ALLAHABAD HIGH COURT

B. Jangi Lal

Vs.

B. Panna Lal
(Desai and Beg, JJ.)

13.09.1945. 01.02.1957

JUDGMENT

Beg, J.

1. This is a plaintiff's appeal arising out of a suit praying for the removal of defendant No. 1 from his office as manager and of defendants Nos. 2 and 3 from their office as trustees of a private endowment, and for his own appointment as manager of the same. The plaintiff further sought an injunction restraining the defendants from managing the endowed property or interfering with its management in future. The plaintiff also claimed rendition of accounts from defendant No. 1 the manager. The dispute in the present case relates to a private endowment which was created by one Chhunnu Lal an ancestor of the plaintiff in the year 1893 by a written deed. By this deed of endowment Chunnu Lal dedicated some properties to the idols of Sitaramji and other deities. For the management of this endowment he framed an elaborate scheme in the deed executed by him. According to this scheme, he was himself to be the manager of this endowment for his life time, and, after his death, his son Jagannath Prasad was to be its manager. The deed further provided for the appointment of a number of trustees whose duty it was to supervise the work of the manager. The office of the manager, according to the deed of endowment was to continue in the descendants of Chunnu Lal, male or female, so long as the family did not become extinct. In case any manager was found undeserving of his office as manager, an assistant manager was to be appointed by written order of the trustees to act with the manager. So far as the appointment of trustees was concerned, the author of the endowment directed that every outgoing trustee was to nominate a new trustee in his place with the consent of the other trustees; and, in case this option was not exercised by him, the remaining trustees could nominate a trustee in the vacancy created. The deed further provided that, in case any trustee was unfit to perform the functions entrusted to him in the deed, and the management was likely to suffer as a result thereof, it was open to a court of law to intervene with a view to ensure the proper working of the waqf. It was further provided that in such a case it was also open to any well-wisher of the waqf to come forward, and move a court of law, and the costs incurred in that connection would be defrayed from the dedicated property. It would appear that in the year 1941, when the present suit was brought, the person acting as the manager of the said endowment was Panna Lal defendant No. 1, the grandson of Chunnu Lal, the author of the waqf and defendants Nos. 2 and 3 were acting as trustees of the said waqf. The plaintiff Jangi Lal, son of Munnu Lal, was the great grandson of

Chunnu Lal. The plaintiff's father Munnu Lal was the elder brother of Panna Lal. Munnu Lal had acted as the Manager of the said waqf prior to Panna Lal up to the year 1918 when he died. The present suit was filed by the plaintiff Jangi Lal who is the great grandson of Chunnu Lal against Panna Lal defendant No. 1 who was the Manager of the waqf and the two trustees who are defendants Nos. 2 and 3 on the allegation that the said trust was being mismanaged by Panna Lal its manager.
It was alleged in the plaint that Panna Lal was an extravagant and careless person, and he was not taking any interest in the worship of deities. He had ceased to carry out the mandates of the author of the trust, was embezzling trust monies and was misappropriating the income of the trust property for his personal purposes. It was further alleged that defendants Nos. 2 and 3 who were the trustees of the said waqf had been won over by him and they were colluding with him in his unlawful deeds with the result that the objects of the trust were being completely frustrated. The plaintiff had, therefore, filed the present suit claiming the relief mentioned above.

2. The suit was contested by defendant No. 1 only. He denied the charges of misconduct and mismanagements levelled against him. He further pleaded that the present suit was not maintainable at the instance of the plaintiff, as the waqf was a private one. A suit of this nature according to the defendant No. 1 could only be instituted by the idol, and no one else. Defendants Nos. 2 and 3 did not defend the suit.

3. The trial Court framed a preliminary issue on the question of maintainability of the present suit at the instance of the plaintiff. On this issue the trial Court held that the present suit was not maintainable by the plaintiff. The trial Court further held that the present suit must fail as the idol was a necessary party to a suit of this nature, and such a suit could only be brought by the idol and no one else. It accordingly dismissed the suit with costs to the contesting defendant. Aggrieved with the said judgment, the plaintiff has filed this appeal in the High Court.

4. Before us the learned counsel for the appellant has strenuously argued that the view of the trial Court that the present suit was not maintainable at the instance of the plaintiff is wrong. On the other hand, the learned counsel for the respondent has reiterated the arguments that found favor with the trial Court, and has contended that the idol is the only person competent to institute a suit of this nature and the plaintiff has no right to sue.

5. Having heard the learned counsel for the parties we are of opinion that this appeal should be allowed. We find it difficult to hold that such a suit can only be brought by the idol alone, and no one else. We are of opinion that the acceptance of such a view would result in the creation of difficulties in the way of the preservation of the interests of the idol itself. Whether an idol is a necessary party to a suit or not would in our opinion, depend on the facts and circumstances of each particular case. It might be that where the interests of the idol are directly affected or its own existences seriously imperiled, the appearance of the idol before the Court might be necessary.
This might be so, for example in a case where the existence of a trust in favour of the idol is itself

denied, or the physical location of the idol at a certain place is sought to be altered or challenged by the parties. There might be other cases also where the Court, considering the circumstances of the case, might feel that it is necessary to implead the idol. In such a case, it is open to the Court to implead the idol. In any case, where the existence of a trust in favour of the idol is admitted by the parties, and a serious charge is levelled against the acting shebait, it would not be justifiable to dismiss the suit of the plaintiff altogether on the ground that a case against the acting shebait can be brought by the idol alone. We have to remember in this connection that the idol itself is incapable of acting in a Court of law. It can act only through a human agency, and the human agency through which the idol normally acts is its own manager or shebait. In the present case charges of a grave nature are leveled against the manager himself and it is not expected that such a manager would bring a suit for his own removal. In such a case, we see no reason why any person who is interested in the waqf should not be allowed to bring a suit. In the present case it cannot be said that the plaintiff has no such interest as would not be enough to enable him to sustain a suit in a Court of law on his own behalf. The plaintiff in the present case is admittedly a descendant of the elder branch, being the grandson of the founder of the trust. He belongs to the family for whose worship the idol was created, and he has a right to worship the idol. He has, therefore, also a right to see that the idol, which is the object of his worship, is properly maintained and preserved, and the property which is dedicated for its preservation and maintenance is not diverted to other purposes. Apart from this direct and present interest which he has, the plaintiff has also a future interest in the office of the managership of the waqf as a prospective shebait. He is not a stranger to the family, and has as much interest in seeing that the objects of the waqf are properly carried out as any other member of the family.

6. Of course, it is open to an idol to bring a suit to defend its own interest. That is always the right of the idol. It is a right which primarily vests in the idol itself, and can be exercised at any time when it likes to do it. That, however, does not exclude the right of other persons who are interested in the waqf in their own right to bring a suit relating to the matter. The right of the plaintiff however as a worshipper or as a prospective shebait is not a right which is derived through the idol. It is no doubt a right which is inseparably bound up with the idol and appertains to it. It is, however, a right which springs independently of the idol. It is derived from the deed of endowment, and accrues to him by virtue of his being a descendant of the author of the waqf, and, as such, a member of his family. In such a case the right of the plaintiff is a right that is concurrent with that of the idol.

7. The question as to how far it is open to a worshipper to bring a suit of this nature has been exhaustively discussed in a Bench judgment of the Calcutta High Court reported in *Manohar Mookerjee v. Peary Mohan Mookerjee*[1], In that case the learned Judges held that on the analogy of the well-settled principle of English law the view may be maintained that it is open to the founder or his heirs to sue for the removal of the old trustee, the appointment of new one and for the proper administration of the trust and its properties. To the same effect is the view expressed in *Girish Chandra Saw v. Upendra Nath Giridas*[2],

[1]54 Ind Cas 6 : AIR 1920 Cal 210
[2]35 Cal WN 768 : AIR 1931 Cal 776

8. In *Tarit Bhusan Rai v. Sri Sri Iswar Sridhar Salagram Shila*[3], it was held by Pal J., that there are several distinct rights of suit in respect of endowed property, viz :

> 1. the idol itself, as a juristic person, has the right of suit;
> 2. the shebait, the human agency through whom the idol must act, has a distinct right, distinct from and in normal cases in supersession of the idol's right of suit; it is this right of suit which has been said to be vested in the shebait and not in the idol;
> 3. the prospective shebaits, as persons interested in the endowment, have a right of suit; and
> 4. worshipper and members of the family have their own right.

9. In the Hindu Law of Religious and Charitable Trusts by B. K. Mukherjee (Tagore Law Lectures) 1952 edition at page 263 it is stated that :

> "It cannot be denied that a worshipper or a prospective shebait has an interest of his own quite apart from that of the deity and his right to sue for the protection of the idol's property is founded on his own right to worship and the maintenance of the object of worship." At page 265 of the same book it is stated that :
> "The deity as a juristic person has undoubtedly the right to institute a suit for the protection of its interest. So long as there is a shebait in office, functioning properly the rights of the deity, as stated above, practically lie dormant and it is the shebait alone who can file suits in the interest of the deity. When, however, the shebait is negligent or is himself the guilty party against whom the deity needs relief, it is open to the worshipper or other persons interested in the endowment to file suits for the protection of the debutter."

10. In A. Ghosh's Commentary on the Law of Endowments, 1938 Edition, at page 828 the law on the point is stated as follows :

> "In case of private endowments any person who is interested in the worship of a certain idol can alone maintain a suit for declaration that certain properties are the debutter properties of his ancestral idol. Any person, interested in the endowment may sue to set aside an improper alienation of its property by the manager. An improper alienation made by the manager being in breach of trust and in exercise of his power may be set aside by suit instituted by any one interested in the endowment."

In Sastri's Treaties on Hindu Law, seventh edition, by Gopalchandra Sarkar at page 894 it is

stated that :

> "A co-shebait or one who is entitled to become the shebait after the present incumbent may set aside an alienation of the office or endowed property when illegally made. The founder or his heirs may invoke the assistance of the Court

[3]45 Cal WN 932 AIR 1942 Cal 99

> for proper administration of the debutter property. One of the heirs may even maintain such a suit."

11. The general principle as enunciated in Sir Hari Singh Gour's Hindu Code, fourth edition, para 284(1) at page 878 is as follows :

> "A suit is maintainable by a person interested in an endowment in respect of a civil right concerning it."

The commentary on this principle under the heading 'Right of Suit' as contained in para 2141, page 880 is to the following effects :

> "In the case of an endowment, whether public or private, law has prescribed a minimum safeguard that no one can sue unless he is at least 'Interested' in the endowment." Discussing the question as to what is the nature of interest necessary to enable one to sustain a suit it is stated in para 2142 at page 881 that :

The 'interest' required may be neither direct nor measurable in money, since it will suffice if it is such as the civil law would consider as sufficient. In so holding the Privy Council considered the fact that the mere fact the plaintiff was the descendant of the founder of a public charity, though in the female line was sufficient to entitle her to sue for the removal of a trustee who had been improperly appointed to manage it ..... It is not easy to define the interest that would qualify a person to maintain a suit, since the interest one possesses must differ according to the object and nature of the endowment and his own relation thereto. But the touchstone of his right is his 'interest' in the endowment; if the endowment is a private one, the founder, and his descendants, his heirs, members of the sect or order to which the endowment belongs and even the worshipper possess sufficient qualifying interest to start the suit."

12. On behalf of the respondent it has been argued that the idol alone can bring a suit and reliance in this connection has been placed on the Privy Council case reported in *Pramatha Nath Mullick v. Pradumna Kumar Mullick*[4] In this suit there was a dispute between co-shebaits of a household deity relating to the location of the deity itself. The co-shebaits were three brothers and they were to worship the deity by turns. One of the brothers brought a suit claiming declaration that during his turn of worship he had a right to remove the idol to his own house. It was held by the Privy Council that in the matter of location of the idol itself, the will of the idol

must be respected. As observed by their Lordships, the result would vitally affect its interest. They, therefore, directed that the suit should be remitted in order that the idol might appear by a disinterested next friend appointed by the court. It is to be noted that in this case the question of the physical location of the idol at a particular spot was a matter that directly concerned the idol itself, and it was, therefore, considered proper in that case to implead the idol through a disinterested next friend. In the present case there is no relief directly affecting the physical location of the idol itself. Moreover in this case their Lordships of the Privy Council have nowhere laid down that a suit relating to the management of private trust can be brought by the idol alone, and no one else. Further

[4] ILR 52 Cal 809

in the said case their Lordships of the Privy Council were dealing with the regulation of the worship of the idol and, therefore, they were of opinion that all persons interested should be impleaded. In this view of the matter, they directed that not only the idol but the female members of the family who were interested in the worship of the idol should also be impleaded. In this regard they made the following observations.

> "Their Lordships are accordingly of opinion that it would be in the interests of all concerned that the idol should appear by a disinterested next friend appointed by the court. The female members of the family should also be joined, and a scheme should be framed for the regulation of the worship of the idols."

This case cannot, therefore, be cited as an authority for the sweeping proposition that the idol alone is competent to bring a suit.

13. The next case relied on behalf of the respondent is reported in *Sharatchandra Shee v. Dwarkanath Shee*[5], In this case a suit was brought for removal of the defendant from the position of shebait of the deity. The trust was a private one. Under the deed of endowment the two plaintiffs who had brought the suit had no right to worship nor had they any interest in the trust estate. In their judgment, their Lordships stated :

> "It seems clear that the first two plaintiffs as grandsons of Dina Nath, had no interest therein, they could not even claim any prospective right of shebaitship in the private trust." Thus the first two plaintiffs having neither any right to worship nor any prospective right to shebaitship could not be said to have any interest to enable them to maintain the suit. In the present case the plaintiff possess both these rights. Under the above circumstances it was considered necessary that in order to make the suit maintainable it was necessary to implead the idol through a disinterested next friend, and the first plaintiff was appointed by the court as next friend of the idol to enable the idol to maintain the suit. This case is, therefore, distinguishable on Tacts. Further it does not warrant the proposition that worshipper or a prospective shebait cannot bring a suit in respect of a private religious trust.

14. The next argument of the learned counsel for the respondent is that at any rate, the plaintiff is not entitled to a decree for rendition of accounts, as no cause of action in his favour has accrued in respect of it. It is open to the respondent to agitate this plea in the trial court. It will be for the trial court to consider this plea, and if it so thinks, it will be open to it to refuse to award this particular relief to the plaintiff. But that cannot be a ground for dismissing the entire suit as not maintainable.

15. In the alternative, it was further argued on behalf of the respondent that the remedy of the plaintiff lay in applying to the trustees for the appointment of an assistant manager as provided in the deed of endowment. We find it difficult to give effect to this argument in view of the fact that in the present case the allegation is that

[5] ILR 58 Cal 619 : AIR 1931 Cal 558

the trustees themselves are colluding with the Manager. It will, therefore, be futile to ask the alleged guilty party itself to afford the relief. In the deed of endowment the author has made no provision as to what would happen if the trustees and the manager conspire to defraud the trust. In the absence of any provision to the contrary in the deed itself, we see no reason why the general law should not be given effect to, and the plaintiff denied the right to prosecute the suit which he is found entitled to maintain.

16. We, accordingly, set aside the judgment and decree of the court below and allow the appeal with costs. The suit is remanded to the trial court to be disposed of according to law.

Appeal allowed. .