

(1986) 04 PAT CK 0035
In the Patna High Court
Case No : Civil Revision No. 413 of 1985

Bidhu Shekhar Prasad Sinha		APPELLANT
	Vs	
Surendra Narain Singh and Others		RESPONDENT

Date of Decision : 01-04-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 10

Citation : (1987) PLJR 691

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Advocate : Krishna Prakash Sinha, Bishwanath Prasad Singh and Shivaji Singh, for the Appellant; J.P. Shukla and Kailash Nath Diwakar, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Jha, J.—This civil revision petition is against an order dated 20th December, 1984. One Surya Shekhar Prasad Sinha instituted a suit against the defendant-petitioner. The plaintiff was the step brother of the defendant-petitioner. The defendant-petitioner was appointed as Shebait of the deities. The allegation in the plaint was that the defendant-petitioner was not properly managing the properties of the deities. In other words, the main allegation was that the defendant-petitioner should not continue as Shebait as he was spoiling the properties of the deities. The defendant-petitioner has refuted these allegations.

2. This matter arises out of an injunction matter. The trial court refused to grant injunction to the deceased plaintiff. Surya Shekhar Prasad Singh (plaintiff) died during the pendency of the appeal in the appellate court. The lower appellate court allowed the heirs of the deceased plaintiff to prosecute the appeal before the appellate court. The lower appellate court was of opinion that the heirs could be substituted as guardians under Order 32, rule 10 of the CPC (hereinafter referred to as "the Code").

3. The points for consideration are as follows :

(1) Whether the heirs of the deceased plaintiff can be substituted for prosecuting the appeal before the lower appellate court ?

(2) Whether the heirs of the deceased plaintiff can be subsumed under Order 32 rule 10 of the Code

4. The answer must be given in the affirmative to both the questions. The heirs of the plaintiff can prosecute the case on behalf of the plaintiff. The heirs of the plaintiff will prosecute the case in order to protect the interest of the deities and the properties of the deities. It is in the public interest that the heirs should be substituted to prosecute the case on behalf of the deceased plaintiff.

5. In my opinion, the provisions of Order 32, rule 10 of the Code will apply to the present case. The suit was filed by the deceased plaintiff on behalf of the deities in order to protect the interest of the deities as well as their properties. The allegation was that the defendant, petitioner was not managing the properties of the deities properly. Therefore, such a suit can be filed on behalf of the deities. If it is so, then the provisions of Order 32, rule 10 of the Code will apply and the heirs of the deceased plaintiff can be substituted in place of the plaintiff in this case.

6. Learned Counsel for the petitioner drew my attention to the propositions propounded by Shree B.K. Mukherjee in his book. "The Hindu Law of Religious and Charitable Trust".

2nd edition, at page 249, in the following words:

(1) "An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might, therefore, be said to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol.

[See the case of Bishwanath and another v. Sri. Thakur Radha Ballabhji and others (A.I.R. 1967 Supreme Court 1044, at page 1047.)

7. On a perusal of the above-mentioned propositions, it is clear that some agency can also file a suit on behalf of the deities in order to protect the interest of the deities. In other words, a person other than a Shebait can also file a suit. In the present case, Surya Shekhar Prasad Sinha filed the suit on behalf of the deities (although the deities are not mentioned in the plaint) in order to protect their interest. Such a suit will be deemed to have been filed on behalf of the deities. If it is so, the provisions of Order 32, rule 10 of the Code will be

applicable. If the provision of Order 32, rule 10 of the Code will be applicable then the lower appellate court was justified in allowing the heirs of the deceased plaintiff to be substituted in his place in order to prosecute the appeal before the lower appellate court.

8. In my opinion, it is the discretion of the appellate court to allow or not to allow the substitution of the heirs of the deceased plaintiff-appellant. If the action of the appellate court does not touch the jurisdiction of the court, then, in my opinion, the civil revision petition itself is not maintainable in this Court. This Court, while exercising civil revisional jurisdiction, does not interfere with the discretion of the court below, unless it touches the jurisdiction of the court below. I am therefore, not interfering with the order of substitution passed by the lower appellate court.

9. Learned Counsel for the petitioner contends that the original plaintiff filed the suit, in his personal right and that right comes to an end on the death of the plaintiff. I do not accept this contention in view of the provisions of Order 32, rule 10 of the Code. In the result, the petition is dismissed, but without any costs.