Ramnath Vayas Vs. Sri Thakur Rash Behariji Maharaj

LegalCrystal Citation : legalcrystal.com/472710

Court : Allahabad

Decided On : Jul-22-1914

Reported in : AIR1914All493; 25Ind.Cas.271

Judge : George Knox, J.

Appellant : Ramnath Vayas

Respondent : Sri Thakur Rash Behariji Maharaj

Judgement :

George Knox, J.

1. This application for revision of a decree passed by the Subordinate Judge of Agra and dated the 9th of December 1913 arises out of a suit brought by one Ram Nath Vayas. In the plaint the defendants are described as Sri Thakur Rash Bihariji Maharaj, enshrined in a temple known as the Tareora Temple, situated in Bindraban, Mohalla Galibhut, under the Superintendence of Raja Birendra Kishore Manikya of Agartallah Tareora in. Bengal, and (2) Hari Mohan Deb, son of Har Charan Sainapat, a Bengali Brahman at present residing in Bhutwali Gali, Bindraban, Pargana Muttra, defendants.

2. The suit was originally instituted in the Court of the Additional Munsif of Muttra. It was a suit to recover Rs. 90, together with costs et cetera from the defendant No. 1 as the viutwalli and manager of the temple of Sri Thakur Rash Bihariji Maharaj. There was a prayer in the plaint that if for some reason or other defendant No. 1 be held by the Court to be not liable for the amount due to the plaintiff, it may be decreed against the estate of the deceased debtor who in the suit was described as representative and the karpardaz of the temple on behalf of defendant No. 1. The Additional Munsif of Muttra gave a decree as prayed for against defendant No. 1 only, and no mention is made of defendant No. 2. In appeal defendant No. 1 has described himself as appellant and arrayed as sole respondent Ram Nath Vayas, the original plaintiff. Hari Mohan Deb, defendant No. 2, disappears altogether.

3. Plaintiff does not appear to have considered himself aggrieved by no decree being passed against Hari Mohan Deb in the alternative as asked for in the plaint. If he had wished to open this question when the petition of appeal was filed, he could have put in an objection, but he did not do so and in appeal the dispute resolved itself into the one question, viz., whether Raja Birendra Kishore Manikya could or could not be sued without the consent of the Governor-General in Council. 'It is true that the Appellate Court did record the point for. determination as to whether Mathura Mohan purchased any article for the temple and had he authority to purchase articles on the credit for the temple. But this point was never determined. The Appellate Court was

satisfied that a suit against the Raja was not maintainable without the consent of the Governor-General in Council. The plaintiff takes in revision two pleas: (1) that the defendant No. 1 being the idol of a temple and not a Ruling Chief the Court had jurisdiction to entertain the suit against the said idol and Section 86 of the Code of Civil Procedure had no application, and (2) that defendant No. 2 was no Ruling Chief. The learned Counsel for the petitioner went into a long and interesting argument as to whether the idol in the temple was or was not a juristic person. He referred the Court to a number of rulings, the chief of which are : Manohar Ganesh Tamhekar v. Lakhmiram Govindrawi 12 B. 247, Kalidas Jivram v. Gor Par jar am Hirji 15 B. 309, Shri Ganesh Dharnidhar Maharajdev v. Keshavrav Govind Kulgavkar 15 B. 625, Tahboonnissa Bibee v. Koomar Sham Kishore 15 W.R. 228 : 7 B.L.R. 621 and Syud Shah Alleh Ahmad v. Mussamut Bibee Nuseebun 21 W.R. 415. But this point does not really arise for decision. The lower Appellate Court has dismissed the plaintiff's claim on the ground that the plaintiff has sued a Ruling Chief without the consent of the Governor-General in Council. No plea has been taken as to whether the idol can or cannot be made responsible for the debt which is said to have been incurred on its behalf. It was plaintiff's duty to so arrange his suit as to make it cognizable by the Civil Courts. If the idol was responsible without any manager of any kind, then the plaintiff should have sued the idol without adding to the idol the name of the Ruling Chief as mohatmim wa mutwalli. This he did not do, and his suit, therefore, was dismissed.

4. Some of the arguments in this petition turned upon the question as to whether Raja Birondra Kishore Manikya was or was not such a Ruling Chief as described under Section 86 of the Civil Procedure Code. I have considered this point and am satisfied that the Court below took a proper view. Their Lordships of the Privy Council in Neel Kisto Deb v. Beer Chunder 3 B.L.R. 13 : (P.C.) : 12 W.R. 21 (P.C.) held that the Rajah of Tipperah, though in respect to (some of his) lands subject to the Laws and Courts of British India, is in fact an independent Prince with a considerable territory known as the Tipperah Hills.' Aitchison in his Collection of Treaties, Engagements and Sanads, Vol. II pp. 279-283, describes the Raja as a Ruling Chief with the power of passing sentences of death and as feudatory to the Goverment of India.

5. The petition fails and is dismissed with costs.