

## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice  
Abdur Rahim.*

D'CRUZ AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

D'SILVA AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Right of suit—Civil Procedure Code, ss. 30, 539—Suit by subscribers of  
society, maintainability of.*

1908.  
September  
23.  
October 16.

Some of the subscribers to a society brought a suit on behalf of themselves and other persons interested against the office bearers and members of the society, for the removal of the office bearers and for an account of the affairs of the society. No sanction of the Advocate-General under section 539 of the Code of Civil Procedure or permission of Court under section 30 of the Code for bringing the suit was obtained by the plaintiffs. Under the rules of the society, the subscribers as such, had no control over the officers of the society or the conduct of the society's affairs and they were not beneficiaries having any claim on the funds of the society :

*Held*, that they had no right to maintain the suit.

*Per Sir ARNOLD WHITE, C.J.*—Even if it is assumed that the suit was maintainable without the sanction of the Advocate-General under section 539 of the Code of Civil Procedure, the plaintiffs cannot maintain the suit as they were not members of the society and their rights were in no way analogous to the rights of worshippers in a Hindu temple, who could maintain a suit in their own right.

*Per ABDUL RAHIM, J.*—Assuming that the defendants are in the position of trustees of the society, liable to be sued for misconduct by persons interested, the plaintiffs cannot maintain a representative suit without sanction or leave obtained under section 539 or 30 of the Code of Civil Procedure.

Section 539 is enabling as regards the general public interested, in the sense that two persons may sue now *where it would have been necessary before that all should sue*, or that some should obtain leave to sue on behalf of the rest.

*Thackersey Dewraj v. Hurbhum Nursey*, [(1884) I.L.R., 8 Bom., 432], distinguished.

*Budree Dass Mukim v. Chooni Lal Johurry*, [1906] I.L.R., 33 Calc., 789], referred to.

*Subbagya v. Krishna*, [(1891) I.L.R., 14 Mad., 186], referred to.

SECOND APPEAL against the decree of J. H. Munro, District Judge of South Malabar, in Appeal Suit No. 40 of 1905, presented against the decree of C. Hanumantha Rao, Subordinate Judge of Cochin, in Original Suit No. 31 of 1904.

The facts necessary for the report are set out in the judgments.

The Subordinate Judge, in whose Court the suit was instituted,

WHITE, C.J., framed a preliminary issue whether the plaintiffs as subscribers had a right to bring the suit and he decided that they had not.

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His decision was confirmed on appeal. The judgment on appeal was as follows :—

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“The plaintiffs, on the ground that they are subscribers to an association known as the St. Vincent de'Paul Conference of Cochin, sue to remove the defendants who are the office bearers of the association for an account of the funds and other reliefs. The lower Court raised the preliminary issue whether the plaintiffs as subscribers have a right to maintain a suit of this nature. The issue having been found in the negative, the plaintiffs appeal.

The appellants' vakil practically contented himself with asserting in so many words that subscribers as such have a right to bring a suit like the present. For his sole authority he relied upon I.L.R., 8 Bom., 432. That case does not help us, for apart from being subscribers the plaintiffs in that case had the right to sue by reason of being devotees of the idol. The plaintiffs do not sue as beneficiaries under the trust. The beneficiaries are admittedly the poor of Cochin. There seems to be no authority for the position that a person not a beneficiary under a trust can bring an action like the present against the trustee. Suits under section 539, Code of Civil Procedure, are suits by beneficiaries against trustees (I.L.R., 15 Mad., 241 at p. 246). The interest entitling a person to sue under Act XX of 1863 is the interest of a person deriving benefit from the religious institution by having the right of attendance or of partaking in the distribution of alms. Under the Trust's Act it is the beneficiary who is given the right to proceed against the trustee. I find no reference in that Act to a suit by persons in the position of the plaintiffs, nor does there seem to be any such reference in Lewin on 'Trusts.' I am of opinion therefore that the lower Court's finding on the preliminary issue is correct. This appeal therefore fails and is dismissed with costs.”

The plaintiffs appealed to the High Court.

*P. R. Sundra Ayyar* for appellants.

*J. C. Adam* for first, second and fourth to seventh respondents.

JUDGMENT (Sir ARNOLD WHITE, C.J.).—In this case the plaintiffs sue as subscribers to a society known as the Society of St. Vincent de'Paul St. Francis Conference, on behalf of themselves and all other persons interested in the subject-matter of the suit.

They ask in their plaint (1) that the defendants may be removed from their respective offices in the St. Vincent de'Paul St Francis Conference at Cochin, and (2) that they may be ordered to render an account of the affairs of the society for the time during which they were in office

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In their written statement the defendants allege that the society is a voluntary society whose primary object is the spiritual wellbeing of its members, and that only, secondarily, it has a charitable object, as ministering to such spiritual welfare; that the society is governed by a written constitution and by the directions issued by the general council in Paris; that the first plaintiff has been a subscriber of the sum of two annas monthly from 1893 till December 1902, since when he has subscribed four annas per mensem; and that the second plaintiff has been a subscriber of two annas per month till December 1903, and in January 1904 increased the subscription to four annas.

The suit was decided on a preliminary issue whether the subscribers to the society have, as such, any right to bring a suit of this kind. The Courts below have held they have no such right. The organisation of the society and the objects for which it was intended are explained in the judgment of the Subordinate Judge.

I express no opinion whether this suit is maintainable without the consent of the Advocate-General having been obtained under section 539 of the Code of Civil Procedure. For the purposes of my judgment I assume that the suit can be brought without the consent of the Advocate-General.

It has not been suggested that under the rules of the society, subscribers, as such, have any control over the officers of the society or the conduct of the society's affairs. The officers of the society are appointed under the rules of the society, and not by the subscribers. It is clear that subscribers are not entitled as of right to make any claims upon the funds of the society. They are not the beneficiaries of the trust.

I do not think the decision of Scott, J., in *Thackersey Dewra? v. Hurbhum Nursey*(1) applies to the present case. In that case, in dealing with the question whether the plaintiffs could maintain the suit in their own right and in their own names

(1) (1884) I. L. R., 8 Bom., 432.

WHITE, C. J., without the permission of the Court or notice to other parties interested under section 30, the learned Judge observed that the plaintiffs sued not as members of the caste but as subscribers to the temple funds and devotees of the idol, and, as such, each had a right to complain of mal-administration.

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In the present case it does not appear that the plaintiffs are even members of the society, and their ecclesiastical rights, if any, in connection with the society, are, in my opinion, in no way analogous to the rights of the worshippers in a Hindu temple.

I think the Courts below were right and I would dismiss the appeal with costs

ABDUR RAHIM, J.—The plaint in the suit states in its first paragraph that the plaintiffs who are the subscribers to the society of St. Vincent de'Paul St. Francis Conference, British Cochin, sue on behalf of themselves and all other persons interested in the subject-matter of the suit, and, in its second paragraph, describes the seven defendants respectively as the President, the Secretary, the Treasurer and the active members of that society. The reliefs specifically asked for are the removal of the defendants from their respective offices, for accounts and for payment into Court of the money which may be found due from them to the society. Assuming that the defendants are in the position of trustees of the society, or of the Cochin Conference, and thus liable to be sued for misconduct or neglect of their duties, by persons interested in the administration of the trust which is one partly for religious and partly for charitable purposes, the plaintiffs clearly cannot maintain a representative suit like this without the sanction or leave obtained either under section 539 or section 30 of the Civil Procedure Code. But it is contended by the learned vakil for the appellants that the decisions reported in *Budree Dass Mukim v. Chorni Lal Johurry*(1) and *Subbaya v. Krishna*(2) have laid down the law differently. All that these two cases lay down is that section 539 of the Civil Procedure Code is permissive, and not mandatory, so that suits which were maintainable before its enactment without special leave are not affected by its provisions. But in *Subbaya v. Krishna*(2) the general rule is stated to be that, all persons interested in a suit should join in

(1) (1906) I.L.R., 33 Cal., 789 at p. 804.

(2) (1891) I.L.R., 14 Mad., 186 at p. 209.

bringing it, and Woodroffe, J., in *Budree Dass Mukim v. Chooni Lal Joharry* (1) says with reference to section 539, "As regards the general public interested, it is enacting, in this sense that two persons may sue now *where it would have been necessary before that all should sue*" (the italics are mine), "or that some should obtain leave to sue on behalf of the rest. To this special privilege it annexes a condition to prevent wasteful suits in that it requires that sanction should be obtained." I adopt this proposition as correctly stating the law, and hence the present suit having been brought without the sanction of the Court or the consent of the Advocate-General has been rightly held to fail.

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If the defendants be treated as servants of the council appointing them, and not trustees the suit might be open to a further objection that they are liable to be sued only by their employers. I am inclined to think however that they occupy the position of trustees.

In the view I have expressed it is not necessary that I should deal with the argument of the learned counsel for the respondents that the suit is not maintainable because the plaintiffs are subscribers paying only a small monthly subscription, and not beneficiaries who alone, according to him, can institute such an action as this. Nor do I feel myself called upon to consider his other argument, that, as the prominent object of the society is the advancement of the spiritual benefit of the members and charity is but its subsidiary object, the Civil Courts have no jurisdiction to entertain a suit relating to its management. But I must say that I should have felt considerable hesitation in accepting either of these two contentions. However that may be, for the reasons I have mentioned I agree that the appeal must be dismissed with costs.

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(1) (1906) I.L.R., 33 Calc., 789 at p. 804.