

(1941) 03 CAL CK 0002

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 269 of 1937

Sree Sree Iswar Lakshi Durga Har Tatneswar and Others

APPELLANT

Vs

Surendra Nath Sarkar and Others

RESPONDENT

Date of Decision : 19-03-1941

Acts Referred:

Citation : (1941) 03 CAL CK 0002

Judgement

Mukherjea, J.—The facts giving rise to this appeal may be shortly stated as follows:

One Hara Chandra Kundu, a resident of Beliaghata, in the Suburbs of Calcutta, owned a property known as Kundu Bagan which is described in Schedule ka to the plaint. The property comprises two plots of land:-- one, which is now premises No. 7, Rakhal Ghose Lane, has an area of 9 bighas 13 cottahs and odd, while the other, which is situated in, and constitutes premises No. 61, Rakhal Ghose Lane, measures about 6 bighas 6 cottahs and odd. On the bigger plot, there are two temples with an attached bhog-ghar and one brick-built house which is used for residential purposes.

On December 3rd, 1883, Hara Chandra Kundu executed an arpannama in respect of this entire property and dedicated it to deities Sri Lakshmi, Durga Ratneswar Shiba and others. He constituted himself the first shebait under the arpdnna, and it was provided in the deed, that after his death, his two wives Kailasmoni and Durgamoni would become joint shebait, and in the event of the death of one, the rights would pass to the other by survivorship; and after the death of both the widows, the shebaitship would devolve upon Shibdas, an adopted son of Hara Chandra. Hara Chandra acted as shebait during his life-time, and after his death both of his widows became joint shebait in accordance with the terms of the arpannama. Durgamoni, the second wife of Hara Chandra, and Shibdas, the adopted son, both died during the life-time of Kailashmoni who remained the sole shebait till her death on July 7th, 1910.

2. About three years before her death, Kailashmoni executed a deed of

appointment by which she appointed her two brother's sons Kanai and Bolai, shebait in respect of the said endowment after her death. On the strength of this document, the two brother's sons of Kailashmoni took possession of the debutter properties and the temples and went on possessing the same after the death of Kailashmoni.

3. It is not disputed that after the death of Kailashmoni, the shebaitship devolved, in law, upon four persons, namely, Narayandas, Narayanpada, Haripada and Jugalkishore who were the grandsons of Abhoy Charan Kundu, a paternal grand-uncle of Hara Chandra, by his first son Rajyeswar. Narayan Das died on January 12th, 1926. Narayanpada is also dead, and his wife Nayanmanjuri is Defendant No. 6 in this suit. Haripada and Jugal Kishore are both alive and they are Defendants Nos. 4 and 5 respectively.

4. The Plaintiff Shailendra is the son of another grandson of Abhoy by his second son Beni Madhab. His father died during the life-time of Kailashmoni. The relationship between the persons, and between them and the founder Hara Chandra, would be clear from the pedigree that is set out in the judgments of both the Courts below.

5. Narayan Das and his three brothers were all out of possession of the debutter estate when Kailashmoni died, and the Idols and their properties were all in the possession of Kanai and Bolai and certain tenants of theirs. The de jure shebait was too poor to start a litigation with these powerful opponents, and they were on the look-out for somebody who could financially assist them in this matter. Such financiers they found in the Sarkars who are Defendants Nos. 1 to 3 in this suit.

6. On September 13th, 1919, Narayan Das executed a patta in respect of the entire ka Schedule properties in favour of Defendants Nos. 1 to 3, by which he granted a lease of the said properties to the latter for a period of 10 years. The document recited that Narayandas was the sole shebait of the deities, his two brothers Narayan Pada and Jugal Kishore having relinquished their rights in his favour, and that it was necessary to grant the lease inasmuch as there was no money with which he could carry on litigation with Bolai and Kanai or conduct the worship of the Idols. The rent reserved was Rs. 50 a month and a sum of Rs. 1,000 was taken as selami, it being stated in the deed that this money was taken for repairs of the temple. The lessees were not to pay any rent till they got possession of the properties, and, after the properties were recovered, the rents were to be appropriated by the lessees towards the costs of litigation, incurred by them, less what was necessary to pay the Government revenue and the expenses of the daily sheba of the Idols. If the entire costs of litigation were not satisfied within the period of 10 years, the lessor undertook to grant a fresh lease on the expiry of the term at the same rental and without a fresh selami.

7. It is to be noted here that Narayan Das purported to grant the lease as a sole shebait, although his three brothers who were co-shebait were living at that

time. One of them, Haripada, was not mentioned in the lease at all, while the other two were said to have renounced their rights in favour of Narayan Das. There was, however, a clause at the end of the document which ran as follows:

Be it farther known that if it transpires that my brothers or any other cosharers have any right in the said properties and if they make any claim and if they be rightful claimants and any rent is payable to them for thakurseba, then you shall pay the same out of the said monthly rent of Bs. 50/-.

8. Before two months had expired from the date of this lease, another lease was granted to Defendants Nos. 1 to 3 on December 8th, 1919, by Hari Pada and Jugal Kishore, two out of the three brothers of Narayan Das in respect of the same property. The lessors purported to grant the lease in respect of their two-thirds share of the ka Schedule lands which they were alleged to hold as shebait. The lease was for a period of 95 years at a rent of Rs. 30 per month and a sum of Rs. 4,000 was taken as selami. There were the same recitals of legal necessity as in the first lease, and it was expressly stated that if the lessees failed to get possession of the properties amicably, they might institute civil and criminal cases against these rightless persons who were in possession of the same, and the entire expense of such litigation would be borne by the lessees.

9. The third lease in favour of the selfsame Defendants was executed on August 6th, 1921, and the lessor was Nayan Manjuri, widow of Narayan Pada, the remaining shebait who was dead at that time. She purported to lease her one-fourth share in the debutter property to Defendants Nos. 1 to 3 for a period of 99 years, the consideration being a selami of Rs. 900 and a yearly rental of Rs. 10.

10. The last lease to which the present suit relates was granted on March 22nd, 1922, on behalf of the present Plaintiff by his guardian mother Rani Bala. It was stated in the patta that the Plaintiff Shailendra was also a shebait, but he had been ignored in the previous documents; and whatever interest the Plaintiff had, as shebait, in the ka Schedule properties, was let out to Defendants Nos. 1 to 3 for a period of 99 years. The selami was Rs. 800 and the rent reserved was Rs. 50 a year.

11. It appears that after these leases were granted, the Defendants Nos. 1 to 3 together with their lessors, including the present Plaintiff, brought a suit (being Title Suit No. 68 of 1922) for recovery of possession of the properties including the temples, from the hands of Kanai and Bolai and their tenants.

12. The suit was decreed by the trial Court in favour of the Kundus alone Against that there was an appeal taken to this Court by the lessees, and this Court held that, as the lessors had admitted that the Defendants Nos. 1 to 3 were their tenants, the decree would be in favour of the lessees as well. This decree was made on December 7th, 1927.

13. In execution of the decree for costs obtained against the Kundus, the Defendants Nos. 1 to 3 put up to sale and purchased whatever interest the

Kundus had in the debutter estate.

14. The Plaintiff Shailendra has now instituted the present suit as presumptive shebait of the deities, and he seeks to recover possession of all the debutter properties on the allegation that the four leases mentioned aforesaid were fraudulent and inoperative and were not binding on the deities, who were not, in any way, benefited by them. He further prayed for removal of Defendants Nos. 4 to 6 as shebait of the deities on the ground that by their conduct, they had forfeited their rights.

15. The ka Schedule properties constitute, as I have said above, the immovable properties of the idols comprising the temples and the residence of the shebait, while the ornaments and utensils meant for the personal use of the deities are enumerated in Schedule kha.

16. The suit was contested by Defendants Nos. 1 to 3, the Sarkars only. Their defence, in substance, was that the four leases were for legal necessity and binding on the deities. It was contended further that the Plaintiff had no right to sue and the suit was barred under the principles of estoppel and res judicata.

17. The Defendants Nos. 4 to 6 sided with the Plaintiff, and in the joint written statement filed by them, they practically admitted all the allegations made in the plaint.

18. The trial Court decreed the suit in part. The Plaintiff was held to be the sole shebait of the deities on removal of Defendants Nos. 4 to 6 who were declared to have forfeited their rights as shebait. The learned Munsif found that out of the four leases, the first had already expired and the fourth was altogether void, it being granted by the guardian of the present Plaintiff who was not a shebait at the time when the lease was executed. The other leases were found to be for legal necessity and were held binding on the deities to the extent of 12 annas share that the lessees had as shebait in the debutter property. The result was that with regard to ka Schedule properties, with the exception of the temple and its appurtenances, the Plaintiff was given a decree for khas possession to the extent of 4 annas only. His claim for khas possession was allowed in full with regard to the temple and also the movables described in Schedule kha.

19. There was an appeal taken against this decision by the Plaintiff to the Court of the District Judge at Alipore, and Defendants Nos. 1 to 3 preferred cross-objections. The lower Appellate Court dismissed both the appeal and the cross-objections and affirmed the decree of the trial Court.

20. It is against this decision that the present second appeal has been preferred by the Plaintiff, and there have been cross-objections filed by Defendants Nos. 1 to 3 also.

21. Mr. Gupta who appears in support of the appeal has raised three points for our consideration.

22. He has argued, in the first place, that the Courts below were wrong in holding that the two leases were for legal necessity and were binding on the deities. The second point raised is that whether or not there was any legal necessity to support the transactions, there could not be, in law, a transfer by some of the shebait of what was stated to be their specific shares in the idols' properties. Thirdly, it is contended that the leases were void ab initio inasmuch as the lessors did not only transfer the properties of the deities but transferred the temples and the idols also, along* with their rights and duties as shebait.

23. The last point was not considered by the Courts below, and this Court by a previous order remitted the case to the lower Appellate Court for a finding on that point. The finding of the learned Additional District Judge is now before us and the whole appeal has been argued by the learned Advocates on both sides.

24. On the first point, Mr. Gupta concedes that as the temple and the properties of the deities were in possession of trespassers, it might have been necessary for the shebait, who were in need of funds, to raise money by transfer of a portion of the debotter estate. He argues, however, that though legal necessity did, as a matter of fact, exist, the transactions themselves were not for legal necessity. In support of his contention, he has placed reliance upon the recitals in the two documents. In the patta executed by Haripada and Jugal Kishore in respect of their alleged two-thirds share of the debotter estate the recitals were as follows:

Several rightless persons without any right have been appropriating the said properties at pleasure and depriving us, the real shebait: they are applying the debotter properties of the said Sri Iswar Thakurs for their own purposes, and nothing is being done, for carrying on the work of deb-sheba and the repairs of the temples. It is our bounden duty to rescue the said properties from the clutches of the said rightless persons. *** But we have no such means as to be able to remove the said rightless persons with the aid of the Court and recover possession of the properties on behalf of the gods and for this reason we notified that we would grant ijara settlement of the properties with the object that the works of deb-sheba and occasional ceremonies et cetera might be carried on with the income of the said Debotter properties, *** and the said debotter properties might be rescued with the aid of the Court. * * * And you having agreed to pay a lump sum of Rs. 4000/- as selami and a rent of Rs. 30/- per month for the same, we on receipt this day from you of Rs. 4000/- on account of the selami grant ijara to you for the period of 95 years from Asar, 1325 B.S. to Jaistha, 1422 B.S. *** And being entitled in our right you shall amicably take over possession of the properties. If you do not get possession amicably, then you shall take possession thereof with the aid of Civil or Criminal Court at your own expense. *** We shall not be liable for the costs.

25. Mr. Gupta points out that though the shebait were in need of funds to carry on litigation with Kanai and Bolai, yet the selami amounting to Rs. 4,000 was not taken for that purpose at all. This sum was taken for the personal use of the shebait and not for the benefit of the deities, as the subsequent clause in the

document shows, the litigation expenses were to be borne entirely by the lessees and the lessors had no concern with them. It is further argued that there could not be any justification for granting, what really amounted to a permanent lease of the debotter estate, at a fixed rental of Rs. 30 per month, and the deities could not possibly be benefited by the transactions.

26. Under the third lease, which was granted by Nayan Manjuri she received a selami of Rs. 900 though the express recital in the deed was, that all expenses of carrying on the suit relating to the debotter properties and the temples would have to be borne by the lessees.

27. On the face of it, the contention of Mr. Gupta appears to be of great force, and Dr. Basak appearing for the Respondents has frankly conceded that if we are to regard the selami and the rents mentioned in the two leases as the only considerations for the transfers, the transfers would not be binding on the deities. He contends, however, that quite apart from the selami and the rental, there was a very large and substantial consideration for the transactions and that was the undertaking given by the lessees that they would carry on the litigation for the recovery of the temple and the properties at their own expense.

28. The pattas did not indeed contain any express undertaking of that sort, but as the properties were admittedly in possession of strangers and the lessees would have no means of enjoying them unless they succeeded in evicting the trespassers, it may certainly be presumed that the risk and expenses of the litigation which had to be brought by the lessees was also one of the considerations for the leases, and we agree with Dr. Basak that considering the probable expenses of such litigation, it would not be unfair to say that such undertaking was the primary consideration. If this is the correct view, the leases could be supported on the ground of legal necessity even if a portion of the consideration was taken by the shebait for their personal use. We are not prepared on this ground alone to differ from the decision that has been arrived at by the Courts below.

29. We think, however, that on the second point raised by Mr. Gupta, he is entitled to succeed. Assuming that there was legal necessity to support the leases, the question arises whether it is possible to hold, as the Courts below seem to have done, that three out of four shebait could grant a lease in respect of the twelve annas share of the debotter properties. In the judgments of the Courts below, it is assumed that Hari Pada and Jugal Kishore, as two out of the four shebait, had eight annas share in the debotter properties and Nayan Manjuri, wife of Narayan Pada, had another four annas share in the same. The combined effect of the two leases therefore was that the lessees acquired a leasehold interest, to the extent of twelve annas share, in the idols' properties.

30. This assumption seems to us to be fundamentally unsound. In the first place, no particular shebait can be said to have a defined share in the idols' interest. In the second place, before a lease can be binding on the deity, there must be a

joint demise by all the shebait acting together.

31. The trustees or shebait, when they are more than one, form, as it were, but one body in the eye of law. The deity is represented by all of them acting together and no one shebait can be said to represent the idol in part or to possess any specific interest in any share of the idol's property. Vide *Narendra Nath Kumar v. Atul Chandra Banerji* 27 C.L.J. 605 (1917) and *Baraboni Coal Concern, Limited v. Gokulananda Mohanta Thakur* L.R. 61 I.A. 35: s.c. 38 C.W.N. 325 (1933)

32. Dr. Basak does not dispute this principle, and he has conceded that the lower Courts were wrong in treating the leases as being operative to the extent of twelve annas share in the idols' property. His case is that the leases would either be operative with regard to the entire interest of the deities or would fail altogether:--there could not be a transfer of a fractional interest in the deities' properties by any particular shebait.

33. In the present case, the document executed by Hari Pada and Jugal Kishore, referred to above, purports to transfer only a two-thirds share of the debotter property, and Nayan Manjuri, the other lessor, purports to lease out her husband's one-fourth share. The finding of the Courts below is that Jugal Kishore and Haripada had really a moiety share and not two-thirds share, and, consequently the lessees got altogether a three-fourths share in the entire debotter estate.

34. Dr. Basak does not attempt to justify or support this line of reasoning at all. He invites us to hold that in reality there was a transfer of the entire estate, though the shebait executed different documents at different times. He starts with the first lease of Narain Das executed on September 13th, 1919, and argues that this and the two subsequent leases are to be taken and read together as forming parts of one and the same integral transaction. In other words, his argument is that the first lease of Narain Das was an effective demise of the entire property on behalf of all the shebait, and the two subsequent deeds, one of which was executed by Jugal Kishore and Haripada and the other by Nayan Manjuri, should be taken as mere ratifications by the other shebait of the original lease granted by Narayan Das.

35. We do not think that we can accept this contention as sound.

In the first place, we agree with the Courts below in holding that the lease by Narayan Das which was for a term of 10 years only has already spent its force and cannot be taken to be still subsisting. It is true that there was a covenant in the patta that if the litigation expenses incurred by the lessees could not be satisfied by appropriation of the rents payable under the lease within the period of 10 years, the lessor would grant a fresh lease on the expiry of that term on the same conditions. No such fresh lease has, as a matter of fact, been executed.

36. Even if it is assumed for the sake of argument that the lessees must be

deemed in the eye of law to have got a fresh lease for another 10 years, I do not think that it would be of the slightest assistance to Dr. Basak's clients. The patta that was executed by Narayan Das could not be said to be an act on behalf of all the shebait. Narayan Das purported to grant the lease in his capacity as a sole shebait. It was expressly mentioned in the document that two of the shebait, namely, Narayan Pada and Jugal Kishore, had renounced their rights in favour of the grantor, which was not a fact, and the very existence of Hari Pada was ignored. It cannot be argued also that by the second document which was executed by Hari Pada and Jugal Kishore on December 8th, 1919, they simply ratified the first lease granted by Narayan Das. The two leases were different from each other on all material points. The lease by Hari Pada and Jugal Kishore was for a period of 95 years, the rent reserved was different, and at the top of all, the lessors, purported to transfer specifically their two-thirds share of the property which was stated to measure 7 bighas and odd cottahs of land only. In the first lease of Narayan Das, the rent was to be appropriated towards the expenses of the litigation incurred by the lessees. According to the second lease, the lessees had to pay rent amounting to Rs. 30 a month to the family priest for defraying the expenses of worship, and there was no provision under which the costs of litigation could be deducted from the rents.

37. The third lease which was granted by Nayan Manjuri was also in respect of her husband's alleged specific one-fourth share. It was for a period of 99 years and reserved a rental of Rs. 10 a year.

38. We are of the opinion that the leases were quite distinct and separate transactions having no manner of connection with each other. The first lease was granted by one of the shebait without the concurrence of the rest, while the other two purported to be transfers of certain specific shares by particular shebait who claimed to own these shares in the idols' interest.

39. Dr. Basak has argued further that, in any view of the case, the fact remains that all the shebait, who were parties to the Title Suit that was instituted in 1922, recognised his clients as lessees in respect of the entire debottcr property, and this circumstance would establish that all the shebait agreed in granting the leases. It is true that this Court passed a joint decree in favour of the Kundus and Sarkars on the footing that the Kundus recognised the Sarkars as their tenants, but the character of the tenancy was not investigated, and there was no decision as to whether the terms and the conditions of the several leases were binding on the deities. These questions," as the judgment of this Court shows, were expressly left open. In these circumstances, it is impossible to say that all the four shebait agreed in granting a lease for 95 or 99 years to the Sarkars in respect of the entire debottcr property described in Schedule ka to the plaint.

40. Our conclusion is that the first lease is no longer subsisting, and the other two leases upon which the Courts below have relied are altogether void, being transfers by particular shebait of certain fractional interests in the idols' properties without the consent of the other co-shebait. The fourth lease which

was granted by the Plaintiffs" mother has been found to be void by both the Courts below, and this finding has not been challenged before us.

41. In view of our decision on this point, it is strictly speaking not necessary to discuss the other question raised by Mr. Gupta as to whether the transactions were void ab initio as being transfers on the part of the shebait not merely of properties belonging to the deities, but of the idols and their own religious offices and duties as shebait as well.

42. On this point we have an elaborate judgment of the Court of Appeal below subsequent to the order of remand. The learned Additional District Judge has found that there was no express term in the first lease which was granted by Hari Pada and Jugal Kishore which would go to show that they transferred the Idols and their religious offices as well and empowered the lessees to carry on the deb-sheba in their place. There was indeed such a provision in the lease of Nayan Manjuri, but in the opinion of the learned Judge, it was inserted in that document without the knowledge of the lessees. The learned Judge, however, relied to a great extent upon the fact that the temples with their appurtenances and the Idols were included in both the leases, and when the lessees got possession of the properties after the decree of this Court, they took possession not only of the debottcr lands but of the temples and Idols as well, and it is not disputed that they are possessing the idols since then and performing the deb-sheba.

43. It may be, as Dr. Basak suggests, that it was necessary to include the temples within the leases as the temples themselves were in possession of trespassers, and it was necessary to empower the lessees to institute suits in respect of the temples as well; but, at the same time, it is inconceivable as to why no provision was made in the documents that after the lessees would recover possession, the shebait would take charge of the worship of the idols. The provision in the lease that the rents would have to be paid to the family priest who would carry on the worship might suggest that the shebait wanted to retain some control over the worship, but this provision was more or less illusory, as is proved by the fact that by another document executed on the same day a priest was appointed, who was to conduct the worship from generation to generation and the shebait practically cut off all connection with both secular and religious duties in connection with the debotter.

44. We agree with Mr. Gupta that the shebait did part with the idols and their shebaiti rights and this part of the transaction was void. The Courts below, therefore, were perfectly right in giving the Plaintiff a decree in respect of the temples and their appurtenances with regard to which no transfer by way of a lease or otherwise was permissible in law.

45. The lease of the property itself, however, stands on a different footing, and if it was otherwise valid, it could, in our opinion, be separated from the alienation of the duties or the religious office of the shebait, and could be upheld as an

independent transaction, but as we have already held that the lease in respect of the debotter properties was otherwise void, this question does not arise in the present case.

46. The leases being held to be void, the only other question that remains for our determination is, on what terms the Plaintiff would be entitled to recover possession. It is not disputed that Defendants Nos. 1 to 3 had spent large sums of money in carrying on litigation both civil and criminal against those persons who were in illegal occupation of the debotter estate, and but for their efforts the deities would never have got back their properties. They have also spent money for repairs of the temples and for carrying on deb-sheba which was neglected by the shebait. As the transactions are found to be void, the Plaintiff before he can recover the properties on behalf of the deities must compensate the Defendants Nos. 1 to 3 for all the expenses which they have legitimately incurred. This principle, which underlies sec. 65 of the Indian Contract Act, has been recognised in a series of cases decided by the High Courts in India as well as by the Judicial Committee--Vide Harnath Kuar v. Indar Bahadur Singh L.R. 50 I.A. 69 : S.C. 27 C.W.N. 949 (1922), Ram Charan Lonia v. Bhagwan Das Maheshri L R. 53 I.A. 142: S.C. 31 C.W.N. 198 and Nagappa Chettiar v. Brahadambal Ammani L.R. 62 I.A. 70: S.C. 39 C.W.N. 709 (1935) Mr. Gupta has very fairly conceded that this claim on the part of the Defendants is perfectly just and proper and the payment of these expenses should be a condition precedent to his client getting possession of the debotter estate.

47. This point was raised in the written statement of the Defendants, but as the Courts below held that the leases were valid in part, the evidence on this point was not examined and no finding was arrived at. In these circumstances, we have no other alternative but to send the case back in order that this question might be properly investigated.

48. The result is that this appeal is allowed and the judgments and decrees of the Courts below are set aside. It is declared that the leases relied upon by the Defendants are void and not binding on the deities. The Plaintiff is declared to be the sole shebait of the deities, and he will be entitled to recover possession of the temples and their appurtenances together with the Idols and movables mentioned in the Schedule kha of the plaint at once. As regards the rest of the immovable properties described in Schedule ka, the Plaintiff will get a decree for possession conditional on his paying the entire amount of expenses which may be found to have been incurred by the Defendants in the interests of the idols: these expenses would include the costs of litigation, both civil and criminal, against persons who were in unlawful possession of the debotter estate, the expenses of repair and renovation of the temple and also the Government revenues and Municipal taxes and other charges paid by the Defendants Nos. 1 to 3 for preservation of the property during the entire period from September 13th, 1919, up to this date. The lessees would not be entitled to recover the selamis which they paid to the several lessors. There will also be no enquiry into

the rents and profits which the Defendants Nos. 1-3 realised from the sub-tenants during this period, and they will be deemed to be set off against the expenses of deb-seba incurred by the Defendants and the interest which they are entitled to, on the amounts due to them.

49. The Defendants Nos. 1-3 must however be held liable for all Municipal taxes and Government revenues, which are payable in respect of the debutter property up to date, and the amount of such taxes and revenues as are now in arrears will be debited against them.

50. The case will go back to the trial Court for taking accounts on this basis, and for ascertainment of the amount due by the Plaintiff to Defendants Nos. 1-3. It will be open to the parties to adduce further evidence on this point. The Plaintiff will be entitled to get possession of the (ka) Schedule properties with the exception of the temples and its appurtenances only on payment of the money that would be ascertained by the Court. As for the period subsequent to the date of this judgment and up to the date of delivery of possession, the Defendants Nos. 1-3 will be entitled to enjoy the rents and profits of the property subject to their paying all Government revenues, Municipal taxes and other charges for which the property may be liable to be sold, and they must indemnify the Plaintiff, when they deliver up possession to him, against any loss which the latter might sustain by reason of non-payment of such revenues or taxes.

51. Parties will bear their own costs in all the Courts up to this stage. Costs in connection with the enquiry into accounts will be at the discretion of the trial Court. The cross-objections are dismissed without costs.