

(1920) 07 CAL CK 0002**Calcutta High Court****Case No:** None

Gour Chandra Das and Another

APPELLANT

Vs

Mon Mohini Dasi

RESPONDENT

Date of Decision: July 8, 1920**Citation:** AIR 1921 Cal 142 : 62 Ind. Cas. 476**Hon'ble Judges:** Walmsley, J; Greaves, J**Bench:** Division Bench**Judgement**

Greaves, J.

This is an appeal by defendants Nos. 1 and 2 against a decision of the District Judge of Hooghly affirming a decision of the Second Subordinate Judge of Hooghly. The material facts are shortly as follows:--One Shambhu Chandra Das, who died in the year 1882, by his Will appointed as his executors Nilmoni and Srinibash. He also appointed them as shebaits of a certain Thakur named Saligram, and the effect of the Will of Shambhu as construed by this Court was that he created a trust in favour of the idol of the whole of his property, Shambhu left a widow named Saraswati, who is still alive, and a daughter named Mon Mohini who is the respondent in this appeal. She obtained Letters of Administration de bonis-non of the estate of Shambhu. In this capacity Mon Mohini commenced the suit in respect of which this appeal arises against the defendants as heirs of Nilmoni, who died in the year 1914, asking amongst other reliefs that the moveable properties of the debutter estate might be made over to her and that the defendants might be directed to render accounts for the period of the executor's tenure of office. The decree passed by the first Court, which has been upheld by the lower Appellate Court, directs the two defendants to render within two months a full and correct account of all the properties of the estate of Shambhu that came into the hands of Nilmoni and Srinibash and to render certain other accounts mentioned in the decree. I may assume for the purposes of this appeal, and indeed I must, that the finding of the lower Appellate Court that the defendants have removed various moveables belonging to the idol and house is a correct finding, but the appeal is bound to

succeed, inasmuch as the suit was misconceived. the whole of the estate of Shambhu was created a trust property for the idol Saligram and as soon as debts and legacies were paid and the funeral expenses were paid, the executors would hold the property upon the trusts of the Will and there would be no property administered by the executors which would pass to any administratrix de bonis non appointed by the Probate Court.

2. It seems to have been argued by the learned Vakil for the respondent that the mere appointment of his client as administratrix de bonis non entitles her to the reliefs she sought. It does not follow that as the result of that grant, as of necessity, the administratrix will obtain any property, If the property has become trust property, it is not for the administrator to ask for Recount of those properties which are in trust, Now, it seems to me that on the death of Nilmony, who, although he was empowered to appoint a shebait to succeed him, has neglected to do so, the only persona who were entitled to commence this suit would be either Saraswati the widow of Shambhu or the persona who, in the events which have happened, would be entitled to Act as shebaits of the idol in a properly constituted suit. It seems to me that Mon Mohini as. administratrix de bonis non cannot maintain a suit of this nature. That really disposes of the appeal. But if that is not sufficient, the decree for accounts that has been passed by the first Court and upheld by the lower Appellate Court is manifestly wrong. The defendants are, no doubt, bound to account for the moveables and other properties which they may have removed in a properly constituted suit; but they are under no obligation to render accounts of the executorship of Nilmony and Srinibash with whom they have no concern.

3. In the result the appeal is allowed and the suit dismissed with costs in all Courts.

Walmsley, J.

4. I agree.