Bhima Rout Vs. Dasarathi Dass

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Court : Kolkata

Decided On : Jul-02-1912

Reported in : (1913)ILR40Cal323

Judge : Mookerjee and ;Beachcroft, JJ.

Appellant : Bhima Rout

Respondent : Dasarathi Dass

Judgement :

Mookerjee and Beachcroft, JJ.

1. This appeal is directed against the decree of dismissal in a suit commenced by the plaintiffs under Section 14 of the Religious Endowments Act of 1863. The case for the plaintiffs is, that they are interested in the endowment of Sarala Thakurani at Kutila in the district of Cuttack, that the endowment was under the management of a committee appointed under the Religious Endowments Act of 1863, that the sole surviving member of that committee (the first defendant) had neglected his duties and that the second defendant, who claimed to be the paricharak or superintendent of the temple, though he had never been formally appointed to the office, had misappropriated the properties of the endowment. Upon these allegations the plaintiffs prayed that the first defendant might be removed from the committee and the second defendant from the office of superintendent. The suit was defended by both the defendants. The allegations on the merits were denied by both, and the second defendant farther asserted, that he was entitled to the office of superintendent under a hereditary right. Five issues were, thereupon, raised; one of which was, whether the second defendant had acquired a hereditary right to the paricharakship of the endowment. Another issue related to the merits of the case, namely, whether the allegations of neglect of duty and misappropriation were bond fide and true. The third raised the question, whether the plaintiffs had any cause of action specially against the first defendant. No objection was taken, however, to the frame of the suit, and it does not appear to have been urged that the second defendant was not a necessary party to the litigation. The suit was tried out on the merits and dismissed by the District Judge, on the 8th July 1907. During the pendency of the appeal by the plaintiffs in this Court, the first defendant died on the 28th June 1910. On the 2nd September following, his adopted son, Saroda Charan Das, was brought on the record. On the 24th January 1911, a new committee was appointed under Section 7 of the Religious Endowments Act of 1863. Thereupon, on the 4th March 1912, the plaintiffs applied to this Court for an order under Rule 20 of Order XLI to the effect that the members of the new committee might be added as defendants respondents. This application was granted ex parte and notice was directed to issue upon the added respondents. At the hearing of this appeal, the added, respondents have not entered appearance nor has anybody appeared on behalf of the adopted son of the first defendant. But on behalf of the second defendant, a preliminary objection has been taken that, in the events which have happened, the appeal has become incompetent and ought to fail on that ground. In our opinion, this contention is well fou ruled and must prevail.

2. It is clear at the outset that the adopted son of the first defendant ought not to have been brought on the

record. The first defendant was sued in his character as a member of the committee appointed under the Religious Endowments Act of 1863. The relief claimed against him was purely personal, namely, his removal for neglect of duty. This cause of action did not survive against his adopted son. It is equally plain that an order for the addition of the members of the new committee as respondents should not have been made. It is obvious that Rule 20 of Order XLI Las no application to this case. That rule applies only to cases, where, at the hearing' of the appeal, the Court is satisfied that a person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may, in such a contingency, adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent. An order under Rule 20 can, consequently, be made only at the hearing of the appeal. Apart from this difficulty, it is plain that the person who can be made respondent under that rule is a person who was a party to the suit in the Court from whose decree the appeal has been preferred. The members of the committee who are sought to be added as respondents, were admittedly not parties to the litigation in the Court below. Consequently, the order cannot be supported under the rule to which our attention has been drawn. It has been argued, however, on behalf of the appellants that the order in question might have been made, not under Rule 20 of Order XLI nor under Rule 10 of Order 22, but under Order 1 Rule 10 of the Code. That rule-authorizes the Court, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, to order that the name of any person whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be aide d No doubt, as pointed out in the case of Kashi v. Sadashiv Sakharam Shet (1) (1895) I.L.R. 21 Bom. 229. the Court may in the exercise of its powers under this rule bring before the Court a person who is a stranger to the Litigation. But it is plain that in the case before us, an order under this rule ought not to be made, because there is no cause of action upon the plaint as framed against the members of the new committee. It is suggested, however, that their presence before the Court is necessary in order that an effective order for dismissal of the second defendant may be made. Bat it would be obviously unfair to the members of the new committee to bring them before the Court for such a purpose, when they have not been offered any opportunity to defend the suit. They cannot rightly be held bound by the evidence adduced at a time when they had ho concern with the religious institution, of which they are now the committee under the Religious Endowments Act of 1863. We hold, accordingly, that the members of the new committee should not have been added as parties respondents and we direct that the adopted son as also the members of the committee be discharged from the record of this appeal. The appeal must proceed, if at all, as against the second defendant alone, and this raises the question whether the appeal, as now constituted, can be maintained.

3. On behalf of the appellants it has been argued that the appeal is maintainable, because the suit might originally have been instituted against the second defendant alone under Section 14 of the Religious Endowments Act of 1863. To determine the validity of this contention, it is necessary to analyse briefly the provisions in the preceding sections of the Statute. Sections 3 and 4 refer to two distinct classes of religious establishments. Section 3 deals with cases in which, at the time of the commencement of the Act, the mosque or temple or other religious establishment was one to which the provisions of Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817 applied, and the mosque or temple or other religious establishment was an institution in which the nomination of the trustee, manager or superintendent thereof was vested in or might be exercised by the Government or any public officer, and the nomination of such trustee, manager or superintendent was subject to the confirmation of the Government or any public officer. Section 4, on the other hand, deals with cases of religious establishments in which the nomination of the trustee, manager or superintendent did not vest in nor was exercised by or was subject to the confirmation of the Government or any public officer. In the former class of cases, covered by Section 3, the course to be followed is outlined in Sections 7, 8, 9, 10, 11 and 12. In the latter class of cases, covered by Section 4, the duty of the trustee, manager or superintendent is defined by Section 13. In the class of cases covered by Section 3, provision is made for the appointment of a committee to whom the property is transferred under Section 12. In the case of endowments covered by Section 4, the property is transferred to the trustee, manager or superintendent

by that very section itself. It is clear, therefore, upon a review of these sections, that a well-marked distinction was observed by the Legislature between two classes of cases, namely, first, the class in which the trustee, manager or superintendent was, to put it briefly, under the control of the Board of Revenue and, subsequently, under the control of the committee appointed under the Statute; and secondly, the class in which the trustee, manager or superintendent was not subject to the control of the Board of Revenue. We have now to examine the provisions of Section 14 which runs as follows: 'Any person or persons interested in any mosque, temple, or religious establishment, or in the performance of the worship or of the service thereof, or the trust relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court, the trustee, manager or superintendent of such mosque, temple, or religious establishment, or the member of any committee appointed under the Act, for any misfeasance, breach of trust, or neglect of duty, committed by such trustee, manager, superintendent, or member of such committee in respect of the trusts vested in, or confided to, them respectively.' With reference to this provision, it has been argued on behalf of the appellants that a suit is maintainable as against the trustee, manager or superintendent even in a case when a Committee has been appointed under Section 3 read with Section 7. On behalf of the respondent, this position has been controverted, and it has been argued that in a case of this description the only suit maintainable is against the committee, although it may be conceded that in a suit so instituted the trustee, manager or superintendent may be joined as a pro formd defendant, while the substantial relief is claimed as against the committee. It has further been contended that the suit against the trustee, manager or superintendent contemplated by Section 14 is a suit against a trustee, manager or superintendent to whom the property has been transferred under Section 4. In our opinion, this contention is obviously well-founded. The Legislature could not have intended, that, where there is a committee which controls the trustee, manager, or superintendent, a suit may be instituted not merely against the committee, but, independently of the committee, against the trustee, manager, or superintendent, for his removal. The intention of the Legislature must have been to regulate and control the management of the endowment through the committee. If the members of the committee tolerated an unsuitable person as trustee, manager, or superintendent, such conduct on their part would amount to neglect of duty and would make them amenable to the jurisdiction of the Court. In the present case, therefore, the suit could not have been instituted against the second defendant alone. But it has been argued on behalf of the appellants that the materials on the record are not sufficient to show that the endowment is of the character mentioned in Section 3 of the Religious Endowments Act of 1863. There is some force in this contention. But, as was pointed out in the case of Ponduranga v. Na(sic)appa(1) (1889) I.L.R. 12 Mad. 366. the circumstance that a committee has been appointed under Section 3 and the committee has worked for many years without protest or challenge, is primd facie, evidence that the endowment is of the character described in Section 3 of the statute. We must, therefore, proceed on the assumption that the second defendant, described as the superintendent of the endowment, is under the control of the committee appointed under the provisions of Section 7. He is, consequently, as has been contended by his learned vakil, removeable by them for good reason. This position is supported by a long series of decisions, amongst which may be mentioned those of Wasik Ali Khan v. Government (2) (1834) 5 Mac. S. R. 363 O. E. Wasik Ali v. Government (3) (1836) 6 Mac. S. R. 130 N. E. Ram Charan Das v. Chutter Bhoji (4) (1845) 7 Mac. S. R. 205 O. E. Chinna Rangaiyangar v. Subbraya Mudali (1) (1867) 3 Mad. H. C. R. 334. Ramiengar v. Gnanasambanda Pandarasannada (2) (1867) 5 Mad. H. C. R. 53. Virasami Nayudu v. Subba Rau (3) (1882) I.L.R. 6 Mad. 54. and Seshadri Ayyangar v. Nataraja Ayyar (4) (1897) I.L.R. 21 Mad. 179. The position might have been different if, as in the case of Local Agents of Hooghly v. Kish-nanend (5) (1848) 7 Mac. S. R. 476 O. R. the defendant had been a manager entitled to hold office under a hereditary right. In such a case, a question might have arisen, whether the committee could have been appointed at all under Section 3 of the Religious Endowments Act, because a trustee, manager, or superintendent of this description would not be a trustee, manager, or superintendent as contemplated in that Section. For the present, at any rate, however, we must assume that the endowment is of the description mentioned in Section 3, and that the second defendant is removeable for good reason by the committee which has been appointed under the Act. Consequently, the inference follows, that the suit cannot be maintained as against the second defendant alone, and that the appeal as now constituted is incompetent.

4. The result is, that the appeal is dismissed, but under the circumstances without costs.