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**(1945) 09 AHC CK 0022**  
**In the Allahabad High Court**

Ram Charan Lal and Another

APPELLANT

Vs

Sri Narsinghji Mahraj and Others

RESPONDENT

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**Date of Decision :** 26-09-1945

**Acts Referred:**

**Citation :** AIR 1946 All 254

**Hon'ble Judges :** Verma, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Verma, J.—This is an appeal by the defendants against an order of remand passed by the lower appellate Court. Plaintiff 1 in the suit was an idol, Sri Narsinghji Maharaj, through one B. Shri Narain Vaish, described as managing trustee of the temple in which the idol is installed and of the property attaching to it. There were five other plaintiffs who purported to join the idol in bringing the suit on the ground that they were the members of a Board of Trust appointed by the District Judge under a decree passed in Suit No. 1 of 1934 which had been brought by certain person u/s 92, Civil P.C. The suit was for the recovery of a sum of Rs. 3755-10-3 from the assets of one Lala Janki Prasad deceased which had come into the possession of the defendants on the-death of Janki Prasad. One of the pleas raised by the defendants was that the suit was barred by the provisions of Order 22, Rule 9, Civil P.C. That plea found favour with the Court of first instance and the suit was accordingly dismissed by that Court. The plaintiffs appealed and the lower appellate Court, differing from the first Court, allowed the appeal and remanded the suit for trial on the merits.

2. The material facts may be stated thus. One Dwarka Prasad erected a temple in Budaun in the year 1904 and installed plaintiff in that temple. He also dedicated certain property to the idol. He appointed himself as the first manager or mutwalli or trustee. His daughter, Mt. Gomti, was to be the second trustee. On the death of Mt. Gomti, five men were to be the trustees. Two of them died during the lifetime of Dwarka Prasad. On the death of Mt. Gomti the trustees who

were alive were Janki Prasad, Govind Prasad and Har Narain. Har Narain was a resident of Cawnpore and took no interest in the affairs of the temple. Of the remaining two, Janki Prasad became the managing trustee or mutwalli. In the year 1934 two men, Govind Prasad one of the three trustees and one Mata Din obtained the consent of the Advocate-General for the institution of a suit u/s 92, Civil P.C., and instituted Suit No. 1 of 1934 in the Court of the District Judge. They impleaded Janki Prasad and Har Narain as defendants. Among the reliefs claimed in that suit was one praying that Janki Prasad "be ordered to render all the accounts of the income of the waqf properties... and be ordered to pay the amount that is found due from him on taking accounts, which sum is at present provisionally fixed at Rs. 2500." Janki Prasad died during the pendency of that suit and no attempt was made to bring any one on the record as his-legal representative. It may be mentioned here that one of the two plaintiffs, viz., Govind Prasad, also died during the pendency of the suit and no one was substituted for him either. The result was that the suit was continued by Mata Din alone against Har Narain alone. A decree was passed in that suit removing Har Narain from the post of trustee and appointing a Board of Trust and settling a scheme for the future-management of the Trust. The relief for1 rendition of accounts and for the recovery of any sum that might be found due on the accounts being taken fell to the ground as no such relief had been claimed against Har Narain and the only person against whom that relief had been claimed, namely, Janki Prasad, had died. The present suit, as has already been stated, has been brought by the idol and the members of the Board of Trust for the recovery of an ascertained sum from the assets of Janki Prasad in the hands of the defendants.

3. The lower appellate Court agreed with the trial Court in the view that the plain, tiffs of suit No. 1 of 1934 could have successfully applied for the substitution of the legal representatives of Janki Prasad in that suit. It allowed the appeal of the plaintiffs, however, on the ground that the person who is barred by Order 22, Rule 9(1) from bringing a fresh suit is the person who was the plaintiff in the previous suit and that the present plaintiffs cannot in any sense be deemed to be the same as the plaintiffs who had instituted Suit No. 1 of 1934. Dr. Asthana, for the defendants appellants, has contended that the present suit should be deemed to-have been brought by the same plaintiffs as had brought the suit of 1934 because a suit u/s 92 is a representative suit brought on behalf of the entire body of persons having an interest in the Trust. His contention is that the present plaintiffs 2 to 6 belonged to the group of persons who were so interested and are, therefore, bound by whatever happened in the previous suit. His further argument is that that suit must be deemed to have been for the benefit of the idol also and that, therefore, plaintiff 1 of the present suit, viz., the idol, is also bound by the acts and omissions of the plaintiffs of that suit. We have come to the conclusion that the arguments which have been addressed to us on behalf of the appellants cannot be accepted. The deed by which the endowment by trust in question was created is not on the record and we are not,

therefore, in a position, to know definitely whether the property vested in the idol or in the trustees. At the same time, it may be pointed out that it was stated in para. 1 of the present suit that plaintiff 1, the idol, was the owner of the endowed property and that the contents of that paragraph were admitted in the written statement. But in any event, the property vested either in the idol or in those who lawfully became the trustees from time to time. Suit No. 1 of 1934 was, according to the argument of Dr. Asthana himself, on behalf of those members of the public who had an interest in the trust. It was not on behalf of the idol. The ultimate result of a suit of that type might be to the advantage of the idol in the sense that its affairs would in future be administered properly, but it is difficult to see how the suit can be taken to have been brought by the idol itself. Even though the object of a suit instituted in accordance with the provisions of Section 92, Civil P.C., is to benefit the trust, inasmuch as the affairs of the trust are expected to be better administered as a result of the decree passed in it, the suit cannot be said to be instituted by or on behalf of the trust or in the name of cestui que trust. We are unable, therefore, to accept the argument that the idol must be taken to have been a party to suit No. 1 of 1934. We are also unable to accept the contention that the remaining plaintiffs of the present suit, namely, the present members of the Board of Trust which came into existence as the result of the scheme settled by the District Judge when he decided Suit No. 1 of 1934, are bound by what happened in Suit No. 1 of 1934. As has been indicated above, the suit of 1934 was not brought by the then trustees. It is hardly necessary to point out that Govind Prasad was a plaintiff in that suit, not in his capacity as one of the trustees, but as one of the members of the public, who, along with another member of the public, Mata Din, obtained the consent of the Advocate-General for the institution of the suit. Even he died during the pendency of the suit and no one was substituted for him. The present plaintiffs 2 to 6 have joined the idol in bringing this suit as members of the Board of Trust appointed by the District Judge upon the termination of suit No. 1 of 1981. They are plaintiffs in the present suit in a capacity which is entirely different from that of the plaintiffs in Suit No. 1 of 1984. In our opinion there is nothing in the law which can bar the idol or the present trustees from bringing this action on the ground that the plaintiffs of the suit u/s 92 failed to substitute the legal representatives of Janki Prasad.

4. We must not be taken to affirm the view of the Courts below that the plaintiffs in the suit u/s 92 - Suit No. 1 of 1934 - could have, or should have, applied for the substitution of the legal representatives of Janki Prasad. In view of the conclusion at which we have arrived, in agreement with the lower appellate Court, as stated above, we do not think it necessary to consider this question. Mr. Baleshwari Prasad, for the respondents, has also urged that Order 22, Rule 9(1) is not applicable on the further ground that the cause of action for the present suit is different from the cause of action on which the relief for rendition of accounts and recovery of whatever was found due on the accounts being taken was based. We do not consider it necessary to express any opinion on this

question also. For the foregoing reasons we dismiss the appeal with costs.