APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Pakenham Walsh.

RAGHAVENDRA RAO AND SEVEN OTHERS (PLAINTIFFS), APPELLANTS,

1929, July 18.

v.

VOBIAH AND EIGHT OTHERS (DEFENDANTS), RESPONDENTS.*

Religious Endowments Act (XX of 1863), sec. 3—"Any public officer," meaning of—Temple subject to superintendence of Mysore Government at the time of passing of the Act—Jurisdiction of Temple Committee over the temple.

The words "any public officer" in section 3 of the Religious Endowments Act (XX of 1863) mean a public officer under the Government of Madras; hence a temple committee constituted under the Act cannot claim superintendence over a temple, the nomination of the trustee whereof was vested in the officials of the Government of Mysore at the time of the passing of the Act.

APPEAL against the decree of the Court of the Subordinate Judge of Bellary in Original Suit No. 3 of 1920.

P. R. Ganapathi Ayyar for appellants.

V. S. Narasimhachar for respondents.

JUDGMENT.

KUMARASWAMI SASTRI, J.

KUMARASWAMI SASTRI, J.—This Appeal arises out of a suit filed by the temple committee of Kudligi for a declaration that the suit temple which they say was called Hude Kampli Devaru is subject to the control of the plaintiffs, for directing the defendants to return to

* Appeal No. 108 of 1921.

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the manager, who they allege was appointed by them, the properties of the temple, for accounts and other reliefs. The contesting defendants deny the plaintiffs' claim. Their case was that Kampli Devaru had no temple, that they had no concern with Kampli Devaru temple at Hude and the inam, that the right of appointing the pujari was in the Masa Naiks, that Kampli Devaru idol was permanently in Mysore territory, and that the Court had no jurisdiction.

The suit was instituted in 1911. It came up twice to the High Court as the suit was decided on preliminary questions. The Subordinate Judge who tried the suit after both orders of remand has found that the Kampli Devaru is a Narasimha salagrama image which is the deity of the Masa Naik caste, that it has no permanent shrine, that it is always on tour and that it has a temple and inam at Hude. He finds that the temple committee has or had no jurisdiction over this temple, that the temple was never under the control of the Board of Revenue, and that the power of appointment of trustees was at least from 1800 to 1890 exercised by the Mysore Government, and that no Dharmakarta was ever appointed or confirmed by the Board of Revenue, and dismissed the suit. Hence the appeal.

It is clear from the evidence that, in 1810, the previous trustee or pujari was dismissed by the Diwan of Mysore, and a fresh trustee was appointed. The order of the Diwan is on page 30, Exhibit P (printed documents in Appeal No. 186 of 1914). It refers to the dismissal of the first pujari's grandson, Dosa Gopaya, and the appointment of Dasaya. Then it proceeds as follows :— "In future, if to install the patta of Gosi God, Kampla God, or any other God, they should come and inform you as well as the sircar of it ; a Hachadu and Paga should

be presented from the sircar and when the relatives come and inform, you should have the patta installed, when you install patta, you shall receive the Najar usually payable therefor by them to the sircar. When making the patta installation, careful enquiry should be held in the presence of respectable persons of the place and after a decision, Hachada and Paga should be presented from the sircar and the patta should be conferred." This is dated 28th March 1810. The first person appointed continued in office until 1853. His son was the second pujari from 1853 to 1874. It appears that, in accordance with the order of 1810, he was recognized as the trustee, and the customary honours were given to him. Then his son Obaya was the pujari from 1874 to 1879 and was succeeded by his elder brother from 1879 to 1907. In 1907 disputes arose as to the successor. Several members of the community did not want the sons of Peddanna to be appointed owing to the alleged immorality of their mother, and there were various proceedings, civil and criminal, in the Courts of Mysore. The Subordinate Judge has found on the evidence that, for nearly a century, no sort of control was exercised by the Board of Revenue or by any officials in British India as regards the management of the temple and the appointment of trustees, that till 1890 the Mysore Government officials were informed of the persons who were selected by the community as trustees and they were recognizing them, that in 1890 the Diwan thought the Mysore Government did not concern itself with this endowment as it was not one of the temples which had any grant from or subject to the control of the Mysore Government. Therefore, the question for determination in this case is, whether, on these facts which the Subordinate Judge has found and which we see no reason to differ from, the temple

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committee have got any right in the matter. The Subordinate Judge has given reasons for holding that the temple committee has no right. He deals with this question in paragraph 25 of the judgment onwards. We think that the decision of the Subordinate Judge on this point is right.

Act XX of 1863 was an Act passed for the purpose of enabling the Government of India to divest itself of the management of religious endowments. It begins by saying

> "Whereas it is expedient to relieve the Boards of Revenue and the local agents in the Presidency of Fort William in Bengal and the Presidency of Fort St. George from the duties imposed upon them by Regulation XIX of 1810, of the Bengal Code . . . and Regulation VII of 1817 of the Madras Code, . . . so far as those duties embrace the superintendence of lands granted for the support of mosques or Hindu temples and for other religious uses, the appropriation of endowments made for the maintenance of such religious establishments, the repair and preservation of buildings connected therewith and the appointment of trustees or managers thereof, or involve any connexion with the management of such religious establishments."

Section 3 enacts that

> "in the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in the preamble to this Act are applicable, and nomination of the trustee, manager or superintendent thereof, at the time of the passing of this Act is vested in or may be exercised by the Government or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided."

The provisions are *inter alia* for the appointment and constitution of temple committees as provided for by section 7. Section 4 enacts that

" in the case of every such mosque, temple or other religious establishment which, at the time of the passing of this Act, shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest in, nor be examined by, nor be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager, or superintendent, all the landed or other property which at the time of the passing of this Act shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple or other religious establishment, except such property as is hereinafter provided,"

and on such handing over, it enacts that the power and responsibility of the Board shall cease. It has been found by the Subordinate Judge—and we accept the finding—that the Board of Revenue never exercised any control over this endowment, nor was the power of appointment of trustee, manager or superintendent vested in or exercised by the Government of Madras or by any public officer under the Government of Madras. The contention of Mr. Ganapathi Ayyar for plaintiffs is, that "public officer" does not mean a public officer under the Government of Madras but means any public officer wherever such public officer may exercise his function. He goes to the length of arguing that a public officer outside British India would also be a person in the contemplation of section 3 and that any institution the appointment of whose trusteeship is vested in or controlled by any public officer, whether in British India or outside, would fall under Act XX of 1863, and be subject to the jurisdiction of the temple committee appointed under section 7. I am unable to agree with this contention. I find it difficult to see how the Act can apply so as to give jurisdiction to the Board of Revenue or the temple committee in cases where a public officer subject to the control of another Government, presidency or province,

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has been exercising the powers of appointment or control. The words "public officer," I think, must, having regard to the other sections of this Act and to the provisions of Regulation VII of 1817, mean public officer under the Government of Madras and not a public officer outside the control of the Government of Madras. I have already referred to the preamble, and it refers to cases to which Regulation VII of 1817 applied, and before section 3 can be invoked, there should be two conditions satisfied, namely, that not only the Regulation VII of 1817 should be applicable but also that at the time of the passing of the Act, the nomination of the trustee, manager or superintendent should be vested in or exercised by the Government or any public officer, or such nomination should be subject to the confirmation of the Government or public officer. In the preamble to the Regulation VII of 1817, we find reference to the provinces immediately dependent on the Presidency of Fort St. George. Section 2 vests in the Board of Revenue the general superintendence of all endowments, etc., in the several provinces dependent on the Presidency of Fort St. George. Section 3 says that it is the duty of the Board of Revenue to take measures to ensure that religious establishments are properly maintained and that other trusts are properly carried out. Section 7 enables the Board of Revenue to have local agents. Section 8 says that the Collector shall be one of the local agents, and powers are given to the Government to appoint other local agents, if it so desires. Section 11 says that the local agent shall report to the Board of Revenue the vacancies and casualties as they may occur and other particulars as to whether the line of descent is by hereditary right or by election. Section 12 refers to cases where the nomination is vested in Government or a public officer, and section 13 says what

is to be done on the receipt of the report. It is clear from a perusal of the various sections referred to, that the Madras Regulation VII of 1817 was confined to the Government and territories administered by the Government of Fort St. George, and the "public officer" there was a public officer subject to that Government and not any public officer, and in construing section 3, I think it is clear that we must take "public officer" there to be a public officer who was exercising his functions under Regulation VII of 1817. Section 4 simply says that where section 3 does not apply, i.e., where the Government would not have any power to transfer the management to local committees, any endowment which then belonged to such trust shall be made over to the trustee in charge of the endowment, and the Board shall divest itself of all concern in the management. The scheme of this Act, therefore, is that in all cases where Regulation VII of 1817 applied or in cases where the appointment of trustee was either made by the Government of Madras or one of its officers, or where the confirmation of such appointment had to be made by Government or by its officers, such powers were transferred to temple committees; in all other cases, property which was subject to the endowment was transferred to the then legally entitled trustee, and the Board of Revenue had no other control over such property. It is, therefore, clear from the scheme of this Act, that to give jurisdiction to temple committees they must show that the case falls under section 3. Otherwise it is difficult to see how a temple committee can either appoint a trustee or file a suit like the present one requiring property to be handed over to the trustee whom they had no power to appoint. I am therefore of opinion that the decision of the Subordinate Judge is

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right, and the temple committee had no right to institute this suit.

The appeal fails and is dismissed with costs of respondents 1, 5 and 6.

PAKENHAM WALSH, J.—I agree.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Waller and Mr. Justice Anantakrishna Ayyar.

1929, April 30.

RAMANAYYA (2ND RESPONDENT), APPELLANT,

v.

KOTAYYA AND ANOTHER (APPELLANT AND 1ST RESPONDENT), RESPONDENTS.*

Letters Patent, clause 15 *(amended)—Decision of single Judge in Second Appeal—Refusal of leave to appeal—No appeal against refusal.*

When, after the amendment of clause 15 of the Letters Patent, a single Judge of the High Court decides a second appeal and refuses leave to appeal, not only does no appeal lie from the judgment on the merits, but also no appeal lies from his refusal. *Lane* v. *Esdaile* [1891] A.C., 210, followed.

APPEAL under clause 15 of the Letters Patent against the order of VENKATASUBBA RAO, J., refusing to grant leave to file a Letters Patent Appeal against his judgment in Second Appeal No. 1506 of 1928 on the file of the High Court (A.S. No. 261 of 1928 on the file

* Letters Patent Appeal No. 38 of 1929.