

We can see no reason why the assignment of the interest to the plaintiff should not be upheld. The same objection now raised would equally apply to the attachment as to the assignment of the interest.

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We must reverse the decree of the lower appellate court and restore that passed by the District Munsif with the exception of the words "it is ordered that the order on petition 1387 of 1883, passed by the District Munsif of Chavacherry on 11th December 1883, be, and the same hereby is, set aside." In other words, we allow the declaration only. We will allow the appellant half costs in this Court and full costs in the lower appellate court.

This governs second appeals 1158, 1159, and 1160 of 1886.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Muttusami Ayyar.*

ATHAVULLA (DEFENDANT), APPELLANT,

and

GOUSE (PLAINTIFF), RESPONDENT.*

1886.
Nov. 10.
1887.
Sept. 12.
1888.
Feb. 6.

Pensions Act, 1871, s. 4—Religious Endowments Act, 1863, ss. 14, 15—Yaumia granted to mosque—Suit against co-trustee for declaration of right.

Section 4 of the Pensions Act, 1871, provides that no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the British or any former government, whatever may have been the consideration for any such pension or grant and whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted :

Held that a yaumia allowance granted to a religious institution did not fall within the purview of the Pensions Act.

Where a trustee of a Muhammadan mosque sued for a declaration of his title as against a co-trustee :

Held that ss. 14 and 15 of the Religious Endowments Act, 1863, were not applicable to the suit.

APPEAL from the decree of K. R. Krishna Menon, Subordinate Judge of Tinnevely, in suit No. 19 of 1884.

The plaint in this suit was as follows :—

* Appeal No. 144 of 1885.

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“ Plaintiff’s father, Kadar Mohidin Khatib Sahib, Gulam Hydrus, son of Mahomed Gouse, and the defendant’s father, Kaja Mohidin Hydrus, were the hakdars to Pirdastagir mosque. The said mosque and the properties appertaining thereto belong to plaintiff’s family.

“ The properties specified in the schedule hereunto annexed belong to the said mosque. They were granted as inam by the former government to the said mosque in the names of the ancestors of both the parties, so that the income thereof might be applied to the charities of the mosque as specified in sch. I, and the remainder to the maintenance of the hakdars who do service.

“ The forefathers of both the parties were enjoying the said properties and were conducting the charities of the mosque with the income thereof. As the aforesaid Gulam Hydrus, son of Mahomed Gouse, among them, conducted proceedings against the right of the said mosque, he was dismissed from the place of hakdar by the Inam Collector; and the inam patta was granted in the names of the fathers of plaintiff and defendant.

“ Subsequently, a misunderstanding arose between plaintiff’s father, Kadar Mohidin Sahib, and defendant’s father, Kaja Mohidin Hydrus, and, under the orders of the Collector, the members of the committee were arbitrators and decided, on the 2nd January 1868, according to the wishes and consent of both of them, that plaintiff, the hakdar, should be manager of the said mosque, receive the income of the properties and conduct the charities, and that the defendant and Kadar Shah the plaintiff’s step-brother, should do service in the said mosque. The said Kadar Shah went abroad without performing service, &c.

“ Thereupon, plaintiff himself was conducting the charities of the mosque out of the income of the said inam properties and out of his own (funds). The defendant also was, in accordance with the said order, doing services for a short time.

“ Under such circumstances, the defendant wrongfully alienated some of the properties of the mosque and did not join the plaintiff in drawing yaumia allowance from the taluk (treasury), and further he ceased to do the services of the mosque.

“ Moreover, in the suit brought by plaintiff before the Revenue officer about the attempt made separately by the defendant to draw the yaumia of the mosque from the taluk treasury, the defendant deposed in the Tinnevelly taluk kachari on the 8th and

15th of July 1880, that he was the man doing the services of the said mosque, that plaintiff alone was the hakdar to the mosque, and that, if he wrongfully alienated the charity properties in future, he would forfeit his right; and, thereupon, in July 1880, the plaintiff drew from the taluk treasury, on giving a receipt, the yaumia allowance for the amount he had spent out of his own funds in 1879, and plaintiff alone paid the quit-rent due up to fasli 1289.

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“ Subsequently, the defendant, without properly doing the services of the mosque in accordance with the said deposition, has unlawfully alienated the properties and prevented the tenants from paying the varam. Consequently, plaintiff himself has been conducting the charities of the mosque out of his own funds and the tenants have been paying the quit-rent for plaintiff.

“ The defendant obtained rent-deeds from some of the tenants who cultivated the inam lands belonging to the said mosque, alleging fraudulently that he was the hakdar to the mosque; and to recover the melvaram due under them, the defendant brought Small Cause suits Nos. 8 and 41 of 1883 on the file of the Subordinate Court of Tinnevelly, in which the plaintiff put in a petition stating that he was the hakdar to the said Pirdastagir mosque, that he was entitled to receive the said melvaram, and that he should, therefore, be included as a party, and that the defendant was not entitled to the place. Thereupon, the court ordered on the 24th November 1883 that this plaintiff should establish his right by means of a regular suit. The mosque in question and the properties appertaining thereto are under the management of plaintiff.

“ The cause of action arose on the 24th November 1883 at Tinnevelly.

“ The plaintiff, therefore, prays the court

- (i) that it may be declared that plaintiff is hakdar to Pirdastagir mosque specified in sch. I and all the properties appertaining thereto and entitled annually to draw from the taluk treasury the yaumia allowance fixed for the said mosque as specified in sch. V, that defendant shall have no connection with them, that plaintiff alone has right to the whole management of the properties, and that the defendant, who has made wrongful alienation, has no right to the mosque, &c.;

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- (ii) that plaintiff may draw the remaining yaumia allowance for faslis 1290, 1291 and 1293, which is in deposit in the Tinnevelly taluk (treasury), viz., Rs. 131-15-1 as specified in sub-No. 1 of sch. VI, and that plaintiff may recover from defendant the yaumia allowance for faslis 1291, 1292, and 1293, which the defendant has drawn, viz., Rs. 133-10-2 as specified in sub-No. 2 of sch. VI, and the sum of Rs. 42-5-9 which the defendant has obtained under the decree in Small Cause suit No. 8 of 1882 on the file of the Subordinate Court of Tinnevelly and which is specified in sch. VII;
- (iii) that plaintiff may recover from defendant the costs of this suit;
- (iv) and that such other reliefs may be granted as the court may deem fit under the circumstances of the case."

The Subordinate Judge decreed part of the claim.

Defendant appealed.

Kalianaramayyar for appellant.

Rama Rau for respondent.

The further facts necessary, for the purpose of this report, appear from the judgment of the Court, (Collins, C.J., and Muttusámi Ayyar, J.) the material portion of which was as follows :—

As to the preliminary objections, neither s. 14 of Act XX of 1863 nor s. 539 of the Code of Civil Procedure has any application. This is a suit by a trustee against the co-trustee to enforce his vested hereditary right, and it cannot be said that he has simply an interest, such as is defined by s. 15 of the Religious Endowments Act, XX of 1863, nor is it to be considered that Regulation IV of 1831, or the Pensions Act XXIII of 1871, which repealed the above Regulation is applicable to a yaumia allowance granted to a religious institution. As to the contention that the suit was not maintainable, it being a declaratory suit, and that the appellant being in possession, the respondent ought to have claimed consequential relief, the finding is that both are in joint possession as co-trustees, and that the possession of neither was adverse to the other. We do not consider the objection to be well-founded. We dismiss this appeal with costs.

Memorandum of objections is not pressed, and is also dismissed with costs.
