

(1916) 06 CAL CK 0036
In the Calcutta High Court

Girija Prosunno Roy and Others

APPELLANT

Vs

Becharam Patra and Others

RESPONDENT

Date of Decision : 28-06-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 92

Citation : 35 Ind. Cas. 846

Hon'ble Judges : Teunon, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal from a judgment of the learned Subordinate Judge of Hooghly, affirming the decision of the Munsif of Howrah. The learned Vakild for the appellants in conducting the appeal has taken up a considerable portion of our time and, if I may say so without disrespect, not very usefully. The cases which he has cited before us, with a view to leading us to disagree with the decision of the learned Judge of the lower Appellate Court, really have nothing to do with the matter. The decisions of this Court are clear that a suit of this nature requires the consent of the Advocate-General. There are good reasons why that should be so. Experience shows in all countries that a very large portion of public trust funds has been wasted in litigation and, therefore, it has been considered that a suit relating to a public trust should not be brought except with the consent of the Advocate General, unless the plaintiffs have a special claim or claim a special interest under and by virtue of the trust. It seems to me that the learned Judge of the lower Appellate Court rightly applied the law in this respect.

2. The second point is one which is equally unwarranted by the terms of the law; and that is that these plaintiffs, who occasionally perform the worship of the idol of the debutter property of which this land forms a portion, are entitled to sue under the provisions of Order I, Rule 8, Code of Civil Procedure, their case being that there are numerous persons having the same interest in the suit. These numerous persons, the learned Vakild for the appellants says, are the whole population of India excluding the Mohamadans, the Christians and the persons

belonging to the non-Hindu denominations. That is not what is meant by the rule at all, because the next words state that they should have the same interest in one suit. The interest that the plaintiffs have, as members of the public, being not sufficient to enable them to maintain the suit u/s 92, Code of Civil Procedure, without the consent of the Advocate-General, they cannot, by saying that they represent the whole of the Hindu population not only of British India but also of all parts of India lying outside the limits of the Indian Empire, get a sufficient interest to sue apart from Section 92.

3. There is nothing in this appeal. It is accordingly dismissed with costs.

Teunon, J.

4. I agree.