ORIGINAL CIVIL.

Before Ameer Ali J.

SREE SREE ISHWAR NARAYAN JIU

v.

SOLER.*

1936

Dec. 22.

Debattar—*Alienation by* shebâit—*Leave of Court—Jurisdiction.*

The Court has no jurisdiction to give directions in respect of *debattar* property to a *shebâit* or to give him leave to alienate such property on the ground of necessity.

APPLICATION in chambers.

The relevant facts and argument of counsel appear from the judgment.

P. N. Chatterjee for the applicant.

AMEER ALI J. This is an application by a *shebâit* asking for leave of this Court to sell or mortgage certain property for the purpose of effecting repairs to some of the *debattar* property.

Such orders have to my knowledge been made by this Court, and, therefore, it is only fair that I should state my reasons for refusing an order. It is better that the public should know them.

On expressing to the attorney my doubt as to there being any jurisdiction, I was told, at the time, that the application was made under the Indian Trustees Act.

I have always assumed that that Act does not apply to *debattar* property, and, in my opinion, there is no Act which enables an application to be made by *shebâits* for directions or leave to sell.

*Application in Original Suit No. 101 of 1934.

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Mr. P. N. Chatterjee has been good enough to argue the matter to-day, and he relies upon two cases, In the matter of the Petition of *Kahandá Nárrandás* (1) and In re: *Nilmoney Dey Sarkar* (2).

In the latter case no indication of the nature of the transaction is given, except for the use of the words "trustee" and "beneficiary." In the former case it would appear that the transaction was, in substance, a trust in the English form, that is to say, property vested in trustees to be applied towards certain religious purposes.

In both cases, therefore, I assume that the transaction was not one of *debattar*. There may be doubts whether under s. 3 of the Indian Trustees Act the phrase "exercised only in cases to which English law is applicable" applies to cases of trust for Hindu religious purposes. On that point *In the Matter of the Petition of Kahandás Nárrandás* (1) is not an authority to the effect that that Act applies.

It is in my opinion no authority for the proposition that applications in the case of *debattar* can be made by *shebâits*.

A *shebâit*, as Mr. Chatterjee has said, is "in the position of a trustee," but a number of authorities have pointed out that he is not in law a trustee. The property is vested in the Deity; it is the Deity's property, and the *shebâit* has to act for the Deity and no more. He is to act according to circumstances and his dealings with the Deity's property are only valid transactions in so far as they comply with certain conditions generally referred to as "necessity." That question of "necessity" I have to the best of my ability dealt with at length in *Ananta Krishna Shastri* v. *Prayag Das* (3).

In my opinion, there is no power in this Court to grant an application by a *shebâit* to sanction his transactions on the ground of necessity, *i.e.*, to grant

(1) (1880) I. L. R. 5 Bom. 154. (2) (1904) I. L. R. 32 Cal. 143.
(3) I. L. R. [1937] 1 Cal. 84.

as it were a certificate of "necessity." There is no power to adjudicate on that point before the transaction is entered into.

In the same way with *kartâs*. I know of no power in the Court to authorise a *kartâ* to enter into a transaction for necessity. That necessity either exists or not. It is for that reason that so many *kartâs* come to this Court, get themselves appointed guardians of the property of minors, and ask for leave to sell. For my part, I think that great damage is often done by that means.

I remember last year a case where a *kartâ* had got himself appointed guardian. He made an application for leave to sell on the basis of necessity, and it was only by accident that it was discovered that he had sold the six or seven other properties belonging to the estate after having been made guardian for the purpose of getting an order giving him leave to sell.

However that may be, there is jurisdiction in the case of a guardian under the Guardians and Wards Act, 1890.

In my opinion, there is no statute which deals with *debattar*, and there can be no question of the *shebâit* being appointed guardian of the properties of the Deity.

In the circumstances, I make no order on the application, notwithstanding the argument which Mr. Chatterjee has been good enough to address me.

Mr. Chatterjee has asked me, apart from the question of jurisdiction, to express the opinion that this would be a proper case for the *shebâit* to raise money. I regret that I am unable to do so.

Speaking for myself, even in cases where I have jurisdiction, it is with misgiving that I make orders, because I realise the great difficulty of this Court in dealing with applications on affidavit.

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I have often desired that there should be some means by which, before an order is made by this Court, which may ruin the estate, as often happens, a proper investigation could be made. It is one of those duties, the machinery for the exercise of which, needs attention.

That being my opinion, still less would I take it upon myself to certify necessity where I have no jurisdiction.

Application dismissed.

Attorney for applicant: *H. P. Dutt.*

P. K. D.