APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Sadasiva Ayyar.

P. L. A. ALAGAPPA CHETTIAR AND TWO OTHERS (PLAINTIFFS NOS 2 TO 4), APPELLANTS,

1917, April 20, and 25.

v.

R. M. P. CH. MUTHIAH CHETTIAR (DEFENDANT), RESPONDENT.*

Religious Endowments Act (XX of 1863), ss. 14 and 18—Leave given to four persons under section 18 of the Act—Suit by them under section 14—Death of one of the plaintiffs after suit, whether it effects abatement.

A suit instituted under section 14 of the Religious Endowments Act by four persons with the leave of the Court under section 18 of the Act does not abate on the death of one of the plaintiffs.

Venkatesha Malia v. *Ramayya Hegade* (1915) I.L.R., 38 Mad., 1192, *Maddala Bagavannarayana* v. *Vadapalli Perumalla Charyulu* (1916) 29 M.L.J., 231, distinguished.

Chabile Ram v. *Durga Prasad* (1915) I.L.R., 37 All., 296, not approved.

Parameswaran Munpee v. *Narayanan Nambodri* (1917) I.L.R., 40 Mad., 110, referred to.

APPEAL against the decree of W. L. VENKATARAMAYYA, the District Judge of Ramnad at Madura, in Original Suit No. 22 of 1913.

The facts appear from the judgment of AYLING, J.

S. T. Srinivasagopala Achariyar for the appellants.

G. S. Ramachandra Ayyar for the first appellant.

A. Krishnaswami Ayyar and *M. Patanjali Sastri* for the respondent.

AYLING, J.—The suit from which this appeal arises was instituted under section 14, Religious Endowments Act XX of 1863, by four persons who had obtained leave of the Court under section 18 of the same. Subsequent to its institution one of these persons died and the District Judge has dismissed the suit on the single ground that it is not competent to the three survivors to maintain it, it being "essential that all the donees of the power (to institute a suit) conferred by the Court should jointly exercise that power right up to the finish of the suit". The surviving plaintiffs appeal.

AYLING, J.

* Appeal No. 44 of 1916.

ALAGAPPA v. MUTHIAH.

AYLING, J.

The chief authority relied on by the District Judge is that of *Venkatesha Malia* v. *Ramayya Hegade*(1) in which it was held that where sanction was given under section 18 of the Religious Endowments Act to two men, it was not open to one of them alone to institute the suit under that sanction. It may be pointed out at once that this ruling does not necessarily cover the present case, in which the suit was validly instituted by all the persons who obtained leave to sue but one of them subsequently died. It does not necessarily follow that a validly instituted suit abates for this reason. Another judgment of this Court quoted in support of the lower Court's decree, *Maddala Bagavannarayana* v. *Vadapalli Perumalla Charyulu*(2), also deals with a case in which the institution was itself defective (in the above sense) : and the only authority brought to our notice in support of the abatement is *Chabile Ram* v. *Durga Prasad*(3) which was expressly dissented from in a recent case of this Court : *Paramcswaran Munpee* v. *Narayanan Nambodri*(4). All the last three cases were of suits instituted under section 92, Civil Procedure Code ; but as I shall endeavour to show presently the difference between the two sections is in the present appellant's favour.

Section 18 of the Religious Endowments Act is very similar to section 195 of the Code of Criminal Procedure. In each the Courts are expressly forbidden to entertain a complaint or suit, unless express sanction or leave for its institution has been previously obtained. The grant of the sanction or leave in each case removes the bar to the Court taking cognizance of the matter ; and once that bar is removed it is not easy to see how either of the two sections can have further effect. In the case of section 195 of the Code of Criminal Procedure the complaint may be filed by a different person altogether from the person who applied for the sanction [vide *In re Thathayya*(5)] and though it is not necessary for us to go so far as the present case, I do not see why the same should not hold good in the case of leave granted under section 18 of the Religious Endowments Act.

With all respect to the learned Judges who decided *Venkatesha Malia* v. *Ramayya Hegade*(1) the wording of section 18 of the

(1) (1915) I.L.R., 38 Mad., 1192.
(2) (1916) 29 M.L.J., 231.
(3) (1915) I.L.R., 37 All., 296.
(4) (1917) I.L.R., 40 Mad. 110.
(5) (1889) I.L.R., 12 Mad., 47.

Religious Endowments Act seems to afford no warrant for the consideration by the Court of the personality of the applicant. The duty of the Court is specifically defined as the determination of whether there are sufficient prima facie grounds for the institution of the suit. In dealing with applications under section 195 of the Code of Criminal Procedure Courts do not uncommonly bear in mind the personality of the applicant and his probable motives, although section 195 is in this respect quite general in its terms, and does not attempt to define the matters for the Court's determination. Nevertheless, as already stated, a sanction granted to one person may be utilized by another. Section 92 of the Code of Civil Procedure is different. It expressly authorizes the institution of a suit by

"two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General."

This wording certainly supports the view that the persons who institute the suit must be identical with those who obtained the sanction.

Under section 14 of the Religious Endowments Act, on the contrary, any person or persons interested may sue: and section 18 merely interposes an independent condition that the suit shall not be entertained unless leave has been previously granted on application but without indicating in any way by whom the application should be made.

There seems to me therefore no need to adopt the District Judge's very narrow view of the section: and where the District Court has, on due consideration, decided that there are sufficient prima facie grounds for the institution of a suit against trustees of religious endowments it is undesirable in the public interest that unnecessary obstacles should be thrown in the way of its prosecution.

I would set aside the decree of the District Court and remand the suit for disposal on its merits. Costs in this Court should be costs in the cause.

SADASIVA AYYAR, J.—I should like to reserve my opinion on the question whether when leave is granted to *A* under section 18 of Act XX of 1863 to institute a suit, *B* could institute that suit under section 14.

But I entirely agree with my learned brother that there is nothing in section 18 which can be construed as putting an end

ALAGAPPA v. MUTHIAH.

SADASIVA AYYAR, J.

to the suit after it is once legally instituted simply because one of several persons who obtained the leave under section 18 died during the pendency of the suit. I think that the general provisions of the Civil Procedure Code become applicable as much to a suit brought in the special Court mentioned in section 14 of the Religious Endowments Act after the first step, namely, the institution of the suit has taken place, as to a suit brought under section 92, Civil Procedure Code, except that a certain special or rather supplemental provision regarding reference to arbitration (*see section* 16 *of* the Religious Endowments Act) is also applicable to the former case and the Court is given express powers to award certain named reliefs in its decree to a suit under section 92, Civil Procedure Code (see also *Parameswaran Munpee* v. *Narayanan Nambodri* (1) and *Varadayya Chetty* v. *Munusami Chetty*(2).

A suit under section 14 of Act XX of 1863 is, in my opinion, as much a representative suit as one brought under section 92 of the Civil Procedure Code or some of the suits under Order I, Rule 8 of that Code, as it is equally brought in and as it affects the rights of all those interested in the religious endowment. All such interested persons become in the eye of the law parties to such a suit and the death of one or more of them cannot cause the suit to abate nor would it prevent the suit from being heard till "its finish" after it has been once properly and legally instituted unless perhaps in the almost impossible contingency of all the persons interested ceasing to exist in this world by death or by wholesale apostasy. I agree in the order proposed by my learned brother.

S.V.

(1) (1917) I.L.R., 40 Mad., 110.

(2) (1911) 10 M.L.T., 514.