

PRIVY COUNCIL.

1887.
June 16.

MINAKSHI NAIDU (DEFENDANT), APPELLANT,

and

SUBRAMANYA SASTRI (PETITIONER), RESPONDENT.*

[*On appeal from the High Court of Madras.*]

Act XX of 1863 (Religious Endowments), s. 10—Appellate jurisdiction—Order of District Judge filling vacancy on committee not appealable.

It is not to be assumed that there is a right of appeal in every matter which comes under the consideration of a Judge; such right must be given by the enacted law, or equivalent authority.

The High Court has no jurisdiction to hear an appeal from the order of a District Judge made by him on petition pursuant to s. 10 of Act XX of 1863 (Religious Endowments), appointing a member to fill a vacancy in a committee. Neither that Act, nor the general law, gives any right of appeal, which therefore does not exist, from such an order.

In a cause which a Judge is competent to try, if the parties without objection join issue and go to trial upon the merits, the defendant cannot subsequently dispute his jurisdiction upon the ground of irregularities, which, if objected to at the proper time, might have led to the dismissal of the suit. But when the Judge has no jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent convert it into a proper judicial process.

Ledgard v. Bull(1) referred to and followed.

APPEAL from an order (11th November 1881) of the High Court, affecting to reverse an order (10th February 1881) of the District Court of Madura, made under s. 10 of Act XX of 1863, an Act “to enable the Government to divest itself of the management of religious endowments.”

The order of the District Court of Madura, to which this appeal related, appointed a member to fill a vacancy in the committee managing the Minakshi Sundraswari Devasthanam in Madura, that being a religious endowment within the scope of Act XX of 1863, of which s. 10 is as follows:—

“Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided. The

* *Present* : Lord HOBHOUSE, Sir BARNES PEACOCK, Sir RICHARD BAGGALLAY, and Sir RICHARD COUCH.

(1) L.R., 13 I.A., 134; I.L.R., 9 All., 191.

remaining members of the committee shall as soon as possible give public notice of such vacancy, and shall fix a day which shall not be later than three months from the date of such vacancy for an election of a new member by the persons interested as above provided under rules for elections which shall be framed by the Local Government, and whoever shall be then elected under the said rules shall be a member of the committee to fill such vacancy. If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court on the application of any person whatever may appoint a person to fill the vacancy, or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply, and if this order be not complied with the Civil Court may appoint a member to fill the said vacancy."

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On the 8th December 1880 Ponnambalam Pillai and twenty-three other inhabitants of Madura informed Mr. P. P. Hutchins, District Judge, by petition, that Gurusámi Sastryal, one of the five members of the committee, had died on the 5th September preceding, and that the surviving members had taken no steps to fill up the vacancy.

The following order was consequently made on the 10th February 1881:—

A vacancy occurred some months ago on the committee of the Minakshi Sundraswrar Devasthanam by the decease of Gurusámi Sastryal. The committee failed to fill it up within the allotted period, and petitions were presented to this court to take the matter into its own hands. I sent for the lists of voters, and, as a preliminary step for my own satisfaction, I endeavoured to ascertain the wishes of the public by appointing a date for the registration of votes.

The election was held on the 28th December last.

The tellers recorded 300 votes for Minakshi Náik; 141 for Subbaragava Sastry, son of the late Gurusámi Sastry; 13 for Vakil Dorasami Aiyar; and 8 for Ramia Munian, a Patnúl Chetti.

Subsequently, I heard Mr. Scott for the last-named candidate, Mr. French for the second, and Mr. Pole for the first. I at once intimated that I should not appoint the second, as I thought him too young, nor the third, because apart from other objections, it would not be becoming for me to put a second wakil of my own

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court on the committee. The remaining candidates were Minakshi Náik and Ramia Munian Chetti, and I said that I should probably appoint the former, unless the pamphlet referred to by Mr. French, as subversive of the worship of Siva and as bearing Minakshi Náik's signature, should show that he would not be a proper person for the office. I find nothing whatever in that publication which can possibly be construed into hostility to the worship of Siva.

Mr. Scott has repudiated the election as an indication of the popular opinion, and perhaps it may be so. Very probably, the result is more due to better party organization than to real public feeling. But I am quite satisfied that some of the complaints were groundless and that the Patnúl Chetti's adherents had free access both into the palace and to the tellers' tables, and that the proceedings were conducted in a perfectly impartial way—at all events, the election is sufficient to support the preference which I should naturally give to one with whose qualifications I am personally acquainted than to one of whom I know nothing except that he cannot read Tamil. I say this without intending to cast the slightest slur on Ramia Munian Chetti's character which seems to be well guaranteed, and notwithstanding my natural desire that so large a section of the population as the silk-weavers should be represented on the committee.

Since hearing the argument, another candidate has come forward in Mr. Rama Row, the Treasury Deputy Collector. I at once wrote to him that I should be glad to appoint him if he was about to retire, as I felt sure that his official habits and experience would be of great benefit to the institution. He is, however, unable to assure me that he will retire very shortly, and I do not think it desirable that a public official of his standing, and far less a magistrate, should be on the committee.

I have read the Tinnevely judgment, but it does not support the objections to the appointment of a Vishnuvite. The great Tirumal Náik himself, to whom the pagoda owes its chief grandeur, was, I believe, of that sect. The two members last elected held the same opinions, and so have many others entrusted with great authority by the committee. They all worship Siva as well as Vishnu.

It is accordingly ordered that Minakshi Naidu be and he hereby is appointed to be a member of the committee for the

management of the Minakshi Sundraswrar Devasthanam of Madura *vice* Gurusámi Sastryal deceased.

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On the 21st April 1881 the respondent presented a petition to the High Court of Madras praying that the order of the Civil Judge might be rescinded, that one G. Subramanya Sastry might be appointed, or that a new election might take place.

On the 8th August the respondent presented a petition to the successor in office of the District Judge of Madura, praying that he would take further evidence in the matter for submission to the High Court, or would cancel the order of his predecessor. Upon this the District Judge passed the following order:—

“Looking to the wording of Mr. Hutchins’ order, I find it to be perfectly clear that this is not an election under the Act with which I could exercise any interference. Mr. Hutchins was exercising his power under s. 10 of the Act, and, for his own satisfaction, held an election as a test of the wishes of the people; his order was, no doubt, passed in consideration of the wishes of the people as expressed in the election, but it can only be upset by an appeal to the High Court. The petition is dismissed.”

On the 11th November 1881, the High Court (Turner, C.J., and Muttusámi Ayyar, J.), made an order cancelling the appointment of this appellant, and directing the District Judge to make a new appointment guided by the observations contained in the following judgment:—

“The institution is admittedly, at present, devoted to the worship of Siva, and in accordance with the letter and spirit of the Act its concerns should be directed by persons of the same persuasions—persons whose religious convictions will be enlisted in support of their fiduciary office. We shall set aside the appointment made by the Judge, not because we entertain any doubt of the fitness of the gentleman selected on the score of integrity and reputation, but because he has pronounced himself actively in favor of the cult of Vishnu.

“We shall not, however, take it upon ourselves to make an appointment, but shall direct the Judge to do so, having regard to the consideration we have mentioned. Each party will bear his own costs of this appeal.”

The same Judges, on the 20th September 1882, rejected a petition of review under s. 623 of the Code.

Minakshi Naidu then applied under s. 600 of the Code for

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a certificate in order to appeal to Her Majesty in Council, making it the first of his grounds that the order of the District Court of Madura was final. On 20th April 1883 the Judges holding that they could not give leave to appeal in this case, rejected the application. However, on the 9th February 1884, he obtained special leave to appeal.

On this appeal Mr. *J. D. Mayne* appeared for the appellant.

Mr. *R. V. Doyne* for the respondent.

For the appellant, it was argued that the High Court was wholly without jurisdiction to reverse or vary the order of the Civil Court. By s. 10 of Act XX of 1863, the Civil Court, meaning the officer holding the post of District Judge, was directed to appoint, upon default of an appointment having been made by the remaining members of the committee. In conforming to the Act, he was not acting as Judge of a court vested with a jurisdiction in a suit of any kind, nor did he recognize a right. He was only in this manner a *persona designata*. No jurisdiction to the High Court, or to any court, was given to hear an appeal from an order made under s. 10; nor was there a jurisdiction given by the general law.

Reference was made to s. 2 of Act X of 1877, the code then in force, where "decree" was defined; also to s. 11, explaining "civil suit" to be where a right is contested; also ss. 588 and 622. The amendment of the latter section by s. 92 of Act XII of 1879 and its appearance as amended in the present Code (Act XIV of 1882) was also referred to.

Reference was also made to *Bajah Amir Hassan Khan v. Sheo Baksh Singh*(1), *Maharaja Dhiraj Mahtab Chand Bahadur of Burdwan*, in re(2), *Sankar Dobay*, in re(3), and *Anthony v. Dupont*(4). In the last case the Madras High Court had interfered under s. 622, but there was no other precedent for such a course. *In re Venkateswara*(5); that an appeal does not exist in the nature of things and that a right to appeal from any decision of any tribunal must be given by express enactment appeared in *Sandback Charity Trustees v. North Staffordshire Railway Company*(6); and by the Indian law, appeals were allowed in suits of a civil

(1) L.R., 11 I.A., 237.

(2) 2 B.L.R., 217; see also pp. 181 & 301.

(3) 4 B.L.R., 65; see also 5 B.L.R., app. 59.

(4) I.L.R., 4 Mad., 217.

(5) I.L.R., 10 Mad., 98.

(6) L.R., 3 Q.B.Div., 1, at p. 4.

nature, where they were not disallowed, but a suit there must be; in other words, there must be parties, there must be a right presented to a court, and a decision thereupon. All these elements were wanting here. Lastly, it could not be concluded that the objection to the jurisdiction had been waived. As the High Court had no jurisdiction to entertain the appeal, no waiver in that court could operate. Neither express, nor implied, consent of the parties could give jurisdiction to a court which did not possess it by law—*Ledgard v. Bull*(1).

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Mr. R. V. Doyne was called upon only in reference to the question of jurisdiction, which, it was intimated, would be disposed of before the order would be discussed on its merits.

For the respondent, Mr. R. V. Doyne contended that under the general powers of superintendence which the High Court possessed as the successor of the Sadr Diwani Adalat, the jurisdiction to hear the appeal had been duly exercised, and that such authority having really existed in the court, the objection as to the jurisdiction was now taken too late; an argument to which was added that the appellant by applying for a review had himself invoked it.

Reference was made to Regulation V of 1802, preamble; Charter Act, 24 & 25 Vic., c. 104, ss. 9 and 15; Letters Patent of 1865, clauses 15 and 16; Code of Civil Procedure, Act X of 1877, s. 622.

An application might be distinguished from a suit, but the order of the Judge when made fell under s. 622, not being such an order as was excluded from appeal by s. 588, which gave an appeal from specified orders, excluding other orders of a similar class. The appointment, however, amounted to a decree within the meaning of the definition in the code; and it was hardly correct to apply the expression that unless an Act creating a right gave an appeal there could be none, inasmuch as the superintending power of the High Court made it rather that there would be an appeal, unless it had been expressly taken away.

Counsel for the appellant was not called upon to reply.

Their Lordships' judgment was delivered by

SIR RICHARD BAGGALLAY.—This is an appeal against an order of the High Court of Madras, which cancelled an order of the

(1) L.R., 13 I.A., 134, and I.L.R., 9 All., 191.

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District Judge of Madura appointing the present appellant to fill up a vacancy in the committee of a pagoda in the Madras Presidency.

The appointment was made by the District Judge under the provisions of s. 10 of Act XX of 1863, entitled "An Act to enable the Government to divest itself of the management of Religious Endowments," and commonly known as *the Pagoda Act*. By that Act it was provided that the local Government should appoint one or more committees in every division or district to take the place, and to exercise the powers of, the Board of Revenue and the local agents, under the regulations thereby repealed, that the members of such committees should be appointed from among persons professing the religion for the purposes of which the temple, or other religious establishment, was founded or should be maintained, and in accordance, so far as could be ascertained, with the general wishes of those who were interested in the maintenance of such temple or religious establishment, and that the appointments should be for life; s. 10 provided for supplying vacancies in the following terms: "Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided. The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested, as above provided, under rules for elections which shall be framed by the local Government, and whoever shall be then elected under the said rules shall be a member of the committee to fill such vacancy. If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy, or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy."

The interpretation clause provided that the expression "Civil Court" should mean the principal Court of Original Civil Jurisdiction in the district in which the temple was situated.