
(1911) 05 AHC CK 0005
In the Allahabad High Court
Case No : Second Appeal No. 880 of 1910

Jodhi Rai

APPELLANT

Vs

Basdeo Prasad and Others

RESPONDENT

Date of Decision : 30-05-1911

Acts Referred:

Citation : (1911) 05 AHC CK 0005

Final Decision : Allowed

Judgement

Banerji, Karamat Husain and Chamier, JJ.—This appeal arises out of a suit for pre-emption brought by the plaintiff-appellant under the following circumstances.:-

2. Certain property was purchased in the name of Sri Thakurji, seated in the temple, named Purandar Lal, in the town of Basra, under the management of Basdeo Prasad. The plaintiff claims pre-emption in respect of that property and he brought the suit against the vendor and the vendee. In the plaint the vendee was described as Sri Thakurji, installed in the temple, known as Purandar Lal, in the town of Rasra, under the sarbarakarship of Basdeo Prasad. In the court of first instance no objection was raised as to the form of the suit, and on the merits the claim was decreed. Basdeo Prasad preferred an appeal and in that appeal for the first time he contended that the first defendant had been wrongly described, and by reason of this misdescription the suit must fail. This plea was upheld by the learned Judge who also refused to allow an amendment on the ground that the effect of the amendment would be to introduce another person on the record, and the claim would therefore be time-barred. In support of his opinion the learned Judge relied on the decision of this Court in Thakur Raghunathji Maharaj Vs. Shah Lal Chand, In that case a Bench of this Court held that a suit relating to property alleged to belong to a temple cannot be brought in the name of the idol of the temple. The learned Judges in their judgment gave no reason for this opinion beyond the fact that there may be" difficulties about realizing costs. With great respect we are unable to agree with the learned Judges. An idol has been held to be a juristic person who can hold property.

Therefore, when a suit is brought in respect of property held by an idol, it is the idol who is the person bringing the suit or against whom the suit is brought, the idol being the person beneficially interested in the suit. No doubt, in every suit the party bringing it or the party against whom it is brought must, when he is suffering from an incapacity, be represented by some other person, as in the case of an infant or a lunatic. Therefore, when a suit is brought on behalf of or against an idol, there must be on the record a person who represents the idol, such as the manager of the temple in which the idol is installed. The manager of the idol is not personally interested in the suit, any more than is the next friend or guardian of a minor. As a suit by a minor should be brought in the name of the minor and not of his next friend, so should a suit on behalf of the idol be brought in the name of the idol as represented by the manager, and in a suit against the idol the defendant should be similarly described. It is true that every pleading must be signed by a sentient being; but this can be done by the manager, just in the same way as in the case of an infant the pleadings are signed by his next friend or guardian for the suit. The first defendant in this suit was, therefore, properly described in the plaint, and the view of the learned Judge in this respect is in our judgment erroneous. If there is any defect in the description of the defendants in suit of this kind, it is nothing more than an irregularity or misdescription. If, for instance, a suit on behalf of an idol is brought in the name of the manager of the idol that would not warrant the dismissal of the suit: but the plaint may be amended by correcting the description. Similarly, in the case of a defendant. Such an amendment would not have the effect of introducing a third party on the record, and no question of limitation would, in our opinion, arise.

3. We accordingly allow the appeal; set aside the decree of the court below, and remand the case to that court with directions to re-admit it under its original number in the register and dispose of it according to law. Costs here and hitherto will abide the event.