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Sm. Palanibala Debi Vs Kalipada Chakravarty and Others

Court: Calcutta High Court

Date of Decision: June 19, 1950

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 80
Limitation Act, 1963 â€" Section 10, 2(4)

Citation: 54 CWN 960

Hon'ble Judges: Guha, J; Das, J

Bench: Division Bench

Advocate: Hiralal Chakrawarti and Radha Kanta Bhattacharya, for the Appellant; Nilkantha Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

Das, J.
This appeal is at the instance of Defendant No.1 and is directed against a judgment and decree passed by Mr. B. L. Sarkar,

Subordinate Judge, Third Court, Alipore, dated the 22nd of December, 1948.

2. There is deity called Sree Sree Iswar Dakshineswar Thakur at village Dhopdhopi within Police Station Baruipore, District 24-Parganas. The

founder of the endowment and its first shebait was one Udhab Chandra Pundit. In course of time Iswar Chandra Chakravarty became the shebait

of the said deity. The relationship of Iswar Chandra Chakravarty with the parties figuring in this litigation is shown in the following genealogical

table.

The deity is worshipped daily and on the 1st Magh every year Jantal (Assemblage of people) make offerings at the temple. The shebaits of the

daily also distribute medicines which are paid for. The surplus left after meeting the coasts of worship goes to the shebaits. On the death of Iswar

Chandra Chakravarty leaving six sons the shebaiti was divided into six palas of five days each. The plaint recites that according to the custom palas

are sold among the co-shebaits but not to strangers. As a result of such sales and devolutions, on death the palas came to be held by the different

shebaits as follows: -

Govinda had no share in pala.

Surendra had 2 Ã¯Â¿Â½ days pala.

Abani had 7 Ã¯Â¿Â½ days pala.

Mani 2 Ã¯Â¿Â½ days pala.

Nagendra 7 Ã¯Â¿Â½ days pala.

and

Haran 10 days pala.

3. We are concerned in this litigation with the pala of 10 days which was held by Haran. Haran died leaving his widow - Raj Lakshmi as his sole

heiress. The nature of the interest taken by Raj Lakshmi Debi is a matter which will be discussed at the appropriate place. On the 21st of Kartick

1334 B.S. corresponding to 7th of November, 1921, Raj Lakshmi sold her pala of 10 days to one Ramrakhal Ghosh, a stranger to the family, the

purchase being effected in the benami of one Mani Lal Biswas. The kobala has been marked as Exhibit 1(b). The kobala purports to convey the

pala of 10 days to the transferee from the 3rd of Ashar, 1334 B.S. up to the end of the life of transferor (Raj Lakshmi). On the 11th of Agrahayan,

1328 B.S. corresponding to 27th of November, 1921, Ramrakhal Ghosh sold his rights in the pala of 10 days to Nagendra and Surendra. On the

27th of Jyaistha, 1332 B.S. corresponding to 10th June, 1925, Tara Kali Debi who had succeeded to Surendra sold her share in the pala of 10

days purchased under the conveyance dated the 27th of November, 1921 to Nagendra. The position, therefore, was that after the 10th of June,

1925, Nagendra acquired the pala of 10 days which had belonged to Surendra. Defendant No.1 is the daughter and sole heiress of Nagendra.

Defendant No.1 being a minor proceedings under Act VIII of 1890 were started and in caase No.111 of 1931 Defendant No.2 was appointed

Receiver of the properties of minor Defendant No.1. On the 22nd of December, 1943, Raj Lakshmi died. The Plaintiffs claimed to be the

versioners to the estate of Raj Lakshmi''s husband Haran Chandra Chakravarty. The present suit was filed on the 24th of June, 1944. The Plaintiffs

alleged that on the death of Raj Lakshmi the 10 days'' pala of Haran Chandra Chakravarty had vested in them they were entitled to the following

reliefs:

(Ka) Khas possession of evicting Defendants Nos.1 and 2 from the disputed pala of 10 days and the shebaiti right in one-third share on

declaration that Defendant No.1 has no longer any interest and that the Plaintiffs have acquired title to the same as reversioners.

(Kha) Mesne profits against Defendants Nos.1 and 2 from 22nd of December, 1943, up to delivery of possession in respect of the pala of 10

days.

4. The plaint contains a Schedule (Ka) of the properties and of the pala of the deity Sree Sree Iswar Dakshineswar Thakur Schedule Ka gives a

description of the properties and mentions the relevant cadastral survey Dags. 13001 Cadastral Survey Dag comprises five rooms and three

dalans; Cadastral Survey Das 13002 is the Mandir temple). Cadastral Survey Dag 13001/13739 is a place used by the Hindu public resorting to

the temple. This is followed by the following statement - One-third share of shebaiti right and the pala of 10 days in respect of the deity Sree Sree

Iswar Dakshineswar Thakur installed in the said land, etc., are the subject-matter of this suit. The valuation statement states that the annual income

is not capable of determination and is valued at Rs.1,100. The claim for mesne profits was tentatively valued at Rs.100. By order No.73 dated

24th August, 1928, the value of the subject-matter of the suit was enhanced for Rs.6,600.

5. Two sets of written statements were filed on behalf of Defendant No.2 and Defendant No.1. In substance the two written statements were

identical and the material defence of the Defendants may be stated to be that the deity was a necessary party to the suit; that the resting place of

Hindu pilgrims and the structures are the personal property of the Defendants, that the suit was bad for want of notice u/s 80 of the Code of Civil

Procedure; and that the description of the property as given in the plaint was not correct, that the Plaintiff"s claim is barred by limitation and that

the Defendant No.1 had acquired a title by adverse possession. On these pleadings the following issues were framed:

(1) Is the suit maintainable in its present form?

(2) Is the suit bad for non-joinder of parties?

(3) Is the suit bad for want of notice u/s 80 of the Code of Civil Procedure?

(4) Is the suit barred by the principle of res judicata?

(5) Is the suit barred by limitation?

(6) Has the suit been properly valued and stamped?

(7) Are the Plaintiffs reversionary heirs of Haran Chandra Chakravarty?

(8) Have the Plaintiffs their alleged title to 10 days" pala, and to one-third share in the shebaiti right of the deity Sree Sree Iswar Dakshineswar

Thakur? Are they entitled to get a decree for recovery of possession therein as prayed for?

(9) Are the Plaintiffs entitled to any interest in C.S. Dag 13001 and the land whereupon the shops, the pilgrims" rest-houses are situated?

(10) Are the predecessors of Defendant bona fide purchasers for value? Are the Plaintiffs entitled to get possession without paying the

consideration money which may have been paid by the Defendant?

(11) Are the Plaintiffs entitled to get mesne profits?

(12) What relief, if any, are the Plaintiffs entitled to?

These issues were framed on the 31st May, 1947. On the 6th of December, 1948, Issue No. 13 was added. The issue runs as follows:-

(13) Has the Defendant No.1 acquired shebaiti right by adverse possession?

The learned Subordinate Judge found Issues 1, 6, 7, 8, 9, 11 and 13 in the Plaintiffs'' favour and Issues 2, 3, 4, 5, 10 and 12 against the

Defendants.

6. In this Court the findings of the learned Subordinate Judge on Issues 1, 4, 6, 7 and 10 have not been challenged.

7. Mr. Chakravarti appearing for the Appellant has not challenged the finding of the Court below that the Plaintiffs are reversionary heirs to the

estate of Haran on Lakhimoni''s death.

8. The first contention of the Appellant is that the Plaintiffs'' claim to 1/3rd shebaiti right and 10 days'' pala (turn of worship) of Haran is barred by

limitation and that the Defendant No.1 has acquired the same by adverse possession.

9. The documents of sale by Lakhimoni to Mani Lal Biswas (admittedly a benamdar for Ram Rakhal Ghosh), Exhibit 1 (b) and by Ram Rakhal

Ghosh to Nagendra and Surndra, Exhibit 1 and the evidence established that on 17th June, 1920, Rajlakshmi sold her pala of 10 days to Satish

Chandra De (a stranger to the family) for a term of two years, the latter sold the right to Ram Rakhal Ghosh (also a stranger on 1st April, 1921,

that Ram Rakhal went into possession, that on 6th August, 1920, Rajlakshmi granted an ijara for five years (i.e. from 3rd Asarh, 1320 B.S. to 2nd

Asarh, 1334 B.S.) to Ram Rakhal; that on 18th May, 1921, Rajlakshmi also sold her right to receive rent in respect to the ijara to Ram Rakhal,

that on 7th November, 1921, Rajlakshmi sold her right to the said pala from 3rd Asarh, 1334 B.S. to the end of her life to Ram Rakhal in the

benami of Manilal Biswas and that Ram Rakhal was in possession from 1st April, 1921; that while Ram Rakhal was thus in possession, he sold the

said pala to Nagendra and Surendra on 27th November, 1921, for a consideration of Rs.10,000, expressly stating that an absolute title to the said

pala was being conveyed; that Nagendra and Surendra went into possession after their purchase.

10. All the transfers above referred to were void, as they were between a co-shebait and strangers or vice versa. See Raja Verma Valia v. Ram

Vermah Mutha, L.R. 4 IndAp 76, ILR (1877) Mad 235 which held that an assignment of the right of management of a pagoda and its subordinate

chetrams is beyond the legal competence of the urallers, both under the Common Law of India and the usage of the institution and that an

assignment of a trusteeship for the pecuniary advantage of the trustee could not be validated by proof of custom. The right to receive offerings from

pilgrims resorting to the temple or shrine is also inalienable; Puncha Thakur v. Bindeswari Thakur, ILR 48 Cal 28 (1915).

11. The possession of Ram Rakhal and his successors, being under void transfers became adverse from 1st June, 1921.

12. It is first contended that Article 141 of the Second Schedule of the Indian Limitation Act applies as the transfer was made by Rajlakshmi who

was a female and succeeded by inheritance to her husband Haran.

13. The benefit of Article 141 can be claimed by the Plaintiff if he can prove (1) that there was a qualified estate in the Hindu female and (2) that he

was entitled to possession after the death of the female as heir of the last male holder.

14. It is, therefore, necessary to consider the nature of the estate taken by a Hindu female succeeding to a male as the latter"s heir in case of

private debutter.

15.A Hindu female who succeeds to a shebait right represents the endowment as completely and effectively as a male heir, subject to the

qualification that on her death, the shebaiti right goes not to her heirs but to the heirs of the last male holder of the shebaiti right. The first condition

of the applicability of Article 141 is, therefore, absent and the article cannot apply : Pydigantam v. Rama Doss, ILR 28 Mad 197 (201) (1905),

Lilabati Misra v. Bishnu Chobey, (1907)6 CLJ 621 and Jharia Das v. Jalandhar Thakur, ILR (1912) 39 Cal 887 (894) .

16. It is further contended that in case of transfer y a shebait, limitation runs from the death of the alienating shebait and as such, limitation begins to

run from Rajlakshmi"s death and the suit is not barred.

17. Now the law of limitation governing alienations by a shebait prior to the Amending Act I of 1929 came into force on 1st January, 1929, was

for a long time in a state of uncertainty.

18. The question may be discussed under three classes of cases:

(1) Transfer of some item of endowed property.

(2) Transfer of the office of a shebait and its emoluments and the properties of the endowment.

(3) Transfer of the right of a trustee who is a shebait.

19. In cases coming within class (1) it was decided by the Lords of the Judicial Committee in Vidya Varuthi Thirtha v. Balusami Ayyar, LR 48 IA

302 : (1921) 26 CWN 537 that a shebait was not a trustee and Section 10 of Article 134 of the Indian Limitation Act was inapplicable to

alienations of math property; and that all such cases fell to be governed by Article 144, the period of limitation starting from the date when the

possession of the Defendant becomes adverse to the Plaintiff. It was further held that as the alienation there in question was a permanent lease and

under the law enured for the tenure of office of the grantor, i.e., the Mohant, possession of the alienee became adverse when the alienor''s tenure of

office came to an end by death, resignation or removal. The opinion of the Board in the case was delivered by Ameer Ali, J. After this decision, the

Courts in India took divergent views on the question whether the ratio decidendi in Vidya Varuthiis case, which was a case of permanent lease,

was applicable to a complete and absolute transfer, e.g., a sale. The High Courts of Allahabad, Calcutta, Bombay, Lucknow, Patna held that it

was not applicable and that limitation ran from the date of alienation; Sarab Deo Bharthi v. Ram Balal, ILR (1931) 54 All 909 , Raja Munindra

Narain Roy v. Sarat Chandra Bandyopadhya, 30 CWN 740 (1926), Debendranath Sadhu Khan v. Nahar Mul Jalan, (1930)34 CWN 493,

Hamid Mia Sharfuddin v. Nagindas Jivangi, ILR (1925) Pat 341, and Parkasdas v. Janki Ballabh Sarson, ILR 2 Luck 229 (1926).

20. To the High Court of Madras took a contrary view : Arumugeen Pillai v. Mohidin Sheriff Saheb, 64 M.L.J. 706 (1933). The conflict was set

at rest by the Privy Council in Mohant Ram Charan Dass v. Naurangi Lal, LR 60 IA 124 : (1932) 87 CWN 541 and it was held that an alienation,

whether by way of sale or permanent lease, by a Mohant, of an item of property appertaining to the math, even if not for necessity and, therefore,

beyond the powers of the Mohant to alienate, was valid during his tenure of office, and in such cases, the possession of the purchaser or the lessee

did not become adverse to the math and time did not run under Article 144 till the tenure of office of the alienating Mohant ceased by death,

resignation or removal.

21. The principle thus stated by Lord Russel of Killowen in the above case applies to all cases of Hindu and Mahomedan religious institutions, and

to alienations of debutter temple or wakf property by the head of the institution, e.g., Mohant, shebait, dharma karta, mutwalli, etc., Srimat Daiva

Sikhamani Ponnambala Desikar v. Periyanar Chetti, LR 63 IA 26 : (1930)40 CWN 361 and Sm. Iswar Sridhar Jew, (1946)50 CWN 629 .

22. The true principle has been stated by Mukherjea, J., in Sm. Hemanta Kumari''s case to be ""that when an endowed property is alienated by a

manager, the possession of the alienee becomes adverse as soon as he is without any title to the property.

23. In applying the above principle, we must, however, remember that the alienation is void when the manager acts in negation of the trust, e.g.,

when he alienates the endowment as a whole, Damodar Das v. Lakhan Das, LR 37 IA 147 : 14 CWN 889 (1910) or alienates an item of

endowed property, not as manager but claiming title thereto as his own secular property.

24. The principle discussed above apply also to involuntary transfers : Subbaiya Pandaram v. Mahamad, LR 50 IA 295 : 28 CWN 493 (1914),

as also to mortgage execution sales : Sm. Hemant Kumari Bose v. Sree Sree Iswar Sridhar Jew.

25. I shall now discuss cases coming within class (2), viz., transfers of office and the properties of the endowment.

26. This subject may be considered under several heads:

(a) Mere transfer of office.

(b) Transfer of properties of the endowment.

[His Lordship then quotes Article 124 of the Limitation Act and proceeds as follows: -]

27. The article does not apply where the office is non-hereditary, e.g., by nomination; in such a case the article applicable is Article 120. Khajeh

Salimulla v. Abdul Khair M. Mustafa, ILR 37 Cal 268 (278) (1910).

28. In case of a shebaiti right which is hereditary, Article 124 applies, the terminus a quo being when the possession of the Defendant, which by

force of Section 2 (4) , includes any person from or through whom a Defendant derives his liability to be sued, becomes adverse.

29. In Gnana Sambanda Pandara Sannadha v. Velu Pandaram, ILR 37 Cal 263 (278) (1910) which was a suit to eh the Plaintiffs" right to the

management and an endowment connected with a temple and possession of the lands forming the endowment, from purchasers in possession of

the hereditary office and interest appertaining thereto, it was held that Article 124 of Act XV of 1877 applied, and that as the sales were null and

void in the absence of custom, the possession taken by the purchaser was adverse to the vendors and those claiming under them from the date of

entry into possession and as the office and the title were hereditary no new cause of action accrued to the Respondent on the death of his father,

the vendor. It was also had that there was no distinction between the office and the property; Sir Richard Couch observed as follows: -

Their Lordships are of opinion that there is no distinction between the office and the property of the endowment. The one is attached to the other;

but if there is, Article 144 of the same schedule is applicable to the property. That bars the suit after twelve years" adverse possession"" : p. 77.

30. It may be pointed out that once adverse possession has begun to run in favour of a person, a transferee from the latter can tack his possession

to that of his predecessor : Manally Chenne Kesava Rayya v. Mangala Vaidelinga, ILR 1 Mad 343 (1877).

31. The observations of Sir Richard Couch quoted above shew that when the right to the office is barred, the right to the possession of property

attached thereto is lost with it, as the right to the property is merely secondary and dependent upon the right to the office : Gobindasami Pillai v.

Dakhina Murthi, ILR 35 Mad 92 (94) (1912) and Khaje Salimulla v. Abdul Khair M. Mustafa.

32. It is not necessary for me to consider whether the converse case, viz., where the right to office is not barred, the right to the property attached

thereto can be barred though adverse possession in respect of the property for over 12 years be established.

33. In the third class of cases, where the trustee who is a shebait, transfers his office, the possession of the transferee is adverse from the date of

transfer and time runs against the endowment from that date, Subbaya Pandaram v. Mahammad.

34. I have just stated the law as it stood before 1st January, 1929, when Amending Act of 1 of 1929 came into force.

35. I have now to consider the effect of the Amending Act of 1929.

36. The first question is whether the Act is retrospective or not . . . The Act does not affect pending suits : Mt. Allarakhi v. Sha Mohammad Abdur

Rahim, 61 IA 50 : 38 CWN 400 nor does it revive a right already barred on the date which the Act came into operation Gopaldas Ganbat Das v.

Tribhowan, ILR 45 Bom 365 1920 nor when it would inflict such hardship or injustice as was not within the contemplated of the legislature :

Munjhoori Bibi v. Akel Muhammed, 17 CWN 889 (1918). But save as aforesaid or as expressly provided in the statute, the law of limitation,

being a law of procedure, is retrospective in its operation, both as regards the period of limitation and the terminus a quo, even though the cause of

action arose whenthe repeated Act was in operation : Manjhoori Bibi v. Akel Muhmmad, 17 CWN 889 (1918) as such, the law in force at the

date of a suit or other proceeding will apply - Gopaldas Ganpatdas v. Tribowan and Khondkar Mahommed Saleh v. Chandra Kumar Mukherji,

ILR 56 Cal 117 (1931).

37. In the present case, the transfers took place within 12 years of the commencement of the Amending Act and the right was not barred by lapse

of time when the Amending Act came into force; as such, the Amending Act will apply to the present case.

38. The Amending Act has amended Section 10, and added Articles 134A, 134B, 134C. It has left Articles 124, 144 in tact.

39. Section 10 has been amended by adding an explanation which reads as follows: -

[Then his Lordship quotes Expl. To Section 10 and proceeds as follows: -]

40. I may now quote Articles 134A, 134B and 134C.

[Then his Lordship quotes Articles 134A, 134B and 134C and proceeds as follows: -]

41. I have already stated the broad outlines of the plaint. It is abundantly clear that the suit was one for possession of 1/3rd shebaiti right and 10

days" pala. Though the plaint contains a description of the structures, there is no prayer for possession of these properties. No issue was also

raised on the point.

42. The suit is, therefore, strictly within Article 124. This article is unamended. As such, for the reasons already stated, adverse possession ran

from the date of the entry into possession by the transferee and the present suit is barred.

43. It is contended that the amended Act has affected the view taken in Gana Sambandha''s case.

44. Section 10 merely applies to transfers of endowed properties which are not for value. The explanation merely constituted the shebaits, etc., to

be express trustees. In other words, a voluntary transferee cannot now plead the bar of limitation to a claim for recover y of the endowed property

or its profits. The effect is to supersede Vidya Varuthi''s case.

45. The transfers in the present case are for value and are outside the amended Section 10. Reliance is placed on Articles 134B and 134C by the

learned Advocate for the Respondents.

46. The effect of the Amending Act I of 1929 is that so far as assignments for valuable consideration are concerned, they are now governed by the

new Articles 134A, 134B, 134C. In such cases, the amended articles have brought the law in line with the decision in Mohant Ram Charan Dass''s

case which was decided under Article 144. In view of the specific provisions in Articles 134A, 134B, 134C, it is no longer necessary or

permissible to resort to the general Article 144. An enquiry into the question when possession became adverse is now unnecessary and the

terminus a quo now is ""the death, resignation or removal of the transferor"" as expressly stated in the new Articles.

47. The effect of the above discussion leads me to the conclusion that the present case is within Article 124 and as the Defendant No.1 and her

predecessors had been in possession under a void alienation for value and claiming absolute title for over 12 years prior to the death of Lakhimani,

the Defendant No.1 has acquired a title by adverse possession and the Plaintiffs did not acquire any title on Lakhimani''s death. The claim of the

Plaintiff is also barred by limitation.

48. It is next contended that the running of time stopped when Nagendra and Surendra who were shebaits, purchased the 1/3rd shebaiti right and

10 days'' pala from Ram Rakhal Ghose, and that as Ram Rakhal was in possession for less than 10 years, and his title was not perfected by lapse

of time, no question of limitation or adverse possession arose.

49. The basis of this contention rests on the supposition that possession of Nagendra and Surendra was as co-sharers, and that in the absence of

ouster, no question of limitation or acquisition of title by adverse possession could arise.

50. It is now firmly established that a shebait is not the owner of the endowed property, but is only its manager or custodian; Vidya Varuthi v.

Balusami Ayyar. Relying on the above state of the law, Sen, J., held that co-shebaits cannot, therefore, be called co-sharers in the debutter

property but are co-owners in the shebaiti right : Govindadas Nath v. Shyama Charan Nath, 44 CWN 1004 (1940). One co-shebait can,

therefore, claim the interest of another co-shebait under Article 124, if the claim be regarded as a claim to share in the office and under Article

144, if it is regarded as a claim to endowed property : Lachmisewak Saha v. Ramrup Saha, 48 CWN 801 (1944). The question, however, is

whether the possession is, in fact, adverse. In the present case, the shebaits had been in possession on the basis of palas. When one paladar is in

possession of the pala of another paladar under an invalid transfer and in open assertion of a hostile title, the possession of the pala becomes

adverse. This view is supported by the decision in Giridhari Lal Mundra Vs. Kumar Purnendu Narayan Roy Dev Barma and Another, . I am not

unmindful of the fact that in Surendra Krishna Roy v. Shree Shree Iswari Bhabaneswari Thakurani, ILR 60 Cal 54; on appeal L.r. 64 I.A. 203 : 41

CWN 988 (1937) affirmed on a different point by the Privy Council co nominee L.R. 64 I.A. 203, Sir George Rankin held that as regards an

idol"s property a shebait stands in a fiduciary relationship to the idol and there can be no adverse possession by shebait, e.g., by openly claiming

the property as secular and possessing as such. In the present case the possession of the transferee as under void transfers, was in open assertion

of hostile title to the knowledge of the co-shebaits. The present case is, therefore, entirely different. Here there is no denial of the idol"s title, but it

is a case of one co-shebait claiming by adverse possession, the share of another in the shebaiti right. It is merely an adjustment of the rights of the

shebaits inter se.

51. In my opinion, the title of Lakhimoni and her successors, i.e., the Plaintiffs to the disputed property, viz., 1/3rd shebait right and 10 days" pala

of Haran, and on his death, of Lakhimoni, was barred by the adverse possession of Ram Rakhal Ghose and his successors and the Plaintiffs

acquired no title to the disputed property, on Lakhimoni"s death.

52. The first contention urged on behalf of the Appellant, therefore, succeeds. This finding is sufficient to dispose of the appeal.

53. But as some other points were fully debated, I shall record my opinion on these points, for the sake of completeness.

54. The second point urged on behalf of the Appellant is that the deity was a necessary party to the suit.

55. As I have already pointed out, the claim of the Plaintiffs is not one adverse to the deity. The deity"s title is not disputed by either party. The

claim is merely for recovery of the shebaiti right and its emoluments. The decision in this suit will merely determine who will be the shebaits as

regards 10 days'' pala of Haran. In my opinion, to such a suit, the deity is not a necessary party. Reliance was placed by Mr. Chakravarty, learned

Advocate for the Appellant, on the decision in Pramatha Nath Mallick v. Pradyumna Kumar Mallick, L.R. 52 I.A. 248 where in a suit which

concerned the location of the deity during a pala, the deity was held to be a necessary party on the ground that ""the result (of the suit) might

conceivably and vitally affect its interests,"" per Lord Shaw. The deity was directed to be made a party to be represented by a disinterested next

friend. In the case of Kanhaiya Lal v. Syed Hamid Ali, L.R. 60 I.A. 263 on which reliance was also placed on behalf of the Appellant, the suit

related to the eviction of the Defendants from lands on which there was a Thakur dwara (a temple) and in regard to which a deed of endowment

had been created in favour of Sri Thakurji Maharaja, the deity installed in the temple. The Lords of the Judicial Committee directed the deity to be

added as a party on the ground that the interests of the deity were involved in the litigation.

56. The above case are distinguishable. In the case of Brojendra Nath Seal v. Lalit Mohan Seal, 45 C.L.J. 41 the deity was held not to be a

necessary party though a division of the property was directed.

57. The true import of the above cases was considered by this Court in Bimal Krishna Ghose v. Shebaits of Sree Sree Iswar Radha Ballav Jew,

ILR (1937) 2 Cal 105 : 41 CWN 728 (1937) and it was laid down that it is perfectly true that in a matter in which the deity is vitally interested the

deity should be made a party and if the shebaits have got interest adverse to that of the deity, it is necessary that the idol should be represented by

a perfectly disinterested person as was indicated by their Lordships of the Judicial Committee in the case mentioned above. Necessity, however,

has got to be judged on the facts of each particular case and the circumstances to which it gives rise. Bimal Krishna Ghose''s case related to the

framing of a scheme. It was held that at the stage where the issue for determination was the adjustment of the rights of management amongst the

shebaits inter se, the deity was not a necessary party though it may be found to be a necessary party when the scheme is finally approved of. In the

case of Haripada Mukherji v. Elokeshi Debi, 44 CWN 357 (1940) where the contest was one regarding the right of the Plaintiff as shebait to the

disputed properties and neither party disputed the title of the deity, the deity was held not to be a necessary party. In the case of Pulin Krishna

Mookerji v. Adyanath Mukherji, 45 CWN 85 (1940) where the Plaintiff claimed a right to a pala as shebait, the deity was held not to be a

necessary party. Panckridge, J., observed that ""the case of Pramatha Nath Mullick v. Pradyumna Kumar Mullick, is not an authority for the broad

proposition that in every case where questions of deva sheva arise, the idol is a necessary party to the suit."" In the case of Sashi Kumari Devi v.

Dhirendra Kishore Roy, 45 CWN 699 (1940) where a suit was instituted by a worshipper of a family idol or removal of the shebait and for a

declaration that certain immovable properties improperly alienated are debutter properties and for an injunction, it was held that the deity was not a

necessary party.

58. The contention raised on behalf of the Appellants must accordingly be overruled.

59. The third contention raised is that the suit is bad as no notice u/s 80 of the CPC was not served on Defendant No.2.

60. It may be conceded that a Receiver is a public officer within Section 80, Bhubonmohini Debi v. Birajmohan Ghose, 44 CWN 74 (1939). But

here the complaint of the Plaintiff is not in respect of any act done by Defendant No.2, as Receiver acting in his official capacity. Defendant No.2

was impleaded merely because he was in possession of the property in dispute. In such a case, notice u/s 80 of the CPC is not necessary: Haridas

Chatterji v. Monmotha Nath Mullick, 41 CWN 322 (1937) and Bhubonmohini Debi v. Birajmohan Ghosh. The contention has no substance and

must be overruled. The fourth contention of the Appellant is that the whole of the property in dispute was not debutter. I have already found that

the subject-matter in dispute is not any immovable property. The question, therefore, does not arise. Moreover, the lower Court has found that the

property claimed by Defendant No.1 was not included in the plaint. This finding is amply supported by the evidence on record. The point does not,

therefore, arise.

61. This contention accordingly fails. No other point was raised at the hearing of the appeal.

62. The result, therefore, is that this appeal succeeds, the judgment and decree of the Court below are set aside and the suit is dismissed. The

Appellant will be entitled to her costs in this Court and in the Court below.

Guha, J.

63. I agree.