

1897
March 11.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blair.
THAKUR RAGHUNATHJI MAHARAJ (PLAINTIFF) v. SHAH LAI.
CHAND (DEPENDANT).

*Amendment of plaint—Suit brought in the name of the idol of a temple—
Amendment allowed in name of manager of temple—Practice.*

A suit relating to property alleged to belong to a temple cannot be brought in the name of the idol of the temple.

Where such a suit was so brought the Court in Second Appeal allowed the plaint to be amended, on certain conditions, by substituting the name of the person alleged to be the manager of the temple, but without prejudice to any question which might subsequently be raised as to such person's *locus standi* in the suit.

The suit out of which this appeal arose was brought really on behalf of a temple for the recovery of certain property alleged to be due under an award. The plaint was thus entitled:—"Thakur Raghunathji Maharaj seated in the temple at Ramghat, pargana Anúpsahr in the Bulandshahr district, through Salig Ram, son of Raghunath, Manager and Superintendent of the Temple." No objection was taken to this form of the plaint in the Court of first instance, and that Court (Subordinate Judge of Aligarh) gave the plaintiff a decree as claimed. On appeal by the defendant the District Judge dismissed the appeal and the suit, holding that the suit could not be brought in the name of an idol. The Judge also held that section 539 of the Code of Civil Procedure applied, and no sanction having been obtained to its institution, the suit was on that ground also unmaintainable.

The plaintiff appealed to the High Court.

Babu Jogindro Nath Chaudhuri, for the appellant.

Mr. D. N. Banerji, for the respondent.

EDGE, C. J. and BLAIR, J.—This suit, which relates to property alleged to belong to a temple, was brought in the name of the idol of the temple—"Thakur Raghunathji Maharaj, seated in the temple at Ramghat, Pargana Anúpsahr in the Bulandshahr district, through Saligram, son of Raghunath, Manager and Superintendent of the temple." The lower appellate Court

Second Appeal No. 1027 of 1894, from a decree of L. G. Evans, Esqr., District Judge of Aligarh, dated the 8th August 1894, reversing a decree of Babu Ganga Saran, Subordinate Judge of Aligarh, dated the 26th September 1893.

dismissed the suit upon two grounds—(1) that an idol cannot be a plaintiff in a suit under the Code of Civil Procedure, and (2) that section 539 of that Code applied to this case, and the requirements of that section had not been complied with.

We do not see how section 539 applies in this case at all. In our opinion the Code of Civil Procedure, which requires that there must be a plaintiff to a suit, does not contemplate an idol being made plaintiff. Difficulties might arise in enforcing the process of the Court if an idol or a god of a temple were accepted as a plaintiff in a suit.

We are willing to allow an amendment to be made, which will be, of course, without prejudice to any rights which may have been acquired by limitation, or as to any question which may arise as to the right to sue of the person who may be substituted as plaintiff by way of amendment. We only allow the amendment conditionally, the condition being that within four months from this date the costs already incurred by the defendant in this suit be paid to him, including the costs of this appeal. When these costs have been paid to the defendant, or into Court to his credit, we permit an amendment to be made making Saligram, son of Raghunath, plaintiff in the suit. We do not decide in allowing the amendment that he is the proper plaintiff or that he has any right to sue. If the costs of the defendant up to the present time be not paid within the time limited, the appeal in this Court will stand dismissed with costs. If these costs are paid within the time limited, the amendment may be made within a fortnight from the payment of the costs, and in that case the decrees of the Courts below will be set aside and the case will be remanded to the Court of first instance for trial on the merits and on any issues which may arise owing to the amendment.

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RAGHUNATH-
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v.

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