

held that the grandson of the maternal uncle of the deceased's mother was entitled to succeed as a bandhu *ex parte maternâ*. The decree of the Subordinate Judge must be reversed and the case remanded to be disposed of according to law. Costs to be provided for in the revised decree.

SETHURAMA  
v.  
PONNAMMAL.

## APPELLATE CIVIL.

*Before Mr. Justice Kernan and Mr. Justice Wilkinson.*

NARASIMHA AND ANOTHER (PLAINTIFFS), APPELLANTS,

AND

AYYAN CHETTI (DEFENDANT), RESPONDENT.\*

1888.  
Dec. 10, 11, 12.

*Civil Procedure Code, s. 539—Interest necessary to support a suit under—Suit to remove a trustee.*

The plaintiffs, having an interest as the managers of a temple in seeing to the due performance of the religious part of the administration of a certain charity endowed for the sustenance of Brahmans and connected with the temple, and being further interested in its administration as Brahmans entitled under certain circumstances to share in the benefits of the charity; sued under s. 539 of the Code of Civil Procedure to remove defendant from the trusteeship of the charity on the ground of fraudulent mismanagement:

• *Held*, that the plaintiffs' interest did not support the suit.

*Quære*: Whether a suit for the removal of a trustee will lie under the above section.

APPEAL against the decree of J. A. Davies, Acting District Judge of Tanjore, in original suit No. 2 of 1885.

This was a suit by the plaintiffs praying for the removal of the defendant from the office of trustee of a certain charity endowed by one Kuthan Chetti for sustenance of Brahmans, and for the appointment of the plaintiffs as trustees.

The plaintiffs, who are Brahmans, stated that they were the hereditary adhinakartas of the temple in question, and had by inheritance a certain precedence in the temple ceremonies; that the charity referred to above was dispensed in a choultry attached to the temple and that the defendant who was appointed trustee by the deeds of endowment had been guilty of fraudulent mis-

\* Appeal No. 160 of 1887.

NARASIMHA  
v.  
AYYAN.

management; and that the Collector had accorded to them sanction to institute this suit.

The defendant denied the above allegations of fact and contended that the suit did not lie as framed.

The following issues were framed (among others):—

- (1) Whether the suit falls under s. 539 of the Code of Civil Procedure, or under Act XX of 1863, so far as the religious endowment is concerned, and under Madras Regulation VII of 1817 so far as the charitable endowment is concerned, and whether, if under these special enactments, the jurisdiction of this Court under s. 539 of the Code of Civil Procedure is ousted?
- (2) Whether the plaintiffs have such interest in the trust as to entitle them to sue?

On the above issues the District Judge said—

“*First issue.*—It is admitted by the parties, as well as proved by exhibits G and I (the deeds of endowment,) that the object of Kuthan Chetti’s endowment in this case was twofold, first, to supply a daily offering to the deity in the Srinivasa Perumal Covil of Thogur and designated the ‘kuruni ariseikattalai’ of one marcal of rice to be cooked and mixed with curds and afterwards distributed as ‘prasada,’ and, secondly, to build an annachatrum in the said village to feed Brahman travellers. The first must be considered a religious purpose, and the second a charitable one. To give this Court jurisdiction under s. 539 of the Code of Civil Procedure, it is necessary that the purposes of the trust besides being charitable or religious should be public. It is contended for the defendant that this is not a public trust, inasmuch as the scheme was started by a private individual who retained the management of it in his own hands, and made no dedication of it to the public by a valid trust-deed. But I overrule this objection, as I consider that exhibit G clearly creates a trust which is further vested by exhibit I in the defendant, and that the purposes of it may be decided public, as they are generally for the benefit of a whole section of the community, namely, the travelling Brahman population. The next contention for the defence, so far as the religious part of the endowment is concerned, is that while there exists the special enactment Act XX of 1863 for the proper appropriation of endowments of lands relating to temples, the words ‘religious purposes’ in s. 529 of the Code should be considered as

referring only to cases where the endowments do not relate to temples. If, however, the Legislature had intended this, they would surely have expressed their intention by the insertion of a saving clause to the desired effect. The fact that the words 'or religious' are an addition made by Act XIV of 1882 to the section as it originally stood, makes it appear that they were purposely added in order to admit a suit of this kind against a trustee, who is not one of the class of trustees contemplated by Act XX of 1863 which refers to trusts already in existence and not to such as might subsequently be created. And so with regard to the other contention in connection with the charitable part of the endowment that it is governed by Madras Regulation VII of 1817, and its superintendence being vested by s. 2 of the said regulation in the Board of Revenue they should also have been made parties to this suit,—it may be assumed that the regulation referred only to endowments then existing, for its language speaks of only what is and what has been and not of what will be; not a single provision is made therein for what is to be done in the case of future endowments—the only future it deals with is in regard to escheats. But if this interpretation is wrong and the Regulation is applicable to this case, it has been held in *Ponnambala Mudaliyar v. V. R. Pandia Chinnatambiar* (1) that it merely provides supplementary remedies and does not deprive the ordinary Courts of their jurisdiction. So that on the first issue I find that this Court has jurisdiction over the case under s. 539 of the Code of Civil Procedure.

"The second issue is whether the plaintiffs have such a 'direct interest' in the trust as to enable them to bring the suit. The case they set up is that they are the present managers of the temple, and as such have a direct interest in seeing to the due performance of the religious part of the trustee, *i.e.*, the daily offerings to the Perumal in the temple which yield the 'prasada,' in which they further claim a right to share first in their capacity as managers and then as Brahmans of the agraharam, should the remainder of the 'prasada' not all be required for distribution among travellers. Although I consider the plaintiffs have not proved by their evidence that they are the actual managers of the temple, for they keep no accounts, or that the managers, *quid* managers, have a right to share in the 'prasada,'—the evidence on

NARASIMHA  
P.  
AYYAN.

NARASIMHA  
v.  
AYYAN.

the point being contradictory, yet I find they have a right to interfere in the management, as well as to take a portion of any cooked rice that may be left after travellers have been fed. It is proved that Rangayyan, the father of the first plaintiff and uncle of the second, was the joint manager of the temple with Kuthan Chetti, the defendant's predecessor, and while I believe the defendant is now, as he states, the sole manager, it is admitted by him that the Brahmans of the village assist him in the management, and that they have been accustomed to take the 'Prasada' that is left over. I think that these admitted privileges give the plaintiffs such a direct interest in the trust as is contemplated by s. 539 the terms of which do not state and do not seem to imply that the interest required should necessarily be a beneficial one. I therefore find this issue in plaintiffs' favor."

The decree of the District Judge dismissed the suit so far as it prayed for the removal of the defendant, but contained certain directions as to the management of the charity.

The plaintiffs appealed and the defendants preferred a memorandum of objections against the above decree so far as it was not in accordance with their respective cases.

*Seshagiri Ayyar* for appellants.

*Pattabhirama Ayyar* for respondent.

The Court (Kernan and Wilkinson, JJ.) delivered the following

JUDGMENT:—We are of opinion that the plaintiffs had not a direct interest in the trust within the term of s. 539 of the Civil Procedure Code and that the suit was not, therefore, maintainable. See *Jan Ali v. Ram Nath Mundul*(1).

Again we think that it is not at all clear that a suit to remove a trustee can be maintained under s. 539.

It has been pointed out by Mr. Pattabhirama Ayyar that s. 539, in most parts of it, follows the provisions of Romilly's Act(2), which enabled trusts of certain classes to be carried out by summary procedure and not by suit; amongst the objects of that Act one was to appoint a new trustee and it was held that under the Act, a trustee could not be removed hostilely. No doubt, s. 539 provides that a suit may be brought to appoint the trustee and for other purposes, and it contains a proviso that further relief may be

(1) I.L.R., 8 Cal., 32.

(2) 52 Geo. 3, c. 101.

given according as the nature of the case required. Such grounds of relief would be some matter consequent on the relief, which the section enables to be granted.

NARASIMHA  
v.  
AYYAN.

We dismiss this appeal, and, as the Judge had not jurisdiction to try the case, we reverse the decree, so far as it gave any directions for the performance of the trust, or gave the plaintiffs any relief or decided any rights therein of either plaintiffs or defendant.

Appellant is to pay the costs of this suit throughout, including this appeal.

---

## APPELLATE CIVIL.

*Before Mr. Justice Parker and Mr. Justice Shephard.*

NANJAPPA (PLAINTIFF), APPELLANT,

and

NANJAPPA AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

1888.  
Nov. 20.  
Dec. 10.

---

*Contract Act, ss. 63, 74—Penalty—Stipulation for enhanced interest—Interest on decree amount up to date of payment—Remission of part performance of contract—Sum accepted on account of interest.*

A hypothecation bond provided for payment of interest on the principal sum at the rate of 9 per cent., and contained a further provision, that on default being made in payment of interest accruing due, interest should be paid from the date of the bond at the rate of 15 per cent. Default was made when the first and second payments of interest became due. After the second payment had become due, the creditor accepted payment on account of interest of a sum a little more than the arrears calculated at 9 per cent. In a suit by the creditor :

*Held*, (1) that the plaintiff had not waived any right under the bond by accepting the payment on account of interest :

(2) that the provision for enhanced interest calculated from the date of the bond on default, was of the nature of a penalty under s. 74 of the Contract Act.

(3) that the plaintiff was entitled to interest on decree amount from date of decree to date of payment at 6 per cent.

*Balkishen Dus v. Rumi Bahadur Singh*(1) discussed and distinguished; *Baij Nath Singh v. Shah Ali Hosain*(2) dissented from.

SECOND appeal against the decree of J. D. Irvine, Acting District Judge of Coimbatore, in appeal suit No. 138 of 1887, modifying

---

\* Second Appeal No. 251 of 1888.

(1) I.L.R., 10 Cal., 305; s.c. I.L.R., 10 I.A., 162.

(2) I.L.R., 14 Cal., 248.