

NARAYANASAMI
v.
KUPPUSAMI.

JUDGMENT.—The first contention on behalf of the appellant was that the debt mentioned in the appellant's application for the certificate was the property of the appellant's father Sattaya Pillai. But, as Sattaya Pillai, the appellant, and the respondent were members of an undivided family, the presumption is that the debt was one due to the joint family, and there is nothing on the record to rebut this presumption.

The next contention was that the Judge should not have directed the grant of the certificate in the joint names of the appellant and the respondent. No doubt the cases in *Shitab Dei v. Debi Prasad*(1) and *Lonachand Gangaram Marwadi v. Uttamchand Gangaram Marwadi*(2) show that ordinarily certificates should not be granted to rival claimants jointly. But in the present case it is clear that the real object of the application for certificate was to raise questions as to the validity of the adoption of the respondent, a matter which was the subject of litigation for many years (*Narayanasami v. Kuppusami*(3) and which the appellant's vakil states is now also the subject of a suit brought to set aside the adjudications made in favour of the respondent. In these circumstances I do not think it proper to interfere with the order of the District Judge.

I reject the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar.

PERUMAL NAIK (DEFENDANT No. 2), PETITIONER,

v.

SAMINATHA PILLAI AND OTHERS (PLAINTIFFS Nos. 1, 2, 4 AND 5),
RESPONDENTS.*

*Suit for dismissal of members of devasthanam committee—Act XX of 1863, s. 16—
Reference to arbitration --Powers of arbitrators.*

Where a suit for dismissal of the members of a devasthanam committee and damages was referred under Act XX of 1863, section 16, to arbitrators who passed an award dismissing them as prayed and decreeing a portion of the damages claimed with interest :

(1) I.L.R., 16 All., 21. (2) I.L.R., 15 Bom., 684. (3) I.L.R., 11 Mad., 43.

* Civil Revision Petition No. 136 of 1895.

Held, that the Court had power to refer the matter to the arbitrators and award damages with interest, provided the amount, inclusive of interest, did not exceed the amount claimed in the plaint.

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PETITION under section 622 of the Code of Civil Procedure praying the High Court to revise the decree of W. Dumergue, District Judge of Madura, in original suit No. 26 of 1891.

This was a suit under Act XX of 1863 in which the plaintiffs sued for the dismissal of the members of the Palni devastanam committee from office, together with damages assessed at over Rs. 6,000 for losses incurred and alleged misappropriation by the defendants. Under section 16 of the Act the suit was referred for decision to arbitrators, with the following issues:—

(1) Whether there has been any misfeasance, breach of trust, or neglect of duty on the part of the committee members or of any of them in relation to the items severally set out in the schedule attached to the plaint?

(2) To what reliefs, if any, are the plaintiffs entitled?

The award passed by the arbitrators was that the defendants should be dismissed from office, that the first and second defendants should be directed to pay to the devastanam Rs. 3,212-4-0 as damages with interest thereon at the rate of 6 per cent. per annum from the date of the plaint to the date of realization, the same being made recoverable from them personally and also from their movable and immovable properties, and that all the three defendants should be directed to pay to the first, fourth and fifth plaintiffs the full costs of the suit with interest thereon at 6 per cent. per annum from date of decree to date of realization and bear their own costs.

The District Court passed a decree in accordance with the terms of the award.

Defendant No. 2 appealed.

Ramachandra Rau Saheb for petitioner.

Subramania Ayyar for respondent.

JUDGMENT.—The learned vakil for the petitioner (second defendant) urged that the award of the arbitrators and the decree thereon were illegal in so far as they related to (i) the dismissal of the petitioner from his office as a member of the committee and (ii) the award of interest prior to the date of the plaint.

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Whether, if the contention were sound, the petitioner's remedy was not by appeal I refrain from determining, as I have come to the conclusion that the contention is unsound. Now with reference to the first point mentioned, viz., the dismissal from office, it was argued that it was not competent for the Judge to refer the point to the arbitrators, as it involved virtually a question of criminal punishment, which was for the Judge and not the arbitrators to deal with. I however fail to see how the jurisdiction to remove a trustee exercised by the Civil Courts has any reference to crimes or their punishment. In the first place it is a purely civil jurisdiction exercised by the Courts as ancillary to its principal duty to see that the trusts are properly executed (*Letters-tedel v. Broers* (1)). Nor is it true that removal from office is decreed always as punishment. No doubt such relief is often granted when misconduct is proved. But, as pointed out by the Judicial Committee in the case above cited, a trustee may be removed even when no misconduct is established if the Court is satisfied that the continuance of the trustee would prevent the due execution of the trusts.

As to the second point the argument was that, inasmuch as the plaintiffs had not claimed interest prior to the date of the suit, neither the arbitrators nor the Judge had authority to award such interest. It is quite true that in the plaint schedule interest prior to the date of the suit is not specified as one of the items making up the amount claimed as damages sustained by the temple in consequence of the malversation committed by the petitioner and the other trustees. But, the sum awarded, including the interest in dispute, does not exceed that claimed as damages. And, except as fixing a limit beyond which recovery cannot be had, the averment of the amount of damages is not a material one (*Sedgwick on Damages*, Vol. III, sec. 1260, 8th edition). I am therefore of opinion that it was quite competent to the arbitrators and the District Judge to award to the temple the interest in question as part of the compensation due to it with reference to the amounts found to have been misappropriated. The petition fails and is dismissed with costs.

(1) L.R., 9 App. Cases, 386.