APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

1887.
August 17.

SRINIVÁSA (PLAINTIFF No. 1), APPELLANT,

and

VENKATA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Court Fees Act (Act VII of 1870, sch. II, art. 17, cl. vi)—Religious Endowments Act (Act XX of 1863), ss. 14, 18.

A and B being worshippers at a Hindú temple, obtained sanction under s. 18 of the Religious Endowments Act to sue for the removal of the managers of the temple on the ground of breach of trust and for damages.

A and B sued to remove the managers, but claimed no damages in their plaint:

Held, that, as the suit instituted differed from the one for which sanction was given, the plaint was properly rejected.

APPEAL against the order of D. Irvine, District Judge of Trichinopoly, in original suit No. 10 of 1885.

This was a suit brought under the Religious Endowments Act (Act XX of 1863, s. 14) by two persons, being worshippers in a Hindú temple at Srirangam, against seven persons as managers or trustees of the temple, alleging various acts of misfeasance and praying for their removal from office. No claim was made for damages, though the order sanctioning the suit sanctioned such a claim and the plaint was stamped with Rs. 10 only.

The District Judge directed that a claim for damages should be added; and an *ad valorem* stamp affixed; this, however, was not done, and he accordingly made an order rejecting the plaint under s. 54 of the Code of Civil Procedure.

One of the plaintiffs preferred this appeal against the above order.

Bháshyam Ayyangár for appellant.

Rámá Ráu for respondents.

The further facts of the case and the arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment of the Court (Muttusámi Ayyar and Brandt, JJ.).

JUDGMENT.—The appellant is a worshipper in the Hindú temple at Srirangam, in the district of Trichinopoly, and the respondents are managers or trustees of that temple. The suit from which this

* Appeal No. 52 of 1886.

appeal arises was instituted by the former against the latter under s. 14 of Act XX of 1863. In miscellaneous petition 585 of 1884, on the file of the District Court of Trichinopoly, the appellant applied under s. 18 of the Act for sanction to institute a suit for the removal of the respondents from their office of trustees and for recovery from their private property of the damages mentioned in the schedule attached to his petition. On the 24th January 1885, the District Judge made an order granting permission to institute the suit; he observed, however, that from the statements of the counter-petitioners themselves, it appeared very desirable that the accusations made against them should be sifted. On the 7th July 1885, the appellant and the second plaintiff presented their plaint, which prayed for a decree removing the respondents from the office of managers of the temple in question and awarding the appellant the costs of the suit. The plaint stated further that the respondents were guilty of various acts of misfeasance, breach of trust, and neglect of duty, by which the temple sustained a loss of nearly Rs. 17,000. The respondents contended, *inter alia*, that the suit was under-valued, and that the plaint, which was engrossed on a 10-rupee stamped paper was improperly stamped. The Judge considered that the plaintiffs were bound to include in their plaint a claim for damages, and that the suit was under-valued. He also pointed out that the suit instituted was not the suit for the institution of which sanction had been given, and he directed them to amend their plaint by adding a claim for damages and to pay additional stamps in proportion. The appellant failed to comply with his order, and thereupon he rejected the plaint under s. 54, cl. (*d*) of the Code of Civil Procedure. It is argued, in support of the appeal, that the plaint was sufficiently stamped; that the suit was not under-valued; and that the sanction accorded under s. 18 of Act XX of 1863 extended also to the suit, which was actually instituted. If it were necessary to determine for the purposes of this appeal, whether the plaint was properly stamped, we should certainly follow the decision of this Court in Appeals Nos. 89 of 1881(1) and 65 of 1884. The District Judge notices them in his

(1) *Veerasami Pillay* v. *Chokappa Mudaliar and others*.—This was a suit brought under Act XX of 1863, s. 14. On appeal to the High Court (Turner, C.J., and Muttusámi Ayyar, J.) in their judgment, say: "The relief sought is the removal of the defendants from the offices, it is alleged, they severally hold, on the ground that they have been guilty of misfeasance; the suit is one, of which the subject-matter does not admit of valuation and the court fee payable on its institution is 10 rupees."

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judgment, and observes that he is unable to take the same view, or to accept them as binding upon him; but it appears to us that his reasoning is inconclusive, and that several of his remarks are at variance with the recognized rules of judicial interpretation; nor are we prepared to accept his view as to the distinction which is said to exist between the relief asked for in a suit and its subject-matter. As, however, we come to the conclusion that this appeal must fail on another ground, which we shall presently state, we shall not dwell further on this part of the case, and state at length our reasons for holding that the decisions of this Court are right. We are of opinion that the suit actually instituted by the appellant was not the one for the institution of which sanction was accorded, and cannot, therefore, say that the plaint was not properly rejected. The Judge observes that sanction might not have been accorded, if, when the application was made, the intention not to claim damages had been distinctly intimated to the court. It may be that the fact of a person not interested otherwise than as a worshipper in a temple being prepared to include a claim to damages in his suit and to pay stamp duty thereon was regarded to some extent as evidence of *bonâ fides* on his part. It is urged by the appellant's pleader that the words of the prayer in the application for sanction should be taken distributively, and that it was competent to the Judge, under s. 14, to award damages for the benefit of the temple, whether they were claimed in the plaint or not. In this case, the appellant distinctly asked for permission to sue both for the dismissal of the trustees and for compensation for the loss entailed on the institution, and it was open to the plaintiffs, if they changed their mind subsequently, to apply to the court for an amendment of the order under which leave was given to them to sue. Having regard to the fact that the character of the suit, which the appellant proposed to institute, was one of the circumstances which the Judge was entitled to take into consideration in forming an opinion as to whether the application was *bonâ fide*, we are not prepared to hold that the appellant was entitled, as a matter of right, to give the suit a character different from that in respect of which sanction was granted. The obligation, which s. 18 imposes on the Judge to satisfy himself that there are sufficient *primâ facie* grounds for the institution of a suit, and the power conferred upon him by s. 19 to call for the production of accounts of the trust before giving leave for the institution of

the suit, indicate an intention on the part of the legislature to provide an adequate protection to the trustees against vexatious suits, and, in cases of doubt, we think, we ought, so to construe s. 18 as not to take away the protection. The contention that the plaint needs only a stamp of Rs. 10, even when damages are claimed, cannot be supported, inasmuch as the compensation claimed would then form part of the subject-matter of the suit, capable of being estimated at a money value within the meaning of the Court Fees Act. On the ground that the suit instituted was different from the one for the institution of which sanction was granted, we dismiss the appeal, but, under the circumstances, there will be no order as to costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

VENKOBA (PLAINTIFF), APPELLANT,

and

SUBBANNA (DEFENDANT), RESPONDENT.*

1887. August 5.

Civil Procedure Code, s. 43—Claim for mesne profits received prior to date of former suit for land.

Where a suit to recover land was brought and no claim was made for mesne profits received prior to date of plaint:

Held, that s. 43 of the Code of Civil Procedure was a bar to a subsequent suit for such mesne profits.

CASE stated under s. 617 of the Code of Civil Procedure by H. R. Farmer, Acting District Judge of Kurnool, as follows:—

"The plaintiff (appellant) on the 29th of September 1885 brought suit No. 458 of 1885 on the file of the District Múnsif's Court of Nandyal, and on the 8th of October 1885 suit No. 476 of 1885 on the same file, to set aside a deed of gift of certain lands and to obtain possession thereof. He obtained decrees in his favor on the 24th of November 1885. He, subsequently, on the 23rd April 1886, brought the suit No. 159 of 1886, which has

* Referred Case No. 4 of 1887.