

well-known case of *In re Hallett's Estate, Knatchbull v. Hallett*(1) where it was held that if money held by a person in a fiduciary character, though not as trustee, has been paid by him to his account at his bankers the person for whom he held the money can follow it, and has a charge on the balance in the bankers' hands. In a later case, *Sinclair v. Brougham*(2), the principle in *In re Hallett's Estate*(1) was applied. It is quite clear that the plaintiff was entitled in the lower Court to succeed in his claim against the first defendant and therefore the first defendant's appeal must be dismissed with costs.

MURUGAPPA
CHETTIAR
v.
KUMARA-
NANDASWAMI.
BEASLEY C.J.

CORNISH J.—I concur.

G.R.

APPELLATE CIVIL.

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

HASARIMULL CHANDUKCHAND AND ANOTHER
(SECOND DEFENDANT AND HIS LEGAL REPRESENTATIVE),
APPELLANTS,

1931,
October 27.

v.

N. R. VEDACHALA CHETTIAR AND ANOTHER
(PLAINTIFFS), RESPONDENTS.*

Madras Hindu Religious Endowments Act II of 1927 (as amended by Act I of 1928), sec. 73 (2)—Wrongful alienation of trust property by trustee—Suit by other trustees to recover property from alienees—Jurisdiction of Civil Courts.

Section 73 (2) of the Madras Hindu Religious Endowments Act II of 1927 (as amended by Act I of 1928) is not a bar to the institution of a suit by a trustee of a temple against strangers

(1) (1879) 13 Ch.D. 696.

(2) [1914] A.C. 398.

* Original Side Appeal No. 27 of 1930.

CHANDUK-
GHAND
v.
VEDACHALA
CHETTIAR.

to the trust claiming to be alienees of trust property wrongly obtained by them through the maladministration of a trustee.

Vythilinga Pandara Sannadhi v. Temple Committee, Tinnevely Circle, (1931) I.L.R. 54 Mad. 1011, discussed.

Budree Das Mukim v. Chooni Lall Johurry, (1906) I.L.R. 33 Calc. 789, followed.

Sembla.—There is nothing in section 92 of the Code of Civil Procedure which has not been taken out of that section and placed either in section 73 or other sections of the Madras Hindu Religious Endowments Act and section 73 of the said Act does not embrace any relief which could not formerly have been obtained under the procedure set out in section 92 of the Code.

APPEAL against the judgment of WALLER J., dated 28th January, 1930, and passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Civil Suit No. 85 of 1927.

T. G. Raghuvachari for second appellant.—The suit, as framed, is one for the recovery of property on the basis of a breach of trust by the trustee. The first clause of section 73 of the Madras Hindu Religious Endowments Act is the same as section 92 of the Code of Civil Procedure, 1908. The second clause of section 73 is wide enough to cover any suit in which the primary issue to be tried is whether the trustee has committed a breach of trust or not. The observations in *Vythilinga Pandara Sannadhi v. Temple Committee, Tinnevely Circle*(1) support the above submission. Section 73(2) came to be enacted in this manner on account of the observations in *Venkataramana Ayyangar v. Kasturiranga Ayyangar*(2).

K. Narasimha Ayyar for respondents.—The plaintiff had given up the reliefs which might bring the case under section 73 and confined the suit to reliefs against the appellant who is a stranger to the trust. The reliefs now claimed against the appellants do not come within the purview of the section. Practically there is no difference between section 92 (1) of the Code of Civil Procedure, 1908, and section 73 of the Madras Hindu Religious Endowments Act. In *Budree Das Mukim v. Chooni Lall Johurry*(3) it was held that section 92

(1) (1931) I.L.R. 54 Mad. 1011.

(2) (1916) I.L.R. 40 Mad. 212 (F.B.).

(3) (1906) I.L.R. 33 Calc. 789.

has no application to suits against strangers to the trust. See also *Budh Singh Dudhuria v. Niradbaran Roy*(1) and *Abdur Rahim v. Mohamed Barkat Ali*(2).

CHANDUK-
CHAND
v.
VEDAGHALA
CHETTIAR.

[Counsel was stopped.]

Cur. adv. vult.

JUDGMENT.

BEASLEY C.J.—This is an appeal from a judgment BEASLEY C.J. of WALLER J. He had before him a suit claiming reliefs against seven defendants. The first defendant was one of the trustees of a temple in the Chingleput District and the reliefs sought against him were his removal from trusteeship, an account, and various other reliefs which are properly to be obtained under section 73 of the Madras Hindu Religious Endowments Act. It was alleged that he had badly administered the trust and that as a result of the maladministration some property belonging to the temple and set out in the plaint got into the hands of the other defendants. The only defendant appealing here is the second defendant and he is admittedly the alienee of the most valuable of all the trust property, and that property is wholly situate in Madras. It is quite true that the suit has all the appearances of a suit under the Madras Hindu Religious Endowments Act. The sanction of the Endowments Board has been obtained and the reliefs sought are, as already pointed out, reliefs which are properly obtainable under that Act. But something happened in the lower Court; Mr. Narasimha Ayyar who was appearing for the plaintiffs did not press his claim against the first defendant. It should be remarked that the first plaintiff is also a trustee of the temple and, whether it was so stated at the time or not, it is quite clear that

(1) (1905) 2 C.L.J. 431.

(2) (1927) I.L.R. 55 Calc. 519 (P.C.).

CHANDUK-
CHAND
v.
VEDACHALA
CHETTIAR.

BEASLEY C.J.

he could not have pursued his remedy here against the first defendant by reason of the fact that the suit in this High Court was barred by the provisions of section 73 of the Madras Hindu Religious Endowments Act. Accordingly, the suit against the first defendant was dismissed. That leaves only the alienees. Of these the alienees other than the second defendant have been content with the position of affairs as decided in the lower Court, which was, that, as regards the suit properties, the question whether their transfers can be set aside is to be inquired into. The second defendant appeals. His contention here is that the claim against him is one within the provisions of section 73 (2) of the Madras Hindu Religious Endowments Act and that this Court therefore has no jurisdiction to try the suit. He puts forward this contention by reason of the wording of that sub-section which is as follows:—

“ Sections 92 and 93 and Rule 8 of Order I of the First Schedule of the Code of Civil Procedure, 1908, shall have no application to any suit claiming any relief in respect of the administration or management of a religious endowment and no suit in respect of such administration or management shall be instituted except as provided by this Act.”

These words, it is argued, mean that any suit between any parties in which the question of the administration of a religious endowment comes into question immediately attracts the provisions of section 73 of the Madras Hindu Religious Endowments Act. It is argued that that section is wide enough to embrace any suit in which such a matter has to be considered. The appellant prays in aid *Vythilinga Pandara Sannadhi v. Temple Committee, Tinnevely Circle*(1), a decision of a Bench of this Court consisting of CURGENVEN and CORNISH JJ. There, what the Court had to consider

(1) (1931) I.L.R. 54 Mad. 1011.

was a claim of a purely personal nature. It was a suit to establish the plaintiff's personal right as hereditary trustee of a certain village temple; and it was held that the provisions of section 73 did not apply to any such claim. Then the Bench went on to state as follows:—

“The suit raises no issue as to the manner in which the trust property has been administered or should in future be administered.”

That, it is argued, is a decision to the effect that in all cases where there arises a question involving the consideration of administration of trust property the provisions of section 73 of the Madras Hindu Religious Endowments Act are at once attracted. In my view, that is going much beyond what was expressed in that decision. What we have got to consider here is whether, in a case where trustees of a temple are suing entire strangers to the temple, the provisions of section 73 of the Madras Hindu Religious Endowments Act apply at all. As between a trustee of a temple and other trustees of the temple, or as between the worshippers of a temple and the trustees of a temple and the persons interested in the temple, clearly, when questions of administration of the trust arise, those are matters which come within the scope of section 73 of the Madras Hindu Religious Endowments Act. But entirely different considerations apply where the parties are on the one hand trustees of a temple and on the other hand entire strangers who are claiming to be alienees of property wrongly obtained by them through the maladministration of a trustee. It seems to me that there is nothing in section 92 of the Code of Civil Procedure which has not been taken bodily out of that section and placed either in section 73 or other sections of the Madras Hindu Religious Endowments Act; and

CHANDUK-
CHAND
v.
VEDACHALA
CHETTIAR.
—
BEASLEY C.J.

CHANDUK-
CHAND
v.
VEDACHALA
CHETTIAR.
BRASLEY C.J.

it seems to me clear that the Madras Hindu Religious Endowments Act, particularly section 73, does not embrace any relief which could not formerly have been obtained under the procedure set out in section 92 of the Code of Civil Procedure. It is admitted that such a claim as this would not have been one which was within the provisions or subject to the procedure of section 92 of the Code of Civil Procedure. Except for the decision of the Bench already referred to and some observations which appear in a Full Bench Case, *Venkataramana Ayyangar v. Kasturiranga Ayyangar*(1), no authorities have been quoted in support of the extreme contention of the appellant here. In that case the Full Bench was dealing with a case very similar to this and it held that the claim there was not one which was within the provisions of section 92 of the Code of Civil Procedure. It is true that at the end of his judgment SESHAGIRI AYYAR J. says at page 232 as follows:—

“ If I may venture a suggestion, the time is come for the intervention of the Legislature to insert a clear and unambiguous provision in the Code of Civil Procedure that all reliefs relating to public, religious and charitable trusts, except those which partake of the character of personal or communal rights, should be litigated only under the provisions of section 92 (1). An amendment of Act XX of 1863 may be necessary to give full effect to this suggestion.”

Then PHILLIPS J. makes similar observations. It is suggested that it was in consequence of those expressions of opinion that section 73 of the Madras Hindu Religious Endowments Act came to be drafted in the form in which it is. It is curious that it should be suggested that observations made in 1917 were the reason and cause of a statute which was only passed 10 years later. Personally I can see no connection between those observations and section 73 of the Act. There

(1) (1916) I.L.R. 40 Mad. 212, 232 (F.B.).

is ample authority in support of the position that section 92 of the Code of Civil Procedure and the corresponding section of the old Code do not apply to suits between trustees of a temple and alienees from trustee of a temple of trust property. In *Budree Das Mukim v. Chooni Lall Johurry*(1) WOODROFFE J. at page 804 says :

CHANDUK-
GHAND
v.
VEDACHALA
CHETTIAR.

BEASLEY C.J.

“It is on this principle, viz., that the suit contemplated by the section is directed against trustees, that it has been held that as against strangers it does not apply.”

He then sets out a number of decisions, two of which are decisions of this High Court, on that point, establishing that principle, and then continues :—

“It has doubtless been held in one case that, where there is a claim for administration of trust, which falls within the section, a claim to eject an alienee may be joined with it: *Sajedur Raja Chowdhuri v. Gour Mohun Das Baishnav*(2). But the latter claim does not, in my opinion, come within the scope of the section and is open to the charge of misjoinder, and the decision has been dissented from in a later case, *Budh Singh Dudhuria v. Niradbaran Roy*(3), with which I agree.”

This decision of the Calcutta High Court was one under the corresponding section of the old Code. There is further authority to be found with regard to section 92 of the present Code in a decision of the Privy Council, *Abdur Rahim v. Mohamed Barkat Ali*(4). Lord SINHA in delivering the judgment of their Lordships states at page 526 :

“It is urged broadly on behalf of the respondents that all suits founded upon any breach of trust for public purposes of a charitable or religious nature, irrespective of the relief sought, must be brought in accordance with the provisions of section 92, Code of Civil Procedure.

The short answer to that argument is that the Legislature has not so enacted. If it had so intended, it would have said so in express words, whereas it said, on the contrary, that

(1) (1906) I.L.R. 33 Calc. 789.

(2) (1897) I.L.R. 24 Calc. 418.

(3) (1905) 2 C.L.J. 431.

(4) (1927) I.L.R. 55 Calc. 519 (P.C.).

CHANDUN- only suits claiming any of the reliefs specified in sub-section
 CHAND (1) shall be instituted in conformity with the provisions of
 2. section 92 (1).”
 VEDACHALA
 CHETTIAR.

BRASLEY C.J.

Nevertheless the contention of the learned Counsel for the appellant here is that, although suits between a trustee of a temple and trespassers or alienees from the trustee of a temple are not within section 92 of the Code of Civil Procedure, directly it is necessary to prove the plaintiff's case by evidence that the alienation was the result of mismanagement by that trustee, the provisions of section 73 of the Madras Hindu Religious Endowments Act are at once attracted. I can see no warrant for any such contention. To so contend is to very widely amend the words in sub-section (2) of that section. If it had been intended to deprive the litigant of his right of the choice of the forum, it would have been done so by express enactment and not left to be a matter of mere implication. I cannot myself see that that deprivation is even implied in sub-section (2) to that section. Under these circumstances it is quite clear to me that the learned trial Judge was quite right in deciding that the Court had jurisdiction to proceed with the case as against the appellant. It is very difficult to see with what object this appeal has been presented. The other alienee-defendants have been quite content with the position imposed upon them in the lower Court and it is conceded here by the learned Counsel for the appellant that there can be no bar of limitation, even in the event of the appellant's success here, to a suit claiming exactly the same reliefs being filed in the District Court at Chingleput. Under these circumstances, it is very difficult to see what the appellant had to gain by presenting this appeal unless it be time. This appeal must be dismissed with costs.

CORNISH J.

CORNISH J.—I agree. I find it difficult to understand how the judgment in *Vythilinga Pandara Sannadhi*

v. *Temple Committee, Tinnevelly Circle*(1), to which I was a party, is supposed to give support to the appellant's contention that, if a suit raises a question touching the validity of an alienation of trust property by a trustee, it is a suit in respect of the administration or management of the trust within section 73 of the Madras Hindu Religious Endowments Act. The sole question in that case was whether a suit to establish a claim to the hereditary trusteeship of a temple was barred by section 73. We held that it was not, for the reason that it was a suit to establish a private right and not a suit in respect of the administration or management of a temple. In my opinion, the effect of section 73 of the Act is simply this; that a suit which could only be instituted by the Advocate-General or some persons with his consent under section 92, Civil Procedure Code, must, when it relates to a religious endowment governed by the Act, be instituted by the Endowments Board or by some person, having an interest, with the consent of the Board. It is pointed out in *Vythilinga Pandara Sannadhi v. Temple Committee, Tinnevelly Circle*(1) that, though some of the reliefs specified in section 92 of the Code of Civil Procedure are reproduced verbatim in section 73 of the Act, the others are provided for elsewhere in the Act. And as it has been held by the Full Bench in *Venkataramana Ayyangar v. Kasturiranga Ayyangar*(2) that a suit to recover trust property from its alienees does not come within section 92 of the Code, I think it follows that such a suit is equally outside the scope of section 73 of the Act, and that this appeal fails.

CHANDUR-
CHAND
v.
VEDACHALA
CHETTIAR.
CORNISH J.

G.R.

(1) (1931) I.L.R. 54 Mad. 1011.

(2) (1916) I.L.B. 40 Mad. 212 (F.B.).