

APPELLATE CIVIL.

Before Mookerjee and Beachcroft JJ.

BHIMA ROUT

v.

DASARATHI DASS.*

1912

July 2.

Parties—Religious Endowment—Suit against the sole surviving member of the Committee and the Superintendent of a temple—Death of the sole surviving member—Substitution of the adopted son—New Committee added as party—Cause of action, abatement of—Civil Procedure Code (Act V of 1908) O. XXI, r. 20, O. XXII, r. 10, O. I r. 10.—Religious Endowments Act (XX of 1863) s. 14.

A suit, brought against the sole surviving members of the committee of management appointed under section 3 of the Religious Endowments Act 1863 and against the superintendent of a temple, for their removal from the committee and from the office of superintendent, respectively, was dismissed by the District Judge. Pending the appeal, the 1st defendant died and his adopted son was brought on the record as a party by the plaintiffs. Subsequently, a new committee was appointed and added also as a party, and the appeal was proceeded with against the adopted son, the superintendent and the new committee.

Held, that the relief against the 1st defendant was purely personal and that the cause of action did not survive against his adopted son.

Held, also, that the members of the new committee should not have been added as parties respondents.

Kashi v. Sadashiv Sakharan Shet (1) referred to.

Held, further, that the suit could not be maintained as against the 2nd defendant alone, and that the appeal, as now constituted, was incompetent.

APPEAL by Bhima Rout and Chakradhâr Panda, the plaintiffs.

On the 12th February 1904 Bhima Rout and Chakradhar Panda, who were two of the *shebaks* of a

* Appeal from Original Decree, No. 292 of 1907, against the decree of J. J. Platel, District Judge of Cuttack, dated July 8, 1907.

1912
BHIMA ROUT
v.
DASARATHI
DASS.

certain temple dedicated to the idol "Sarala" at Kutila in the district of Cuttack, filed a petition for permission to bring a suit under sections 14 and 18 of the Religious Endowments Act, 1863, against the members of the committee of management and against the superintendent of the said temple for their removal from the committee and from the office of superintendent, respectively. At the time of the filing of this application, the committee of management, which had been appointed under section 3 of the Religious Endowments Act, 1863, consisted of three members, one of whom died and another resigned after the application was filed. On the 10th January 1905, the permission prayed for was accorded, and on 31st January the same year the plaintiffs filed their plaint against Dasarathi Dass and Durga Prasad Singh, alleging, that they, the plaintiffs, were interested in the endowment of the idol "Sarala," that the said endowment was under the management of a committee appointed under the Religious Endowments Act, that the defendant No. 1, who was the sole surviving member of that committee, neglected his duties, that the defendant No. 2 claimed to be the superintendent of the said temple and has been acting as such without being formally appointed to the office and finally, that the defendant No. 2 has misappropriated the properties of the endowment, and praying, that the defendant No. 1 might be removed from the membership of the committee and the defendant No. 2 from the office of superintendent.

The defendants in their written statement denied the allegations on the merits, and defendant No. 2 further asserted that he was entitled to the office of the superintendent under a hereditary right.

On the 8th July 1907, this suit was dismissed by the District Judge. The plaintiffs, thereupon,

appealed to the High Court. During the pendency of the appeal, the defendant No. 1 died on the 28th June, 1910, and on the 2nd September, of the same year, his adopted son, Saroda Charan Das, was brought on the record. On the 24th January, 1911, a new committee was appointed under s. 7 of the Religious Endowments Act, 1863. On the 4th March, 1912, the plaintiffs having applied *ex parte* to the High Court for an order under Order XLI rule 20 of the Code of Civil Procedure, 1908, the members of the new committee were added as respondents and notice was directed to issue upon them.

1912
 BHIMA ROUT
 v.
 DASARATHI
 DASS

Babu Provash Chandra Mitra and *Babu Susil Madhab Mullick*, for the respondent Durga Prasad Singh, took a preliminary objection that this appeal had become incompetent and could not be proceeded with. The cause of action against the first defendant was entirely personal and the right to sue him did not survive against his adopted son. The suit, therefore, must abate: see Order XXII rule 1 of the Code of Civil Procedure, 1908. Furthermore, the endowment in question was under section 3 of the Religious Endowments Act, 1863, and this is evidenced by the fact that a committee was appointed to perform the duties imposed on it under section 7 of the Act. Under section 12 the property of the endowment is vested in the committee as trustee. There is a second class of endowments governed by sections 4 and 13 of the Act. Suits brought under section 14 affect both classes and, if brought against the superintendent alone, must be a suit against him in his capacity as trustee of the property vested in him under section 4. There cannot be a suit against the superintendent alone where the property is not vested in him, but in the committee as trustee. In case of an endowment where a committee has been appointed, the committee becomes the

1912

BIHMA ROUTH
v.
DASARATHI
DASS.

principal party, against whom substantial relief must be sought, the superintendent being made merely a *pro forma* defendant. The superintendent is appointed by the members of the committee and is under their control, being removable by them for misconduct, or for other good reason. This appeal, which is against the superintendent alone, must consequently fail.

Babu Ganoda Charan Sen and *Babu Ramesh Chandra Sen*, for the appellants. Under Order XLI, rule 20 of the Code of Civil Procedure, 1908, I am entitled to bring the members of the new committee as parties. As members of the committee, they are interested in the proper administration of the trust (see sections 7 and 13 of the Religious Endowments Act, 1863) and the Court may at any stage of the proceedings add them as parties. [*Per Curiam*: This is not a suit for administration of the trust.] This is a suit under section 14 of the Religious Endowments Act, which empowers any person or persons interested in the temple to proceed against the superintendent alone, even where the committee appointed under section 3 of the Act is vested with the powers of the Board of Revenue and has property transferred to it. But it is not clear from the records that the members of the committee were appointed under section 3 of the Religious Endowments Act. Section 12 does not mean that the committee is to be the trustee of the trust property. The trustee is not the Board of Revenue and no section lays this down. Section 11 clearly states that a member of a committee cannot bring a suit. The property never vested in the Board of Revenue as trustee. The powers given to the Board of Revenue by Regulation XIX, 1810, of the Bengal Code, and Regulation VII, 1817, of the Madras Code, were powers of superintendence. [*Per Curiam*: The question is,

whether section 14 authorizes a suit against the trustee where there is a committee.] Section 14 is not a bar to a suit against the trustee, where the members of the committee are brought on the record. [*Per Curiam*: You had no cause of action against them.] If the trust property is vested in the committee, then under section 14 without the committee being made a party, the suit could not be proceeded with. The mere fact of there being a committee does not bring this case under section 3, and this case must not be so regarded. Unless section 14 is an absolute bar against this suit, it must proceed in the interest of the public.

1912
BHIMA ROUT
v.
DASARATHI
DASS.

MOOKERJEE AND BEACHCROFT, JJ. This appeal is directed against the decree of dismissal in a suit commenced by the plaintiffs under section 14 of the Religious Endowments Act of 1863. The case for the plaintiffs is, that they are interested in the endowment of Sarala Thakurani at Kutila in the district of Cuttack, that the endowment was under the management of a committee appointed under the Religious Endowments Act of 1863, that the sole surviving member of that committee (the first defendant) had neglected his duties and that the second defendant, who claimed to be the *paricharak* or superintendent of the temple, though he had never been formally appointed to the office, had misappropriated the properties of the endowment. Upon these allegations the plaintiffs prayed that the first defendant might be removed from the committee and the second defendant from the office of superintendent. The suit was defended by both the defendants. The allegations on the merits were denied by both, and the second defendant further asserted, that he was entitled to the office of superintendent under a hereditary right.

1912
BHIMA ROUT
v.
DASARATHI
DASS.

Five issues were, thereupon, raised; one of which was, whether the second defendant had acquired a hereditary right to the *paricharakship* of the endowment. Another issue related to the merits of the case, namely, whether the allegations of neglect of duty and misappropriation were *bonâ fide* and true. The third raised the question, whether the plaintiffs had any cause of action specially against the first defendant. No objection was taken, however, to the frame of the suit, and it does not appear to have been urged that the second defendant was not a necessary party to the litigation. The suit was tried out on the merits and dismissed by the District Judge, on the 8th July 1907. During the pendency of the appeal by the plaintiffs in this Court, the first defendant died on the 28th June 1910. On the 2nd September following, his adopted son, Saroda Charan Das, was brought on the record. On the 24th January 1911, a new committee was appointed under section 7 of the Religious Endowments Act of 1863. Thereupon, on the 4th March 1912, the plaintiffs applied to this Court for an order under rule 20 of Order XLI to the effect that the members of the new committee might be added as defendants respondents. This application was granted *ex parte* and notice was directed to issue upon the added respondents. At the hearing of this appeal, the added respondents have not entered appearance nor has anybody appeared on behalf of the adopted son of the first defendant. But on behalf of the second defendant, a preliminary objection has been taken that, in the events which have happened, the appeal has become incompetent and ought to fail on that ground. In our opinion, this contention is well founded and must prevail.

It is clear at the outset that the adopted son of the first defendant ought not to have been brought on the

record. The first defendant was sued in his character as a member of the committee appointed under the Religious Endowments Act of 1863. The relief claimed against him was purely personal, namely, his removal for neglect of duty. This cause of action did not survive against his adopted son. It is equally plain that an order for the addition of the members of the new committee as respondents should not have been made. It is obvious that rule 20 of Order XLI has no application to this case. That rule applies only to cases, where, at the hearing of the appeal, the Court is satisfied that a person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal; the Court may, in such a contingency, adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent. An order under rule 20 can, consequently, be made only at the hearing of the appeal. Apart from this difficulty, it is plain that the person who can be made respondent under that rule is a person who was a party to the suit in the Court from whose decree the appeal has been preferred. The members of the committee who are sought to be added as respondents, were admittedly not parties to the litigation in the Court below. Consequently, the order cannot be supported under the rule to which our attention has been drawn. It has been argued, however, on behalf of the appellants that the order in question might have been made, not under rule 20 of Order XLI nor under rule 10 of Order 22, but under Order 1 rule 10 of the Code. That rule authorizes the Court, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, to order that the name of any person whose presence before the

1912

BHIMA ROUT
v.
DASARATHI
DASS

1912
 BHIMA ROUT
 v.
 DASARATHI
 DASS.

Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. No doubt, as pointed out in the case of *Kashi v. Sadashiv Sakharam Shet* (1), the Court may in the exercise of its powers under this rule bring before the Court a person who is a stranger to the litigation. But it is plain that in the case before us, an order under this rule ought not to be made, because there is no cause of action upon the plaint as framed against the members of the new committee. It is suggested, however, that their presence before the Court is necessary in order that an effective order for dismissal of the second defendant may be made. But it would be obviously unfair to the members of the new committee to bring them before the Court for such a purpose, when they have not been offered any opportunity to defend the suit. They cannot rightly be held bound by the evidence adduced at a time when they had no concern with the religious institution, of which they are now the committee under the Religious Endowments Act of 1863. We hold, accordingly, that the members of the new committee should not have been added as parties respondents and we direct that the adopted son as also the members of the committee be discharged from the record of this appeal. The appeal must proceed, if at all, as against the second defendant alone, and this raises the question whether the appeal, as now constituted, can be maintained.

On behalf of the appellants it has been argued that the appeal is maintainable, because the suit might originally have been instituted against the second defendant alone under section 14 of the Religious Endowments Act of 1863. To determine the validity of this contention, it is necessary to analyse briefly the

provisions in the preceding sections of the Statute. Sections 3 and 4 refer to two distinct classes of religious establishments. Section 3 deals with cases in which, at the time of the commencement of the Act, the mosque or temple or other religious establishment was one to which the provisions of Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817 applied, and the mosque or temple or other religious establishment was an institution in which the nomination of the trustee, manager or superintendent thereof was vested in or might be exercised by the Government or any public officer, and the nomination of such trustee, manager or superintendent was subject to the confirmation of the Government or any public officer. Section 4, on the other hand, deals with cases of religious establishments in which the nomination of the trustee, manager or superintendent did not vest in nor was exercised by or was subject to the confirmation of the Government or any public officer. In the former class of cases, covered by section 3, the course to be followed is outlined in sections 7, 8, 9, 10, 11 and 12. In the latter class of cases, covered by section 4, the duty of the trustee, manager or superintendent is defined by section 13. In the class of cases covered by section 3, provision is made for the appointment of a committee to whom the property is transferred under section 12. In the case of endowments covered by section 4, the property is transferred to the trustee, manager or superintendent by that very section itself. It is clear, therefore, upon a review of these sections, that a well-marked distinction was observed by the Legislature between two classes of cases, namely, first, the class in which the trustee, manager or superintendent was, to put it briefly, under the control of the Board of Revenue and, subsequently, under the control of the committee

1912
 BHIMA ROUṬ
 v.
 DASARATHI
 DASS.

1912

BHIMA ROUTT
v.
DASARATHI
DASS.

appointed under the Statute; and secondly, the class in which the trustee, manager or superintendent was not subject to the control of the Board of Revenue. We have now to examine the provisions of section 14 which runs as follows: "Any person or persons interested in any mosque, temple, or religious establishment, or in the performance of the worship or of the service thereof, or the trust relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court, the trustee, manager or superintendent of such mosque, temple, or religious establishment, or the member of any committee appointed under the Act, for any misfeasance, breach of trust, or neglect of duty, committed by such trustee, manager, superintendent, or member of such committee in respect of the trusts vested in, or confided to, them respectively." With reference to this provision, it has been argued on behalf of the appellants that a suit is maintainable as against the trustee, manager or superintendent even in a case when a Committee has been appointed under section 3 read with section 7. On behalf of the respondent, this position has been controverted, and it has been argued that in a case of this description the only suit maintainable is against the committee, although it may be conceded that in a suit so instituted the trustee, manager or superintendent may be joined as a *pro forma* defendant, while the substantial relief is claimed as against the committee. It has further been contended that the suit against the trustee, manager or superintendent contemplated by section 14 is a suit against a trustee, manager or superintendent to whom the property has been transferred under section 4. In our opinion, this contention is obviously well-founded. The Legislature could not have intended, that, where there is a committee which controls

the trustee, manager, or superintendent, a suit may be instituted not merely against the committee, but independently of the committee, against the trustee, manager, or superintendent, for his removal. The intention of the Legislature must have been to regulate and control the management of the endowment through the committee. If the members of the committee tolerated an unsuitable person as trustee, manager, or superintendent, such conduct on their part would amount to neglect of duty and would make them amenable to the jurisdiction of the Court. In the present case, therefore, the suit could not have been instituted against the second defendant alone. But it has been argued on behalf of the appellants that the materials on the record are not sufficient to show that the endowment is of the character mentioned in section 3 of the Religious Endowments Act of 1863. There is some force in this contention. But, as was pointed out in the case of *Ponduranga v. Nagappa* (1), the circumstance that a committee has been appointed under section 3 and the committee has worked for many years without protest or challenge, is *prima facie*, evidence that the endowment is of the character described in section 3 of the statute. We must, therefore, proceed on the assumption that the second defendant, described as the superintendent of the endowment, is under the control of the committee appointed under the provisions of section 7. He is, consequently, as has been contended by his learned vakil, removeable by them for good reason. This position is supported by a long series of decisions, amongst which may be mentioned those of *Wasik Ali Khan v. Government* (2), *Wasik Ali v. Government* (3), *Ram Charan Das v. Chutter Bhoji* (4), *Chinna Rangaiyangar*

1912
 BHIMA ROUT
 v.
 DASARATHI
 DASS.

(1) (1889) I. L. R. 12 Mad. 366. (3) (1836) 6 Mac. S. R. 130 N. E.
 (2) (1834) 5 Mac. S. R. 363, O. E. (4) (1845) 7 Mac. S. R. 205 O. E.

1912
 BHIMA ROUT
 v.
 DASARATHI
 DASS.

v. *Subbraya Mudali* (1), *Ramiengar v. Gnanasambanda Pandarasannada* (2), *Virasami Nayudu v. Subba Rani* (3) and *Seshadri Ayyangar v. Nataraja Ayyar* (4). The position might have been different if, as in the case of *Local Agents of Hooghly v. Kishnanend* (5), the defendant had been a manager entitled to hold office under a hereditary right. In such a case, a question might have arisen, whether the committee could have been appointed at all under section 3 of the Religious Endowments Act, because a trustee, manager, or superintendent of this description would not be a trustee, manager, or superintendent as contemplated in that section. For the present, at any rate, however, we must assume that the endowment is of the description mentioned in section 3, and that the second defendant is removeable for good reason by the committee which has been appointed under the Act. Consequently, the inference follows, that the suit cannot be maintained as against the second defendant alone, and that the appeal as now constituted is incompetent.

The result is, that the appeal is dismissed, but under the circumstances without costs.

O. M.

Appeal dismissed.

(1) (1867) 3 Mad. H. C. R. 334.

(3) (1882) I. L. R. 6 Mad. 54.

(2) (1867) 5 Mad. H. C. R. 53.

(4) (1897) I. L. R. 21 Mad. 179

(5) (1848) 7 Mac. S. R. 476 O. R.