

*Before Mr. Justice Maclean and Mr. Justice O'Kinealy.*

BHOBOTARINI DEBI (PLAINTIFF) v. SREE RAM PAUL  
(DEFENDANT).\*

1888  
January 9,

*Practice—Plaint—Infant plaintiff—Next friend—Form of plaint—  
Title of plaint.*

A suit was brought by a minor, who appeared by her next friend, and a decree was given in her favour. The defendant appealed, making the next friend alone respondent, and had the decree of the Court of first instance modified in his favour. The next friend appealed to the High Court, where the respondent objected to the next friend being heard, on the ground that she was no party to the suit.

*Held*, that the Court would not entertain the objection at the instance of the party through whose fault the error occurred, but that the judgment of the Court below should be set aside, and that of the Court of first instance restored.

On the 9th of December 1878, the plaint in this case was filed in the Munsiff's Court at Ranaghat. The title of the plaint is as follows: "*Suttobali Debi*, minor, represented by her guardian, Bhototarini Debi of Santipur, Station Santipur, by profession zemindar, *plaintiff* v. *Sree Ram Paul*, son of the late *Ram Mohun Paul*, of Santipur, by profession a service-holder, *defendant*." The plaintiff's claim was decreed by the Court of first instance, and the defendant appealed. In the appeal the defendant dropped the name of the minor, and entered on the record as respondent the name of Bhototarini Debi. The Subordinate Judge struck off a sum of Rs. 208 from the amount decreed by the Munsiff in favour of the plaintiff, and gave a proportionate amount of costs to the respondent. From this decision Bhototarini Debi appealed to the High Court.

Baboo *Jussoda Nundun Paramanick* for the respondent objected that the appellant had no *locus standi*.

Baboo *Nil Madhub Bose* for the appellant.

\* Appeal from Appellate Decree No. 843 of 1881, against the decree of Baboo Amrito Lal Chatterjee, Subordinate Judge of Nuddea, dated the 25th February 1881, modifying the decree of Baboo Rajendro Coomar Bose, Munsiff of Ranaghat, dated the 31st March 1879.

1883  
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 v.  
 SREE RAM  
 PAUL.

The judgment of the Court (MACLEAN and O'KINEALY, JJ.) was delivered by

MACLEAN, J.—The respondent's pleader objects to our hearing this appeal on the ground that the plaintiff, appellant, Bhobotarini Debi, was not the plaintiff in the original suit, and that therefore she has no *locus standi* in this Court. It is a matter of surprise that this objection should have been raised here, because we find that the person who is now appellant before us was alone placed upon the record in the lower Appellate Court as respondent. We cannot, therefore, allow the objection to bar the hearing of this appeal. The appellant's vakeel recognizes his situation and asks us to set aside the judgment of the lower Appellate Court, which is adverse to her in saddling her with costs, on the ground that she was not liable under the Munsiff's decree and was in fact improperly made respondent in the Court below. We think there is no way out of the respondent's dilemma. Having omitted to make Suttobali Debi, the real plaintiff, respondent in the lower Appellate Court, he has lost his opportunity of questioning the Munsiff's decree in her favour. The decree of the lower Appellate Court, modifying the Munsiff's decree, is valueless and should be set aside. As the ground upon which we set aside the decree of the lower Appellate Court was not taken by the appellant before us in the memorandum of appeal, we cannot allow her any costs. The appeal is decreed without costs, the decree of the Subordinate Judge is set aside, and the decree of the Munsiff is restored.

*Appeal allowed.*