

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Abdur Rahim.

1909.
December 8.

RAMANATHAN CHETTIAR (PETITIONER), PETITIONER,

v.

ANANTHANARAYANA AIYAR AND ANOTHER
(COUNTER-PETITIONER AND SECOND PETITIONER), RESPONDENTS.*

Civil Procedure Code, Act XIV of 1882, s. 622—Religious Endowments Act XX of 1863, s. 18—District Judge may in disposing of petitions under s. 18, make inquiries.

An order of a District Judge under section 18 of Act XX of 1863 is not open to revision under section 622 of Act XIV of 1882, unless he acts illegally in the exercise of his jurisdiction.

In re Venkateswara, [(1887) (I.L.R., 10 Mad., 98)], referred to.

A District Judge acting under section 18 of Act XX of 1863 has power to make enquiries before disposing of the application for leave to sue and is not bound to decide on a bare perusal of the application.

PETITION, under section 622 of the Civil Procedure Code, praying the High Court to revise the order of Arthur F. Pinhey, District Judge of Madura, in Original Petition No. 381 of 1907.

Application under section 18 of Act XX of 1863 to remove counter-petitioner, manager of Sriminateche Sundaraswaral Devas-tanam. The District Judge called for an affidavit from the counterpetitioner and being satisfied with his explanation dismissed the application.

Petitioners moved the High Court under section 622 of the Civil Procedure Code, Act XIV of 1882.

P. R. Sundara Ayyar and *K. Srinivasa Ayyangar* for petitioner.

T. Rangachariar and *C. V. Anantakrishna Ayyar* for respondent.

JUDGMENT.—A preliminary objection is taken that the order of the District Judge under section 18, Act XX of 1863, is not open to revision under section 622 of the Civil Procedure Code and reliance is placed on the case of *In re Venkateswara*(1). The petitioner's vakil contends that the District Judge acted illegally in the exercise of his jurisdiction within the meaning of section 622 of the Civil Procedure Code in that he did not give his decision on a bare perusal of the application for leave to sue,

* Civil Revision Petition No. 283 of 1908.

(1) (1887) I.L.R., 10 Mad., 98.

but made some enquiry and received an affidavit from the manager in reply to the allegations in the petition. No authority in support of this view is cited and we think that it is unreasonable. Section 18 would afford no protection against improper suits if the Court could refuse leave only if the facts alleged in the petition did not disclose any cause of action, for any plaint which disclosed no cause of action would be rejected under the General Law of Procedure independently of the special provision in section 18. Moreover the provision in section 19 of Act XX of 1863 that the Court before giving leave may order the manager and other temple authorities to file accounts, negatives the contention of the petitioner's vakil. That contention has also been negatived in the recent unreported decisions of this Court in Criminal Revision Petition No. 20 of 1908. The District Judge, then, did not act illegally in the exercise of his discretion, and no petition under section 622, Civil Procedure Code, lies (*In re Venkateswara*(1)).

We dismiss this petition with costs.

BENSON
AND
ABDUR
RAHIM, JJ.

RAMA-
NATHAN
CHETTIAR
v.
ANANTHA-
NARAYANA
AIYAR.

APPELLATE CRIMINAL.

*Before Mr Justice Subrahmania Ayyar, C.I.E., Officiating
Chief Justice, and Mr. Justice O'Furell.*

THE PUBLIC PROSECUTOR

v.

SARABU CHENNAYYA.*

1899.
September.

Evidence Act I of 1872, s. 91.—Search-list does not exclude oral evidence of matters stated therein—Confession not recorded in compliance with orders of Government—Such confession admissible if voluntary.

Section 91 of the Evidence Act has no application when the writing is not evidence of the matter reduced to writing.

A search-list is not evidence of the matter stated therein and it does not therefore exclude oral evidence of such matter.

Although G.O., No. 2883, Judicial, paragraph 5 (dated 17th December 1887) directs that no Magistrate may record any confession or statement under section

(1) (1887) I.L.R., 10 Mad., 98.

* Criminal Appeal No. 284 of 1889. Reported under the direction of Benson and Abdur Rahim, JJ., (Ed.)