

(1929) 12 AHC CK 0040

Allahabad High Court

Case No: None

Radha Balabh Pathak

APPELLANT

Vs

Bhullo and Others

RESPONDENT

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**Date of Decision:** Dec. 10, 1929**Citation:** AIR 1930 All 303**Hon'ble Judges:** Bennet, J**Bench:** Division Bench**Final Decision:** Dismissed

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### Judgement

Bennet, J.

This is an appeal by the plaintiff against an order of remand. The facts are that the plaintiff sued for possession of certain property against four defendants, of whom Motilal, Chandra Bhan, and Lala Ram were three brothers, and Goswamini Rohini Debya, as the manager of a temple. The suit was decreed by the Munsiff and an appeal was brought by the She bait, defendant 4. In that appeal, inter alia, the defendant 4 urged that the idol, the Thakurji, was a necessary party to the suit. The lower appellate Court passed an order on 7th January 1927 as follows:

The plaintiff has put in an application to make the Thakurji a party in the case and the Thakurji has now been brought on the record. Inasmuch as all the issues will have to be tried on the evidence adduced on behalf of the Thakurji, this decision of the learned Munsiff cannot stand. It is accordingly set aside and the suit is remanded for retrial, The parties shall have a right to produce fresh evidence.

2. The plaintiff made an application in the Court of the Munsiff when the case was heard on remand, asking that the Thakurji and the Shebait, defendant 4 should be removed from the array of defendants and that application was granted by the Munsiff. The Munsiff again decreed the suit of the plaintiff for possession. An appeal was filed in the lower appellate Court by the heirs of Lala Ram, the original defendant 1, and the ground urged before the lower appellate Court was that it was

not open to the Munsiff to strike off the name of the Thakurji which had been added by the lower appellate Court. That plea has been accepted by the lower appellate Court and the case has been again remanded to the Munsiff for determination after bringing the Thakurji and the Shebait on the record as defendants. The plaintiff appeals against that order of remand.

3. We consider that the application to the Munsiff to strike off the Thakurji was an application under Order 1, Rule 10(2). That rule authorises a Court to strike off the names of any person improperly joined as party. Inasmuch as the lower appellate Court had found that the Thakurji should properly be joined as a party, we consider that it was not open to the Munsiff, a Court subordinate to the lower appellate Court, to come to the opposite conclusion in regard to that matter, and therefore we consider that the Munsiff Was not authorised to strike off, the name of the Thakurji as a party. Similarly, we consider that the Munsiff should not have struck off the name of the Shebait as a party. We further consider that as the question at issue was whether this particular shebait, Goswamini Rohini Debya had improperly granted a perpetual lease of property to the plaintiff, that she was not the proper person to represent the Thakurji before the Courts. Accordingly we consider that the Thakurji should be represented by some other representative.

4. Accordingly we dismiss this appeal with costs and the order of the lower appellate Court of remand should be carried out with the directions given above.