

(1878) 04 CAL CK 0017

Calcutta High Court

Case No: None

Panchcowrie Mull and
Others

APPELLANT

Vs

Chumroolall and
Others

RESPONDENT

Date of Decision: April 1, 1878

Citation: (1878) ILR (Cal) 564

Hon'ble Judges: Richard Garth, C.J; Markby, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

The learned Judge in the Court below has dismissed the suit (without settling any issues, and without going into evidence), as we understand, upon four grounds,-

1st.--That the plaintiffs do not show in what right they sue.

2nd.--That the plaintiffs are not a corporation, and cannot therefore claim to In old property by succession.

3rd.--That the Advocate-Gen oral is not a party to the suit.

4th.--That no leave of the Court to bring the suit has been obtained u/s IB of Act XX of 1863.

2. The right in which the plaintiff's sue is, in our opinion, sufficiently shown. They describe themselves as the persons forming for the time being the Tairo Pantee Anungo Punch Brothron, and as such they claim to have, on behalf of themselves and others, the general management and control of the religious endowments belonging to the Degumbery Soot of Jains. They also show that the bequests, which they seek to enforce are bequests which the testator directed to be applied under the management and direction of this very same Punch, to certain purposes connected with the worship of this sect. So far, therefore, there appears to us to be

no objection to the frame of the suit. Of course, when the issues are properly framed, the plaintiffs will have to prove this part of their case.

3. The next objection to the suit, in our opinion, also fails. We do not consider the object of the suit to be to assert any personal rights of ownership in the plaintiffs whatsoever. If any part of the plaint is ambiguous in this respect, all doubt as to this might have been removed when framing the issues. What the plaintiffs substantially seek, is to have the trusts of the will, in which they are interested (not beneficially, but as the representatives of their sect), ascertained, and the performance of these trusts secured.

4. Nor do we consider, that the practice of this Court requires that the Advocate-General should be a party to a suit of this description. We have inquired into the matter, and, as far as we have been able to discover, this is not necessary. For example, in 1861, we find a person named Nolibindoff" filing a bill on behalf of himself and all the other Armenian inhabitants of New Naukchewan in Russia, to enforce certain bequests to the institutions of that city; and he only alleged, as his title to bring the suit, that he was one of the inhabitants. In this case a scheme was drawn up and a decree made, without any concurrence of the Advocate-General.

5. The last objection is, no doubt, supported by the authority of Mr. Justice Norman; but having carefully considered the Act XX of 1863, we are unable to agree in the view that it was intended to apply to such a suit as this. The first thirteen sections of the Act clearly do not apply, and although the language of Section 14, which empowers any person interested in a religious endowment to sue a trustee, is general in its terms, yet we do not consider that the Legislature had in its contemplation to interfere with the procedure of the Supreme Court in reference to trusts concerning property, which could not, under any circumstances, come under the direct control of Government. Such a suit as the present is not brought under Act XX of 1863, but under the ordinary original jurisdiction of this Court, inherited from the Supreme Court, and conferred upon the Supreme Court by its Charter--a jurisdiction similar in its general features to that of the Lord Chancellor in England; see *Attorney-General v. Brodie* 4 Moore's I.A. 190.

4. At the same time, whilst we believe that this is the correct view of the law as it stands at present, we cannot help thinking it extremely desirable, that suits of this kind to enforce trusts, which are of a public character, should only be brought either by the consent of the Advocate-General, or by the leave of the Court. Such suits are very of ton vexatious and open to abuse, and we consider that a procedure similar to that which is provided by Act XX of 1863, for suits to which that Act extends, might usefully be applied to all suits of this nature. This of course could only be effected by legislative interference.

5. We think that the learned Judge was wrong to dismiss the suit upon the grounds stated by him. The decree will, therefore, be set aside and the suit remanded to be

heard upon its merits.

6. The costs of the appeal will be costs in the cause.