

(1956) 06 CAL CK 0020
In the Calcutta High Court
Case No : Civil Revision No. 1449 of 1956

Sri Sri Nitai Gour Radheshyam

APPELLANT

Vs

Harekrishna Adhikari and Others

RESPONDENT

Date of Decision : 29-06-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 32 Rule 1

Citation : AIR 1957 Cal 77

Hon'ble Judges : Lahiri, J

Bench : Single Bench

Advocate : Abinash Chandra Ghosh, for the Appellant; S. Roy Choudhuri, for the Respondent

Judgement

Lahiri, J.—The plaintiff who is the petitioner in this case instituted a suit on behalf of a deity for a declaration that certain alienations made by the defendants were invalid and were not binding upon the deity and also for certain other reliefs. The plaintiff is not the present shebait of the deity, but he claims to be the prospective shebait. The defendants are the present shebait. The suit was instituted on 8-3-1954. On the date on which the plaint was filed there was a conflict of decisions in this Court on the question whether a person who is not the present shebait of the deity can institute a suit on behalf of the deity without obtaining the permission of the Court. Das and Sen JJ. held in two reported decisions that no such permission was necessary whereas Gentle and Pal JJ. held that such a permission was necessary. Ultimately the matter was decided by a Division Bench of this Court consisting of Das Gupta and Guha JJ., in the case of Sm. Sushama Roy Vs. Atul Krishna Roy and Another, (A) where their Lordships differed from the views expressed by Das and Sen JJ., and approved of the decision of Gentle and Pal JJ. This decision of the Division Bench was published on 20-6-1955 in the Calcutta Weekly Notes. On 19-11-1955 the plaintiff filed an application for permission of the Court to prosecute the suit on behalf of the deity. This application has been rejected by the Munsif by an order dated 14-3-1956 upon the view that the permission of the Court must be obtained

before the suit is brought on behalf of the deity and any application filed after the institution of the suit is not maintainable. Against this order the plaintiff has obtained the present Rule.

2. On hearing Mr. Ghose and Mr. Roy Choudhury for the petitioner and opposite parties respectively, it seems to me that the learned Munsif has not taken a correct view of the decision. Mr. Roy Choudhury appearing for the opposite parties has invited my attention to a passage at p. 786 of the decision where Das Gupta J., in delivering the judgment of the Division Bench observed as follows:

"If anybody other than a shebait wishes to institute a suit on behalf of the deity, he could make an application to the Court and the suit will be maintainable only if the Court appoints him as the shebait." It is, of course, desirable that the permission of the Court should be obtained at the time of the institution of the suit or before the institution of the suit but the passage which I have quoted above cannot be interpreted to mean that an application for permission filed after the institution of the suit is not maintainable. More particularly in the present case the law was in an unsettled condition before the decision of the Division Bench. The plaintiff was entitled to rely upon the decisions of Das and Sen JJ., according to which he was not required to obtain permission of the Court before the institution of the suit on behalf of the deity. In any case I do not think that the plaintiff's application can be rejected only on the ground that it was filed after the institution of the suit and in my opinion the learned Munsif placed a narrow construction upon the passage which I have already quoted. It may be that the suit cannot be regarded as having been validly instituted before permission is granted by the Court and in my opinion the passage which I have read means only this that the institution of the suit will be validated only with effect from the date on which the plaintiff applies for permission to sue on behalf of the deity.

3. Mr. Roy Choudhury appearing for the opposite parties contended that his client should be given an opportunity of filing an objection to permission being given to the plaintiff to sue on behalf of the deity. It appears that the application was filed as far back as on 19-11-1955 & was pending in the Court of the Munsif till 14-3-1956. If the defendants did not choose to file any objection during that period, I do not see any reason why I should grant them a fresh opportunity to file the objection.

4. In this view of the matter I would make this Rule absolute, set aside the order of the learned Munsif and, grant the plaintiff's application to prosecute the suit on behalf of the deity.

5. The petitioner will be entitled to costs of this Rule.