

ORIGINAL CIVIL.

Before Lord-Williams J.

SHARATCHANDRA SHEE

v.

DWARKANATH SHEE.*

1930

June 20 ;
July 14.

Suit—Idol—Next friend of idol—Suit by next friend, when competent.

In the case of a private religious trust, with regard to the mismanagement of which the members of the public cannot intervene, and it cannot be expected that the *shebait* will bring a suit against himself, it is necessary and desirable that the idol should file a suit by a disinterested next friend appointed by the court.

Jagadindra Nath Roy v. Hemanta Kumari Debi (1), *Kalimata Debi v. Nagendra Nath Chukerbutty* (2), *Pramatha Nath Mullick v. Pradyumna Kumar Mullick* (3) and *Doorganath Roy v. Ram Chunder Sen* (4) referred to and discussed.

This was a suit for the removal of the defendant from the position of the *shebait* of the deity *Shree Shree Ishwar Harinarayan Lakshmi Janârdan Sâlgrâm Kulasila*, for the appointment of a new *shebait* in his place, and for other incidental reliefs. The plaintiffs alleged that the first defendant, with the connivance of his son, the second defendant, was mismanaging the *debattar* estate and allowing it to fall into disrepair and neglecting to perform the worship of the idol and misappropriating the income thereof. The defendants alleged that the plaintiffs had no cause of action, inasmuch as they had no interest in the idol or the *debattar* property and that they could not maintain the suit. The preliminary point therefore arose for adjudication, *viz.*, whether in the case of a private religious trust, with regard to the mismanagement of which the members of the public could not intervene, and there was no body left out of the members of the family who under the deed of endowment had any interest in the trust

*Original Civil Suit, No. 1892 of 1927.

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| (1) (1904) I. L. R. 32 Calc. 129 ; | (3) (1925) I. L. R. 52 Calc. 809. |
| L. R. 31 I. A. 203. | (4) (1876) I. L. R. 2 Calc. 341 ; |
| (2) (1926) 44 C. L. J. 522. | L. R. 4 I. A. 52. |

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estate and where it could not be expected that the *shebait* would bring a suit against himself with regard to the said mismanagement, the idol could file a suit by a next friend.

D. N. Sen for the plaintiffs.

N. N. Bose and *T. M. Chatterji* for the defendants.

Cur. adv. vult.

LORT-WILLIAMS J. By a deed of endowment, dated the 18th June, 1892, one Baidyanath Shee, a Hindu governed by the Bengal School of Hindu law, dedicated certain property to an idol, which he had previously established at his family dwelling-house.

By the terms of the said deed, he provided that he should be the first *shebait* and, after his death, his mother, and, after her death, his youngest brother, Dwarkanath Shee, the first defendant in the present suit, and, after his death, it was provided that the office should devolve on the eldest lineal descendant of the first defendant in the male line.

It was further provided that if any *shebait* should cause harm to the *debat̄tar* estate, then the other brothers and brothers' sons of Baidyanath Shee should be entitled to remove him and appoint another member of Baidyanath Shee's family in his place.

Baidyanath and his mother and his brothers and brothers' sons are all dead, with the exception of the first defendant and his son Kanailal Shee, the second defendant. The third defendant is the nephew of Kanailal. The first defendant is now the *shebait* under the terms of the said deed.

The first and second plaintiffs are the grandsons of Baidyanath's brother Dinanath. The third plaintiff is the idol suing by its next friend, the first plaintiff.

The plaintiffs allege that the first defendant with the connivance of his son, the second defendant, is mismanaging the *debat̄tar* estate, and allowing it to

fall into disrepair, and neglecting to perform the worship of the idol, and misappropriating the income thereof.

The defendants allege that the plaintiffs have no cause of action, that they have no interest in the idol or the *debattar* property, and that they cannot maintain the suit. They allege also that the suit is bad for non-joinder of parties, inasmuch as the widow of one of the grandsons of Dinanath is living and has not been joined.

The preliminary points, which I have been asked to decide, are whether the suit is maintainable by the plaintiffs or any of them, and whether it is necessary to add a party or parties.

This is a private religious trust and is governed by the terms of the deed.

It seems clear that the first two plaintiffs, as the grandsons of Dinanath, have no interest therein. The power of interference given by the deed extends only to the brothers and brothers' sons of Baidyanath, and the office of *shebait* devolves upon the first defendant's line to the exclusion of the lines of his brothers.

Speaking generally, the only person who can bring a suit on behalf of an idol is the *shebait*, and, although an idol is a juridical person, it cannot bring a suit on its own behalf. An idol can hold property, but the possession and management thereof with the right to sue are vested in the *shebait*. *Jagadindra Nath Roy v. Hemanta Kumari Debi* (1).

But that this statement of general principle may need qualification was recognised by Chotzner J. in the case of *Sri Sri Kalimata Debi v. Nagendra Nath Chuckerbutty* (2), where the learned judge expressed the opinion that, in the absence of refusal by the *shebait* to institute a suit for the protection of the property of the idol, neither a worshipper nor an idol

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is competent to maintain a suit, but if the *shebait* definitely declined, then perhaps the idol through its next friend could do so.

The general principle is clearly and comprehensively stated by Lord Shaw in *Pramatha Nath Mullick v. Pradyumna Kumar Mullick* (1).

That was a suit between contending *shebait*s about the location of the idol, and the Court held that the will of the idol on that question must be respected, and inasmuch as the idol was not represented otherwise than by the *shebait*s, it ought to appear by a disinterested next friend, appointed by the court.

In the circumstances of the present case, it cannot be expected that the *shebait* will bring a suit against himself charging himself with mismanagement and misappropriation of the *debattar* estate and income, upon such issues the interest of the *shebait* is adverse to that of the idol.

Being a private religious trust, no member of the public can intervene, and the founder's living relatives other than Dwarka's line are excluded by the terms of the deed itself.

In such circumstances, counsel for the defendants has contended that there is no remedy provided by law, and that the *shebait* can, if he so choose, throw the idol into the Ganges and appropriate the *debattar* property.

It may be that such a contingency might happen if all members of the family, who held any interest in the trust, agreed to put an end to it. See the remarks of Sir M. E. Smith in *Doorganath Roy v. Ram Chunder Sen* (2). But no such scheme has been attempted yet—and the trust and the idol still exist.

Meanwhile, and in the circumstances of the present case, I consider that it is necessary and desirable that the idol should appear in this suit by a disinterested next friend appointed by the Court. As I

(1) (1925) I. L. R. 52 Cal. 809.

(2) (1876) I. L. R. 2 Cal. c. 341 (347);
L. R. 4 I. A. 52 (58).

have indicated already, Sharatchandra Shee has no interest and, therefore, I appoint him as such. Leave is given to apply to add any other parties whom it may be considered necessary to add, in order that the matters in issue may be disposed of, but, in my opinion, the first and second defendants as such are not necessary parties, and their names must be struck out. Costs will be costs in the cause.

Attorney for plaintiffs : *S. K. Ganguli.*

Attorney for defendants: *M. M. Chatterjee.*

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