of such custom, we are not prepared to overrule an express text mentioned in them, and to hold that one who is expressly named therein as a pitru bandhu is an atma bhandu. Another contention is that the maternal uncle and his sons must be considered, though alive, as civilly dead, inasmuch as they alienated their interest. This is manifestly untenable. The decision of the Judge is right, and we dismiss this appeal with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

STRINIVASA AYYANGAR AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

STRINIVASA SWAMI (DEFENDANT), RESPONDENT.*

1892. March 9, 14. April 6.

Civil Procedure Code, s. 539—Suit to eject one claiming to be the jheer of a mutt—Specific Relief Act—Act I of 1877, s. 42—Consequential relief.

Three disciples of a mutt brought a suit, with the consent of the Advocate-General, under s. 539 of the Code of Civil Procedure, alleging that the defendant was in possession of the mutt under a false claim of title as the successor to the late jheer, and praying that it be declared that he was not the duly appointed successor to the late jheer, and that an appointment to the vacant office of jheer be made by the Court, but no consequential relief was asked for:

Held, that Civil Procedure Code, s. 539 was inapplicable to the suit, and that the suit was not maintainable for the reason that relief consequential on the declaration sought under s. 42 of the Specific Relief Act was not asked for.

APPEAL against the decree of J. W. Best, District Judge of Chingleput, in original suit No. 23 of 1888.

The plaintiffs were three disciples of the Ahobalam mutt, and alleged in the plaint that on the death of the last head of the mutt in August 1888, the defendant, falsely alleging that he had been appointed the successor in office of the late jheer, trespassed upon the mutt. The prayer of the plaint was that it be declared that the defendant was not the duly appointed successor of the deceased jheer, and that the Court should appoint a duly qualified disciple of the mutt in his place. The suit was filed, with the con-

* Appeal No. 85 of 1891.

STRINIVASA AYYANGAR v. STRINIVASA SWAMI.

sent of the Advocate-General, under the provisions of section 539 of the Civil Procedure Code. The plaint, in which no relief was asked consequential on those above referred to, bore a Court fee stamp of Rs. 20 only, and a question was raised as to whether this stamp was sufficient. This question was decided in the affirmative by the District Judge, who, however, dismissed the suit on the ground that section 539 of the Code of Civil Procedure was inapplicable. He referred in support of this ruling to *Arunachella Chetti* v. *Muttu Chetti*(1).

The plaintiffs preferred this appeal.

Pattabhirama Ayyar for appellants.

Ramachandra Rau Saheb and *Sadagopachariar* for respondent.

JUDGMENT.—The plaint in this suit was filed, with the consent of the Advocate-General, under section 539 of the Code of Civil Procedure, and asks for two reliefs—(1) for a declaration that defendant is not the duly appointed successor to the late head of the mutt, who died on 10th August 1888, and (2) that the Court will fill up the vacancy by appointing a duly qualified disciple of the late jheer as his successor.

It is admitted that the defendant is in possession of the mutt and its properties. The learned Judge in the Court below has dismissed the suit on the ground that section 539 of the Code of Civil Procedure does not apply to suits brought against a trespasser. Against this view it is argued that plaintiffs have a right to sue whether the sanction of the Advocate-General is given or not, and that it is necessary the Court should make an appointment of a successor to the late jheer, in order that there may be some person qualified to give religious instruction to the disciples of the mutt, and clothed with the rightful authority to sue to eject the trespasser and to recover the mutt and its properties.

It appears to us that this suit is not of the character to which section 539 of the Code of Civil Procedure was intended to apply. That section merely enables two or more of the general public having an interest in a trust, and having obtained the consent of the proper officer to sue the trustees to enforce the better administration of the trust. It thus confers a right of suit against trustees which did not previously exist, and is not applicable to a suit brought by the disciples of a mutt with the real object

(1) Second Appeal No. 194 of 1880 unreported.

of ejecting a trespasser, which right of suit must have existed quite independently of the enactment of section 539. In addition to the unreported case of *Arunachella Chetti* v. *Muttu Chetti*(1) relied on by the learned Judge, we may refer to *Vishvanath Govind Deshmane* v. *Rambhat*(2) and *Giyana Sambandha Pandara Sannadhi* v. *Kandasami Tambiran*(3) at page 506, from which it is clear that section 539 does not apply to suits brought against trespassers.

It is then urged that the two plaintiffs have substantial individual interest of their own, and have a right to sue for the reliefs asked for, even though the consent of the Advocate-General be regarded as an unnecessary formality. It appears to us that it is not necessary to determine in this suit whether the provisions of section 30 of the Civil Procedure Code apply. Assuming that the two plaintiffs can sue alone without joining other disciples under the provisions of section 30, the present suit must fail under section 42 of the Specific Relief Act, inasmuch as the plaintiffs do not seek the consequential relief to which on their plaint they would be entitled. On the facts stated by them they are entitled to ask that some duly qualified person be appointed as the head of the mutt and approved by the Court, and that the mutt and its properties be handed over to the person so appointed, the defendant being ejected therefrom. A similar course was approved by the High Court in *Kadambi Strinivasa Charlu* v. *Subudhi*(4), and is evidently necessary to avoid multiplicity of suits.

We think the fee fixed in the District Court was too low and will allow Rs. 50.

Upon these grounds we confirm the decree of the Court below and dismiss this appeal with costs.

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(1) Second Appeal No. 194 of 1880 unreported.
(2) I.L.R., 15 Bom., 148. (3) I.L.R., 10 Mad., 375.
(4) Appeal No. 10 of 1887 unreported.