

plaintiffs could not be compelled to go to any arbitration. The Resolution passed by the Managing Committee of the Association purporting to enact a rule making a reference to arbitration in such matters compulsory cannot, in my opinion, bind the plaintiffs in this case.

I am, therefore, of opinion that the order of stay should be set aside and the Court should be directed to proceed with the hearing of the suit.

Order set aside.

J. G. R.

APPELLATE CIVIL

Before Mr. Justice Fawcett and Mr. Justice Mirza.

GULABBHAI KANTHADJI (ORIGINAL PLAINTIFF), APPLICANT *v.* SOHANG-DASJI GURU MOHANDASJI (ORIGINAL DEFENDANT), OPPONENT.*

1928
February 10

Temple property—Debt incurred by Shebait—Death of Shebait—Creditor's suit for recovery of debt out of idol's property—Administration suit not appropriate.

Inasmuch as succeeding Shebait of a temple in fact form a continuing representation of the idol's property, there is no proper scope for the theory that, where a Shebait dies, a creditor, who claims to be paid out of the idol's property in respect of a debt incurred by the Shebait, can bring an administration suit on behalf of himself and all other creditors of the deceased Shebait.

Bai Meherbai v. Maganchand⁽¹⁾; *Gangaram v. Nagindas*,⁽²⁾ discussed.

Pramatha Nath Mullick v. Pradyumna Kumar Mullick,⁽³⁾ referred to.

CIVIL Revision application against the order of the Joint Subordinate Judge at Surat.

Suit to recover money.

Gulabbhai (petitioner) was a creditor of one Mohandasji who was the Mahant of a temple of

*Civil Revision Application No. 249 of 1927.

⁽¹⁾ (1904) 29 Bom. 96.

⁽²⁾ (1908) 32 Bom. 981.

⁽³⁾ (1925) L. R. 52 I. A. 245.

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Kapirpanth of Surat. Mohandasji died and the opponent Sohngdasji being his *chela* succeeded to him as his heir and manager of the temple. The deceased Mohandasji had contracted certain debts as manager of the temple and certain others for his own purposes. At his death, he held the estate of the temple and also certain properties of his private ownership.

The petitioner, Gulabbhai, filed a Civil Suit No. 934 of 1926, against the opponent in the Court of the Joint Second Class Subordinate Judge, Surat, to recover his dues which amounted to Rs. 3,113-1-0, from the property of the temple and also from those of the deceased Mohandasji.

There were other suits against the opponent, filed by some other creditors of the deceased Mohandasji, to recover their dues pending in the same Court. They were for personal debts of deceased Mohandasji.

The opponent by his application dated February 8, 1927, applied to the Court to convert the suits into one for administration and to amend the plaints accordingly.

The Subordinate Judge granted the application observing that the most equitable method to proceed with the suits was to treat all of them as if they were to administer the estate of the temple or of deceased Mohandasji, so that other creditors who wanted to come in might see their way to proceed against the estate.

The petitioner-plaintiff applied to the High Court.

Dave with *H. M. Chokshi*, for the applicant.

No appearance for the opponent.

FAWCETT, J. :—The lower Court has held that the case is one which falls within the remarks made in *Bai*

Meherbai v. Maganchand.⁽¹⁾ In that case Chandavarkar J. himself pointed out that succeeding Shebait "in fact form a continuing representation of the idol's property." There is, therefore, no proper scope for the theory that, where a Shebait dies, a creditor who claims to be paid out of the idol's property in respect of a debt incurred by such Shebait, can bring an administration suit on behalf of himself and all other creditors of the deceased Shebait.

Chandavarkar J. in *Gangaram v. Nagindas*⁽²⁾ pointed out the limitations that were applicable to those observations.

In the present case Mr. Dave for the applicant has pointed out that, so far as he seeks relief against a Hindu idol, the latter is a "juristic entity" with its interests attended to by the person who has the deity in his charge and who is, in law, its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir, as laid down in *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*.⁽³⁾ The case is not, in our opinion, a proper one to be dealt with in the manner suggested in *Bai Meherbai v. Maganchand.*⁽¹⁾ The plaintiff cannot, in our opinion, be said to be in the position of a creditor of a deceased person, because his debt is claimed from the Hindu idol that is kept in the temple, and he has in his plaint asked for relief on that footing. The Mahant defendant may, no doubt, be liable in respect of the acts of his predecessor so far as he has assets in his hands; but that mere fact does not suffice to make it a case in which the Court can properly insist upon the plaintiff not bringing a suit merely to recover his own particular debt, but

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⁽¹⁾ (1904) 29 Bom. 96.

⁽²⁾ (1908) 32 Bom. 381.

⁽³⁾ (1925) L. R. 52 I. A. 245 at p. 250.

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making it an administration suit for and on behalf of all the creditors, who might have advanced money, when the defendant's predecessor was the Mahant.

In our opinion, the Subordinate Judge has exercised jurisdiction not vested in him by law, and, therefore, we interfere in revision, set aside his order of July 17, 1927, and direct him to proceed with the trial of the suit in the ordinary way. As the respondent has not appeared, costs to be costs in the cause.

Rule made absolute.

J. G. R.

APPELLATE CIVIL

Before Mr. Justice Faucett and Mr. Justice Patkar.

1928
February 10

GYANAJI POMAJI MARWADI (ORIGINAL RESPONDENT), APPELLANT v. NINGAPPA MARBASAPPA ARLESHWAR (ORIGINAL APPELLANT), OPPONENT.*
Civil Procedure Code (Act V of 1908), Order XLVII, rule 1—Review—Subsequent legislation, no sufficient reason for review.

In the case of a decision that was right when it was made, an alteration in the law, the result of subsequent legislation, cannot be deemed to be new and important matter within the meaning of Order XLVII, rule 1, Civil Procedure Code, 1908, nor can a review be entertained in such a case on the ground that the alteration in the law constitutes "other sufficient reason" within the meaning of that rule.

Kotagihri Venkata Subbanna Rao v. Vellanki Venkatarama Rao⁽¹⁾ and *Chhajju Ram v. Neki*,⁽²⁾ relied on.

Waghela Raisangji Shivsangji v. Shaik Mastudin,⁽³⁾ relied on.

APPLICATION for review of judgment in Second Appeal No. 515 of 1925 reported in 51 Bom. 231.

Suit for specific performance.

The plaintiff alleged that the defendant agreed to sell two of his lands to plaintiff for Rs. 4,000; that Rs. 2,000 had been paid as advance for which a receipt was passed.

The defendant admitted having executed the agreement, but contended that it was passed to

*Civil Application No. 339 of 1927.

⁽¹⁾ (1900) 24 Mad. 1.

⁽²⁾ (1922) 3 Lah. 127; L. R. 49 I. A. 144.

⁽³⁾ (1888) 13 Bom. 330.