deity and unless set aside, it operates as estoppel." A prayer for the amendment of the plaint on behalf of the deity, who had been re-transposed as co-plaintiff, for setting aside the decree was declined. In the result, the appeal was allowed with costs, and the suit was dismissed.

The High Court, however, granted a certificate under Article 133(1)(b) of the Constitution, by virtue of which this appeal has been filed.

A P. K. Chatterjee, appearing for the appellants, has raised these contentions :

(a) (i) There were clear averments in the plaint about the compromise decree in question, having been obtained by fraud and collusion. Issues 9 and 10 were framed on these points, and all the courts below have held that the compromise decree passed by the High Court on B 28-6-1950 in First Appeal No. 257 of 1949, was collusive. The plaintiffs could not be non-suited merely on account of their failure to pray in specific terms for the relief of setting aside the decree, because in view of the clear allegations of fraud and collusion in the plaint and the finding that the compromise decree was collusive, the Court was competent to grant the relief of setting aside the decree under Order 7, Rule 7 of the Code of Civil Procedure, particularly when the effect of C the declarations specifically claimed, was the same as if a formal prayer had been added for setting it aside.

(ii) A decree obtained by fraud or collusion is a nullity, which from its very nature, does not need setting aside.

In support of this contention, reference has been made to the obser- D vations in *Prayag Kumari Debi & Ors.* v. *Sisa Prosad Singh*(1); *Mir Muzaffar Ali & Ors.* v. *Kali Proshad Sahar & Anr.* (2); *Hare Krishna Sen* v. *Umesh Chandra Dutt*(3); *and Bishnunath Tewari & Ors.* v. *Mst. Mirchi.*(4)

(b) The High Court was in error inasmuch as it held that Jadugopal had no *locus standi* because Jadugopal was a member of the E settlor's preceptor and, as such, had, apart from the deity, his own independent right as a worshipper and also under clause 18 of the Trust Deed to maintain the suit. (Reference in this connection, has been made to *B. Jangi Lal* v. *B. Punna Lal & Anr*(5).

(c) Panchanan, co-plaintiff had also a right to maintain the suit because he was an heir of Jogendra who was one of the Shebaits nomi- F nated by the settlor and on the death of Jogendra and Jogendra's wife, the Shehaitship had devolved on him (Panchanan) (Reference was made to the decisions of this Court in *Kidar Lall Seal & Anr.* v. *Hari Lall Seal*(6); *Jai Jai Ram Manohar Lal* v. *National Building Material Supply, Gurgaon*(7); *Nandurai Yogananda Lakshminarasimachari & Ors.* v. *Sri Agastheswaraswami Varu of Kolakalur*(8).

G (d) On merits : The entire proceedings in Title Suit No. 55 of 1947 instituted by Pannalal and Niharranjan Bhowmicks against the

(1) A.I.R. 1926 Cal. 1.
(2) 18, Cal. W.N. 271.
(3) A.I.R. 1921 Patna 193 (F.B.)
(4) A.I.R. 1955 Patna 66.
H (5) A.I.R. 1957 All. 743.
(6) [1952] S.C.R. 179.
(7) [1970] (1) S.C.R. 22.
(8) [1960] (2) S.C.R. 768.

other Bhowmicks, Nagandranath, Nandlal etc., were collusive and fraudulent, and the permission granted in appeal by the High Court to compromise, did not purge the decree passed in terms of that compromise, of the taint of collusion which vitiated it.

(e) The High Court erred in holding that there is no evidence to show that the compromise decree was obtained from the High Court by fraud and collusion. There was cogent circumstantial evidence on the basis of which the trial Court and the first appellate Court had concurrently held that the entire proceedings in Suit No. 55 of 1947 and in First Appeal No. 257 of 1949 before the High Court, including the compromise decree dated 21-6-1950 were fraudulent and collusive. This evidence—proceeds the argument—on which the first two Courts based this finding of fraud and collusion, primarily consisted of these circumstances :

(i) Iswar Chandra Vidyalankar was put up as guardian *ad litem* of the deity in the trial Court, or Satish Chandra Bhattacharyya, who on Vidyalankar's death stepped into his shoes later in the High Court, was a nominee of the Bhowmicks, and was not an independent disinterested person appointed as guardian *ad litem* after service of notice to all the interested parties, particularly Panchanan Biswas who had an interest in the Shebaitship.

(ii) The trust deed, dated 9th July, 1904 (Ex. 1), as consistently held by the Courts below, created an absolute Debuttar, and the said compromise decree substantially destroyed the entire endownment created by the settlor, Indranarain.

On the above premises, it is urged that the High Court was not right in holding that the deity was estopped from questioning the compromise. The principle embodied in Section 44, Evidence Act, according to Mr. Chatterjee, has been overlooked, which makes it clear that a decree obtained by fraud or collusion does not operate as *res judicata*, because the same is a nullity. On the other hand, Mr. Asoke Sen, appearing for the Respondent's submits :—

(a) It was rightly held by the High Court that since in the plaint there was no prayer whatever, for setting the compromise decree, the suit, as laid, was not maintainable. The appropriate remedy of the party feeling aggrieved by that decree, was to file a suit for setting it aside. In this connection, reference has been made to *Gulab Koers* v. *Badsa Bhadur*(1); *Karmali Rohimbhoy* v. *Rahimbhoy Habib Bhoy*(2); *Giridharan Prosad* v. *Bholi Ram*(3); and *Jones Co.* v. *Beard*(4).

(b) (i) That the earlier Suit No. 55 of 1947 and the proceedings therein, could not be called collusive because the decree in the trial Court was passed on contest. According to the judgment and decree of the trial Court, the Trust Deed of July 9, 1904 did not create an absolute dedication in favour of the deity.

(1) 13 Cal. W.N. 1197.
(2) I.L.R. 13 Bom. 137.
(3) A.I.R. 1941 Patna 574.
(4) [1930] A.C. 298.

(ii) By the consent decree in question, the High Court had varied that decree, considerably in favour of the deity.

(iii) It has to be presumed that the learned Judges of the High Court who granted leave to compromise, did so after satisfying themselves from a perusal of all the relevant documents, including the Trust Deed dated July 9, 1904 (Ex. 1), that the Settlor, Inderanarain did not create an absolute *debuttar* in respect of the properties described in the Schedule thereto, in favour of the deity.

(c) As rightly held by the learned Judges of the High Court, there was no evidence to show that the compromise decree in question was obtained by practising fraud on the High Court. The twin circumstances, on which, according to the learned counsel for the appellants, the finding of fraud and collusion recorded by the first two Courts is founded, were non-existent, because (i) the Deed of Trust, Ex. P. 1, cannot be construed as creating an absolute debuttar in favour of the deity, and (ii) the Biswases had no longer any subsisting interest or right to manage the property of the deity, and as such, no notice to them was necessary.

In elaboration of Point No. (i) Mr. Sen has taken us through the Deed of Trust, Ex. P-1, with particular emphasis on its clauses 4 and 15. In regard to Point No. (ii), learned counsel has pointed out that according to the terms of the Deed of Trust, Jogendra Biswas was to become one of the Shebaits *after the death of the Settlor;* but Jogendra predeceased the settlor without ever becoming a Shebait. Jogendra had not acquired any vested interest in Shebaitship, which on his death could devolve on his natural heirs. In this connection, reference has also been made to the documents Ex. 3. Agreement dated 2-2-1906 and Ex. 2, deed dated March 24, 1916, according to which the Biswases confined their claim to the receipt of Rs. 900/- per annum and acknowledged the exclusive rights of the Bhowmicks to manage the property and affairs of the deity as *Shebaits.*

We will first take up the last contention canvassed on both sides with regard to the question : Whether the compromise decree, dated 28-6-1950, in F.A. No. 257 of 1949 was obtained by collusion and fraud practised on the High Court. While the trial court and the first appellate court have held that this compromise decree was vitiated by collusion and fraud, the approach of the High Court, if we may say so with respect, is not entirely clear and consistent. The High Court, to start with, seems to proceed on the "basis" (or the assumptions) that the Bhowmicks obtained the consent decree collusively, and concludes with the finding that there is no evidence on the record "from which we can say that the leave (to compromise) was obtained by fraud".

Mr. Chatterjee assails this finding of the High Court. His argument is that there was circumstantial evidence from which the trial court and the first appellate court had rightly drawn the inference that the compromise decree was the result of collusion and fraud on the part of the Bhowmicks. Learned counsel further submitted that in

second appeal the High Court was not justified in reversing that concurrent finding of the first two Courts. A

We do not think that the last argument of Mr. Chatterjee is sustainable.

The plea of collusion and fraud set up by the plaintiff-appellants, is said to be founded on two primary circumstances : (i) that the suit property was absolute debuttar, and (ii) that no notice of opportunity was given to Panchanan, who had an interest in Shebaitship. The existence or non-existence of both these primary facts depends on a construction of the basic documents : Deed of Trust (Ex. 1), Deeds Ex. 3 and Ex. 2. Construction of these basic documents which go to the root of the matter, is a question of law and could be gone into in second appeal. Our only regret is that the High Court did not go into the question far enough. B C

With these prefatary observations, we now turn to the question whether the suit properties had been absolutely dedicated by Indernarain to the deity. Or, whether they were only charged with *Seba puja?* Answer to these questions turn on a construction of the deed (Ex. 1), dated 9-4-1904, captioned : "Declaration of Trust". This deed (which has been extracted earlier *in extenso*) starts with a declaration that the properties in the Schedule are vested completely and permanently as *debuttar*. In Clause 2, the Settlor states that the income of these properties is permanently encumbered for meeting the expenditure of *Durga-puja, Kali-puja* and *Sarswati-puja*. In Schedule 'Kha', the Settlor fixes with specificity, the amount of the expenses which are to be incurred for such worship. In Clause 4, he says that he shall remain the sole Trustee and Shebait of these properties during his lifetime. But by the same Clause, he reserves to himself full and unfettered power to sell, transfer or settle permanently or temporarily the trust property to any part therein; and further makes it clear that no other Trustee shall be able to exercise such power of transfer or do anything which may decrease the income of the Debuttar property. In Clause 6, he provides that any surplus income after meeting the expenditure for worship etc., mentioned in Schedules 'Ga' and 'Gha', shall be invested in purchasing security papers in the name of *debuttar* trust estate. In Clause 10, he directs that in the event of his dying without constructing a Thakurbari and a temple, the future Trustees and Shebaits shall construct the same from the income of the property *only*. Clause 15 is important. Therein, the Settlor unequivocally reserves to himself the power "to change the terms of this deed but no other Trustee excepting myself shall be able to change the terms and conditions of the deed." D E F G

Clauses 4 and 15 of the Deed of Trust, read together seem to indicate that the Settlor had not completely and permanently divested himself of the property covered by this Deed. These Clauses can possibly be read as indicating that even after the execution of this Deed, Ex. 1, the settolr retained unto himself an absolute right to sell, transfer, settle or distribute the trust property or change any of the terms of this Trust H

A Deed. There is no provision in the Trust Deed, indicating how the sale proceeds of such sale, if any, made by the Settlor, Indernarain Biswas, of any of the trust property would be utilised. It will not be extravagant to say that in such an event, the Settlor could utilize the sale proceeds in any manner he liked. Nor is there any direction in this Trust Deed as to how the interest on the Government securities would B be expended. The possible inference is that he wanted to utilise the interest on those securities during his life-time as he wishes, and thereafter leave the enjoyment therof to the descendants. The total amount to be spent on worship and festival was fixed at Rs. 1430/- and no clear destination was indicated for the rest of the income which was to accumulate perpetually. In view of the nature and situation of the properties, the Settlor must have been aware that the income derived therefrom would in time grow and far exceed the expenditure pres- C cribed for worship, religious festivals and even for construction of the Thakurbari. Even so, he did not make any provision for utilisation of the surplus.

There is authority for the proposition that when the property dedicated is very large, and the religious ceremonies which are expressly D prescribed by the Settlor, cannot exhaust the entire income, some portion of the beneficial interest may be construed as undisposed of and cannot but vest as secular property in the heirs of the Settlor. As pointed out by Shri B. K. Mukherjee (a former Chief Justice of this Court) in his renowned work. "The Hindu Law of Religious and Charitable Trusts", there are cases where although the document purports on the face of it, to be an out and out dedication of the entire property to the E deity yet a scrutiny of the actual provisions reveals the fact that the donor did not intend to give the entire interest to the deity, but reserved some portion of the property or its profits for the benefit of his family relations. In all such cases, the Debuttar is partial and incomplete and the dedicated property does not vest in the deity as a juridical person. It remains with the grantees or secular heirs of the Settlor subject to a trust or charge for the religious uses.

F

We do not want to burden this judgment by discussing the various authorities cited by both sides. But reference to only one decision, *Sri Sri Iswari Bhubaneshwari Thakurani* v. *Brojo Nath Dey & Ors.*(1) will be useful. In that case by a deed executed in 1888, two Hindu brothers, R and B, created an endowment in favour of the family G deity, covering a large number of properties, and provides that the right of Shebaiti should go to their male heirs by primogeniture. In 1896, the founders conveyed additional properties to themselves as Shebaits. The deed of endowment purported to dedicate to the deity absolutely the Thakarbari and another house which was intended for the residence of the Shebait. With regard to the rest of the property, the provision was that the Debuttar expenses should be carried on as H before with their income and that the surplus should be invested in erecting masonry dwelling houses for the residence of the donor's family

(1) (64) I. A. 203.

and also for letting out some of these houses for the purpose of increasing the income. The High Court held that with the exception of the Thakurbari and the Shebait's house, the rest of the properties were not absolutely dedicated to the idol, the ultimate benefit being for persons other than the family deity, such dedication created a charge on the endowed property for the expenses of the worship of the deity.

On appeal, the Judicial Committee affirmed this decision Lord Macmillan, who delivered the judgment of the Privy Council, made these pertinent observations :

> '....on a fair reading of the deed as a whole it was not intended that the ceremonies and expenditure should increase indefinitely with the growing income yielded by these properties : See *Surendra Keshav Roy* v. *Doorga Soondarce Darsee* (L.R. 19 I.A. 108). From the nature and situation of the properties and the directions given for their development it must have been clearly contemplated that the income derived from them would be a growing one and must exceed the expenditure required for the prescribed ceremonies and charities. . . . . In these circumstances, the directions as to the disposal of the surplus income became of much importance. Now the clause dealing with the ultimate surplus directs that it shall be applied in the building of additional premises for the convenience of residence and habitation of heirs. This destination, it will be observed, is not in favour of the Shebaits, but is really in substance a gift in favour of the settlor's heirs generally."

The instant case is not on all fours with the above cited case, but the fact remains that here, the Deed of Trust (Ex. 1) prescribes no destination of the growing income which will become surplus after meeting the expenses prescribed by the Settlor for the worship of the deities, the performance of the specified religious festivals and the building of the Thakurbari temple.

Read in the light of the principles enunciated above, the Deed of Trust, Ex. 1, was capable of two possible constructions : (i) It created only a partial dedication and not an absolute debuttar, the properties being charged for *Seva puja* or other religious purposes to the extent specified therein. (ii) It created an absolute debuttar in favour of the deity. The former construction was expressly adopted in the previous suit by the trial Court, and presumably by the High Court in F.A. 257 of 1949 while granting leave to the guardian *ad litem* of the deity to compromise the case on terms embodied in the compromise decree.

In the present round of litigation, the courts below have adopted the latter construction. It is not necessary for us to pronounce as to which of these two constructions is correct. It is sufficient for us to say, that the view taken by the Courts in the previous litigation as to the nature of the dedication, was not beyond the orbit of reasonable possibility. Thus, the existence of the first primary circumstance *viz.*,

A that the suit properties belonged to the deity as absolute debuttar, from which an inference of collusion and fraud was sought to be drawn—had not been clearly and indubitably established.

This takes us to the second circumstance, *viz.*, that the compromise decree was obtained without notice to Panchanan Biswas.

B The first significant circumstance to be noted in this connection is that on April 9, 1904, contemporaneously with the Trust Deed (Ex. 1) of the same date, the Settlor, Indernarain, executed a Will by which he bequeathed his other movable and immovable properties to his relations and further provided that in case the Deed of Declaration of Trust (Ex. 1) fails, Abinash Chandra Bhowmick, his sister's son, will C get the properties included in the said Deed. The Settlor died on August 7, 1905. His will was probated on April 6, 1906. What is said in this contemporaneously executed Will in regard to the destination of the trust property in the event of its failure, reveals that the Settlor himself was possibly labouring under an impression that he was not creating an absolute debuttar. The Will further gives an inkling that the Settlor had the intention to make Abinash Chandra D Bhowmick and his descendants as ultimate beneficiary in respect of the properties comprised in the Trust Deed to the exclusion of the Biswases.

It may be further noted that by Clause 8 of the Trust Deed, the Settlor appointed Jogendra Nath Biswas to be a co-trustee (co-shebait) along with Abinash Chandra Bhowmick, *after his* (*Settlor's*) *death* of E the Trust property. Jogendra Nath Biswas, however, pre-deceased the Settlor, without becoming a Shebait or Trustee. Jogendra was survived by his widow. She also died and Panchanan Biswas, a nephew of Jogendra, is her heir.

From the document, Ex. 3, dated 2-2-1906, it is evident that soon after the death of the Settlor, a dispute arose in regard to the proper- F ties left behind by the Settlor, including those covered by the Trust Deed between the Biswases, i.e. the heirs of Jogendra Biswas on the one hand and Abinash Chandra Bhowmick on the other. By this deed, Ex. 3, the Biswases who were the 1st and 3rd Party and the Bhowmick who was the Second Party, agreed that they had equal rights to supervise the Debuttar property and to get an annuity of Rs. 900/- each G from the income of the Debuttar Estate "for doing the worship and for the remuneration etc." The rights of Bipin Behari Biswas, and Girendra Nath Biswas, the elder brother and cousin respectively, of Jogendra deceased, to perform the worships as co-shebaits were recognised.

Next comes the document, dated 24-3-1916 (Ex. 2). This docu- H ment was executed by Bipin Behari Biswas, Girendra Nath Biswas and Abinash Chandra Bhowmick. It evidences a settlement of a dispute with regard to the management and administration of the Debuttar properties. This dispute had cropped up between them in certain Land

Acquisition Case No. 181 of 1915 pending in the Court of District Deputy. By this document, the said Biswases recognised the right of Abinash Chandra Bhowmick and his line of heirs to manage as Shebaits of the debuttar property, *to the entire exclusion of* Bipin Behari Biswas and Girendra Biswas and their line of heirs. The Biswases, thenceforth, had no right or claim to participate in the affairs of the Trust. Their right had become restricted to receiving an annuity of Rs. 900/- from the surplus income of the property. There is no evidence on the record that after the execution of this deed, the Biswases or their heirs ever participated in the management of the Trust Property or its affairs, beyond receiving the quit-annuity. Thus the Biswas had lost long ago their rights as Shebaits by relinquishment and/or adverse possession.

This being the actual position, Panchanan Biswas was not a necessary party to be impleaded in the previous suit or F.A. 257 of 1949. His right to receive the fixed annuity from the income of the trust property was in no way affected by the compromise decree; on the contrary, it had been expressly safeguarded. The name of Ishwar Chandra Vidyalankar or his successor as guardian *ad item* of the deity, though put forth by the plaintiffs in that litigation, was accepted by the Court. No statutory rule has been cited before us, according to which, it was obligatory for the court to issue notice to all persons who could possibly have an interest in the subject matter of the litigation, before granting leave to the guardian of the deity to compromise the case. Be that as it may, the failure of the Bhowmicks to implead Panchanan Biswas in the previous suit or in F.A. 257 of 1949, or of the guardian *ad litem* to give him notice of the application for leave to compromise the case, was not a circumstance of a definite tendency which could inevitably lead to an inference of fraud being practised on the Court.

Thus, none of the circumstances from which Mr. Chatterjee wants the Court to spell out the conclusion that the compromise decree was obtained by practising fraud on the High Court, was firmly established. Indeed, the first two Courts did not pointedly address themselves to the question as to whether the leave to compromise the case was obtained by perpetrating fraud on the High Court. In the present litigation, therefore, the High Court was entitled in exercise of its powers under Section 103 of the Code of Civil Procedure, to go into that question. The High Court was therefore right in holding that there was no evidence to show that the compromise decree in question was obtained by fraud.

Lastly, a perusal of the Terms of the Compromise which was sanctioned by the High Court in F.A. 257 of 1949, would show that substantial properties, 12 in number, were recognised as absolute Debuttar properties of the deities; which included G.P. Notes of the face value of Rs. 1,11,300/-. Further, a sum of Rs. 58,103/- would be spent for the purpose of building a Thakurbari in terms of the Trust Deed. The then income of the properties declared to be absolute debuttar properties, was stated as Rs. 17,478/- per annum. It is likely to have escalated till then. Furthermore, lavish pecuniary provisions would be made for *Deb Seva* etc. Instead of confining such expenses to Rs. 1,430/-

A annually—which is the limit specified in the Trust Deed—the expenses for the religious purposes specified in the Trust Deed would be raised to Rs. 18,000/-.

It is, therefore, not correct to say that the compromise was destructive of the endowment or the object of the dedication. The terms of the compromise were *prima facie* not unreasonable. By no strentch B of reasoning it could be said that no prudent Court would have granted leave to the guardian of the deity to compromise the case on these terms. As already mentioned, the High Court is presumed to have perused the record, including the Trust Deed, and considered the Terms of the compromise before sanctioning it and allowing a decree in terms thereof.

C In view of the finding that the compromise decree in F.A. 257 of 1949 was not obtained by committing collusion and fraud, this appeal must fail. It is therefore, not necessary to determine the other points raised before us by the appellants because they have become wholly academic.

In the result, we dismiss this appeal, leaving the parties to bear and pay their own costs.

S.R *Appeal dismissed.*