

(1899) 01 CAL CK 0020

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1427 of 1897

Kashi Chandra Chucker-Butty

APPELLANT

Vs

Kailash Chandra Bando Padhya, Who Appeared and Prasanna
Chandra Chattopadhyaya and Loha Ram Mukhopadhyaya alias
Lokenath Mukhopadhyaya, who did not appear in this appeal

RESPONDENT

Date of Decision : 18-01-1899

Acts Referred:

Citation : (1899) 01 CAL CK 0020

Judgement

1. This appeal arises out of a suit for wasilut in respect of a certain turn of worship and of certain land. The suit was brought against three persons. Their defence was shortly a denial of liability. The Court of first instance decreed the suit against Defendants Nos. 1 and 3 for a certain amount, and dismissed the suit as against Defendant No. 2. Thereupon, Defendant No. 3 preferred an appeal, and, on the appeal of that Defendant, the whole suit has been dismissed by the lower Appellate Court, on the ground that no suit for wasilut could lie in respect of profits derived from a turn of worship.

2. In second appeal it is contended on behalf of Plaintiff-Appellant, first, that the lower Appellate Court is wrong in holding that no suit for wasilut, in respect of profits derived from a turn of worship, could lie; and, secondly, that the lower Appellate Court is wrong in dismissing the whole suit when a part of the claim was for wasilut in respect of land.

3. We are of opinion that the first contention of the Appellant is untenable. It has been found, and it is practically undisputed, that the offerings to the idol which constituted the profits of the shebait during his turn of worship, are, in their nature, uncertain and voluntary.

4. That being so, it cannot be said that the Plaintiff is entitled to recover from the Defendants that which they have received out of the offerings made by votaries during the time that the worship was performed by them even if the Plaintiff was the person entitled to perform the worship during that time. In so far as the

offerings were intended for the idol, the Plaintiff can have no personal claim to them; and in so far as they were intended for the shebait of the idol, they being in their nature voluntary, must be taken to have been intended for the person who was then performing the worship, whether rightfully or wrongfully, as against any other person who had a better title to perform the worship during the same time.

5. Upon neither view can the Plaintiff claim to recover the amount.

6. It has been argued that if the Plaintiff's right to perform the worship during his proper turn had not been interfered with by the Defendant, he would have made some profit. But what the amount of that profit would have been is wholly uncertain, and there is no knowing whether any votaries would have paid anything if they knew that it would go to the Plaintiff and not to the Defendant who was then actually performing the duties of a shebait.

7. The view we take is in accordance with the decision of this Court in the case of *Ramessur Mookerjee v. Ishan Chunder Mookerjee* 10 W. R. 457 (1868).

8. The second contention of the Appellant is one on which he is entitled to succeed. The plaint shows that the suit was for wasilut in respect not only of a turn of worship but also of certain land; and so far as the latter claim goes, it is not disputed that the suit is maintainable.

9. The learned vakil for Defendant No. 3 asks us to absolve his client from liability on the ground that Defendant No. 3 did not interfere with the possession of the Plaintiff. Whether that is so or not is a question of fact which will have to be determined by the lower Appellate Court.

10. The result is that the decree of the lower Appellate Court must be set aside and the case sent back to that Court in order that it may dispose of the appeal after determining the question, what is the amount the Plaintiff is entitled to recover as mesne profits on account of his having been kept out of possession of the land referred to in the plaint, and against which of the Defendants. Other questions arising in the case will also have to be dealt with by the lower Appellate Court. The costs of this appeal will abide the result, and will be awarded in proportion to the success and failure of the parties in the lower Appellate Court.