APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

SRI RADHA KRISHNA ASTHAPIT THAKURDWARA THROUGH BHAGWAN KUAR, MUSAMMAT (PLAINTIFF-APPELLANT) *v.* MAHRAJ KUNWAR, MUSAMMAT AND OTHERS (DEFENDANTS-RESPONDENTS)*

1936 *August* 4

Hindu Law—Religious endowment—Family idol—Person appointed sarbarahkaria *and managing trustee, whether entitled to recover trust property—Question of validity of her appointment, whether irrelevant.*

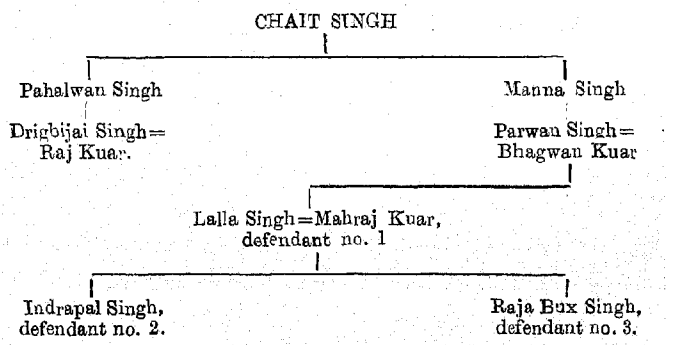
Where a person appointed as *sarbarahkaria* of the trust property has been managing the trust since her appointment, she is entitled as *de facto* manager of the trust, though the trust in question be a private trust, to bring a suit on behalf of the idol for the recovery of the trust property, and it is not necessary to see whether or not her appointment as *sarbarahkaria* was valid. *Mahadeo Prasad Singh* v. *Karia Bharti* (1), and *Gopal Datt* v. *Babu Ram* (2), applied. *Gossamee Sree Greedharreejee* v. *Rumonlolljee Gossamee* (3), relied on.

Messrs. *L. S. Misra* and *S. C. Das*, for the appellant.

Messrs. *T. N. Srivastava* and *Bhagwati Nath Srivastava*, for the respondents.

ZIAUL HASAN, J.:—This is a plaintiff's second appeal against a decree of the learned Subordinate Judge of Sitapur reversing a decree of the Munsif and dismissing the plaintiff's suit for possession of a building and a grove.

The following short pedigree is material in the case:



*Second Civil Appeal No. 320 of 1934, against the decree of Pandit Pradyumna Krishna Kaul, Subordinate Judge of Sitapur, dated the 27th of August, 1934, reversing the decree of Mr. Grish Chandra, Munsif of Sitapur, dated the 8th of March, 1934.

(1) (1935) L.R., 62, I.A., 47. (2) (1936) A.L.J.R., 515.
(3) (1889) L.R., 16 I.A., 137.

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Drigbijai Singh made a gift of all his property consisting of several villages to his wife Raj Kuar in 1880. On the 26th of January, 1916, Raj Kuar executed a deed of endowment by which she dedicated the profits of one of the villages gifted to her for the benefit of the deity installed in a *thakurdwara* built by her. In this deed it was provided that during her lifetime the executant would act as *sarbarahkaria* and would manage the endowed property and that after her death five persons namely, Suraj Prasad, Lal Bahadur, Kanhai Muqaddam, Durga Prasad and Bhola Nath would be appointed as trustees to manage the property, by Government. It appears that Lal Bahadur and Durga Prasad died in the lifetime of Raj Kuar and nobody was nominated by her in their place. Raj Kuar died towards the end of 1931 or in the beginning of 1932 and on the 8th of February, 1932, Maharaj Kuar defendant No. 1 applied to the Tahsildar to be appointed *sarbarahkaria* of the endowed property in place of Raj Kuar deceased. The village patwari also reported for the appointment of a *sarbarahkar* for the dedicated property. On the 20th of April, 1932, two of the three nominated trustees who were then living, namely, Suraj Prasad and Bhola Nath applied to the Sub-Divisional Officer to appoint Bhagwan Kuar as *sarbarahkaria* of the property and she was so appointed.

The suit from which the appeal has arisen was brought by Musammat Bhagwan Kuar as *sarbarahkaria* of the idol against Maharaj Kuar and her two sons for recovery of possession of a building called *bhandara* and a grove on the allegation that the *bhandara* and the grove appertain to the temple but that the defendants had unlawfully taken possession of them and have taken up their residence in the *bhandara* without any right. The defendants denied that any trust was created by Musammat Raj Kuar and pleaded that even if any was created, it was void and unenforceable, that she had no power to make a trust, that defendants 2 and 3 were the nearest reversioners to Drigbijai Singh, that the alleged trust

was a private trust only and that Bhagwan Kuar had no right of suit against the defendants.

The learned Munsif who tried the case decided all the issues against the defendants and decreed the suit. On appeal by the defendants the learned Subordinate Judge concurred with the findings of the trial Court on all the points except on the question of Bhagwan Kuar's right to sue on behalf of the idol. He held that Bhagwan Kuar had no *locus standi* to bring the suit which he therefore dismissed.

The sole question in the appeal therefore is whether or not Bhagwan Kuar could bring the present suit on behalf of the idol.

Ziaul Hasan, J.

It has already been pointed out that Bhagwan Kuar was appointed *sarbarahkaria* of the trust property on the recommendation of two out of the three surviving trustees and the evidence is that she has been managing the trust property since her appointment as *sarbarahkaria*. We have also seen that the defendants denied not only the validity but even the existence of the trust. In these circumstances Bhagwan Kuar as manager of the trust for the time being was perfectly entitled to bring this suit for the benefit of the idol. In the case of *Mahadeo Prasàd Singh* v. *Karia Bhati* (1), it was held that a person in actual possession of a *math* is entitled to maintain a suit to recover property appertaining to it, not for his own benefit, but for the benefit of the *math*. In that case a person who was not duly installed as *mahant* of the *math* was held to be competent to bring a suit for recovery of *math* property on the ground of his being in actual management of the *math*. A similar view was taken by the Allahabad High Court in the case of *Gopal Datt* v. *Babu Ram* (2), in which it was held that a suit can be brought in the name of the idol by a person who is the *de facto* manager of the temple. In this case a suit for rent of a house brought by a person who was managing the property of an idol was

(1) (1935) L.R., 62 I.A., 47. (2) (1936) A.L.J.R., 515.

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decreed in spite of the contention of the defendant that the plaintiff was not a *de jure* manager of the temple. In this case the ruling of their Lordships of the Judicial Committee in *Mahadeo Prasad Singh* v. *Karia Bharti* (1) was followed.

It was argued on behalf of the respondents that the principle laid down in the cases of *Mahadeo Prasad Singh* v. *Karia Bharti* (1), and *Gopal Datt* v. *Babu Ram* (2), was applicable to public trusts only, while it has been held by both the Courts below that the trust in question was a private trust. I fail to see however any difference between the two on the question as to who is entitled to sue on behalf of an idol. Mulla in his book on Hindu Law (8th edition), page 490, says:

"The distinction between public and private endowments is important, for it has been held by the Judicial Committee that where a temple is a public temple, the dedication may be such that the family itself could not put an end to it, but in the case of property dedicated to a family idol the consensus of the whole family might give the property another direction. This is regarded as one test to determine whether the endowment is private or public. It has accordingly been held that where the heirs of the founder are unable to carry on the worship of the family idol out of the income of the endowment, they may transfer the idol and its property to another family for the purpose of carrying on the worship. Such a transfer, if made without consideration and for the benefit of the idol, is valid and binding on the heirs of the transferors. *In other respects, however, there is no distinction between the two kinds of endowments.* Thus property dedicated to the services of a family idol cannot be alienated except for unavoidable necessity, nor can it be taken in execution of a personal decree against the *shebait.*"

It was contended on behalf of the respondents that there was no provision in the deed of trust for the appointment of a *sarbarahkaria* and that therefore the

(1) (1935) L.R., 62 I.A., 47. (2) (1936) A.L.J.R., 412.

appointment of Bhagwan Kuar as such by the Sub-Divisional Officer was not valid. No doubt the deed of trust does not provide for the appointment of any person other than the five trustees named therein but an answer to this argument is furnished by the cases just referred to and it seems to me that in this case it is not necessary to see whether or not Bhagwan Kuar's appointment as *sarbarahkaria* was valid. All that is sufficient is that she has been managing the trusst property for the last four years or so.

Ziaul Hasan J.

Reliance was placed by the learned Counsel for the respondents on the case of *Gossamee Sree Greedharree-jee* v. *Rumonlolljee Gossamee* (1), in which it was held that when the worship of a *thakur* has been founded, the *shebaitship* is held to be vested in the heirs of the founder in default of evidence that he has disposed of it otherwise or that there has been some usage, course of dealing or circumstances to show a different mode of devolution; but in the first place, we are not concerned in this case with the question of succession to the *shebaitship* and, in the second, the principle enunciated in this case is not applicable to the present case as there is no absence of evidence that the founder of the trust has disposed of the *shebaitship* otherwise than by conferring it on her own heirs. In fact Raj Kuar elected five strangers in preference to her own heirs.

The learned Subordinate Judge has laid great stress on the fact that the deed of *wakf* made no provision for the appointment of a *sarbarahkaria* for the dedicated property and seems to think that the effect of a decree in Bhagwan Kuar's suit would be to alter the scheme of management laid down by the founder. No such result, can however, follow in my opinion, all that is held in this case is that Bhagwan Kuar is entitled to recover the trust property as a *de facto* manager of the trust and this decision can have no effect on the question whether or not she is the *de jure* manager of the

(1) (1889) L.R., 16 I.A., 137.

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trust. The learned Judge seems to have been greatly influenced by the fact that the defendants are the legal heirs of Raj Kuar but when a scheme of management has definitely been laid down in the deed of trust excluding the legal heirs from any connection with the trust property, the fact that it is the legal heirs who are the defendants to the suit is immaterial and so far as the trust property is concerned, they are in no better position than mere trespassers.

Ziaul Hasan, J.

I am, therefore, of opinion that the appeal must succeed. It is allowed with costs, the decree of the lower appellate Court is set aside and that of the Court of first instance restored.

Appeal allowed.

REVISIONAL CRIMINAL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge and Mr. Justice Ziaul Hasan

1936
August 6

KING-EMPEROR (COMPLAINANT) *v.* AKBAR ALI (ACCUSED)*

Indian Penal Code (Act XLV of 1860), sections 304A and 279 —Accused, a motor driver, running over and killing a woman but no rashness or negligence in use of road or manner of driving, whether guilty under section 304A, I. P. C.—Inefficient brakes and absence of horn, whether ground for conviction—"Rash or negligent act" in section 304A, meaning of.

Section 279, I. P. C., shows clearly that it is the rash or negligent manner of driving or riding which can constitute an offence under that section. So where the accused, a motor driver, runs over and kills a woman but there is no rashness or negligence on the part of the driver so far as his use of the road or manner of driving is concerned, the accused cannot be convicted under section 304A, I. P. C., on the ground that the brakes of the lorry were not in perfect order and that the lorry carried no horn. The "rash or negligent act" referred to in that section means the act which is the immediate cause of death and not any act or omission

*Criminal Reference No. 24 of 1936, made by M. Masudul Hasan, District Magistrate of Rae Bareli.