

MILLER  
AND  
SANKARAN-  
NAIR, JJ.

REGELLA  
JOGAYYA  
v.  
NIMUSHA-  
RAVI  
VENKATA-  
RATNAMMA.

purposes binding on the reversioners, and the question whether the creditor looked only to the personal credit of the widow or lent to her as representative of the estate on the credit of the estate, have not been decided.

We accordingly reverse the decree of the District Judge and remand the case for decision according to law in accordance with the above observation. Costs will abide the result. It will be open to the District Judge to remand the case to the Court of First Instance or take evidence himself as he deems necessary.

## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, Mr. Justice Benson, and  
Mr. Justice Sankaran-Nair.*

1909.  
November  
26.  
December 10.  
1910.  
February  
10, 11.

SRI VENKATACHALLAPATHY SAHAYA VIYAVASAYA  
COMPANY, BY ITS PRESIDENT, S. R. VENKATRAMIER  
(PLAINTIFF), PETITIONER IN ALL,

v.

KANAGASABHAPATHIA PILLAI (DEFENDANT), ORIGINAL SUIT  
No. 491 (RESPONDENT) IN CIVIL REVISION No. 751 OF 1908.\*

*Provincial Small Cause Courts Act, IX of 1887, sch. II, art. 18.—Suits 'relating  
to Trust' what are.*

Suit by a company by its President to recover from defendants Nos. 2 to 4 the subscriptions due under the Articles of Association of the Company. The first defendant was a trust; defendants Nos. 2 to 4 were the trustees of the trust and members of the plaintiff company, in their capacity of trustees. The plaintiff prayed that the moneys due may be recovered from the trust property in the first instance and, if not so recoverable, from the defendants Nos. 2 to 4 personally. The suit was instituted on the Small Cause side and the Subordinate Judge returned the plaints on the ground that the suit was one relating to a trust within the meaning of Act 18 of Schedule II of the Provincial Small Cause Courts Act and was not triable on the Small Cause side. The High Court was moved by petition under section 25 of the Act, *Held* :

*Per* CHIEF JUSTICE and SANKARAN-NAIR, J.—BENSON, J., dissenting :—

The suit was to enforce payment of moneys due under the Articles of Association and not one 'relating to a trust' within the meaning of article 18. The fact that issues relating to the trust and the rights and liabilities of the trustees may have to be tried will not make the suit one 'relating to a trust'.

\* Civil Revision Petition Nos. 751 to 757 of 1908.

PETITIONS under section 25 of Act IX of 1887 praying the High Court to revise the orders of K. Srinivasa Rao, Subordinate Judge of Tuticorin, in Small Cause Suits Nos. 491 to 495, 1139 and 1140 of 1908.

WHITE, C.J.,  
BENSON  
AND  
SANKARAN-  
NAIR, JJ.

The facts necessary for this report are sufficiently set out in the order of the Subordinate Judge as follows:—

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SAHAYA  
VIYAVASAYA  
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SABHAPATHIA  
PILLAI.

“In all these suits the plaintiff is “Sri Venkatachalapathi Sagaya Vyavasaya Company, Limited,” and the defendants Nos. 2, 3 and 4 in all of them are the same individuals, the first defendant alone being the particular “dharma” or “trust” of which the defendants Nos. 2, 3 and 4 are the trustees. It has to be borne in mind that the first defendant in all these suits is thus admittedly the “trust” or “dharma” itself, and the defendants Nos. 2, 3 and 4 are, as stated above, the managers or trustees thereof. The suits have arisen out of the defendants Nos. 2, 3 and 4 having become members of the plaintiff association in the capacity of trustees of the various “trusts” or “dharma” by formal applications for membership in the said association, which are all signed by defendants Nos. 2, 3 and 4. The object of these suits is to recover arrears of subscriptions due from the defendants Nos. 2, 3 and 4 as trustees of the said dharma to the plaintiff association. The plaintiff describes them as trustees or managers of the various trusts, and the prayer in each plaintiff is that the arrears may be recovered in the first instance from the trust property itself. The application forms filled up and signed by the defendants Nos. 2, 3 and 4 contain descriptions of the lands of the various dharma or trusts of which they are managers and the object of giving these particulars of the trust property is obviously to recover the dues to the association from the trust property. The plaintiff association, being an agricultural association, and the defendants Nos. 2, 3 and 4 having become members thereof, as trustees of these trusts, it is clear that the benefit or the burden of the association was admittedly to go to the trust property, and it is equally clear that the suits that have been filed against defendants Nos. 2, 3 and 4 are filed against them, not, in their private or individual capacity, but only, as trustees of these trusts.”

*A. S. Balasubrahmaniam Ayyar* for petitioners.

*S. Srinivasa Ayyar* for respondent.

WHITE, G.J.,  
BENSON  
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SANKARAN-  
NAIR, JJ.

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SAHAYA  
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JUDGMENT (The CHIEF JUSTICE).—Civil Revision Petition No. 751 of 1908 :—This is a petition under section 25 of the Provincial Small Cause Courts Act, 1887, against the decision of the Subordinate Judge of Tuticorin on the preliminary objection that the suit being one “relating to a trust” within the meaning of the article 18 of the second schedule to the Act, it was not triable on the Small Cause side of the Court. The Subordinate Judge allowed the preliminary objection.

The suit is by a limited liability company brought in the name of the “President” of the Company for “subscriptions” alleged to be due to the Company, under its Articles of Association and rules, from defendants Nos. 2 to 4 as “members” of the company.

Defendants Nos. 2 to 4 are described in the plaint as trustees of a “dharman” or charitable trust, the trust itself being the first defendant.

The claim is made against defendants Nos. 2 to 4 as trustees, and alternatively in their private capacity. The plaintiff asks for payment of the amount claimed from the first defendant, i.e., apparently out of the trust property, and alternatively by defendants Nos. 2 to 4 personally.

The second defendant pleads that the trust funds are in the possession of defendants Nos. 3 and 4 and that they are liable. He denies his personal liability. The third defendant pleads *inter alia* that he and the defendants 2 and 4 are not the trustees of the “dharman”, and that the properties of the dharman are managed by the entire body of the caste of which defendants Nos. 2 to 4 are members. The fourth defendant pleads *inter alia* that defendants Nos. 2 to 4 are not the sole trustees and that the trust property is managed by the whole caste.

It seems to me the suit is one relating to the liability of the defendants, either as trustees, or in their personal capacity, to pay to the company the “subscriptions” alleged to be due from them as “members”, and that is not a suit relating to a trust within the meaning of the words in the second schedule to the Act. In my opinion the fact that, in order to decide the questions raised in the suit, it may be necessary to determine whether the trust property is liable does not make the suit one “relating to a trust.” The defendants are not sued because they are trustees but because, as the plaintiff alleges, they are liable under the Articles of Association of the company to pay the subscriptions

claimed. It may be that, as the result of a decision in this suit, questions may arise for determination as between the defendants Nos. 2 to 4 and their *cestuis que trustent* (if any), but this, in my opinion, does not make the suit one "relating to a trust" as between the plaintiff and defendants Nos. 2 to 4.

The words "suit relating to a trust" are no doubt wider than the words in the corresponding enactment in the Presidency Small Cause Courts Act, 1882, which are "suits to enforce a trust," but the introduction of the words "including a suit", etc., in article 18 of the second schedule to the Provincial Small Cause Courts Act, seems to me to indicate that the words "suits relating to a trust" should be construed in a restricted sense. If the words "suits relating to a trust" are susceptible of the general interpretation which the Subordinate Judge has placed upon them, the later words of the paragraph "including, etc.," would seem to be unnecessary.

I think the view I have indicated is borne out by the authorities (see *Sundaralingam Chetti* and another v. *Mariyappa Chetti* and another(1)).

In *Krishmayyar v. Soundararaja Ayyangar*(2) where it was held the suit was not cognisable by a Small Cause Court, the suit was by a trustee against his predecessor in office for loss to the *Cestui que trust*, by the defendant's negligence, i.e., breach of trust. In *M. V. Subramania Ayyar v. Pandi Doraisami Taver* and others(3) where it was held the suit was not cognisable, the plaintiff's cause of action, if any, was to enforce the performance of the trust in so far as the trust related to him.

I think the Small Cause Court had jurisdiction, that the order of the Subordinate Judge on the preliminary objection should be set aside, and that the case should go back to the Subordinate Judge to be dealt with by him as a Small Cause suit. The costs in this Court are to abide the event. Civil Revision Petitions Nos. 752 to 757 of 1908 follow.

BENSON, J.—C.R.P. Nos. 751 to 757 of 1908).—I find it difficult to hold that these suits are not "suits relating to a trust" within the meaning of article 18 of the Provincial Small Cause Courts Act.

WHITE, C.J.,  
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PILLAI.

(1) (1903) I.L.R., 26 Mad., 200.

(2) (1898) I.L.R., 21 Mad., 245.

(3) (1903) I.L.R., 26 Mad., 368.

WHITE, C.J.,  
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 PILLAI.

The first defendant is the trust itself. Defendants Nos. 2 to 4 are sued as trustees and it is the trust property which the plaintiff seeks to make primarily liable for the sums claimed, the claim against defendants Nos. 2 to 4 personally being only an alternative claim. I do not think that the cases cited by the petitioner's pleader support his contention that such suits as those now in question do not "relate to a trust" nor do I think that the words at the end of article 18 "including a suit", etc., can be read so as to restrict the generality of the preceding words "suits relating to a trust."

The present suits on the face of the complaints involve the question of the liability of the trust property and this directly raises the question of the trustees' right to deal with the trust property in the way they have done.

I therefore think that they relate to a trust and are not triable by a Small Cause Court.

I would dismiss the petitions with costs.

THE CHIEF JUSTICE.—As my learned brother differs, the point of law which is stated in the judgments will be referred to Mr. Justice Sankaran-Nair under section 98 of the Civil Procedure Code.

These petitions came on for hearing before the Hon'ble Mr. Justice Sankaran-Nair who delivered the following

JUDGMENT.—I agree with the Chief Justice. The orders of the Subordinate Judge will be set aside and he will be directed to restore the suits to his file and dispose of them in accordance with law. It is open to him if he thinks fit to act under section 23 of the Provincial Small Cause Courts Act. The parties will bear their own costs in this Court. The costs in the lower Court will be provided for in the final decree.

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