
(1929) 07 PAT CK 0019
In the Patna High Court

Sri Ram Lakshman Janki Jee and Another APPELLANT
Vs
Nirsu Ram and Others RESPONDENT

Date of Decision : 22-07-1929

Acts Referred:

Citation : AIR 1930 Patna 97

Hon'ble Judges : Rowland, J; Das, J

Bench : Full Bench

Judgement

Das, J.—This appeal arises out of a suit instituted by certain idols through Siaram Das as the next friend and for recovery of Rs. 4437-10-3 from the defendants. The Court of first instance substantially allowed the claim of the plaintiffs. On appeal the learned District Judge has set aside the decree passed by the Court of first instance on the ground that the suit as framed was not maintainable.

2. The point arises in this way : The shebait of the idols is one Ram Prosad. Ram Prosad is also a partner of the firm of Earn Chandra-Nirsu Ram. The suit is in respect of the moneys from time to time deposited by Ram Prosad as the shebait of the idols in the firm of Earn Chandra-Nirsu Ram. In these circumstances it was obviously impossible that the idols should institute the suit through Earn Prosad as the next friend. The question was discussed in the Court of first instance and that Court came to the conclusion that the suit as framed was maintainable. The learned District Judge has taken the view that idols can only act through the shebait and not through any other person", and as in his view the suit could not be instituted through Siaram Das as the next friend, the learned Judge dismissed the plaintiffs' suit. In my opinion the question must be decided on the terms of Order 32, Rule 4, of the Code. That rule adopts as a principle that

where a minor has a guardian, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless

and this is very important

the Court considers, for reasons to be recorded, that it is for the minor's welfare

that another person be permitted to act or be appointed, as the case may be

3. It is obvious then that though, as a general rule, a shebait is the proper person to institute a suit on behalf of the idol, there may be circumstances in which the carriage of the suit must be left in hands other than those of the shebait. Para. 1, Rule 4 provides that:

any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit provided

and this is again very important:

that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit a plaintiff.

4. Now, what is the position ? In this case the shebait of the idols is actually a defendant in the case and the view taken by the learned District Judge is directly in the teeth of the proviso to para. 1, Order 32, Rule 4 of the Code. It is plainly impossible that carriage of a suit should be left in the hands of a person who is the defendant in the suit.¹ The interest of the idols in this case is clearly in conflict with that of the shebait and, in my judgment, it is impossible to take the view that the suit should have been instituted through Ram Prosad as the next friend.

5. The merits have not, however, been investigated by the learned District Judge and they must now be investigated. I would, therefore, allow the appeal, set aside the judgment and the decree passed by the Court below and remand the case to that Court for disposal according to law. The appellants are entitled to the costs of this appeal. The costs incurred in the Courts below will abide the result and will be disposed of by the lower appellate Court.

Rowland, J.

¹ agree.