

I would dismiss this appeal with costs.

KARAMAT HUSAIN, J.—I agree.

BY THE COURT.—The appeal is dismissed with costs.

*Appeal dismissed.*

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UJAGAR  
LAL  
v.  
THE  
SECRETARY  
OF STATE  
FOR INDIA  
IN COUNCIL.

1911  
May, 30.

## FULL BENCH.

*Before Mr. Justice Banerji, Mr. Justice Karamat Husain and Mr. Justice  
Chamier.*

JODHI RAI (PLAINTIFF) v. BASDEO PRASAD AND OTHERS (DEFENDANTS).\*

*Suit against an idol—Description of defendant—Amendment of plaint—  
Limitation—Practice.*

Inasmuch as an idol is a juristic person capable of holding property, a suit respecting property in which an idol is interested is properly brought or defended in the name of the idol, although *ex necessitate rei* the proceedings in the suit must be carried on by some person who represents the idol, usually the manager of the temple in which the idol is installed. *Thakur Raghunathji Maharaj v. Shah Lal Chand* (1) overruled.

IN this case certain property was purchased in the name of an idol which was under the sarbarakarship of the defendant Basdeo Prasad. The plaintiff brought this suit for pre-emption against the idol under the sarbarakarship of Basdeo Prasad. The court of first instance (Munsif of Rasra) decreed the suit. The District Judge on appeal set aside the decree, holding that the suit was wrongly brought against the idol and should have been against the sarbarakar as such, and that the plaint could not at that stage be amended, as the amendment would involve the introduction into the suit of a third party as against whom the claim was barred by limitation. The plaintiff appealed to the High Court.

Mr. M. L. Agarwala, for the appellant :—

The suit has been dismissed on a mere technicality. The defendant raised no objection in the court of first instance which decreed the claim. The lower appellate court has dismissed it, relying on *Thakur Raghunathji Maharaj v. Shah Lal Chand* (1). The misdescription is not very material. An idol is after

\* Second Appeal No. 880 of 1910 from a decree of Sri Lal, District Judge of Ghazipur, dated the 3rd of June, 1910, reversing a decree of Manmohan Sanyal, Munsif of Rasra, dated the 28th of January, 1910.

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all a juristic person, and its position is similar to that of any other juristic person, for instance, a corporation. It is true that there is a special provision for corporations, but the case of minors is on all-fours with the present one. A minor is a juristic person, but he can sue or be sued only through a next friend or guardian *ad litem*. An idol may not be a sentient being, but it is a juristic person, even though it cannot sign any pleadings itself, just like a minor. The manager of an idol does not sue and cannot be sued in a personal capacity, but only as representing the property attached to the idol. He referred to *Manni Kasandhan v. Crooke* (1) and *Peary Mohan Mukerjee v. Narendranath Mukerjee* (2).

Munshi Govind Prasad, for the respondent :—

An idol is not a sentient being like a minor. Suit by or against corporations are specially provided for in the Code. Their case is not similar to that of an idol. The real point is to see who is the person really interested in the suit. The question is no doubt only a technical one, but it may have grave consequences.

Mr. M. L. Agarwala, in reply.

BANERJI, KARAMAT HUSAIN and CHAMIER, JJ. :—This appeal arises out of a suit for pre-emption brought by the plaintiff-appellant under the following circumstances :—

Certain property was purchased in the name of Sri Thakurji, seated in the temple, named Purandar Lal, in the town of Rasra, under the management of Basdeo Prasad. The plaintiff claims pre-emption in respect of that property and he brought the suit against the vendor and the vendee. In the plaint the vendee was described as Sri Thakurji, installed in the temple, known as Purandar Lal, in the town of Rasra, under the sarbarakarship of Basdeo Prasad. In the court of first instance no objection was raised as to the form of the suit, and on the merits the claim was decreed. Basdeo Prasad preferred an appeal and in that appeal for the first time he contended that the first defendant had been wrongly described, and by reason of this misdescription the suit must fail. This plea was upheld by the learned Judge who also refused to allow an amendment on the ground that the effect of the amendment would be to introduce another person on the

(1) (1879) I. L. R., 2 All., 296. (2) (1905) I. L. R., 32 Calc., 582, 596.

record, and the claim would therefore be time-barred. In support of his opinion the learned Judge relied on the decision of this Court in *Thakur Raghunathji Maharaj v. Shah Lal Chand* (1). In that case a Bench of this Court held that a suit relating to property alleged to belong to a temple cannot be brought in the name of the idol of the temple. The learned Judges in their judgement gave no reason for this opinion beyond the fact that there may be difficulties about realizing costs. With great respect we are unable to agree with the learned Judges. An idol has been held to be a juristic person who can hold property. Therefore, when a suit is brought in respect of property held by an idol, it is the idol who is the person bringing the suit or against whom the suit is brought, the idol being the person beneficially interested in the suit. No doubt, in every suit the party bringing it or the party against whom it is brought must, when he is suffering from an incapacity, be represented by some other person, as in the case of an infant or a lunatic. Therefore, when a suit is brought on behalf of or against an idol, there must be on the record a person who represents the idol, such as the manager of the temple in which the idol is installed. The manager of the idol is not personally interested in the suit, any more than is the next friend or guardian of a minor. As a suit by a minor should be brought in the name of the minor and not of his next friend, so should a suit on behalf of the idol be brought in the name of the idol as represented by the manager, and in a suit against the idol the defendant should be similarly described. It is true that every pleading must be signed by a sentient being; but this can be done by the manager, just in the same way as in the case of an infant the pleadings are signed by his next friend or guardian for the suit. The first defendant in this suit was, therefore, properly described in the plaint, and the view of the learned Judge in this respect is in our judgement erroneous. If there is any defect in the description of the defendants in suit of this kind, it is nothing more than an irregularity or misdescription. If, for instance, a suit on behalf of an idol is brought in the name of the manager of the idol that would not warrant the dismissal of the suit: but the plaint may be amended

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(1) (1897) I. L. R., 19 All., 380.

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by correcting the description. Similarly, in the case of a defendant. Such an amendment would not have the effect of introducing a third party on the record, and no question of limitation would, in our opinion, arise.

We accordingly allow the appeal; set aside the decree of the court below, and remand the case to that court with directions to re-admit it under its original number in the register and dispose of it according to law. Costs here and hitherto will abide the event.

*Appeal allowed.*

## APPELLATE CIVIL.

1911  
May 31.

*Before Mr. Justice Sir George Knox and Mr. Justice Figgott.*

JUGAL KISHORE (PETITIONER) v. GUR NARAIN AND OTHERS (OPPOSITE PARTIES).\*

*Act No. III of 1907 (Provincial Insolvency Act), section 46 (4)—Act No. IX of 1908 (Indian Limitation Act), sections 12 and 29—Appeal—Limitation—Time requisite for obtaining copies.*

The Provincial Insolvency Act was intended to be, and is, so far as matters governed by it are concerned, a complete code in itself and contains its own limitation law. In computing, therefore, the period of limitation prescribed for presenting an appeal under the said Act the time requisite for obtaining a copy of the order complained of cannot be excluded. *Behari Lall Mookerjee v. Mungolunath Mookerjee* (1) and *Nugentro Nath Mullick v. Mathura Mohun Pawhi* (2) referred to. *Boni Prasad Kuari v. Dulchhi Rai* (3) distinguished.

THE facts of this case were as follows:—

On the 13th of August 1909, the District Judge of Mainpuri made an order for the appointment of a receiver in certain insolvency proceedings under the Provincial Insolvency Act, 1907. An appeal against this order was filed in the High Court on 1st December, 1909, beyond 90 days from the date of the order; but the appeal would have been within time if the time requisite for obtaining a copy of the order were deducted in computing the period of 90 days.

\* First Appeal No. 135 of 1909 from an order of L. Marshall, District Judge of Mainpuri, dated the 13th of August 1909.

(1) (1879) I. L. R., 5 Calc., 110. (2) (1891) I. L. R., 18 Calc., 366.  
(3) (1901) I. L. R., 23 All., 270.