
(1928) 02 BOM CK 0011

In the Bombay High Court

Case No : Civil Application No. 249 of 1927

Gulabbhai Kanthadbhai

APPELLANT

Vs

Sohangdasji Mohandasji

RESPONDENT

Date of Decision : 10-02-1928

Acts Referred:

Citation : AIR 1928 Bom 183 : (1928) 30 BOMLR 535 : (1928) ILR (Bom) 431 : 110 Ind. Cas. 263

Hon'ble Judges : Mirza, J;Fawcett, J

Bench : Division Bench

Judgement

Fawcett, J.—The lower Court has held that the case is one which falls within the remarks made in Bai Meherbai v. Magan-chand ILR (1904) Bom. 96: 6 Bom. L.R. 853. In that case Chandavarkar J. himself pointed out that succeeding Shebaita "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.

2. Chandavarkar J. in Gangaram v. Nacjindas I.L.R.(1908) Bom. 381: 10 Bom. L.R. 519 pointed out the limitations that were applicable to those observations.

3. 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 AIR 1925 139 (Privy Council) . The case is not, in our opinion, a proper one to be dealt with in the manner suggested in Bai Meherbai v. Magan-chand. 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 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 Mabant.

4. 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.