

(1943) 12 CAL CK 0010
In the Calcutta High Court

Thakurani Sri Sri Annapurna Debi

APPELLANT

Vs

Sm. Shiva Sundari Dassi and Another

RESPONDENT

Date of Decision : 20-12-1943

Acts Referred:

Citation : AIR 1945 Cal 376

Hon'ble Judges : Sen, J

Bench : Division Bench

Judgement

Sen, J.—This is an application by the petitioner to be appointed next friend of the plaintiff Thakurani Sri Sri Annapurna Debi in this suit. The suit was instituted on 24th August 1938 by one Sreemati Pramila Sundari Laha as next friend of the plaintiff deity against certain persons whom she describes as the sebaites of the idol and certain transferees from them. Broadly speaking, the suit is for a declaration that the property transferred was debutter property and incapable of being dealt with by the defendants as secular property. Pramila Sundari Laha died on 2nd February 1943. The present applicant Sreemati Karunamoyee Dassi in a daughter-in-law of the family, and she wishes to be appointed next friend of the plaintiff deity for the purpose of proceeding with the suit.

2. On behalf of the respondents the application is opposed on certain grounds with which I shall now deal. It is argued that this suit was not properly constituted inasmuch as Pramila Sundari could not be a next friend of the idol as she was not appointed as such by the Court. The argument is this. Ordinarily the proper person to sue on behalf of an idol is the sebait. In certain circumstances it may be that somebody else could be appointed to look after the interests of an idol in a suit. "When these special circumstances arise it is for the Court and the Court only to appoint such person other than the sebait. In the present case Pramila Sundari did not apply to Court to be appointed next friend but constituted herself next friend. This, it is argued, Pramila Sundari was not competent to do. On this ground it is contended that the suit is not properly framed, and that the present application by the petitioner to be appointed as a

next friend in the place of Pramila Sundari should be refused. In support of the proposition that the next friend of an idol must be appointed by the Court my attention was drawn to the case in Tarit Bhusan Rai and Another Vs. Sri Sri Iswar Sridhar Salagram Shila Thakur by Krishna Chandra Chandra and Others, . There is a passage at page 957 which is as follows :

In exceptional circumstances, a deity can be represented in a legal proceeding by a person other than a sebaits only by the special appointment of the Court: Pramatha Nath Mullick v. Pradyumnakumar Mullick and AIR 1933 198 (Privy Council) .

3. It must be said that if the view expressed in this passage is to be taken to be of general application, then there can be no suit by a next friend unless such next friend is specially appointed by the Court. I am not, however, inclined to hold that the view expressed in this passage is of general application. The exact point which has now been raised was not a point for decision in that case. It is obvious that circumstances may well arise when it would be impossible to expect any of the sebaits to institute a suit; for instance, all the sebaits may be misappropriating debutter property and secularizing it; the idol may be despoiled by all the sebaits acting in concert. In such a case, it is not possible to expect any of the sebaits to institute a suit to protect the property of the idol. In those circumstances what is to happen? It seems to me that the only course open would be for some person to come forward and institute a suit as the next friend of the idol. The matter would first come up before the Court by a suit being instituted by a person claiming to be next friend of the idol. It would be permissible for the defendants thereafter to come up before the Court and contest the fitness of the next friend to act as such. The Court would then investigate the matter and decide upon the suitability of the persons instituting the suit to act as next friend, but I do not see any ground for holding that the next friend must be appointed as such by the Court before he can institute a suit. In the rules of this side of the Court there is provision for a similar matter. It is to be found in chap. 19 of Original Side Rules. It does not in terms apply to suits by idols, but it applies to suits by minors and persons of unsound mind. Rule 1 says:

Where a suit is instituted in the name of a minor, the next friend shall make an affidavit, to be presented with the plaint in the suit, that he has no interest directly or indirectly adverse to that of the minor, and that he is otherwise a fit and proper person to act as such next friend.... No order appointing the next friend by whom the suit is to be instituted shall be drawn up.

4. In the present case this rule has been followed, although, as I have said before, it is not in terms applicable. In these circumstances it may be inferred that the Court has approved of Pramila Sundari Laha acting as next friend of the deity. In my opinion the suit was properly filed by Pramila Sundari Laha and the fact that she was not specifically appointed next friend by the Court does not render the suit bad. Pramila Sundari is now dead, and it is open to the present applicant to apply to be appointed next friend in her place. There are no specific

rules in the Code with respect to the appointment of a next friend on the decease of a next friend of an idol but the provisions of Order 32, Rule 10 would be a safe guide in dealing with such an application. There it is stated that on the retirement, removal or death of the next friend of a minor, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of somebody as next friend, and the Court may appoint such person as it may think fit. This application is accordingly quite in order.

5. The next question which arises is whether the present applicant is a fit and proper person to be appointed next friend. It is said that she is merely a daughter-in-law of the family, and therefore she has not such interest in the subject-matter of the suit as would justify her being appointed next friend. I do not think that I can accept this argument urged on behalf of the respondents. It seems to me that she has sufficient interest in the subject-matter of the suit. Further, it is not necessary that the person applying to be appointed next friend should have any right to the property, involved in a suit of this description where the plaintiff is a deity. Any person, in my opinion, could apply and it is open to the Court to appoint him or her to look after the interests of the "deity, so long as the Court is satisfied that the person has no interest adverse to the deity. There was another argument urged on behalf of the respondent. It was pointed out that there is no allegation in the plaint that the sebait had refused to bring this, suit, and it was contended that in such circumstances a suit by a next friend is bad. For this view learned, counsel relied on *Sri Sri Kalimata Debi and Another Vs. Nagendra Nath Chuckerbutty and Others*, . There is a passage at p. 526 which, is as follows:

It would appear therefore that the proper person to have instituted the suit was a sebait and nobody else. Had the position been that Nagendra in his capacity of sebait had definitely declined to institute the suit, it might perhaps have been open to Basanta as the next friend of the idol to have taken his place, but in the absence of any such refusal it seems-to me that neither Basanta nor the idol are competent. The suit is therefore bad.

6. Here, again, I repeat what I have said with reference to the other case, namely that no principle of general application has been laid down. The learned Judge was dealing with the particular facts of the case. I do not think that it is necessary in every case that the sebait should be first asked to institute the suit before the idol sues by a next friend who is not a sebait. If in the plaint it is alleged, as in this case it is, that all the sebait has been disposing of debutter property as secular property, it would be open to the person who makes such an allegation to sue as next friend without first going through the useless formality of asking one of the sebait, who is alleged to have been misappropriating the debutter property, to institute a suit to establish his misappropriation. There is, in my opinion, no bar to the present application. Next it was contended on behalf of the respondents that the petitioner should be made to furnish security for costs. At present I am not inclined to accede to this prayer. I do not consider that

there are sufficient materials before me which would justify me in directing the petitioner to furnish security. The respondents, however, may re-agitate this question on proper materials, if they so think fit. I accordingly appoint the petitioner next friend of the deity. There will be an order in terms of Clauses 1, 2, 3 and 4 of the summons. The costs of this application will be costs in the cause. Certified for counsel.