PATNA HIGH COURT

Ramsarup Das

Vs

Rameshwar Das

A.F.O.D. Nos. 171 and 332 of 1946

(Sinha and Mahabir Prasad, JJ.)

26.09.1949

JUDGMENT

Sinha, J.

1. These two appeals by the defendants arise out of a single judgment and decree passed by the learned Additional Subordinate Judge of Monghyr, dated 21st June 1946, in a suit. for declaration of title and recovery of pos. session of the properties as shebait of the deity, Shree Lakshmi Narayan Jee. First Appeal No. 171 is on behalf of defendant 1 Ramsarup Das, and First Appeal No. 332 is on behalf of defendants 2 and 3.

2. The plaintiff alleged that there is an ancient Asthal in village Salauna in the Begusarai subdivision of Monghyr District endowed with considerable properties. The institution was founded by Mahanth Mesta Ram Bairagi Brahmachari Grihatlagi Vaishnava Sadhu of Shree Sampradaya Sect, with the help and support of the Hindus of the locality. He also alleged that the Asthal was a public charitable and religious institution for the behoof of the Hindu community; that the Asthal has large income from gifts and offerings made by the public for religious and charitable purposes; that out of the income and offerings, the mahanths successively acquired properties, and thus made accretions to the endowment; that the Asthal had thus acquired considerable properties detailed in Bch. A to the plaint; and that Mahanth Lakshmi Das, the plaintiff's guru, made considerable acquisitions for the public trust aforesaid, and erected a stone built temple on the site of the old dilapidated temple at a large cost, and, in Fhagoon 1323 Fasli, formally endowed all the properties of the Asthal by mantra sankalpa to the deity, Shree Lakshmi Narayan Jee. The properties thus became debottar properties after the endowment aforesaid. Mahanth Lakshmi Das aforesaid died in magi, 1326 Fasli, leaving him surviving three chelas, namely, Bishun Das, Bhagwat Das and Rameshwar Das. During the bhandara, that is to say, sradh ceremony, of Mananth Lakshmi Das, there arose a dispute amongst his chelas as regards succession to the shebaitship. That dispute was settled, and the deed of settlement is the ekrarnama, dated 5th February 1919, the terms of which were that the three chelas aforesaid were to succeed one another as shebait, that is to say, Bishun Das was to come first, next to him was to be Bhagwat Das, and the plaintiff was to come after him, and that, after the lapse of the life estate of those three persons a worthy bairagi of brahman descent would be selected by the gentlemen

of the locality and the sadhus of the neighbourhood. It was also agreed as a result of the settlement that those three persons would not nominate their successors. Accordingly, Bishun Das became the first mahanth and shebait, and he was recorded in the, Collector's records as shebait of the deity. Bishun Das died on 3rd march 1931, and, on his death, Bhagwat Das succeeded him as the mahanth and shebait according to the terms of the ekrarnama, and he also was recordel as shebait of the deity in the Collector's registers. Bhagwat Das died on 25th February 1935, and the plaintiff succeeded him as the shebait of the deity. The plaintiff thus became the shebait and mahanth not only as a result of the ekrarnama but also according to the custom and usage of the Asthal and the agreement of the people of the locality and the mahanths of the neighbourhood. The plaintiff also alleged that, according to the custom prevalent in the Asthal, the ablebt chela is appointed shebait by the people of the locality and the sadhus and mahanths of the neighbouring mathas, irrespective of whether he was a senior or junior chela, in case the last reigning mahanth died leaving more than one chela. The plaintiff made an application for mutation of his name in the Collector's records in substitution of the name of last mahanth, Bhagwat Das; but he was opposed by defendant 1 who was set up by designing persons as the chela of the last mahanth, Bhagwat Das. The land registration case ended in favour of defendant 1, and, on the strength of the order of the Laud Registration Courts, defendant 1 dispossessed the plaintiff from the office of the shebait on 15th December 1935 Defendants 2 and 3 were also impleaded, as some of the Asthal properties set out in Bch. B of the plaint stood recorded in their names. The plaintiff also sets out a number of litigations between the parties, which are not very material for the purposes of these appeals. The plaintiff prayed for the declaration that, according to the terms of the ekrarnama, dated 5th February 1919, the plaintiff is the mahanth and shebait of the Salauna Asthal after the death of Mahanth Bhagwat Das; that defendant 1 bad no title to the office of shebait; and that he was never appointed mahanth and shebait of the aforesaid Asthal. It was also claimed that the possession of defendant 1 as shebait of the properties appertaining to the Asthal was that of a trespasser, and that the plaintiff be put in possession of the shebaitship by dispossessing the defendant, or any other persons found to be in possession of the Asthal properties. A decree for mesne profits from the date of the institution of the suit until the date of delivery of possession was also prayed for.

3. The suit was contested by all the defendants. Defendant 1 filed a separate written statement, and defendants 2 and 3 their own. Except for the formal pleas in bar of the suit, the substantial contentions raised in the written statements were that the Asthal and its properties were not of the nature of a public and charitable trust; that the properties of the Asthal were the personal properties of the mahanths; and though it was admitted that Mahanth Lakshmi Das established a temple, and installed the deity Lakshmi Narayan Jee, it was denied that be dedicated all the movable and immovable properties appertaining to the matha or the Asthal to the deity, or that the properties thus became debottar. Defendant 1 did not admit the genuineness or the validity of the ekrarnama dated 5th February 1919, and asserted that, even if the ekrarnama was duly executed, it could not bind the defendant. He denied that the plaintiff became entitled td the shebaitship, or that he became the mahanth and shebait by virtue of the ekrarnama, or as a result of the agreement of the people of the locality and the sadhus and ahanths of the neighbouring institutions. It was also asserted that Mahanth Lakshmi Das had no legal right to declare any of the properties appertaining to the math, to be debottar; nor did he make any such declaration. This defendant claimed to be the legal successor to the mahanthship, and, in accordance with the customs and traditions of the Asthal, became the successor to Mahanth Bhagwat Das as his chela, and the mahanths and gentry of the locality, on the death of Bhagwat Das, gave kanthi and

chadar and tilak and pagri to him. He also denied the plaintiff's statement that he was not a bairagi chela of Bhagwat Das. Defendants 2 and 3 denied that the properties in Schedule B were Asthal properties, and claimed those properties as their personal properties. They also denied that they were farzidars of the math in the matter of the purchase of the property at a revenue sale.

4. The parties adduced voluminous oral and documentary evidence in support of their respective cases. The learned Subordinate Judge, who heard this case in the first instance, has written a very careful and exhaustive judgment. He has decreed the suit, with costs against defendant 1 only, holding that the plaintiff is the mahanth and shebait of the deity after the death of Bhagwat Das in accordance with the terms of the ekrarnama, dated 5th February 1919, and also in accordance with the custom of Salauna Asthal, and that the possession of defendant 1 over the Asthal and the properties was wrongful, He, therefore, decreed the suit for possession and for mesne profits to be determined subsequently. In the course of his very pains-taking judgment, the learned Subordinate Judge came to the conclusion that the properties had been dedicated by Mahanth Lakshmi Das to the deity in the year 1323 Fasli since when they ceased to be the personal properties of the mahanths, and became private trust or debottar properties that the ekrarnama was a valid and genuine transaction ; that defendant 1 was not the chela of Mahant Bhagwat Das at the time when the ekrarnama was executed; that defendant 1 was a bairagi chela of Mahanth Bhagwat Das, and the plaintiff's case that he was a grihasthi chela was not true; that the defendant had failed to prove the custom alleged by him that the Salauna Asthal is governed by the special custom of primogeniture; that the Salauna Math was a maurusi Math; that the properties in question were not the personal properties of the Mahanth as was conceded at the time of argument on behalf of the defendant; and that the plaintiff, in spite of his best efforts to take possession of the Asthal properties, could not succeed in actually taking possession of those properties, and in ousting the defendant. He also found that only Item No. 1 of Schedule B to the plaint was the property of the deity, Hence, both sets of defendants have filed their respective appeals from the decision in so far as it affects their interests.

5. During the pendency of the appeals, the successful plaintiff took out execution of the decree for possession. The appellants objected to the delivery of possession being given, and this Court, by its order dated 2nd august 1946, directed that neither party should be allowed to remain in possession of the properties of the Asthal during the pendency of the appeals, and that a third-party receiver should be appointed to take charge of the properties and to look after the worship of the deity. Defendant 1 was appointed interim receiver, and was allowed to remain in the Asthal building but not as a shebait. In the meantime, the plaintiff, Rameshwar Das, died, and an application was filed on behalf of another person, calling himself Mahanth Parmeshwar Das as a chela of the deceased Rameshwar Das, for substitution in his place. The counsel for the appellants contended that the suit had abated as a result of the death of the sole plaintiff who had sued in his personal rights. That controversy was not determined by the Bench which, by its order dated 9th may 1949, directed, with the consent of the parties, that, for the purposes of the hearing of the appeals, Parmeshwar Das might be substituted in place of the sole plaintiff-respondent without prejudice to the rights of either party to the litigation.

6. When these appeals were placed before us for hearing, Mr. Lakshmi Kant Jha on behalf of the appellant raised the contention that, on the death of the sole plaintiff-respondent, the suit itself abated, and that, therefore, the appeals need not be heard on merits, and should be decreed, with the result that the suit should stand dismissed. This Court, as already indicated has placed the

Asthal properties in charge of a receiver, pending the decision of the appeals in this Court. If the appeals were to be allowed, and the suit dismissed in limine, the result naturally would be that the defendant, who was adjudged to be a trespasser, would be restored to the possession of the property. It was argued on behalf of the substituted respondent, Parmeshwar Das, that defendant 1 had claimed personal title in the property which had been found to belong to the Asthal as debottar property. Hence, it was argued the defendant should not be placed in such a position, as a result of the decision of this Court, that he should continue the trespass on the property to the great detriment of the deity on whose behalf the shebait holds the property. It was, therefore, pointed out that the deity should be added as a party to these appeals, and the appeals heard and disposed of in his presence. Without concluding the arguments, we directed that the deity should be represented by an independent person who should not be either a party to this litigation, or of the camp of either party. The Deputy Registrar of this Court was appointed next friend of the deity, Shree Lakshmi Narayan Jee, installed in the Asthal at Salauna. The Deputy Registrar has appeared through an advocate of this Court, and we have heard the arguments as regards the maintainability of the suit and the result of the appeals in presence of the Deputy Registrar representing the deity. It was urged on behalf of the deity that defendant 1 was not a desirable person to represent the deity, inasmuch he was claiming title to the properties adverse to the deity. Hence, on the analogy of a trustee laying a claim adverse to the trust, it was argued that defendant 1 should be removed from a position in which his interests are apparently in conflict with those of the deity.

7. Ordinarily, the deity is not a necessary party to a litigation in respect of debottar property, as the shebait, for the time being, represents the interest of the deity - see in this connection the case of *Dinbandhu v. Chamiraddi*[1], relying upon the decision of their Lordships of the Judicial Committee in the case of ,*Tagadindra Nath Roy v. Hemanta Kumari Debt*[2],). Another difficulty in this case is that this is not a suit to remove a shebait on the ground that he has been acting in a way prejudicial to the interest of the debottar estate. This was a suit by the plaintiff claiming to be the rightful shebait of the debottar estate as against defendant 1 who was claiming to be the rightful owner of the property as shebait and mahanth. It may be mentioned in this connection that, though defendant 1 claimed the properties in dispute as the personal properties of the mahanth, and got an issue added namely, Issue No. 10 and a large volume of oral and documentary evidence was adduced on this question, the lawyer on behalf of defendant 1 in the Court below withdrew that plea, and unequivocally stated that he was not claiming the property as the absolute personal property of the mahanth but as property belonging to the Asthal which was of a debottar character. In this Court also, Mr. P. R. Das and Mr. Lakshmi Manta Jha, who followed him, have unequivocally taken the same position. Hence, it cannot be said now that defendant 1 was asserting an interest in the property adverse to the debottar estate. The case must, therefore, be determined on grounds other than that urged on behalf of the deity that defendant 1 should be removed from his position, because he was claiming a title adverse to that of the deity. Hence, it would appear that the deity is not a necessary party to this litigation.

8. The appellant insisted upon the preliminary question raised on his behalf, namely, that the suit had abated in the events which have happened. The argument is that the plaintiff sued on the basis of the ekrarnama of the year 1919, whereby each of the three chelas of Mahanth Lakshmi Das had agreed to take the place of the last mahanth one after the other, and that, accepting the plaintiff's reading of the ekrarnama, neither of those three mahanths could appoint any successors. If that is so, the argument proceeds, on the death of the plaintiff, the estate would go

to the person selected or elected by the gentry of the locality and the sadhus and mahanths of the neighbouring institutions. But such a person, if so elected or selected, would not come in as the legal representative of his predecessor-in-office. In other words, the contention is that the plaintiff had sued in his personal right as the shebait of the debottar estate. He is now dead, and, on his death, the suit, though it has resulted in a decree, cannot proceed. In this connection, reliance was placed on a decision of a single Judge of the Calcutta High Court, sitting on the Original Side, in the case of *Sham Chand Giri v. Bhayaram Pandey*[3], In that case the plaintiff had sued for a declaration that he had been selected to succeed as mahanth of the Tarkeshwar Shrine and for possession of the properties attached to the institution as also for an injunction to restrain the defendant from interfering or dealing with the properties of the Shrine. During the pendency of the suit, the plaintiff died, and an application was made for substitution in his place by one who claimed to be the successor-in-office to the deceased plaintiff. He also applied to amend the plaint to make the consequential changes in the pleadings. Sale, J. held that the right to sue did not survive to the applicant, and that, therefore, he could not be substituted in place of the deceased plaintiff. In the course of his judgment, his Lordship made the following pertinent observations:

> "No doubt if this had been a suit to protect the property of the idol as against a trespasser, then it would be difficult to meet the arguments addressed to me on the part of the present applicant; but that is not the character of the snit, and the real object of the applicant is to establish a rival claim to the office of mohant, which can only be done by a separate suit. I take it that whoever, is declared to be the mohant, the property which appertains to the shrine would follow that declaration. The suit is of a personal character inasmuch as its object is to establish a right to a personal office, and for that reason it appears to me that the right to sue does not survive. The result is that this suit abates."

9. This decision can be distinguished on the ground that that case had not proceeded to judgment, and there was no decree in existence in favour of the plaintiff, as in the present case. But the question is would that make a material difference to the result? Reliance was also placed on the decision of a Division Bench of the Lahore High Court in the case of *Gulzar Shah v. Sardar Ali Shah*[5], Their Lordships of the Lahore High Court held that, where succession to the office of a gaddinashin and mutwalli of a religious institution is not hereditary, but dependent on election, a person who claims to be the only disciple of the deceased appellant cannot be regarded as his legal representative for the purpose of carrying on the appeal, inasmuch as the right to such an office is a personal one, and comes to an end, on the death of the person claiming it. This case can be distinguished on the ground that it was the unsuccessful plaintiff who figured as the appellant in the High Court and who was dead. There was no decree in his favour, unlike the present case. Their Lordships followed the decision of the Calcutta High Court just referred to *Sham Chand v. Bhayaram Pandey*[5],

10. Reliance was also placed on behalf of the appellant on the decision of the Court of Appeal in the case of *Phillips v. Homfray*[6], In that case their Lordships pointed out generally the cases in which the right to sue survives. In the course of their long judgment, their Lordships have made the following observations:

> "The only cases in which, apart from questions of breach of contract, express or implied,

> a remedy for a wrongful act can be pursued against the estate of a deceased person who has done the act, appear to us to be those in which property, or the proceeds or value of property, belonging to another, have been appropriated by the deceased person and added to his own estate or moneys. In such cases, whatever the original form of action, it is in substance brought to recover property, or its proceeds or value, and by amendment could be made such in form as well as in substance. In such cases the action, though arising out of a wrongful act, does not die with the person. The property or the proceeds or value which, in the lifetime of the wrongdoer, could have been recovered from him, can be traced after his death to his assets, and recaptured by the rightful owner there. But it is not every wrongful act by which a wrongdoer indirectly benefits that falls under this head, if the benefit does not consist in the acquisition of property, or its proceeds or value."

The facts of that case were entirely different and have no resemblance to those of the present. But their Lordships have considered the application of the common law rule of actio personalis moritur cum persona. That was also a case in which a decree had been passed; but that decree had not become final, as the enquiries directed by the Court in the first instance had yet to be made, and one of the defendants died after the passing of the decree but before the enquiry had been completed. This case was cited on behalf of the appellant to meet the respondent's argument that the rule would not apply to a case where the suit had resulted in a decree. This ruling has been followed in the later case of *Chapman v. Day*[7]*,*

11. In answer to these rulings relied upon on behalf of the appellant, Mr. Lalnarayan Sinha made reference to the decision of a Full Bench of the Allahabad High Court in the case of *Muhammad Husain v. Khushalo*[8]*,* In this case a suit had been instituted by a member of a joint Hindu family for recovery of what he called his share of ancestral family property which had been sold in execution of a money decree for a debt contracted by the plaintiff's grandfather. The trial Court dismissed the suit, but, on appeal, the lower appellate Court decreed it in respect of the plaintiff's interest in the property. The defendants appealed to the High Court. During the pendency of the appeal in the High Court, the plaintiff died. The appellants got his widow substituted on the record in place of the deceased plaintiff-respondent. When the matter came before a Division Bench the appellants relied upon a previous decision of the Allahabad High Court in the case of *Padarath Singh v. Raja Ram*[9]*,* As the Division Bench was doubtful of the correctness of the ruling relied upon on behalf of the appellant, they referred the case for decision to a larger bench. The Full Bench, consisting of the Chief Justice and four other puisne Judges, agreed with the following observations of the learned Chief Justice:

> "I have always understood the law to be that in those cases in which an action would abate upon the death of the plaintiff before judgment, the action would not abate if final judgment had been obtained before the death of the plaintiff, in which case the benefit of the judgment would go to his legal representative. Whether the deceased plaintiff's representative can enforce the whole of the judgment in this case is a different matter: see *Phillips v. from fray*[10]*,*."

In my opinion, the answer to the question raised on behalf of the appellant depends upon the nature of the suit. If the plaintiff is suing to establish his right to a certain property in his own

rights and not by virtue of his office, certainly the cause of action for the suit will survive, and his legal representative can continue the suit on the death of the original plaintiff, either during the pendency of the suit or of the appeal. But, where the plaintiff's suit is primarily to establish his personal right to an office which would entitle him to possession of the property in question, on his death, either during the pendency of the suit or during the pendency of the appeal, the right to sue would not survive, and the suit will, therefore, abate. The case decided by the Full Bench of the Allahabad High Court, referred to above, related to a right of property not depending upon personal office, though in the earlier decision of the Division Bench of the same Court in *Padarath Singh v. Raja Ram*[11] their Lordships of that Court went to the length of holding that the suit by a member of a joint family for establishing his right to a property of the joint family would abate on his death. This decision is hardly consistent with the Full Bench decision of the same Court in *Muhammad Hussain v. Khushalo 9 ALL. 131,* and its correctness may well be open to doubt. But it is not necessary to consider that question, as it does not directly arise in this case.

12. The principle is well established that the substituted party can only prosecute the cause of action as originally framed in the suit, and, if it becomes necessary materially to alter the pleadings it becomes manifest that the original cause of action is being substituted for another cause of action which could very well form the subject-matter of a separate suit. In such a case, therefore, it is a new suit which has to be tried. The following observations of their Lordships of the Madras High Court in the case of *Subbaraya Mudali v. Manika Mudali*[12]*,* are relevant to the question before us:

> "The general rule is that, as the representative of a deceased plaintiff can only prosecute the cause of action as originally framed so the defendant can raise no other defence against him than he could have raised against the deceased."

13. Applying these principles to the case before us, it is to be noted that the original plaintiff had based his cause of action on the ekrarnama of 1919, which, as already observed, had enjoined upon the plaintiff not to nominate his successor. The person sought to be substituted in his place can succeed if at all, not by virtue of the fact that he is the chela of the deceased plaintiff but by virtue of the appointment by election or selection according to the custom of the Asthal. Whether the plaintiff has been so elected or selected is not a question which has been raised and decided in the suit as originally framed. The original plaintiff succeeded substantially on the ground that he was one of the three contracting parties to the document called the ekrarnama. All the three parties to the document now being dead, a number of questions now arise for decision; for example, whether the three contracting parties could validly have bound their successors against the established custom of the Asthal; whether Parmeshwar Das (who seeks to be substituted in place of the original plaintiff) or defendant 1 would be the preferential successor-in-office to the last mahanth, or whether neither of them but some third party would be the rightful shebait in respect of the debottar property. All these are questions which have not been, and could not have been, determined in the suit as originally framed. If Parmeshwar Des were to be substituted in place of the deceased plaintiff respondent, the plaint would have to be amended substantially, giving rise to the defendant's right of amendment of his pleadings. Thus, new issues would be raised necessitating a fresh trial, which, in my opinion, is not contemplated by the provisions of O.22, Civil Procedure Code.

14. But it was contended by Mr. Lalnarayan Sinha on behalf of Parmeshwar Das that, if the substitution is not made, the result would be that the property will have to go back from the hands of the receiver, who is at present managing the same, to defendant 1 who has been adjudged to be a mere trespasser. It is not correct to describe defendant 1 as a mere trespasser. He has been adjudged by the Court below to be a trespasser, as his title by virtue of his being the chela of Bhagwat Das was found to be inferior to the plaintiff's title on the basis of the ekrarnama of 1919. But if the plaintiff's title is dead with him, defendant 1, having been the person in possession, from whom the receiver had taken over, will naturally get the property back, and hold it so long as he is not ejected by a person with a better title. Mr. Lalnarayan Sinha referred to the observations of their Lordships of the Judicial Committee of the Privy Council in the case of *Subbaiya Pandaram v. Mahamed Mustapha Maracayar*[13], in support of his contention that the decision of the Court below that the possession of defendant 1 was that of a trespasser will not be res judicata in any suit to be instituted hereafter by another person claiming the debottar properties as the shebait; but certainly it would merely emphasize the fact that that possession was adverse to the debottar estate. As indicated above, there is no danger of that in the present case, inasmuch as the defendant both in the Court below and in this Court has unequivocally abjured all claim to hold the property adversely to the debottar estate.

15. It was further contended by Mr. Lalnarayan Sinha that, the receiver having already taken possession of the estate, he is holding it for the rightful owner of the property; and, as defendant 1 is not the rightful owner, if the suit were to be dismissed, it would naturally mean that the receiver would make over the property to defendant 1. Hence, he suggested that the receiver should be directed to continue in possession of the property until Parmeshwar Das, or somebody else, had established his right to the shebaitship in preference to defendant 1. But I am not aware of any procedure known to law in accordance with which this Court can ask the receiver to continue in possession indefinitely, or even for a specified period, in the expectation that a decision might be given in favour of Parmeshwar, or in favour of another person, as preferential successor-in-office to the shebaitship. The suit giving rise to these appeals will have to be determined one way or the other, and the receiver will naturally have to make over possession of the property in accordance with that decision. But Mr. Lalnarayan Sinha relied upon the Full Bench ruling of the Allahabad High Court in the case of *Muhammad Ali Khan v. Ahmad Ali Khan*[14], In that case, Braund and Waliullah, JJ. (Allsop J. dissenting) directed that the respondent should be appointed receiver and manager without security of the property of the waqf the receiver to be discharged if, within three months from the date of the order of the High Court, fresh proceedings for the removal of the mutwalli were not taken. In that case, their Lordships had agreed to allow the revisional application against the order of the District Judge removing a certain person from the position of a mutawalli and appointing another one in his place. Such a direction was proposed to be made by Braund, under the provisions of Order 40 Rule 1, Civil Procedure Code. Waliullah J. was inclined to accept that view, but, not being sure whether such an appointment could be made under Order 40, of the Code, suggested that the provisions of Section 151, Civil Procedure Code could he resorted to, in the alternative. Allsop J. pointed out, differing from his learned colleagues, that there was no proceeding pending before any Court in which a receiver could be appointed. He therefore, took the view that the High Court could only set aside the orders of the District Judge, which were ultra vires, and leave the parties to their remedies at law. It is a title difficult to appreciate the reasonings of the majority of the Full Bench appointing a receiver in respect of the property which had ceased to be the subject-matter of a litigation. But a Division Bench of this Court in the case of *Chandreshwar Prasad Narain Singh*

v. Bisheshwar Pratap[15], has clearly held that the power conferred on the Court by Order 40 Rule 1 (a), Civil Procedure Code to appoint a receiver refers only to the appointment of a receiver in respect of property in regard to which litigation is pending, that is to say, as long as the suit remains pending. In agreement with the views of this Court, it must be held that this Court has no power to direct the appointment of a receiver, or the continuance of the receiver already appointed, to hold charge of the property after these appeals are determined one way or the other.

16. It was also urged- by Mr. Lalnarayan Sinha that there is a decree for costs for a substantial sum of money against defendant 1 in favour of the deceased plaintiff, and for ejectment of defendants 2 and 3 in respect of certain property standing in their names. But, if I am right in holding that the plaintiff's suit related to his personal right as a shebait, that right is dead with the plaintiff.

17. For the reasons given above, it must be held that, on the death of the plaintiff, the suit has become infructuous, and that Parmeshwar Das cannot be substituted in place of the original plaintiff, now deceased. The appeals must, therefore, be allowed, and the judgment and decree passed by the Court below discharged. It follows that the defendants appellants have to bear their own costs in this Court and in the Court below, even as the deceased plaintiff bore his own.

Mahabir Prasad, J.

18. I agree.

Appeals allowed.

Cases Referred.

1A IR (4) 1917 cal. 441 : (31 I. C. 548)
232 cal. 129: (31 I. A. 203 (P.C.)
322 Cal. 92
412 Lah. 1: (AIR (17) 1930 Lah. 703)
522 Cal. 92
6(1883) 24 Ch. D. 439 :(52 L. J. Ch. 833)
7(1884) 49 L.T. 436
89 ALL, 131
94 ALL. 235: (1882 A.W.N. 29)
10(1883) 24 Ch. D.439: (52 L J. Ch. 833)
114 ALL 235: (1882 A.W.N. 29)
1219 mad. 345
13 50 I.A. 295 : (AIR (10) 1923 P.C. 175)
14I.L.R. (1945) ALL 818: (AIR (32) 1945 ALL 261)
155 Pat. L.J. 513: (AIR (7) 1920 Pat. 501)