
(1922) 11 AHC CK 0047
In the Allahabad High Court

Darshan Lal and Others

APPELLANT

Vs

Shibji Maharaj Birajman

RESPONDENT

Date of Decision : 15-11-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1923 All 120 : 71 Ind. Cas. 420

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an appeal against an order of remand, and the pleadings of the parties require to be carefully studied if the particular point about which the Courts below have differed is to be rightly appreciated. On the face of it, the suit is one brought by the idol, Shibji Maharaj, installed in a certain temple, suing as a juristic person, through Swami Lachhmi Nand, described as officiating priest and manager of the affairs of the temple. The persons impleaded as defendants are alleged to be wrongfully appropriating the income of the property which should be devoted to the plaintiff. It is an accident of the particular suit that one of the defendants, Musammat Pawa, is the survivor of two ladies who executed a certain deed of endowment in favour of the plaintiff idol. This deed has been read to us. We understand it to mean that the temple was in existence and the plaintiff idol installed therein before the execution of this deed. In any Case, therefore, the trust-deed about which the parties are disputing must be distinguished from all those deeds by which a temple is directed to be built, or an idol to be installed therein. On the face of it, the deed is a gift in favour of the plaintiff idol, subject to this qualification that the executants are to remain trustees and managers on behalf of the idol qua the trust property and are made responsible for seeing that the income of the property is devoted to the interests of the temple. Now, the plaintiff alleges that, after the death of one of the two executants, the survivor, Musammat Pawa, had been induced to execute another deed in derogation of the rights which accrued to the idol under the original deed

of endowment. He impleads various other defendants, on the allegation that they are concerned in the trespass committed upon the rights of the plaintiff idol under cover of the second deed executed by Musammatt Pawa. The Court of first instance framed two issues only. One of these was: Is the suit cognizable by this Court? The second was: Is the suit barred by Section 92 of the Code of Civil Procedure? So far as we can gather, the latter was the only question to which the Trial Court directed its mind, for there is nothing in the frame of the suit to suggest that it is one outside the cognizance of the Trial Court, unless it be barred by the second clause of Section 92, Civil Procedure Code. The First Court found that it was so barred and dismissed the suit alto ether. The lower Appellate Court has reversed this finding and remanded the suit for further trial upon the merits. Subject to one remark, which we shall have to make, we think the order of the lower Appellate Court was clearly right. On the wording of the trust-deed, and independently of any evidence as to what worship is actually conducted and what charities, if any, dispensed at he temple of Shibji Maharaj in question, we should hesitate to hold that the deed of endowment, which has been read to us was one-creating a trust for public purposes, whether of a charity be or of a religious nature. This, however, is a joint on which further light might perhaps be thrown by evidence hereafter to be produced.

2. Apart altogether from this question, the suit, as filed, is simply one by an idol in his juristic capacity against persons who are interfering unlawfully with his property or with his income. Such a suit has nothing to do with Section 92, Civil Procedure Code. There was, however, a question raised in the pleadings about which no specific issue was framed, but which is discussed, in an incidental manner, in the judgment of the lower Appellate Court. The defendants did undoubtedly challenge the competence of Swami Lachhmi Nand to act as the guardian or legal representative of the plaintiff idol for the purposes of this suit. All we wish to say is that there must be an issue on this point and it must be determined. The plaintiff claims, as we understand, to be entitled to represent the idol because he is the priest of the temple, independently altogether of the endowment made in favour of the idol by the original trust-deed on which the claim is based. He says also that he looks after the management of the temple, by which we presume him to mean that he conducts the worship there and dispenses such charities, if any, as are customary at this particular shrine. If this is what the plaintiff means, then this allegation does set up prima facie a ca-e entitling Swami Lachhmi Nand to bring this suit as the next friend of the idol. The fact that he is not the manager or trustee, under the particular deed of endowment which he desires to set up for the benefit of the aforesaid idol, would not prevent him from having a right to act on behalf of the idol in this litigation, if he occupied a position of manager or trustee qua the performance of those ceremonies of worship or charities for the benefit of which the trust monies were directed to be applied. It will, however, be for the Trial Court to fix an issue on this point and to determine it after evidence has been taken. There is, in the judgment of the lower Appellate Court, a suggestion that an idol, who is being

defrauded by his lawful guardian or trustee, might be treated by a Court of Law on the footing of an infant, and that any person claiming a benevolent interest in the fortunes of the said idol, would be permitted to maintain a suit in the name and as the next friend of the injured idol. We think it sufficient to say that we should not be prepared to affirm this as a correct proposition of law. It will be for Swami Lachhmi Nand to make out that he has a right to act on behalf of the plaintiff idol; otherwise the suit will fail on the mere ground that the plaintiff, considered as a juristic personality is not legally before the Court. Subject to these remarks, we dismiss this appeal. As we think that the defendants should have submitted to the order of remand on the ground on which it has proceeded, we leave them to bear the costs of this Court.