APPELLATE CIVIL.

Before Sir Owen Beasley Kt., *Chief Justice, and Mr. Justice Cornish.*

1932, February 1.

BOARD OF COMMISSIONERS FOR THE HINDU RELIGIOUS ENDOWMENTS, MADRAS, AND FOUR OTHERS (DEFENDANT SIX AND DEFENDANTS TWO TO FIVE), APPELLANTS,

v.

SREEMATHI RUGMINI *alias* KUNHIKAVU *alias* KUTHIRAVATTATH KONGASSERI PUTHUKULANGARA AMMA NEETHIYAR AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Madras Hindu Religious Endowments Act (II of 1927), *ss.* 7, 9 *cl.* (2), 67, *and* 84—*Non-existent temple—Hindu Religious Endowments Board—Jurisdiction.*

The control of the Hindu Religious Endowments Board over the endowments of a temple is dependent on the temple being one to which the Madras Hindu Religious Endowments Act applies and the Board has no jurisdiction over the endowments where the temple is clearly non-existent, not temporarily but permanently, and there is no apparent intention of bringing it into existence again.

APPEAL against the judgment of KUMARASWAMI SASTRI J., dated 8th August, 1919, passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Civil Suit No. 424 of 1926.

T. R. Venkatarama Sastri, P. Venkataramana Rao and *D. Adinarayaniah* for appellants.

T. Rangachari, C. Unikanda Menon and *K. Chandrasekhara Thampan* for respondents.

Cur. adv. vult.

JUDGMENT.

BEASLEY C.J. BEASLEY C.J.—The claim in the suit under appeal is similar to the claims in the other suits but the facts are

* Original Side Appeal No. 101 of 1928.

somewhat different. The learned trial Judge dismissed those other suits because, in his opinion, section 7 of the Madras Act II of 1927 was validly enacted by the Local Legislature and section 84 gave power to the Board to decide whether a mutt or temple was a public or a private one when a dispute arose with regard to that. In this case, however, he held that the Board had no jurisdiction to control the property of the respondents and granted an injunction restraining the Board from exercising any of the powers conferred on it by the Act or interfering with the respondents' management of the properties. The Board has appealed against that decision.

The facts, quite shortly, are that the temple in question ceased to exist many years ago and that all that now remains of it are its ruins. About this there is no dispute. It is no doubt true that some of the properties are described as *devaswom* properties and that probably the income was formerly used by the members of the tarwad for the performance of worship in the temple. The learned Judge was of the opinion that the mere fact that there were these properties, the income of which should be devoted to the temple, were there a temple in existence, did not give the Board jurisdiction either to direct the restoration of the temple or to invoke the doctrine of *cy pres* for the purpose of dealing with the income. He held that section 9 clause 12 of the Act clearly contemplates a temple in actual existence as a place of public worship and that there was nothing in the Act or in section 84 giving the Board any jurisdiction to decide the way in which the income or particular endowments attached to temples, which before the Act came into force ceased to exist as places of public worship, is to be applied.

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BEASLEY C.J.

On behalf of the Board it is contended that one of the matters to be decided by the Board under section 84 of the Act is whether an institution is a mutt or a temple as defined in the Act. That is quite true. But, on the other side for the respondents, it is contended that there must at least be an institution in existence and that, if there is, the Board has jurisdiction to decide whether it is a mutt or a temple as defined in the Act. The definition of a mutt or temple in the Act is contained in section 9 clause 12, namely :

> " 'Temple' means a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community, or any section thereof, as a place of religious worship."

In support of the contention that it is not necessary for the temple actually to exist in order to give the Board jurisdiction over its property, it is argued that section 67 of the Act clearly has in contemplation the case where there has been a temple and it has ceased to exist before the Act came into force, and the Board having power to appropriate the income derived from the property for the purposes set out in that section. But, in my view, that section does not assist the appellants because the proper construction of it seems to me to be that it is to enable the Board to deal with religious endowments, the original purposes of which subsequent to the Act become impossible of realisation, that is to say, by the temple ceasing to exist, or with religious endowments which come into existence after the passing of the Act and the purposes of which are never realized. If this is the right view of that section, then it is of no assistance to the appellants. The definition of a temple in the Act requires it to be a place which is used; and this temple not only was not used and is not being used but cannot be

used unless it is rebuilt. It has in fact been in ruins for many years. I, therefore, think that the learned trial Judge was perfectly right in holding that the Board had no jurisdiction with regard to its properties. The difficulty, however, is in laying down that the building of the temple must actually exist in order to give the Board jurisdiction, as cases can be imagined where clearly the Board should and must be intended by the Legislature to exercise its control. For instance a temple may be temporarily non-existent because it may have been washed away by a flood or temporarily submerged or may have been burnt down. Nevertheless the property from which its income is derived may still exist, so may its trustees, and the intention may be to rebuild the temple and resume religious worship as soon as it is rebuilt or the waters that have submerged the temple recede. All that is necessary, in my opinion, to say is that the Board has no jurisdiction where the temple clearly is non-existent, not temporarily but permanently, and there is no apparent intention of bringing it into existence again. For these reasons, this appeal must be dismissed with costs.

An objection to the order of the learned trial Judge directing the Board to pay the respondents only half the costs of the suit was taken by Mr. Rangachari, on behalf of the respondents, who argued that the Board ought to have been directed to pay the entire costs of the respondents. With that contention I do not agree because the order was made because the respondents had failed on other important issues and this was the only issue upon which they succeeded. The respondents' memorandum of objections must, therefore, be dismissed but without costs.

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CORNISH J.

CORNISH J.—I am of the same opinion. The report of the Board's inspector shows that what was once a temple is now a mere collection of debris. Except the base-work of the temple and a mass of broken idols etc., nothing remains of it. The respondents' allegation in the written statement is that the temple was destroyed some 150 or so years ago in an invasion by Tippoo Sultan, and that no attempt was ever made to rebuild it. This ancient ruin would not in ordinary language be correctly described as a temple, and I do not think that the provisions of the Hindu Religious Endowments Act require that it should be deemed to be a temple for the purposes of the Act. Temple, in the definition clause 12 of section 9, signifies a temple in the ordinary sense of the word, namely, a place dedicated and used for public worship. The Act appears, therefore, to contemplate a place having an existence as a temple. It may be, however, that a temple which, at the time when the Act came into force, had been temporarily abandoned as a place of worship for any of the reasons suggested in the course of the arguments, such as destruction by fire or flood, would still be a temple to which the Act applied and be subject to the special powers given to the Board by section 67 of the Act. But that is a question which would have to be decided upon the facts and circumstances of the particular case. The present case is an entirely different one. There is here nothing remainig of a temple except a heap of stones, its site, and its name Kottamala. The establishment of the temple has completely disappeared. It ceased to be used as a place of public worship at a time long beyond living memory; and, as far as one knows, it was not until the year 1925, when a local municipal councillor petitioned the Board, that it occurred to anybody that

the temple should be restored as a place of public worship. On these facts the place is, in my view, incapable of being the subject of a dispute as to whether it is a temple to which the Act applies and consequently the Board had no jurisdiction under section 84 (1).

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G.R.

APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Cornish.

CHINTAKAYALA THAMMAYYA NAIDU, PETITIONER,

1932, February 3.

v.

CHINTAKAYALA VENKATARAMANAMMA AND ANOTHER, RESPONDENTS.*

Court-fee—Land Acquisition Act (I of 1894), sec. 32—Compensation money awarded to Hindu widow having life-interest only directed to be invested in Bank under—Appeal by another claimant claiming exclusive right to—Court-fee payable on memorandum of—Excess court-fee paid in appeal—Refund of—Order for—Inherent power of High Court to make—Court-Fees Act (VII of 1870), ss. 13, 14 and 15—Cases not covered by—Code of Civil Procedure (Act V of 1908), sec. 151.

On a reference under section 18 of the Land Acquisition Act (I of 1894) the District Judge held that one of the claimants, a Hindu widow, was entitled to a life-interest in the compensation money awarded for the melwaram, but, on account of the limited interest held by her, he, under section 32 of the Act, ordered the money to be invested in a Bank, which was accordingly done. In an appeal filed by another claimant claiming that the compensation was payable to him alone,

held that the proper court-fee payable on the memorandum of appeal was not a court-fee *ad valorem* on the amount of the award but a court-fee as for a mere declaration.

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*Civil Miscellaneous Petition No. 4190 of 1931.