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determined the other points raised in favour of the defendants and he accordingly passed a decree confirming the award and dismissed the suit.

The plaintiffs preferred this appeal.

Sundara Ayyar for appellants.

Ryru Nambyar for respondent No. 1.

Bhaskara Menon for respondent No. 2.

JUDGMENT.—There is no doubt in this case as to the *factum* of the award and *primâ facie* the award is legal and proper.

The Court below holding that there was no cause shown for setting aside the award passed a decree in accordance with it.

Having regard to section 522 of the Civil Procedure Code, we are clearly of opinion that no appeal lies against such a decree. We are referred to no case decided in this Court in which the contrary has been held.

The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

NELLAIYAPPA PILLAI (PLAINTIFF), APPELLANT,

v.

THANGAMA NACHIYAR AND OTHERS (DEFENDANTS),
RESPONDENTS.*

*Civil Procedure Code—Act XIV of 1882, ss. 30, 539—Public charity—
Suit by trustee.*

The trustee of a temple sued to recover from the representatives of the trustee of a fund constituted for special purposes in connection with the temple worship, a sum of money misappropriated by him and to obtain the appointment in his place of himself or some other fit person. The plaintiff obtained leave to sue under Civil Procedure Code, section 30, but no sanction had been obtained under section 539 :

Held, that the suit was maintainable.

APPEAL against the order of S. Gopala Chari, Subordinate Judge of Tinnevely, in Original Suit No. 33 of 1896, by which it was ordered that the plaint be returned to be presented in a proper Court.

* Appeal against Order No. 139 of 1897.

The plaintiff was the trustee of a temple under the management of the Devasthanam committee of the Tinnevely district and the plaintiff contained the following allegations. A special fund had been collected for the purpose of supplementing the Government allowance for the worship in the temple. The fund was constituted of a sum of Rs. 5,000 contributed by certain persons including one Nellaikumar Pillai, who was the trustee and manager of the fund. He appropriated part of it and died on the 1st of December 1893, leaving, as his legal representatives, the defendants who were in possession of his estate.

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The plaintiff further alleged that the defendants had been called upon to make good the amount, but had failed to do so, and it continued as follows :—

“As there is no trustee now for the management of the said service and as no arrangements were made originally regarding the appointment of a trustee after the said Nellaikumar Pillai, the trustee for the said service has now to be appointed by this Court.

“As the plaintiff is the trustee for the temple to which the said service is due, as he is interested in the proper conducting of the service and as he is competent to look after the said service work, it is proper that he should be appointed as the trustee for the said service.

“As the plaintiff, besides being the trustee for the said Thonda Nainar temple, is as much interested in the said service as any others of Hindu religion having the same interest, he is entitled to bring a suit under section 30, Civil Procedure Code, for the collection of the amount from the defendants and for the appointment of a trustee for the said service.”

The prayer of the plaintiff was that the money misappropriated be paid to the plaintiff or to the trustee that might be appointed for the said service and “that this plaintiff be appointed as the trustee for conducting the said service ‘charity’ or that any other competent man be appointed as the trustee as the Court deems fit.”

Together with the plaintiff the plaintiff presented a petition for leave to sue under section 30, Civil Procedure Code, which was granted, service thereunder being ordered. Three preliminary issues were framed as follows :—

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“(1) Whether the suit is not maintainable for want of sanction under section 539 of the Civil Procedure Code?”

“(2) Whether the claim falls under section 539 of the Civil Procedure Code and the suit is not in consequence cognizable by this Court?”

“(3) Whether plaintiff’s suit is not sustainable under section 30, Civil Procedure Code?”

Of these issues the Subordinate Judge determined only the second, on which he held that the suit was not cognizable by him and he accordingly made the order now appealed against.

The plaintiff preferred this appeal.

The Acting Advocate-General (Hon. V. Bhashyam Ayyangar) and *Ramakrishna Ayyar* for appellant.

Sundara Ayyar and *Srinivasa Ayyangar* for respondents.

JUDGMENT.—In our opinion the Subordinate Judge has overlooked the circumstance that the plaintiff in this case was the general trustee of the temple and as such held a special position in regard to the protection of its interests. In that character it was not only his right, but his duty to see that the temple funds in the hands of special trustees were duly appropriated (Cf. *Jeyangarulavaru v. Durma Dossji*(1)), and even before the enactment in 1877 of the provision now embodied in section 539 of the Civil Procedure Code he would have been entitled to resort to the ordinary courts to enforce the obligations of the special trustees, and to obtain all appropriate relief for the protection of the interests of the temple. He would have been entitled to have sued for the removal of such trustees for malversation, and, if there was no other provision for filling up the vacancy, he could have asked the Court to appoint fresh trustees. We do not think that such right was intended to be affected by section 539 of the Civil Procedure Code. If that section were held to apply to the case of a person in the position of the present plaintiff, the rights which he had prior to the enactment would be seriously restricted, inasmuch as the exercise of his rights would be made dependent on the sanction of the Advocate-General or Collector as the case might be. It is difficult to believe that special rights of the character in question were intended to be so restricted.

(1) 4 M.H.C.R., 2.

We agree with the learned Advocate-General that the section was intended to apply to persons who, before its enactment, had, or were believed to have, no right to take proceedings for the purposes mentioned in the section, and in their case the limitation requiring previous sanction for the suit was one that was necessary to prevent an abuse of the powers conferred.

We have not thought it necessary to refer to the decisions of the High Courts in other parts of India, as they proceed on a view which has not been accepted by the Full Bench decision of this Court (*Rangasami Naickan v. Varadappa Naickan*(1)). Our view is in accordance with the principle underlying the decision in *Strinivasa Ayyangar v. Strinivasa Swami*(2), and the unreported cases therein cited.

We, therefore, set aside the order of the Subordinate Judge and direct that the plaint be received by him and that the suit be then disposed of in accordance with law.

Costs will abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

PERIATAMBI UDAYAN (DEFENDANT No. 1), PETITIONER,

v.

VELLAYA GOUNDAN AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, s. 258A—Adjustment out of Court—Subsequent execution by decree-holder—Suit to recover money paid on adjustment.

It was agreed between a decree-holder and the judgment-debtors that the former should accept Rs. 200 which was paid in full satisfaction of the decree, and should certify the adjustment to the Court, and that an attachment already placed on the judgment-debtor's property should be raised. The decree-holder accepted the money, but did not carry out his part of the agreement, and more than two years later applied for execution which was ordered to issue, the judgment-debtors' objections being dismissed as out of time. The judgment-debtors now sued in a Small Cause Court to recover the money paid to satisfy the decree :

Held, that the plaintiffs were entitled to recover.

(1) I.L.R., 17 Mad., 462.

(2) I.L.R., 16 Mad., 31.

* Civil Revision Petition No. 126 of 1897.