

The Official Receiver Vs. Iswar Baldev Jiu and ors.

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Court : Kolkata

Decided On : Jun-19-1963

Reported in : AIR1963Cal647

Judge : P.C. Mallick, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rules 2 and 4 - Order 40, Rule 1; ;Limitation Act, 1908 - Schedule - Article 134A; ;Hindu Law

Appeal No. : Ex. Ord. Suit No. 6 of 1957 and T.S. Suit No. 79 of 1952

Appellant : The Official Receiver

Respondent : iswar Baldev Jiu and ors.

Advocate for Def. : Subimal C. Roy, ;B. Ray and ;D. Gupta, Advs. for Defendant Nos. 1 and 2, ;S. Das, ;S.C. Ghose and ;M.M. Ahmed, Advs. for Defendant No. 3, ;A.K. Panja, Adv. ; for Guardian-ad-litem Gauri Mitter and ;J.

Advocate for Pet/Ap. : M. Hazra and A.C. Bhabra, Advs.

Judgement :

P.C. Mallick, J.

1. This is a suit challenging alienation of certain debutter properties. The debutter was created by two deeds executed by Raja Pitambar Mitra and Rani Nandarani

on January 18, 1806 and May 17, 1824, respectively.

2. The properties created debutter by such deeds are very valuable properties consisting of a large number of lands and premises in and around Calcutta. The alienation in the instant case is by way of long leases granted by three persons constituting the committee of management under a scheme framed by this Court in an administration suit being Suit No. 1528 of 1926. The decree framing the scheme will have to be considered later in detail. The preliminary decree was passed in the said suit on March 30, 1934 and the final decree was passed on January 28, 1939 confirming the report of the Official Referee dated March 7, 1938.

3. On December 4, 1950 a second suit for administration of the same debutter estate was instituted in this Court being Suit No. 4575 of 1950. This suit was instituted by one Ashalata Mazumdar, a shebait as next friend of the two deities. The two deities and the said Ashalata Mazumdar are the plaintiffs. All the other shebaits were impleaded as defendants. Allegations have been made in the plaint in that suit, that the debutter estate was not being administered according to the scheme laid down in the decree in Suit No. 1528 of 1926, that of the five members elected on December 16, 1943 to constitute the managing committee, one died and the other resigned, that no steps were taken to fill up the vacancy as provided in the scheme, that the remaining members of the managing committee went on administering the debutter estate illegally, contrary to the scheme, that they granted long leases of the debutter properties and were otherwise guilty of various acts of mismanagement and dereliction of duty and that the scheme has become infructuous and has inherent defects. On these allegations it is prayed that a new scheme be framed in the said suit, that the surviving member of the managing committee elected in 1943 be removed from management and that the debutter estate be administered by the Court. In the said suit the Official Receiver was appointed Receiver of the entire debutter estate by an order dated December 30, 1950. By an order dated December 20, 1951, leave was granted to the Official Receiver to institute suit or suits in the Court of competent jurisdiction to set aside or avoid the leases granted by the said three members of the managing committee in favour of Hem Chandra Naskar and Jogendra Nath Naskar. Pursuant to the

leave granted, this suit has been instituted by the Official Receiver as Receiver appointed in Suit No. 4575 of 1950 for a declaration that the three leases dated May 3, 1946, November 29, 1946 and December 26, 1946, all in favour of Hem Chandra Naskar and Jogendra Nath Naskar or either of them are void and not binding on the debutter estate. There is also a prayer for cancellation of the said three leases. The subject-matter of these leases being situated outside the jurisdiction of this Court, this suit was instituted originally in the Court of the Subordinate Judge of Alipore on May 1, 1952 and then transferred to this Court by an order of this Court made under Clause (13) of the Letters Patent. Shortly prior to this date, pursuant to the leave granted on April 28, 1952, another suit was instituted by the Official Receiver being Suit No. 1654 of 1952 for cancellation of another lease in favour of the same lessees, the lease being dated December 23, 1947, and for a declaration that the same was not binding on the debutter estate. Most of the properties covered by the said lease is situate within the jurisdiction of this Court. The defendants impleaded in both the suits are the deities, the two lessees, Hem Chandra Naskar and Jogendra Nath Naskar and the three members of the managing committee who granted the leases, namely, Khogendra Lala Mitra, Sachindra Lala Mitra and Abani Ghose. The transferred suit being Extraordinary Suit No. 6 of 1957 was tried first and a large number of witnesses and a mass of documentary evidence was tendered. It was agreed that the evidence in the transferred suit would be treated as evidence in the other suit. During the pendency of the suit Hem Chandra Naskar died, so also the defendant Sachindra Lala Mitra.

4. It is alleged in the plaint that after death of Rajendra Lala Mitra who during his lifetime was acting with the consent of the other shebait as the person in management of the debutter estate, disputes arose amongst the descendants of Raja Pitambar Mitra which ultimately led to the institution of Suit No. 1528 of 1926. In paragraph 7 of the plaint the relevant provisions of the scheme relied on by the plaintiff have been set out. In paragraph 8 the constitution of the managing committee consisting of five persons elected on December 16, 1943 has been recited. The death of Subodh Lala Mitra one of the members of the committee in 1945 as also the resignation of Jogendra Lala Mitra another member of the committee shortly thereafter have also been alleged. It is then pleaded that the

surviving members were guilty of violation of the provisions of the scheme in not filling up the vacancy and they purported to continue to manage the debutter estate unlawfully. It is then pleaded that the offending long leases were granted fraudulently without any legal necessity in breach of the scheme at an abnormally low rate of rent. The grantors obtained a salami on the said three leases amounting to Rs. 10,000/-, Rs. 5,000/- and Rs. 5,000/- respectively. The said members and the lessees have been charged with collusion and conspiracy to defraud the debutter estate. The capacity and authority of the grantors to grant the leases has also been challenged. It is pleaded that the leases were ab initio void, the grantors had no authority to grant leases on behalf of the defendant deities. The grants were made in direct contravention of the scheme framed by the High Court. No general meeting of the shebait was called and the formalities prescribed in the scheme had not been observed for obtaining the approval and sanction of the shebait to grant the leases. The leases were alleged to be fraudulent and void. The lessees are charged to have taken the leases with full knowledge of the breach of trust and want of authority on the part of the grantors as also with full knowledge of the illegality of the transaction. It is contended that the lessees were holding the properties as constructive trustees for and on behalf of the deities and they are liable to reconvey, return and release the said properties to the deity defendants.

5. On these allegations inter-alia the following reliefs have been claimed :

- (a) Declaration that the said leases dated 3rd May 1946, 29th November 1946 and 26th December 1946 are void and not binding on the debutter estate belonging to the deity defendants;
- (b) If necessary, the said leases be adjudged void, delivered up and cancelled;
- (c) Declaration that the said properties belong to the debutter estate of the deity defendants and the defendants Nos. 3 and 4 are not the lessees thereof;
- (d) If necessary the defendants Nos. 3 and 4 be directed to reconvey and release the properties set out in Schedule 'A' hereto in favour of the plaintiff and/or the deities defendants.

(e) Injunction restraining the defendants Nos. 3 and 4 from claiming any right or interest in respect of the said properties or from realising any rent, issues or profits thereof;

(f) Possession of the properties mentioned in Schedule 'A' hereto;

(g) An enquiry into damages suffered by the defendant deity by reason of the execution of the said lease and decree for the sum found so due against the defendants Nos. 3 to 7.

6. The voluntary statement filed on behalf of the defendant deities supports the plaintiff's case. There are two written statements on record, one filed jointly by Hem Chandra Naskar and Jogendra Nath Naskar and another by the defendant Khogendra Lala Mitra. Khogendra Lala Mitra originally did not enter appearance nor did he file his written statement. But shortly prior to the trial he filed the same after obtaining an order from me. In both the written statements the plaintiff's claim is disputed. All allegations of fraud, conspiracy and breach of trust made against the members of the managing committee have been denied. It is contended that the grant of leases was made pursuant to the scheme after obtaining the approval of the shebais at a general meeting duly convened and held for that purpose. It is contended further that the vacancy could not be filled for reasons not within the control of the members of the committee, that the surviving members were competent to function without the vacancies being filled up and that the members acted all along in terms of the scheme. The lessees have contended further that they were bona fide transferees for value without notice of the defect in title of the grantors, if any, and as such their title as lessees is fully protected in law. The leases are alleged to be for the benefit of the debutter estate. The Receiver's competence to file this suit and his locus standi had been disputed. The suit is contended to be bad for non-joinder and mis-joinder of parties and causes of action. The suit is also contended to be time barred. Finally, it is pleaded that the suit is false and mala fide instituted at the instance of the previous lessee Shri Sankarsen Ltd. and/or the said Rohini Lala Mitra and Mrigindra Lala Mitra, two shebais, with a view to harass the defendant Khogendra Lala Mitra because of personal animosity.

7. On the pleadings the following issues have been raised by the defendants:

On behalf of the Naskar defendants :

1. Did the defendants Khogendra, Sachindra and Abani in breach of the provisions of the scheme not call Extraordinary General Meeting of the Shebait for filling up vacancy as alleged in paragraph 9 of the plaint?
2. Did Khogendra, Sachindra and Abani dishonestly or fraudulently or in breach of their duty or of the provisions of the scheme purport to continue the said purported Committee with themselves only?
3. Did the said defendants without legal necessity or in breach of the provisions of the said scheme execute the said leases dated 3rd May 1946, 29th November 1946 and 26th December 1946?
4. Were the said leases brought into existence in collusion or conspiracy between the said defendants and the Naskar defendants with intent to defraud or deprive the defendant deities?
5. Are the said leases dated 3rd May 1946, 29th November 1946 and 26th December 1946 void or invalid or inoperative, or illegal or not binding on the plaintiff?
6. Did the said defendants have no authority or capacity or any legal necessity to execute the said leases?
7. Did the said defendants not represent the defendant deity?
8. Did the said defendants not hold a general meeting of shebait or observe other formalities provided in the said scheme for the purpose of letting out the said properties?
9. Did the defendants Nos. 3 and 4 take the said lease with full knowledge and notice of breach of trust or want of authority or illegality of the said defendants as alleged in paragraph 21 of the plaint?

10. Were the said leases granted with the knowledge, consent and approval of all the shebaites of the defendant deity?

11. Have the defendant deities derived benefit from the said leases?

12. Did the Shebaites of the defendant deities confirm and adopt the said leases and acted in terms thereof?

13. Did the Managing Committee with the three members continue to function with common consensus of the general body of shebaites?

14. Were the acts of the said Managing Committee accepted, approved, confirmed and ratified by the general body of shebaites?

15. Are the said leases still binding on the defendant deities and/or the debutter estate?

16. Has the plaintiff any cause of action against these defendants to institute this suit? 16A. Is the plaintiff competent to maintain the suit?

17. Is the plaintiff liable to refund the moneys paid by these defendants as the consideration for the said leases?

18. Is the suit bad for non-joinder of all the shebaites?

19. To what relief, if any, is the plaintiff entitled?

On behalf of Khagendra Lala Mitra:

1. Is the suit barred by the laws of limitation?

2. Is the plaintiff entitled to recover damages as claimed in the plaint?

8. At the trial, a large mass of evidence was tendered both oral and documentary. On the plaintiffs side, many of the shebaites tendered evidence. On behalf of the defendants, Khagendra Lala Mitra and Abani Ghose, two of the members of the Committee, who are alive, and who granted the leases have tendered their evidence. At the -date of the trial, of the two lessees, Hem Chandra Naskar was

dead. Jogendra Nath Naskar the surviving lessee did not give evidence. On behalf of the lessees however the Manager of Naskar Estate Chintaharan Bhattacharyya tendered evidence.

9. Dr. Das learned counsel appearing for the Naskar defendants throughout the proceedings made a grievance of this fact that the debutter estate has been ruined not by Khagendra Lala Mitra the managing shebait and his colleagues in the Committee who granted the leases but by their predecessors who are now championing the cause of the debutter. Most of the debutter properties were leased out to Sankarsen Ltd. before his client came into management on a rent of Rs. 900/- per month and a salami of Rs. 2 lakhs. The entirety of the said sum of Rs. 2 lakhs was utilised for paying the costs of the attorneys employed by the different parties in suit No. 1528 of 1926. Even this colossal sum of Rs. 2 lakhs was not enough to meet the costs and expenses. Thereafter a further sum of Rs. 75,000/- was borrowed from the lessees Sankarsen Ltd. to meet the costs of litigation and the lessees went on recovering this sum of Rs. 75,000/- by making substantial deductions from the rent payable by them under the lease. In the result, when Khagendra Lala Mitra and his committee took charge of the debutter estate, the income of the debutter estate was too inadequate to meet the requirements of the debutter estate. There was no alternative left to the new committee than to grant leases of the remaining debutter properties which were then in an undeveloped condition lying at Beliaghata. The debutter had no money with which the managing committee could develop the estate. The granting of the lease was, therefore, imperative in the interest of the debutter estate, and the terms on which such leases were granted were the best available at the time. It was contended by Dr. Das that the responsibility for the ruin of the debutter estate falls fairly and squarely not on Khogendra Lala Mitra and the other members of the committee who granted the leases to the Naskars but on their predecessors, who finished the debutter estate by granting long leases of all income yielding and most valuable properties to Sankarsen Ltd. Sankarsen Ltd., according to Dr. Das, was aided and abetted by the shebait who are now championing the cause of the debutter.

10. There is no doubt that this prosperous debutter was ruined by reason of the litigation in which it was involved since 1926. The costs payable out of the debutter estate was colossal and this prosperous estate hitherto unencumbered, became heavily encumbered. All the first class income yielding property had to be leased out to raise the above sum and what was left of the debutter was only the lessor's right to get a small sum of Rs. 266/-per month. The paradox is that the suit instituted for the better management and protection of the debutter estate resulted in its ruin. This grievance of Dr. Das may be well-founded. It cannot however be said that the entire responsibility of this ruin must fall fairly and squarely on the shebaites other than Khogendra and the other members of the committee. All the shebaites, including Khogendra Lala and others must take the responsibility. Each one of them was a party to the suit of 1926. Scores of attorneys were employed and the costs of every proceeding in that suit were directed by the Court to be paid out of the estate. Everything was done in that suit according to the law and practice prevailing in this Court. To secure payment of the costs, leases were granted by the Official Receiver who was in possession of the estate pursuant to an order of the Court. The lease was granted to the highest bidder and was sanctioned by the Court. It would, therefore, not be proper to put the responsibility on the lessees or some of the parties to the litigation for ruining the debutter estate. It may be true that the income of the estate was inadequate to meet the expenses of the debutter when the committee of which Khogendra Lala Mitra was the managing shebait took charge of the management of the defaulter estate. And it may equally be true that in the circumstances the only way of increasing the income of the defaulter estate was by granting further leases of the remaining property. These facts, though true, have not much relevance to the present controversy. In order to uphold the leases which are the subject-matter of this suit, I will have to hold that the grantors had the capacity in law to grant the lease in terms of the scheme sanctioned by the Court, that there was legal necessity for the leases and the procedure laid down in the scheme had been adopted and that the leases were for the benefit of the estate. The omissions and commissions of the previous committee of management are not relevant for our present purpose. If and when the act of the previous committee is challenged or the legality of the lease in favour of Sankarsen Ltd., is questioned in a properly constituted suit, the

Court will have to give its decision on it. In the present case these other questions will only lead to confusion of issues. I leave it at that.

11. It is convenient at this stage to consider the provisions of the scheme framed by the Court which regulates the administration of the debutter estate. Clause (1) of the scheme provided that 'a committee shall be formed consisting of five shebait' for the purpose of management of the debutter estate. Clause (2) provides that 'the Committee shall be formed by election by ballot by the shebait. Out of five members to be elected, three shall be elected from the three branches of Janmajoy, Haralal and Gopimohon and the other two shall be elected as representatives of the general body.' Clauses (3) and (4) deal with the mode of formations of the Committee and its tenure. The existing committee for the time being under the signature of the Managing Shebait shall at least two calendar months prior to the expiry of the office issue notices to all the Shebait inviting them to offer for election. The intending candidates by letters are to intimate their candidature at least six weeks before the date of election. Then the date of election was to be fixed by the Managing Committee and notices intimating the date of election shall be sent to all the Shebait. If there be no candidate for election from a particular branch, that seat will be treated as a general seat along with two others. Elaborate rules are laid down for the election of Chairman of the election meeting, method of voting, disqualification of a voter, opening of the ballot box and declaration of the result. It is provided in Clause 4(ii) that in case of dispute as to whether a candidate is disqualified on any of the grounds stated, 'the decision by a majority of the Shebait present at the meeting will be operative and final binding on the Shebait.' Clause 4(13) provides that the term of office of each Committee shall be for 5 years. Sub-clause (14) provides that there should be at least two meetings of the Managing Committee every month and three shall form a quorum. Sub-clause (15) provides that if the Committee is not unanimous in its decision, 'the decision of the majority shall prevail.' If only 4 members of the Committee are present and they are equally divided in opinion on any matter, then it shall be referred to the fifth member who was absent from the meeting whose decision on the matter in question shall be final. Sub-clause (16) provides that a minute book is to be kept and the minutes to be confirmed in the next meeting. Clause (6) provides for vacancies in the Committee and reads as follows:

'6. (1) If a member of the committee during its tenure is unable to attend six consecutive meetings of the committee, or resigns, or is incapacitated by illness or is convicted of an offence involving moral turpitude, or commits misfeasance or misconduct in the performance of worship or in the management of the Thakurs, or becomes an apostate or a lunatic, or an insolvent, or if he or she dies, the other members of the committee shall upon notice in writing to the member of the committee in respect of whose seat the election is to take place (except in the case of his or her death) and to all other Shebaites, within a fortnight of the happening of such event, convene an extra-ordinary general meeting of the Shebaites for the purpose of removing the said member (except in the case of his or her death) and/or for electing a member in his or her place, and the aforesaid rules as to eligibility of the candidate and procedure to be followed at the meeting for general and special seats will be applicable to such extra-ordinary general meeting convened for the purpose aforesaid.

(2) If any dispute arises as to any of the above reasons for the vacancy, the decision of the majority of the Shebaites at the general meeting so convened shall be final.

(3) Upon the happening of the event as aforesaid, no earlier than six months prior to the expiration of the term of office of the particular committee, the Shebaites at the general meeting so convened as aforesaid for the purpose of electing a member of the committee, shall, if they so consider fit by a majority of votes of those present at the meeting, be entitled to declare that the vacancy need not be filled up for the remaining period of the term of office of the particular committee.'

12. The powers of Committee are set out in Clause (7). It will be in charge of all moveable and immoveable properties of the Debutter estate, shall take steps for improvement of the estate, shall not be entitled to borrow money for any purpose except upon a resolution passed by a majority of 3/4th present at a general meeting of the Shebaites convened by the Committee by request in writing. Amount to be spent for the Poojah has been fixed in the Schedule annexed and marked X 'but if the income decreases or increases then with the consent and approval of the majority of Shebaites, which shall be ascertained at a general meeting of the

Shebait to be called by the Committee, the Committee shall be entitled to reduce or increase the Poojah expenses as the case may be.' Clause (S) provides for the appointment of a Managing Shebait by election from amongst the members of the Committee. He is to be guided by the Committee and subject to such guidance do everything in connection with the management and performance of the Poojah. The Managing Shebait is responsible for realisation of rents and profits of the properties and keeping of the accounts. Clause (15) provides for proxies. 'In case of dispute as to the validity or authenticity of the proxy, the decision of the majority shall be final.' Clause (16) provides for notices of general or extraordinary meeting required to be signed by the Managing Shebait under the direction of the Committee. There shall be kept in the office 'a book in which the Shebait shall enter their respective addresses. All notices to Shebait shall be sent to such addresses as are respectively entered in the book as aforesaid. If any Shebait fails to enter his address in the book to be so kept as aforesaid and in consequence of such failure the notice of meeting is not sent to the correct address, the Shebait in default shall not be entitled to raise any objection.' Clause (17) deals with the management of Debutter properties. Sub-clause (b) is very important and reads as under:

'(b) The Committee shall not be entitled to sell or mortgage the properties of the Thakur, nor shall they be entitled to grant a lease of any of the properties for a term exceeding three years at a time. If the Committee wants to grant lease for a term exceeding 3 years, the Committee shall be empowered to do so with the sanction and consent of the majority of the Shebait to be ascertained in a general meeting of the Shebait held specially for that purpose.'

13. Clause (21) provides that the scheme is liable to alteration without recourse to a suit by means of a resolution of the general body of the Shebait passed in that behalf, and an order is obtained from the Court on application made in this suit by such Shebait or Shebait as may be authorised in that behalf by such resolution.

14. The question to be considered in this suit is that having regard to the provisions of the scheme as set out above, the grant of long leases by a Committee of management consisting only of 3 members is permissible in law on

the facts of this case.

15. Before further considering the merits of the plaintiff's case, it is necessary at this stage to consider a point raised by Dr. Das, learned counsel for Naskar defendants, which, if upheld, must result in the dismissal of this suit. Mr. Das's contention is that the Official Receiver is not competent in law to challenge an alienation of a debutter property by the Shebait when the alienation took place long prior to the institution of the suit in which the Receiver was appointed. The suit in which the Receiver was appointed was merely for the purpose of ousting the present management and for administration. The scope of the suit is limited and does not cover a dispute as to the title of a stranger in the Debutter estate. In such a suit, before an administration decree is passed, no suit lies for setting aside an alienation of the Debutter property by the Receiver in any event. Mr. Das strenuously argued that the suit by the Receiver is therefore not maintainable and must be dismissed in limine. In fact, Dr. Das asked me to decide this as a preliminary issue before taking up the consideration of the other issues raised in this case. I was not however inclined to a piece-meal trial particularly having regard to the fact that the suit is pending for so long a time and no application for taking up the preliminary issue was made by the Naskar defendants earlier. The point raised by Mr. Das is of importance and requires consideration.

16. According to Hindu law the only person entitled to institute a suit for setting aside an alienation of a property belonging to a private debutter is limited to founder and his heirs, the Shebait present as well as prospective or members of the family. A stranger to the family has no power to institute a proceeding for setting aside an alienation and the Official Receiver in the instant case, according to Dr. Das, is nothing more than a stranger. Reliance has been placed on several passages in the B.K. Mukherjee's treatise on 'The Hindu Law of Religious and Charitable Trust' and a number of decisions in support of the above contention. The proposition of law can hardly be disputed and has not been disputed by Mr. Mahadev Hazra appearing for the plaintiff. A Receiver who institutes a suit however can hardly be called a stranger in the sense the word has been used by the learned author of the above treatise and in the decisions cited. Nor does a Receiver derive authority to institute a suit from the Hindu law. He derives his

power under the Statute Law viz. the Code of Civil Procedure, Order 40. He institutes the suit as representative of the Court for and on behalf of the party who may ultimately be declared entitled to the property in the suit in, which the Receiver is appointed. In the instant case the Receiver appointed in suit No. 4575 of 1950 is a suit in which the prayer is for administration of the debutter estate. The deity as also all the Shebaites are parties to the suit. The allegation made in the suit is that a number of Debutter properties have been wrongfully alienated and the prayer is for the removal from management of the members of the Committee and for administration of the Debutter estate. The Receiver has instituted the present suit as an officer of the Court for the benefit of the Debutter estate. He cannot therefore be treated as a 'stranger' in the sense the word has been used in the authorities cited by Dr. Das. In order to succeed on the point of maintainability, Dr. Das must establish that the Receiver is not empowered under Order 40 of the Code of Civil Procedure to institute the instant suit. That indeed is the next branch of Dr. Das's argument. The suit No. 4575 of 1950 was instituted by the deity with a Shebait as next friend for framing a scheme for administration of the debutter estate by the Court and for removal of three Shebaites who are in management and possession of the Debutter properties. Allegations of mismanagement and devastavit have been made against the said persons in management. The acts complained of include the granting of the leases in the present suit alleged to be wrongful alienations. The parties impleaded are all the Shebaites. One of the Shebaites who instituted the suit as the next friend of the plaintiff deities is a co-plaintiff. All others have been impleaded as defendants. The alienees i.e., the Naskars have not been impleaded as defendants. It seems to me that the plaintiffs were advised that in such a suit for administration and framing a scheme, the alienees were neither necessary nor proper parties. The point is whether having regard to the nature of the suit and the absence of the Naskars in the said suit, the scope of the suit is wide enough to determine the legality of the alienations in favour of Naskar and the title of the Naskars to be in possession of the properties as lessees. Dr. Das's contention is that it is not.

17. Order 40 Rule 1 empowers the Court to appoint a Receiver when it is just and convenient to do so. The Court is also empowered by the said rule to confer on the Receiver 'all such powers as to bringing and defending suits and for realisation,

management, protection, preservation and improvement of the property.' A Receiver is an officer of the Court and his authority is entirely derived from the Court. He is appointed for the benefit of all concerned. He is the representative of the Court and of all parties interested in the litigation, wherein he is appointed. The properties in suit never rest in Receiver under Order 40 of the Code. The ownership and title remains in the owners. Whenever therefore Receiver institutes suit for possession or title, he does so not because he is the owner but because he is so authorised to do as a representative of the Court and the parties to the suit in which he is appointed a Receiver. When this is kept in mind much confusion in thought can be avoided. When, for example, the instant suit was filed by the Receiver, he did so not because he claimed any title to the demised property but because he has been authorised to institute the instant suit by the Court in suit No. 4575 of 1950 as a representative of the Court for the benefit of the parties in the above parent suit of 1950. I find no warrant for the proposition that a Receiver is empowered and has a limited authority to institute suit for possession and not to institute any suit for the determination of title. The reason suggested is that the Receiver has no ownership, no title to the property in suit and only an owner who has got title can institute a title suit. The fallacy of this argument is that the Receiver is the representative of the owners and as such, may well be empowered to do everything for the protection, preservation and improvement of the property including the institution of suit. It is contended that a Receiver is only entitled to recover possession. But without title you may not be entitled to possession. The Receiver therefore must have the title of subject matter determined and then claim possession. As stated before, the title to be established is not his own title but title of the owners whom he represents in the suit. This seems to me so simple as being beyond argument. It is contended that a Receiver cannot institute a suit against a stranger for recovery of possession on a declaration of title, if the stranger claimed to have acquired title before the appointment of Receiver. This argument will not stand scrutiny and is clearly untenable. Let us take the case of ejectment of a monthly tenant. It is not disputed that a Receiver is competent to institute such a suit. Even if the tenant acquired tenancy right and title to possession prior to the appointment of Receiver, the Receiver is entitled in law to bring an ejectment action against such a tenant after terminating his tenancy right,

say by serving a notice to quit. The case would be the same if the tenant was not a monthly tenant but holding under a lease. Here also the Receiver is competent to institute a suit for ejectment' and recover possession against such a tenant on the ground that the lease is forfeited or is or has become void. No distinction can be made between a monthly tenant and a tenant holding under a lease. In either case the Receiver must prove his title to possession and then claim possession. The title he must prove is not his title but the title of the owners or the lessors. Dr. Das relies on a passage from Woodroff's Receiver, 4th Edition p. 194 which reads as follows :

'But he cannot recover property acquired before his appointment from a stranger to the suit. Nor does his appointment affect any right previously acquired by third persons, nor the right to recover properties sold away by the judgment debtor under Section 53 of the T. P. Act or on the ground that the sale was not binding on the creditors of the judgment debtor.' (Woodroffe on Receiver -- 4th Edn. p. 194).

18. The case relied on in support of the above proposition by the learned author is the case of Mahamad Kasim Sahib v. Pachapakesa Chetti, decided by the Madras High Court and reported in ILR 35 Mad 578. Dr. Das strongly relies on this Madras decision. In the Madras case, the Receiver was appointed in execution of a decree passed by the Small Causes Court of certain moveables alleged to belong to the Judgment debtor. There, the plaintiff decree holder who was appointed the Receiver instituted a suit for declaration that certain moveables were in the possession of third parties and it was alleged that the judgment debtor the original owner fraudulently sold the moveables long ago. In the application made by the plaintiff decree holder for the appointment of Receiver, the prayer was that this Receiver should be appointed for collecting either the property or the value thereof. The order made on the application did not appoint the plaintiff as Receiver for recovering the value of the goods but only as Receiver of moveables. On the strength of this order the plaintiff decreeholder as Receiver instituted a suit for the recovery of moveables against the purchaser of the same. The sale was sought to be set aside on the ground that it was not bona fide but was in fraud of the creditors. The suit was decreed by the Subordinate Judge on the finding that the sale was fraudulent. In appeal the judgment was set aside and the suit was

dismissed. There was a further appeal in the High Court. The High Court affirmed the decision of the Appeal Court and held that the plaintiff as Receiver was not entitled to sue the defendant for the goods or their value. This judgment of the High Court has been relied on by Dr. Das.

19. It is not difficult to understand the decision and the reasons therefor. The factum of sale was admitted but the purchaser's title was challenged on the ground that it was in fraud of the creditors. A fraudulent transferor cannot institute a suit for setting aside the transfer. If the transfer was in fraud of the creditors, the transfer can be challenged in the insolvency proceedings by the Receiver in Bankruptcy because the estate of the bankrupt vests in the Receiver and the Receiver is not bound by the fraudulent transfer. The position of the Receiver appointed under Order 40 Rule 1 is different. The estate does not vest in him. His power is no more than the power of the fraudulent transferor. If the fraudulent transferor had no power to set aside the transfer, the Receiver appointed under Order 40 Rule 1 had no such power. The appointment of Receiver cannot affect the rights previously acquired by third party. In the cited case, the ratio of the decision is that the defendant to whom the property was sold prior to the appointment of Receiver acquired good title as against the transferor even if the transfer was fraudulent and this right of the transferee cannot be affected because of the appointment of a Receiver. Hence the suit instituted by the Receiver was dismissed. Properly read, this decision does not lay down a broad proposition that the Receiver cannot institute a suit challenging the title of a stranger, if the title was acquired prior to the appointment of the Receiver. In the case of a lessee with defective title, which can well be challenged by the lessor, a Receiver appointed by the Court of the lessor's estate can very well challenge the lessee and institute a suit for recovery of the demised property and the decision in 35 Madras 578 constitute no impediment. In the case of *Achut Sitaram v. Sivaji Rao Krishnarao*, decided by a Division Bench of the Bombay High Court and reported in AIR 1937 Bom 244 the question arose whether a Receiver appointed under Order 40 Rule 1 can bring a suit to set aside a collusive sale by one of the parties affecting the rights of the other during the pendency of a previous suit under Section 52 of the T.P. Act. The Court held that the Receiver had the right to institute a suit against such a transferee for a declaration that the sale was not binding. After quoting

Order 40 Rule 1, the Acting Chief Justice Ranganekar made the following observation at p. 250:

'These words in my opinion are enough to empower the court to authorise the Receiver to bring any suit in his own name, the object of which is to preserve, collect or realise the property in suit and where the Receiver is authorised in this behalf, he may sue in his own name. The ground on which the suit is based seems to me to be immaterial. If the owner can bring a suit to recover his own property, and has a cause of action to do so, it is difficult to see why the Receiver who has the same power as the owner has to bring a suit and who is authorised by the Court in that behalf cannot bring such a suit. The Receiver, in my opinion, when properly authorised would have the same power as the owners as regards the property; and if the owner could not have sued for possession of the property the Receiver could not. But if the owner could bring a suit and has a cause of action, then the Receiver would be entitled to sue on the cause of action subject, of course, to his being authorised by the Court in that behalf.'

19a. The observations relied on by Dr. Das before me were also relied on by the learned counsel appearing in the cited case as an authority for the proposition that the Receiver had no power to institute the suit. The contention was negated. With respect I agree to the above observation as setting out the law correctly. A number of other decisions were cited by Dr. Das. In my judgment those decisions do not cover the point I am called upon to consider in this case and I do not think it necessary to deal with them.

20. The next point urged by Dr. Das is that the power of the Receiver is limited by the scope of the suit in which he was appointed a Receiver. In the present suit No. 4575 of 1950, the title of the Naskar defendants as lessee could not have been adjudicated. Naskar defendants were not parties in suit No. 4575 of 1950. The Naskar defendants were not either necessary or proper parties in the suit which was inter alia for framing a scheme of the debutter properties. The suit would have been bad for misjoinder of parties and causes of action, had the Naskar defendants been impleaded defendants and adjudication was sought as to their title as lessee and their right to be in possession of such lessee. Further, the

subject matter of the lease being outside the jurisdiction of this Court, the legality of the title could not have been adjudicated in the suit No. 4575 of 1950. The Naskar defendants were there not properly joined as defendants in the suit. This absence of the Naskar defendants however does not circumscribe the power of the Receiver to institute a suit to recover possession of the property. The Court has the power and it frequently authorises the Receiver to institute suit to recover property wrongfully in possession of stranger. No authority has been cited, nor do I know of any in which it is held that a Receiver cannot institute a suit against a stranger who is not a party to the suit in which he was appointed a Receiver. Indeed, if the stranger was a party, the question could be adjudicated in the suit itself and no appointment of Receiver would be necessary. In my judgment, this point has no substance.

21. It is next contended that in any event prior to the preliminary decree in the administration suit, the Receiver could not be empowered to institute a suit against a stranger. I do not find any reason or authority for such a proposition. If for the protection and preservation of the estate a suit becomes necessary, I do not find any reason for the Receiver to hold his hand till the suit terminates by a decree. In between, sufficient mischief may be done by reason of this delay. The Court while appointing a Receiver must be satisfied that the suit is competent and a prima facie case is made out that the appointment of a Receiver is necessary for the preservation and protection of the estate. Before granting leave to sue, the Court must be satisfied that prima facie there is a cause of action and a suit should be instituted by the Receiver to recover possession of a property belonging to the estate. Ultimately the parent suit in which the Receiver is appointed may succeed or fail. But that has got nothing to do with the appointment of Receiver and allowing the Receiver to institute a suit. If the parent suit ultimately fails and in the meantime the Receiver's suit is decreed and possession is recovered from the stranger in that suit, the Receiver will make over possession to the party entitled thereto as directed by the Court. There would be no contradictory result and the lessee whose lease is adjudged to be void will have no reason to complain.

22. I should note here that I do not agree with Dr. Das that the power of the Receiver to institute a suit is limited by the scope of the parent suit in which he is

appointed Receiver. Receiver's power is derived from the Court and even if the scope of the suit in which a Receiver is appointed does not cover a question of title to the property, the Receiver may be appointed and authorised by the Court to institute a title suit for protection and preservation of the estate. Assuming, however, that Dr. Das's contention is right, in the instant case, the scope of the parent suit is wide enough to cover the determination of title in any of the debutter estate. The preliminary point taken by Dr. Das that the suit is not maintainable fails and the merits of the plaintiff's case will have to be considered.

23. Broadly stated, the plaintiff's case is that the leases have been granted by the Managing Committee in breach of the scheme sanctioned by the Court in Suit No. 1528 of 1926. It is contended by Mr. Mahadev Hazra that the scheme provides that 5 members should constitute the Committee. After the death and retirement of two of the members the Managing Committee instead of filling up the vacancy as provided in the scheme went on functioning as such and went to the extent of alienating the debutter properties. This, according to Mr. Hazra, is clearly illegal and the three members purporting to function as the Managing Committee had no title to grant the offending leases. According to Hindu Law, only the whole body of Shebait is competent to act for the deity to pass title of a debutter estate and if the alienation is not by all the Shebait purporting to act for the deity, the alienee does not acquire any title. (See B.K. Mukherjee's Hindu Law of Charitable and Religious Endowment. 1st Edn., p. 253. See also Manmohan Das v. Janki Prasad. . It is further provided in the Hindu Law that the Shebait cannot delegate their authority to any other person or Shebait and without the concurrence of all the Shebait there cannot be any alienation. (See Mulla's Hindu Law. p. 235. Mukherjee on Hindu Endowment, 1st Edn., pp. 274, 276) When however the debutter estate is operating under a scheme framed by the Court, the provisions of Hindu Law as to the rights of the Shebait acting as a body is modified to the extent of the scheme. (See Srijib Nyayatirtha Secretary v. Sreemat Dandy Swami Jagannath Asram : AIR 1941 Cal 618 . A transfer or alienation is permissible by not all but some of the Shebait provided it is done in terms of the scheme. In such event, the alienee acquires good title. In the instant case the title of the Naskar defendants is defective because the grant has been made by a Committee of three and not of five. This is dehors the scheme sanctioned by the Court. It is not

seriously disputed that if on a construction of the scheme in the decree in suit No. 1528 of 1926 it is held that a Committee of three is not competent to act and deal with the debutter estate, then there would be a serious defect in the title of the lessees. It is however contended by the learned counsel appearing for the Naskar defendants and the defendant Khagendra Lala Mitra that the Committee of three could well function as such under the scheme and deal with the debutter estate even though the two vacancies caused by death of one of the members and resignation of the other are not filled up. It is true that Clause 3 of the scheme provides that 'the committee shall consist of five members' and Clause 6 (i) provides that on such death/retirement the other members of the Committee shall on notice to all other shebaitis within a fortnight from the date of death or resignation, convene an extraordinary general meeting of the Shebaitis for the purpose of electing members of the Committee for filling up the vacancy. On the other hand, Clause 6(3) dispenses with such election for filling up the vacancy if the vacancy takes place within six months from the expiration of the terms of office of the Committee. It cannot be contended therefore that the Committee cannot function without having five members at all times. It can function with less members so long as a quorum can be had in such meeting. The scheme provides that the quorum should be of 3 members. This is the defence contention. Mr. M. Hazra submitted that Clause 5(15) is also relevant in considering the question, viz., whether it was intended that the Committee could function with less than 5 members. Clause 5(15) provides that the Committee should try to be unanimous, but if not, the decision of the majority shall prevail. The sub-clause goes on : 'If only 4 members are present at a meeting of a Committee and they are equally divided in opinion on any matter, then it shall be referred to the 5th member who was absent from the meeting whose decision on the matter in question shall be final.'

This tends to show that it was contemplated that the Committee should always consist of 5. If one vacancy takes place and not filled up, then in the event of deadlock it cannot be removed. What would happen if a vacancy takes place within 6 months of the expiration of the office of the Committee In such a case, according to Clause 6 (3) no election need take place for filling up the vacancy and the Committee will function with 4 members. In such a case if the deadlock

happens and a question arises in which the members are equally divided, Clause 5(15) will not be applicable. It may therefore be contended that the above position was intended to remove a deadlock in normal cases when the Committee is functioning with its full membership and does not indicate that the Committee cannot function except with the full number indicated in the scheme. As indicated before, according to Hindu Law, the whole body of the Shebait represents the deity and the whole body of Shebait can act on behalf of the deity. Inconvenience of this rule is patent particularly where the number of Shebait is large. This leads to difficulties in the management of the Debutter estate and the Debutter estate comes before the Court for administration. The Court frames a scheme for the proper management of the Debutter estate. In such scheme power of management is given to a small body as in the instant case and the body so constituted represents the general body of Shebait. If in such a scheme it is laid down that the Committee that can function and represents the general body of Shebait, shall consist of 5 members. The word 'shall' used in the scheme should be construed as mandatory. In the instant case the scheme provides for representation of each of the 3 branches in the Managing Committee as also the representation of the Shebait as a whole. If there is a vacancy and a representative of one of the branches dies or resigns or is removed from membership, then the Committee ceases to have the representative character as envisaged by the scheme. It is because of this that stringent provision is made in the scheme directing the remaining members of the Committee to hold an election. The language used is that the remaining members of the Committee shall hold election for filling up the vacancy. The language is mandatory. It seems to me that the scheme contemplated that each of the 3 branches would take part in the management through their representatives and should there be a vacancy, it should be filled up with the least possible delay. If the argument of number prevents each member of the branch to participate in the management of Debutter estate, they nevertheless were given the right to participate in the management through their representatives. That right was, intended to be preserved at all times and the language used in the scheme fixing the number of members in the Committee at five. The language used is advisably mandatory. It could not have been intended that the surviving member of the Committee would by the simple

procedure of refusing to hold election caused by the death or retirement or resignation of one member, deprive the Shebait of one branch to participate in the management and look to the interest of that particular branch. I therefore hold that in the instant case the Committee ceased to function because of the failure of the surviving members to fill up the vacancy after the death of one and resignation of the other. I am not impressed with the argument that no election was held because there was no available candidate. This is manifestly untenable. No notice was issued inviting nomination. I hold that the surviving members of the Committee were guilty of breach of duty and by failing to hold election under the mandatory provision in the scheme stultified themselves and became incapable to act for and on behalf of the Debutter estate.

24. Assuming I am wrong and the Committee of 3 is competent to function and do all acts relating to the management of the Debutter estate and pass title to a transferee of a Debutter estate, it has to be considered whether the alienations in the instant case can be upheld having regard to the other provision of the scheme. The material provision on this point is Clause 17(b) of the scheme which reads as follows:

'17(b). The Committee shall not be entitled to sell or mortgage the properties of the Thakur, nor shall they be entitled to grant a lease of any of the properties for a term exceeding 3 years at a time. If the Committee wants to grant lease for a term exceeding 3 years, the Committee shall be empowered to do so with the sanction and consent of the majority of the Shebait to be ascertained in a General meeting of the Shebait held specially for that purpose.'

25. This clause empowers the Committee to grant lease for a term exceeding 3 years only 'with the sanction and consent of the majority of the Shebait to be ascertained in a General meeting of the Shebait held specially for that purpose.' The defence case is that such approval and consent has been obtained in the instant case. The plaintiff's case is that no such approval or consent has been secured. This is a disputed question of fact to be decided on evidence tendered. In paragraph 16 of the plaint the definite case is made that the surviving members of the Managing Committee did not hold any meeting of the shebait and observe

other legal formalities as provided in the scheme for the purpose of letting out the property for a period in excess of 3 years and they have, without the permission of the Court, wrongfully executed the leases. In paragraph 18 it is pleaded that the granting of the said leases was in direct contravention of the scheme. The granting of the leases has been characterised as fraudulent. In paragraph 18 of the written statement of Khogendra Lala Mitra it is pleaded in answer to the allegation made that the leases were sanctioned in General Meetings of the shebaitis held on February 24, 1946, February 27, 1946 and December 7, 1947. There is no denial of the allegation that the leases were obtained without the necessary sanction of the Court or that the formalities laid down in the scheme have been complied with. There, however, is a general denial of the allegations made in paragraphs 17, 18 and 19 of the plaint. The written statement of the Naskar defendants contains more or less the same averments as in the written statement of Khogendra Lala Mitra. In support of the defence case on the point, evidence was tendered by the defendant Khogendra Lala Mitra and the other member of the committee Abani Kumar Ghose. On behalf of the plaintiff a number of shebaitis tendered evidence. The sum and substance of the evidence tendered by the said shebaitis on behalf of the plaintiffs is that they were never given any notice of any meeting, nor did they attend any in which the resolution sanctioning the leases was passed. According to the minutes of the meetings tendered in evidence, many of them were stated to be present in the meeting. Not one shebait, apart from the two members of the Managing Committee, pledged his oath that such a meeting was held in which the shebaitis by a majority authorised the Managing Committee to grant the leases. I may state my view that the evidence of both Khogendra Lala Mitra and Abani Ghose is unsatisfactory and not dependable. Comment has been made of the evidence of the shebaitis who spoke for the plaintiffs. Some of the comments may perhaps be justified, but there are some witnesses who held very respectable offices and their evidence cannot be brushed aside. Witness Jogendra is an employee of Tata Iron and Steel Co. holding a responsible office in the Sales Department. Witness Ajoy Hriday Mitter is a Commercial Tax Officer of the West Bengal Government. Anil Kumar Mitra is a medical practitioner, Amulya Joarder is a retired Chief Inspector of Factories Prabhat Kumar Sarkar is an employee of Bird and Co. in the Shipping Department, Kshetra was the senior most member of the

staff and was officer-in-charge of the Tea Department of Kilburn and Co. for more than 40 years. I cannot say that the evidence of these witnesses can be brushed aside on the ground that they are people of no importance. Generally speaking, even though the oral evidence of the shebait witnesses called by either side may not be wholly dependable, evidence led by the defence is less dependable than that of the plaintiff, having regard to the documentary evidence tendered in this case. It should not be forgotten that the onus of proving that the meetings were held on the dates stated in the written statement is on the defendants. The minutes of these meetings have been tendered in evidence. They are Exts. 0005, 0006 and 011a. There is no minute book. The minutes tendered are in loose foolscap sheets written in pencil. The minutes are set out hereunder :

Ex. 0005: The 6th Extraordinary General Meeting of the Shebaits held on 24-2-46 :

'The members present:

Messrs. Khetralal Mitra, 2. Khagendralal Mitra. 3. Dhirendralal Mitra, 4. Abani Kumar Ghose, 5. Sushil Kumar Mitra, 6. Sachindralal Mitra, 7. Robindralal Mitra, 8. Pulin Krishna Mitra, 9. Provat Kumar Sarkar, 10. Panchanan Sircar, 11. Pashupati Nath Bose, 12. Sanat Kumar Bose, 13. Manindra Nath Chowdhury, 14. Bhojahari Chowdhury, 15. Amarendra Nath Dey and 16. Kirondasi Dasi, Babu Sachindra Lal Mitra was elected Chairman.

Re. Proposal for lease portion of premises No. 147, Rajendra Lal Mitra Road, Beliaghata, Calcutta.

The Committee places the letter dated 18-2-46 received from the Estate of Sri Kuvereswar Thakur and Sri Sri Anandamoyee Kalimata Thakurani's shebaits Babus Hemendra Naskar and Jogendra Nath Naskar of 72, Beliaghata Main Road, containing terms of leases of the above premises for a period of consideration of the shebaits present. After some discussions the offer of the lease as contained in their letter dated 16-2-46 was unanimously accepted by the shebaits.

The Committee is hereby authorised to take necessary steps for executing the lease for 51 years certain with lessee's option for further 31 years at a monthly rent of Rs. 80/- and a selami of Rs. 10,000/- only.

The priest produces a list showing the repairs to the Thakurbati essentially required as also a list of utensils absolutely required for the daily puja and sheba of the Thakur. After discussion it was agreed that the necessary repairs and the purchase of articles mentioned in the list submitted by the priest be made by the managing shebait in consultation with the Committee out of the selami money to be realised.

The Committee is empowered to pay the corporation dues and the dues of Babu Khetrilal Mitra, Khagendra Lal Mitra and Sachindralal Mitra for performing daily and periodical sheba of the thakurs for the year 1943-44 and 1944-45 respectively.

The committee is further authorised to deposit the surplus amount if any after making above payment in a respectable bank.

The committee is to submit an account of all receipts and disbursements in due course.

With a vote of thanks to the chair the meeting concluded at 6.30 p.m.

Sd. S. Mitra.

Chairman.

Ex. 0006 : General meeting of the shebait held on 25-2-46.

Present:

'Khetralal Mitra, Khagendralal Mitra. Dhirendralal Mitra, Abani Kumar Ghose, Sushil Kumar Mitra, Sachindralal Mitra, Rohinindralal Mitra, Pulin Kristo Mitra, Provat Kumar Sarkar, Panchanan Sarkar, Pashupati Nath Bose, Sanat Kumar Bose, Manindra Nath Chowdhury, Bhojabehari Chowdhury, Amarendranath Dey and Sm. Kironsasi Dasi. Babu Sachindra Lal Mitra was elected Chairman.

Considered the letter written by Babus Hem Chandra Naskar and Jogendranath Naskar dated 18th February 1946 for the grant of lease of debutter and portion of premises No. 147, Raja Rajendralal Mitra Road.

Resolved that the offer of Babus Hem Chandra Naskar and Jogendranath Naskar as mentioned in their letter dated 18-2-46 be accepted.

Resolved further that the managing committee is hereby authorised to execute a deed of lease in respect of 11 1/2 bighas more or less of land and tank situated at premises No. 147 Raja Rajendralal Mitra Road to the said Babus Hem Chandra Naskar and Jogendrda Nath Naskar for 51 years certain and a further term of 31 years at the lessee's option provided the lessees pay a selami of Rs. 10,000/-only and pay a monthly rent of Rs. 80/- only.

Resolved further that an application be made to the District Judge, Alipore for permitting the committee's grant of such lease, this application be made at the request of the intending lessee.

Sd. S. Mitra,

Chairman,

Ex. 011a : Proceedings of the fifth Extraordinary General-Meeting of the shebait held at the Thakurbati on 27-2-46 :Bishundeo v. Seogeni Rai : [1951]2SCR548 and the other in Trojan and Co v. Nagappa Chettiar : [1953]4SCR789 . The proposition formulated by Dr. Das can hardly be disputed. To make a case of fraud, conspiracy and collusion, full particulars must be given. In the instant case, the transactions have been challenged on the ground that there was no legal necessity, and secondly that (SIC) leases were granted of the debutter properties (SIC) an abnormally low rent, in breach of the scheme without the consent and approval of the other shebait. These are the material allegations to which the plaintiff relies. No clear allegation (SIC) that the Naskar defendants having full knowledge of the infirmities of the transactions (SIC) the leases from the members of the Managing Committee on payment of illegal grati-(SIC) That case has not been made in the (SIC) and such a case of fraud, collusion and (SIC) the plaintiff

should not be allowed to (SIC) at the trial. That case has not been made (SIC) if there is evidence or suggestion of evidence (SIC) that kind of fraud, I will simply ignore it.(SIC) that extent I uphold the contention of Dr. (SIC). The allegations in the plaint however may(SIC) be read by eliminating the words 'fraud, (SIC) and conspiracy'. Absence of legal necessary and improper conduct and dereliction of duty on the part of the members of the Managing Committee has been pleaded with sufficient particulars. The plaintiff cannot be debarred from making that case on the present pleading. Even if absence of legal necessity is established the lessees are protected if it is proved that they are bona fide transferee for value without notice of defect in title of the grantors. In that view of the matter, the point raised by Dr. Das loses its importance. No case was sought to be made, nor would I allow any that the leases were obtained by the Naskar defendants by taking recourse to bribery and so on.

28-29. The leases have been challenged on the ground that they were without any legal necessity. I have already held that the grant of the leases having been made by a Committee which was not authorised by a majority of the shebaitis in a meeting specially authorised in that behalf, the leases were void. The ground now made is somewhat different. Assuming the shebaitis had the power to grant the leases, can the grant be justified, on the ground of legal necessity? The defendants contend that there was legal necessity in the instant case. The plaintiff contends that on the evidence it must be held that there was no legal necessity. Mr. Hazra asks me to note that no case has been made in the written statement that even though there was in fact no legal necessity, the leases are protected, because the Naskar defendants made bona fide enquiries and were satisfied of the existence of such necessity. There is that infirmity in the pleadings. Mr. Hazra, therefore, urged that if the Naskar defendants fail to establish on evidence that there was legal necessity in fact, they should not be permitted to fall back and support the transaction on the ground that they made bona fide enquiries and were satisfied as to the existence of legal necessity. The Naskar defendants, however, have raised the additional defence in their written statement that they were bona fide transferee for value without notice of defect. If, therefore, the allegations in the plaint are literally interpreted, they may perhaps cover the case of bona fide enquiry. I would, in the instant case, stretch a point in favour of the

defence and uphold the leases on the ground of bona fide enquiry, if such enquiry was held, even if I am satisfied that there was no legal necessity in fact.

30. But before I take up the consideration of this question, it is necessary to dispose of another point of Dr. Das. Dr. Das's point is that a lease, in order to attract the doctrine of legal necessity, must be a permanent lease. A lease, however long it may be, would not amount to alienation in the above sense, unless it is permanent. I find neither reason nor authority in support of this argument. It is true that most of the reported cases are cases of permanent leases. In the case of *Haribhan Baliram v. Hakim*, reported in AIR 1951 Nag 248, it was held that a lease for five years may be hit by the rule of legal necessity. At p. 250 of the report we find the following observation ;

'Cases of leases in perpetuity have often come up before courts. But a lease does not cease to be an alienation because it is not permanent. Since what is necessary and beneficial to the family has to be judged by reference to all the circumstances of a given transaction, the duration of the lease may not be altogether irrelevant to the inquiry regarding family necessity or benefit.'

It was the case of a lease for five years granted by a Mitakshara father and the question debated was whether it was hit by the rule of legal necessity. Trevelyn in his treatise on Hindu Law opines that a manager can create derivative tenures and estates conformable to usage and grant leases for a reasonable time. Manager of an infant's estate or defaulter estate, in the ordinary course of management, can induct tenants for a reasonable period. But granting of a permanent lease or a lease for a long period is not permissible, because such grants can never be considered to be in the ordinary course of management. It is considered to be extraordinary also because it results in the deprivation of the user of the property permanently or for a long period on the part of the owner.

31. Alienation means deprivation. And out and out means full deprivation. Mortgage or lease of a property is partial deprivation because the mortgagor still retains his right to redeem and the lessor his right to receive rent and the right to re-enter after the expiry of the lease. In the case of permanent lease, the right of re-entry is lost. The rule of legal necessity is to protect the estate in the hands of

persons who are not full owners to prevent the deprivation of their property by the owners. That deprivation may be complete as in the case of sale, or partial as in the case of lease or mortgage. It is to prevent this deprivation that the rule of legal necessity has been laid down in Hindu Law. I find no reason to limit the rule only to cases of complete deprivation. It applies also to deprivation not complete but nevertheless substantial. It is not disputed that the rule does apply to mortgage and permanent lease. There is no reason to think that a long lease for 51 or 81 years which deprives its owners of the property for generations would not be hit by the rule. The rule was intended to prevent acquisition of interest in the family of debutter property by others on the basis of a transaction by persons who are not owners, that is by a manager or shebajit. I hold, therefore, that the leases in the instant case are liable to be set aside even though they are not permanent, if it is found that they were not for legal necessity.

32. Another argument of Dr. Das may also be noticed at this stage. The argument is that the shebajits granting the lease being alive, no suit to set aside the leases lies so long as the grantors are alive. Such a lease, in law, is not void and will enure at least during the life time of the grantors. This argument does not appear to me to be correct. Sir Henry Mayne in his Hindu Law 11th Ed. makes the following observation at page 938 :

'But the dictum of the Privy Council in Ponnambala Desikar v. Periyanan Chetty with reference to that case apparently assumes it to be a rule of substantive law that in all classes of religious institutions, whether they are maths or temples, the alienation would be invalid only beyond the lifetime or the tenure of office of the manager. These decisions were all given under the law as it stood before the amendment of the Limitation Act in 1929. Now the amendment of Section 10 and Articles 134A and 48-B of the Limitation Act, which make the manager of the endowment a trustee in whom the property is vested, have not only effected a (SIC) in the law of limitation but have given statute (SIC) recognition to the view that the manager (SIC) law a trustee, at least for the purposes of alienation, and for the purpose of following the property of the institution. They recognise the right persons interested in the institution to have the alienation made by the manager set aside altogether during his life. It would seem therefore that an alienation will

not bind the institution in the absence of necessity or benefit, even during the tenure of office of the alienor.'

Assuming however that the proposition of Dr. Das is correct, it would not be of any avail to him. In the instant case the Committee was appointed on December 5, 1943 for three years. The terms of office of the Committee therefore expired on December 1946. The leases were, executed on May 3, 1946, November 29, 1946 and December 26, 1946. The first two leases were granted when they were actually in office, but not the last. According to the law laid down above, a suit to set aside the leases would lie after December 4, 1946. The leases would be operative upto 3 years, that is, up to December 1949. The instant suit was instituted on May 1, 1952. It must, therefore, be held that this suit to set aside the leases is maintainable inasmuch as it was instituted long after the termination of office of the grantors, even if the law as stated by Dr. Das is correct. The proposition of Dr. Das as stated above however is not correct, as indicated by Mayne in the passage quoted above.

33. It now remains to be considered (SIC) the on the evidence, legal necessity has been established. The facts proved in the case are the prior to December 1946, all the substantial inco (SIC) yielding properties had been leased out to Sankarsen Ltd. for a very long period. The debutter was only getting a sum of Rs. 246/- per month from the lessees. Apart from this, there was very small income from the remaining properties totalling about Rs. 100/-. The amount was the tally insufficient to meet the expenses of the (SIC) butter estate, as laid down in the scheme. (SIC) there was a provision in the scheme to red (SIC) expenses by the general body of shebait, (SIC) was not done. The evidence tendered on behalf of the defendants may be acceptable to me that the shebait was not willing to reduce the (SIC) penses because this would affect the prestige (SIC) the family and this would prevent a large num(SIC) of widows from getting food from the debut(SIC) estate. These widows were entirely dependent (SIC) the debutter for their food. There is evidence (SIC) to meet the deficit the members of the Comm (SIC) had to advance money from their (SIC) pocket. In the background of these facts, (SIC) committee thought it necessary to enhance (SIC) income of the debutter estate by granting. (SIC) leases. The lands still left could have been

(SIC)(SIC)ped, but this required substantial investment. The debutter had no money to invest in development programme. It may very well be conceded that the granting of long leases in such circumstances may be permissible and necessary. But the point for consideration is whether the instant cases should have been granted on the terms sustained therein. The leases will have to be con- (SIC) a little bit more closely.

34. The first lease is dated May 3, 1946, reasons for granting the lease is stated in the (SIC). They are, the paucity of funds which (SIC) it difficult for the Committee to perform the (SIC) sheba and periodical festivals. The land (SIC) sed is 11 bighas and 10 cottahs being premises No. 147, Rajendra Lala Road. It includes a tank. According to the evidence of Dhirendra Nath Sarvadhikari, the tank would be about a little more than 5 bighas and firm land a little more than 6 bighas. The rent reserved is Rs. 80/-per month, without enhancement for the entire period of the lease, namely, 51 years, with an option to the lessee for another 30 years. The Selami is Rs. 10,000/-. The lessees are to pay both the owners and occupiers share of taxes and pay other outgoings. The lessees will have the that to erect a building on the demised land and (SIC) up the tank. In case of acquisition of the property, there would be a proportionate reduction of rent and the compensation money will be (SIC)visible between the lessor and lessees according to law.

35. Mr. Hazra wanted me to note that there is a significant omission in the recitals, of the order dated 18th August 1943. By that order the schedule to the scheme wherein the details of expenses to be incurred were set out was abolished. Mr. Hazra's comment is that if the expenses indicated in the Schedule arc compulsory expenses, then the income of the debutter estate, being admittedly less, the debutter would be involved in (SIC) and this would make out a case of legal necessity. The fact of cutting out the schedule (SIC) the scheme and this schedule being no longer operative by reason of the order dated August 18, (SIC) was therefore suppressed.

36. In the second lease though dated November 29, 1946, the date of commencement isa same as in the first lease, i.e., seven monthsbefore. The period of this is also the same, name(SIC) for 51 years with an option of another

30 years. (SIC) land demised by this deed consists of two (SIC) the first plot is 19 cottahs 8 chittacks, be- (SIC) premises No. 18/1 Beliaghata Main Road. (SIC) is land-locked, having no opening except (SIC) premises No. 147, Rajendra Lala Mitra (SIC) The other plot, being premises Nos. 92, 92/1 (SIC) 92/8, Beliaghata Main Road, is a little over (SIC) bighas 4 Cottahs and 8 Chittacks. There is a (SIC) tank in this land. A portion of the (SIC) was acquired by the Calcutta Improvement (SIC) the award in respect of which was made (SIC) 22, 1946 and possession taken on (SIC) 4, 1946. Attempt was made in argument to prove that after the acquisition, the (SIC) of land had been considerably decreased. (SIC) regard to the dates of the leases which (SIC) considerably after the date of acquisition and possession, this argument can hardly be sustained. The rent reserved is Rs. 26/10/6 per month. Salami Rs. 5,000/-. The other terms are substantially the same. It is in evidence that one of the above two plots of lands, namely, 18/1 Beliaghata Main Road, was let out to a school by the Naskars at a rent of Rs. 31/10/- per month.

37. The third lease is with respect to premises Nos. 47 and 47/1, Narkeldanga Main Road. The lessors are the same. The lessee is Jogendranath Naskar alone. The land comprising the premises measures 5 Bighas and a little less than 5 Cottahs. The rent reserved is Rs. 60/- per month, and the salami is Rs. 4,500/-. The lessors obtained a decree for ejectment and mesne profits in respect to the said land. The litigation went up to the High Court. There was a decree for mesne profits as well. The unsatisfied portion of the decree was also transferred to the lessors. There is no dependable evidence as to what is the actual rent realised from the tenants. Neither Khagendra nor the Naskars tendered the account books to prove what amount of rent was realised from the tenants. The decree for ejectment having been finally confirmed by the High Court, the land could at the date of the lease be considered to be unburdened with a tenant. What was the existing necessity of the debutter estate in 1946 for which the long leases could be justified Inadequacy of the income of the debutter estate to meet the expenses of the debutter according to the schedule laid down in the original decree is established beyond controversy. I am also prepared to hold on the evidence that the expenses actually incurred by the Committee were in excess of the income. There was a reluctance on the part of the general body of shebaitis to reduce

expenses below a certain figure, because it would result in stopping giving bhogs to a large number of widows who were dependent on the bhogs for their food. It was however pointed out by Mr. Hazra, the learned counsel for the plaintiff, that by the order dated August 18, 1943, the scale of expenses provided in the scheme was abrogated and further the scheme itself provided a revision of the scale of expenses in the case of increase or reduction of income. The Committee, therefore, should not have incurred more expenses than the income of the debutter estate justified.

38. It may be argued, as has been argued by Mr. Hazra, that when a debutter is working under a scheme the persons responsible for administering the debutter are not entitled to incur expenses contrary to and inconsistent with that scheme and, therefore, such act being contrary to the scheme laid down, by the Court, cannot in law amount to legal necessity. The 'necessity' ceases to be legal as being contrary to the scheme sanctioned by the Court. He has asked me not to lose sight of the fact, that 'necessity' for which long leases were granted was not for indebtedness incurred in the past but for meeting future needs which can hardly be justified, having regard to the scheme. This argument cannot be brushed aside. But for the moment I am not considering the question from that standpoint. I am considering the question without regard to the provisions in the scheme as to expenses. The fact relevant from this standpoint is whether in fact the expenses of the debutter estate were in excess of the income resulting in the indebtedness of the debutter estate. This is proved. There is further evidence of Khagendra and Ajay that the members advanced the money themselves to meet the excess. What exactly is the amount advanced as such, there is no clear evidence. There is no clear evidence either that apart from this loan there was any pressure on the debutter estate or that there was no other way of liquidating this liability. On the contrary, shortly before the granting of leases in January 1946, compensation was awarded for acquisition of land belonging to the debutter estate. Khagendra pretended ignorance of the date of the award. This is hardly acceptable. It follows that at the material time there was no need for the debutter estate to grant long leases, so that out of the salami to be paid, the deficit and/or the liability of the debutter estate could be met. It is not proved to my satisfaction that by granting these long leases, income of the debutter property was so enhanced that the grant

may be justified. The rent reserved in the leases is low and the lands demised were already let out and were fetching an income. The rent reserved in the leases has not been proved to be very much in excess of the amount realised from the existing tenants by any dependable evidence. The oral evidence on the point is hardly dependable. If, at all, the rent reserved in the leases is a little more than the amount of rent actually realised from the existing tenants. I believe the excess to be negligible. It is not such as to justify the grant of leases for a fixed rent for a period of 51 years plus another 30 years. The salami provided in the different leases does not appear to be adequate. I cannot persuade myself to believe that such leases were either necessary or were for the benefit of the debutter estate. Ever since Hunooman Pershad Pandey's case reported in 6 Moo Ind App 393 (PC), the courts have held that a manager of an infant's or debutter estate has no power to alienate minor's property or debutter property 'except in the case of need or for the benefit of the estate'. No prudent manager could have granted such leases and the leases are manifestly not for the benefit of the debutter estate.

39. It is contended that even if the alienee is unable to give dependable evidence as to the existence of legal necessity, in fact, the alienation will be upheld if the alienee made bona fide enquiry as to the existence of such necessity and did all that was reasonable to satisfy himself as to the existence of such necessity. In the instant case, according to the defence, such enquiries were made and the lessees were satisfied as to the existence of such necessity. As noted before, this case has not been made in the written statement. If I hold the defendants strictly to their pleadings, this plea should not be allowed to be raised. The defendants, however, were not prevented from tendering evidence on the point at the trial. It is Dr. Das's contention that there is evidence in support of this case and I should hold that the lessees made bona fide enquiries and were satisfied from such enquiries that there was such justifying necessity. The necessity for granting the leases is stated in the recitals to be the difficulty felt by the Committee in carrying on the debutter and periodical festival without getting sufficient (SIC) in their hands and leases were being granted (SIC) getting sufficient funds. That is the only (SIC) sity as recited in the leases in suit for the granting of the leases. The enquiry alleged to (SIC) been made must have been limited to that (SIC) only. Chinta Haran the manager of the defendants gave evidence on behalf of the lessees. I do(SIC)

consider his evidence to be satisfactory, (SIC) ries on that point, if made, would have reveal (SIC) that the increase in the income of the debut (SIC) estate by reason of the grant was not in (SIC) of the amount realised, if at all. Further enquiry would have shown that substantial compensate has recently been awarded to the debutter (SIC) for acquisition of a plot of land and in consequence there should not be such inadequacy of fur (SIC) as to disable the Committee from carrying (SIC) the pooja and seva of the deities. I am satisfie (SIC) that if at all any enquiry was made, it was (SIC) at all a bona fide and proper enquiry. I do not agree that the duty of the alienee ended with putting a few questions to the lessors and on the receipt of a reassuring answer, the requirement of law is satisfied. It is not enough to make enquiries which must be reasonable and proper, the lessees must be satisfied from the result of (SIC) enquiries that there was justifying necessity and that the lessors had title to make the grant. If the title of the lessors to make the grant depended upon the fulfilment of certain conditions, the duty of the lessees was to see whether the conditions have been fulfilled. This has not been done in the instant case. This gives a clear, indication, of the nature of the enquiries made by the lessees' manager. In the instant case, the lessees were old residents of Beliaghata. So also the descendants of Raja Pitambar Mitra. Having regard to these facts, I would have expected that Jogendranath Naskar, who is still alive, would himself to the Court that he made enquiries and was satisfied from such enquiries that there was justifying necessity. He might have made enquiries either directly or through agents and servants. But he must tell the court what enquiries he made and from such enquiries he was satisfied as to the existence of legal necessity. He has to satisfy the court of his bona fides. Jogendranath does not come to give evidence and no satisfactory reason has been given for his not giving evidence is court. There are indications in the instant case that the Naskars acted personally in the matter. They wrote to the managing shebait over the (SIC) own signatures that an order from the (SIC) should be obtained before they could take the leases. In fact, such an application was made before the District Judge, Alipore. After the dismissal of the application on the ground that the court had no jurisdiction and the proper forum was the High Court, no further attempt was made in this court to obtain sanction. Instead, the deal was concluded with unseemly haste. The first lease was obtained on May 5, 1946, even though Kanai gave clear

notice to the Naskar on April 25, 1946, by registered letter that Committee had no right to make the grant and that the majority of the shebaitis did not approve of the grant and that no meeting of the shebaitis was held in that behalf.

40. On the evidence, I am not satisfied that the lessees made bona fide enquiries and were satisfied from such enquiries that there was justifying necessity on the part of the Committee to take the grant or that the grant was made with the consent of the majority of the shebaitis or (SIC) the three members of the committee had (SIC) to make the grant. It is impossible in the (SIC) state of the evidence to sustain the plea (SIC) the lessees made- bona fide enquiries and were (SIC) from such enquiries that there was just (SIC) necessity. Nor is it possible in the present (SIC) of the evidence to hold, that the lessees (SIC) bona fide transferees for value without any (SIC) tice of defect of title of the committee who (SIC) anted the leases. The surviving lessee did not (SIC) evidence that he had no notice of defect of (SIC) title. This is important. Tendering the evidence (SIC) of the manager Chinta Haran would not be enough having regard to the facts of this case. Further, Chinta Hasan is not such a trustworthy witness that I can safely act on his evidence. He pretended ignorance of the proceedings in the Alipore Court initiated at the instance of the Naskars to give permission to the Committee to grant leases. I believe that the statement in the petition before the District Judge, 24 Pargannas, and the decision of the District Judge on the same was well known to Chinta Haran and his masters in all its details. It is significant that the lawyers entrusted with the application were also the lawyers of the Naskars. I am unable to swallow the story of Chinta Haran that apart from knowing that no permission had been granted by the District Judge, he and the Naskars had no other knowledge of the proceedings or its details. The explanation given for not making the application in the High Court for sanction refused by the District Judge on the ground of lack of jurisdiction, is that the Naskars were advised by Shri Sanat Kumar Ray Chaudhury that such order was unnecessary. Sanat Babu is no longer living put the junior lawyer Bhattacharyya who acted in the matter of the Alipore proceedings, is still alive. He could have been called to corroborate this fact, if true. There is no such corroboration. Chinta Haran has contradicted himself on so many material points and his evidence is so improbable having regard to proved facts in this case and so much of his evidence is intrinsically unacceptable that it would not be safe to

accept his evidence on any point unless corroborated by other (SIC)pendable evidence. On the basis of the evidence of Chinta Haran I am unable to hold that (SIC)proper enquiries were made that there was justifying necessity or that the members of the Committee had good title to grant the lease or that the Naskars were bona fide transferees for value without notice of defect of title in the demised lands.

41. The next question to be considered is the amount of damages to be awarded against the lessees. It is contended by Mr. Hazra that the plaintiff is entitled to a fair letting value of the lands as compensation for being deprived of the user of the lands. The account books of the Naskar defendants have not been tendered to prove the exact amount of rents realised from the tenants. The rent reserved in the deed dated May 3, 1946 is Rs. 80/- per month. The premises comprise of more than 11 Bighas of land of which roughly 5 Bighas consist of tank and the remaining 6 Bighas of solid land. The evidence of Dhirendranath Sarbadhikari who was the Assessor of the Calcutta Corporation is that the letting value of the land would be much more. It is true that if the land was fully developed the ground rent should have been much more. But the lands have not been developed. As it is, the rent reserved in the deed of lease appears to be low. Ho also the rents reserved in the lease dated November 29, 1946 of Rs. 26/10/- of the two premises being 18/1, Beliaghata Main Road and 91, 92 and 92/8, Beliaghata Main Road appear to be low. There is evidence that the Naskar defendants let out the premises No. 18/1 Beliaghata Main Road to a school at the rate of Rs. 31/10/- per month. What rents are being realised from the tenants to whom the remainder of the two above plots have been let out could have been ascertained if the account books of the Naskar defendants were tendered. The books of account have not however been tendered. Premises No. 18/1, comprise of 19 cottahs 8 chittacks while premises No. 92, 92/1 and 92/8 consist of 3 Bighas 9 cottahs 8 chittacks. There is evidence that there is a tank in it but no dependable evidence as to how much area is covered by the tank. For the same reason I am apt to consider that the rent reserved in the lease dated December 26, 1946, is low. There is no dependable evidence as to the actual amount realised by the Naskar defendants from the tenants in the absence of their account books. The land demised in this lease is more than 5 bighas. The total amount of rent payable by the Naskars under these

three leases come up to Rs. 166/10/- per month. Dhirendranath Sarbadhikary formerly an Assessor of the Calcutta Corporation gave evidence of the value of the demised land and its estimated letable value. It is relatively high. I have no doubt that if sufficient capital was invested in the land by filling up the tank and the land was used for building purposes, the letable value would be very high. But the condition in which the demised lands were at the date of the lease and thereafter was not such as to enable the lands to have its full letable value. Had the land not been leased out by the committee they would not have earned the rent near or even approximately near the amount of its letable value, as given by Shri Sarbadhikari. Comment has been made by the defendant that Shri Sarbadhikari made his valuation on the basis of certain valuations recorded in his private note book. It is contended that they might not be correct and those entries in his private note book are not evidence admissible in a Court of Law. The entries may not be admissible in evidence but I have no reason to think that an assessor of the Corporation would make false entries in his note book. Obviously the entries in the note book were made for purpose of reference to enable him to determine value. Shri Sarbadhikari's evidence is admissible as expert evidence and in order to help him in tendering his expert evidence on valuation he was entitled to rely on his note book in which he recorded valuation of different premises in or around Calcutta. It is true that to support his expert evidence best evidence of valuation of the premises on which he based his opinion has not been given. But even then the evidence tendered is not entirely without value. It would however not be acceptable as clinching evidence of the letable value of the demised premises. I accept his evidence to this extent that the letable value is higher than what is indicated in the disputed indentures. Even in the condition in which the lands were demised the letable value should have been much more. It would not be safe for me to accept his evidence of let-able value and on the basis of that assess mesne profit payable in this case. Taking all the evidence on record on the point, I would assess mesne profit for the entirety of the lands covered by the three leases for the entirety of the period at an average of 50 per cent more than what is provided in the documents. Total rent reserved in the leases is Rs. 2,000/- per year eight annas less. I would determine mesne profit at the rate of Rs. 3,000/- per, year for the entire period and there would be a decree accordingly. The Naskar defendants

have failed to ten-lei their account books to prove the actual amount of rent realised by them from the tenants. Had those books been tendered I would have allowed the actual realisations only, if the lauds were fully 1st out. By withholding the account books, the Naskar defendants have failed to give evidence of the actual receipts. If therefore the amount determined by me is higher than the actual receipts they are to thank themselves for that.

42. On this question, next point to consider is the period for which the mesne profit is payable. Is it from three years prior to the institution of this suit provided in Article 109 or 6 years prior thereto as provided in Article 120 If as I have held the leases were void and not binding ab initio the profits from the land were being realised wrongfully by the lessees right from 1946 onward. In such case Article 109 is the appropriate article and mesne profit recoverable is for 3 years from the date of institution of the suit. There is no clear and convincing evidence that rent from July 1949 has been paid to the deities. The little oral evidence tendered either by Khagendra or Chintaharan uncorroborated by rent receipts or entries in the account book is hardly dependable. Nor should it be forgotten that Khagendra has ceased to be a shebait at the material time according to the scheme laid down by the High Court. If at all payment was made to Khagendra he (SIC) not entitled in law to receive the same and (SIC) a discharge to the debtors of the debutter eat (SIC) If there was clear evidence that money was re (SIC) ed by Khagendra and the same was spent for (SIC) debutter estate, I would have perhaps given (SIC) to the same. The Official Receiver did not (SIC) any rent during his incumbency. For rea (SIC) stated, I hold, that the Naskar defendants (SIC) liable to pay mesne profit at the rate of Rs. (SIC) per year from May 1949 i.e., 3 years prior to (SIC) institution of the suit up to the date the possession is made over to the owners entitled to (SIC) session.

43. It is contended that the deities have (SIC) improperly joined as defendant. It may (SIC) I do not think however that because of this (SIC) other defendants have been prejudiced at the (SIC) It is also contended that the suit is bad for (SIC) joinder of all the shebaits. Only the member of the Managing Committee who granted the (SIC) along with the lessees who are in possession (SIC) been impleaded as defendants. I am unable to accept this contention. In my judgment,

the shebait as such are neither necessary nor properties. They have rightly not been impleaded (SIC) defendants in this suit.

44 A point is taken that the suit is (SIC) barred. Article 134A is the appropriate (SIC) applicable in this case. The leases were all (SIC) made in 1946 and the suit has been instituted (SIC) 12 years. I hold therefore that the suit has (SIC) been instituted within time and is not liable to be (SIC) dismissed on the ground of limitation.

45. For reasons above, the plaintiff (SIC) and there must be a decree in terms of (SIC) (a), (b), (c), (d), (e) and (f) and the damages be calculated in the manner indicated.

46. The defendants other than the (SIC) defendants will pay the costs of the plaintiff. (SIC) costs of the plaintiff may be paid out of the (SIC) in the first instance. The costs of the defendants (SIC) to be paid out of the estate. Certified (SIC) two counsel. The costs of the Official Receiver (SIC) will be as between attorney and client. The (SIC) plaintiff in the first instance is to pay the costs of (SIC) defendant-ad-litem of the minor defendants and (SIC) the same from Naskar defendants.