

justifying my interference in this civil revision petition.

The civil revision petition is dismissed with costs.

SARANATEA
 AYYANGAR
 v.
 MUTHIAH
 MOOPFANAR.

K.W.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Cornish.

TRIKADERI MANEKAL VASUDEVAN ADISERPAD
 AND THREE OTHERS (DEFENDANTS 1, 3, 4 AND 5), APPELLANTS,

1933,
 May 11.

v.

THEKKAMPARAMBATH MANAKAL BHAWADASAN
 NAMBU DIRI AND EIGHT OTHERS [PLAINTIFF AND DEFENDANTS 2
 (LEGAL REPRESENTATIVE) 6 TO 10 AND 13 AND LEGAL
 REPRESENTATIVE OF FOURTH DEFENDANT], RESPONDENTS.*

*Madras Hindu Religious Endowments Act (II of 1927), sec. 73
 (1)—Suit instituted under—Account and inquiry—Decree
 for—Court's power to pass—Sec. 73 (1) (d)—Reliefs
 covered by—Sec. 73 (2)—Suit for recovery of money found
 due by a trustee on an audit report not barred by.*

It is not competent to the Court in a suit instituted under section 73 (1) of the Madras Hindu Religious Endowments Act (II of 1927) to decree an account and inquiry.

Section 73 of the Madras Hindu Religious Endowments Act contains no clause corresponding with clause (d) of section 92 of the Code of Civil Procedure for "directing accounts and enquiries"; and the omission was made advisedly. There are ample provisions in the Madras Hindu Religious Endowments Act for checking the accounts and fixing the liability of trustees, and a special provision enabling the Board or persons interested in the proper administration of the trust to sue for an account and inquiry would be superfluous.

Per RAMESAM J.—Section 73 of the Madras Hindu Religious Endowments Act is confined to cases in which the main relief

VASUDEVAN
ADISERPAD
v.
BHAWADASAN
NAMBUDIRI.

falls under any of the clauses (a), (b) and (c) of sub-section (1) thereof; and clause (d) of sub-section (1) of the section covers relief only incidental to and *ejusdem generis* with the main reliefs. Beyond the reliefs expressly mentioned in clauses (a), (b) and (c) of sub-section (1) of section 73 and any relief incidental to them no further relief can be prayed for in a suit instituted under the sub-section.

Per CORNISH J.—Money found due by a trustee on an audit report would be a debt due by the trustee to the temple, and would be recoverable in a suit either by a co-trustee, or by a new trustee appointed in the place of the trustee in default, or, if a scheme has been framed, by the person or body appointed to the management. Such a suit would not be barred by sub-section (2) of section 73 of the Madras Hindu Religious Endowments Act.

APPEAL against the decree of the District Court of South Malabar in Original Suit No. 3 of 1929.

T. R. Venkatarama Sastri, K. P. M. Menon, K. P. Krishna Menon and P. Govinda Menon for appellants.

Advocate-General (Sir A. Krishnaswami Ayyar), K. P. Ramakrishna Ayyar, P. S. Narayanaswami Ayyar, P. R. Ramakrishna Ayyar and P. R. Vasudevan for respondents.

Cur. adv. vult.

JUDGMENT.

RAMESAM J.

RAMESAM J.—This is an appeal against the decree of the District Judge of South Malabar in Original Suit No. 3 of 1929. The suit was filed under section 73 of the Madras Hindu Religious Endowments Act II of 1927. In the plaint the following reliefs were prayed for:—

(a) removing such of the defendants from their places as trustees of Tirumullapalli temple as the Court finds to be guilty of fraud or gross mismanagement;

(b) framing a scheme of management for the Tirumullapalli temple in Karalamanna Amson, Walluvanad taluk, in consultation with the Board of Religious Endowments ;

VASUDEVAN
ADISERPAD
v.
BHAWADASAN
NAMBUDIRI.
RAMESAN J.

(c) directing defendants 1 to 5 and 11 and 12 to render an account of their management after producing all account books and documents and other temple property in their possession or power and pay such sums as are found due ;

(d) directing defendants 1 to 5 and 11 and 12 to surrender all temple articles, jewels, documents, keys, etc., in their possession or power ;

(e) directing defendants 1 to 5 and 11 and 12 to pay damages for all loss caused to the temple by their fraud and mismanagement ; and

(f) granting plaintiff's costs and such further relief as the nature of the case may require.

The District Judge has given a decree directing that an account should be taken of various items and that the defendants should pay to the Board of Religious Endowments such sum as may be found due on the taking of accounts and granting some other reliefs. Defendants 1, 3, 4 and 5 have filed this appeal. The fourth defendant afterwards died and his legal representative has been made a respondent.

[Portion of the judgment omitted as being unnecessary for the report.]

One of the objections taken in this appeal is that the suit in so far as it prays for the taking of accounts and for a decree directing the defendants to pay certain sums of money to the plaintiff is not maintainable. I will discuss this question lower down.

VASUDEVAN
ADISERPAD
v.
BHAWADASAN
NAMBUDIRI
RAMESAM J.

[Portion of the judgment omitted as being unnecessary for the report.]

After making these remarks in connexion with specific items I now come to the important question in the case as to whether the suit as framed is maintainable. The suit was filed under section 73 of the Madras Hindu Religious Endowments Act II of 1927. This section, on the face of it, appears to be drafted with reference to section 92, Civil Procedure Code, by omitting some of the sub-clauses in it. Clauses (a) and (b) of section 92 are clubbed together as clause (a) of section 73 (1). Clauses (c), (e) and (h) of section 92 are reproduced as clauses (b), (c) and (d) of section 73 (1). Clauses (f) and (g) of section 92 have been provided for in other sections, namely sections 57 and 63. These relate to schemes and alienations. Clauses (f) and (g) of section 92 are not therefore reproduced in section 73. Clause (d) of section 92 especially relates to directing accounts. That clause did not exist in section 539 of the older Codes of 1877 or 1882. There was a considerable conflict of opinion as to whether a trustee can be removed under the old section 539 ; vide *Narasimha v. Ayyan*(1), *Subbayya v. Krishna*(2) and *Rangasami Naickan v. Varadappa Naickan*(3). The final Madras view was that a trustee cannot be removed. The learned Advocate-General for the respondents referred us to *Manohar Ganesh Tambekar v. Lakhmiram Govindram*(4) which was affirmed by the Privy Council in *Chotalal v. Manohar Ganesh Tambekar*(5). It was an instance of a suit

(1) (1888) I.L.R. 12 Mad. 157.

(2) (1890) I.L.R. 14 Mad. 186.

(3) (1894) I.L.R. 17 Mad. 462 (F.B.).

(4) (1887) I.L.R. 12 Bom. 247.

(5) (1899) I.L.R. 24 Bom. 50 (P.C.).

where accounts were demanded and there was no objection in the suit that such a suit was not maintainable. The point was never raised nor argued by Mr. Mayne before the Privy Council nor is there a judgment on the matter. But, assuming that under section 539 there might be a prayer for taking accounts and that such a prayer comes under the last clause relating to "such further or other relief as the nature of the case may require", still the Indian Legislature thought it necessary to make the matter clear by expressly inserting clause (d) in section 92 which relates to the taking of accounts in the Act of 1908. The question now is what significance is to be attached to the omission of clause (d) of section 92 in section 73 and not whether a suit for taking accounts would be maintainable under a section standing like section 539 without any prior history. In the present case prayer (c) of the plaint is a prayer demanding accounts and also for directing the defendants to pay such sums as are found due. But prayer (d) refers to the surrender of temple articles, jewels, documents, keys, etc., by the defendants. Surely a prayer like this does not come under the clause directing accounts. It is a prayer for the recovery of specific property. Is such a prayer also to come under the general clause relating to further relief? We find as a matter of fact that provision has been made in section 78 of the Endowments Act which gives a summary remedy for the recovery of any property admittedly belonging to a temple. If there is any question whether property movable or immovable belongs to a temple and if issues arise with respect to title to such property, can it be

VASUDEVAN
ADISENPAD
v.
BHAWADASAN
NAMBUDIRI.
RAMESAM J.

VASUDEVAN
ADISERPAD
v.
BITAWADASAN
NAMBUDIRI.
—
RAMESAM J.

said that a claim to recover such property falls under the general prayer for further or other reliefs in section 73 and that issues as to title can be tried in such a suit? Similarly again we come to prayer (*e*) which asks that the defendants should be directed to pay damages for all loss caused to the temple by their fraud and mismanagement. Is this also a prayer like the one asking for accounts? Could a prayer like this fall under clause (*d*) of section 73 relating to further or other relief? It may be that under the Court Fees Act a prayer for accounting may be tentatively valued by the plaintiff; vide section 7 (iv) of the Court Fees Act VII of 1870. It may be that the Court Fees Amendment Act of 1922 allowed all suits for accounts and damages to be filed with a court-fee of Rs. 15. But this last provision of law remained in force only for three years because in 1925 the Religious Endowments Act came into force and it provided for a court-fee of Rs. 50 for suits under section 73; vide section 81 and Schedule II. Section 81 says: "Notwithstanding anything contained in the first or second Schedule to the Madras Court Fees Amendment Act, 1922". This shows that the object of section 81 and Schedule II was to raise the court-fee from Rs. 15 to Rs. 50 and not to make suits under section 73 cheap. But the question is whether it was intended by section 81 and Schedule II which permit a suit under section 73 to be filed with a court-fee of Rs. 50 that suits not only for accounts but also for the recovery of properties movable or immovable whether admitted or not admitted to belong to a temple, suits for damages or loss on account of negligence, all such suits could be

allowed to be filed with a court-fee of Rs. 50 only and without stating the valuation of such items. *Prima facie* it looks as if the Legislature could not have intended such suits to be filed under section 73. It is contended by the Advocate-General who appeared for the respondents that clause 2 of section 73 shows that no suit claiming any relief in respect of the administration or management of a religious endowment can be instituted except as provided by the Act, that is by section 73. But this construction proves a little too much for them for it is conceded that according to the decisions certainly there are suits which are held not to be covered by section 73 though they do relate to the administration or management of a religious endowment. In *Vythilinga Pandara Sannadhi v. The Temple Committee, Tinnevely Circle*(1) it was held by my brother CORNISH J. and CURGENVEN J. that section 73 is not a bar to the institution of a suit to establish a right of hereditary trusteeship of a temple and for certain consequential reliefs.

It was also held that "except as provided by this Act" in section 73 meant "contrary to the provisions of this Act". It has not been contended before us that this case is wrongly decided. And when a person wants to establish his right to the hereditary trusteeship of a temple as against other persons who deny it, it cannot be said that in some sense the suit relates to the administration or management of a religious endowment because if the plaintiff succeeds in such a case the endowment will have the benefit of his management as hereditary trustee but if he fails the endowment

VASUDEVAN
ADISERPAD
v.
BHAYADASAN
NAMBUDIRI.
RAMESAM J.

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

VASUDEVAN
ADISERPAD
v.
BHAWADASAN
NAMBUDIRI.
—
RAMESAM J.

will not have his heirs as managers and such a suit will finally decide the point whether a particular person's heirs also shall take part or shall not take part in the management of the temple. In a general sense it cannot be said that such a suit does not relate to the administration or management of the temple. If the words of section 73 are to be construed liberally such a suit would be barred by that section and yet it was held that it was not barred. Again in *Chandukchand v. Vedachala Chettiar*(1) my Lord the CHIEF JUSTICE and my brother CORNISH J. held that a suit by the trustee of a temple to recover property from alienees is not governed by section 73. Here again it is conceded that the decision is correct. If the words "in respect of administration or management" are to be construed in a liberal sense such a suit has relation to the administration or management of the temple because, where property is lost to the temple, the trustee has to recover it; if an attempt is made to restore it, the result of the attempt is to improve the management for administration of the temple and to cure the results of past maladministration. And yet it was held that section 73 does not bar such a suit. Again in *Ranganayaki Bai Ammal v. Shivarama Dubay*(2) CURGENVEN J. held that section 73 (1) (a) does not enable the institution of a suit unprovided for by the rest of the section, and that a suit by some trustees for the removal of co-trustees does not fall under this section. I agree with all these decisions and the main principle underlying them. The principle underlying them is that section 73 ought not to be construed

(1) (1931) I.L.R. 55 Mad. 549.

(2) (1929) 58 M.L.J. 104.

as if it prohibits the filing of any suit relating to the administration or management of a religious endowment. Some limitation has to be placed upon the apparent generality of the language in section 73, clause 2. On what principle is such a limitation to be based? I think the key to the situation is to be obtained by reading clause 2 as a pendant to clause 1 and as prohibiting suits like those provided in clause 1 from being filed except as provided for in the Act, i.e., under section 73. Formerly they could be filed under section 92, Civil Procedure Code, and Order I, rule 8, thereof. The object of section 73 is to prevent the filing of such suits under section 92 or under any other provision and to see that they are filed only under section 73 of the Endowments Act, and to fix a court-fee of Rs. 50 for such suits. Its object is not to prevent other suits not falling under clause 1 from being filed outside the Act. It is agreed on both sides that clauses 1 and 2 should be construed so as to be consistent with each other. It is conceded on the one hand by the appellants that, if clause 2 prohibits the filing of all suits except as provided by the Act, clause 1 should be so construed as to permit the filing of such suits. It is conceded by the respondents that, if certain suits are not covered by clause 1 and should not be filed under section 73, clause 2 should not be so interpreted as to prohibit the filing of those suits under provisions outside the Act.

To this extent both sides are agreed. But the respondents want as wide a construction to be given to section 73 particularly so as to include suits of the kind before us and for the purpose of arriving at such a conclusion they rely on the

VASUDEVAN
ADISERPAD
v.
BHAWADASAN
NAMBUDIRI.
—
RAMESAN J.

VASUDEVAN
ADISERPAD
v.
BHAWADASAN
NAMBUDIRI.
—
RAMESAM J.

language of clause 2. But when we find a number of decisions excluding a number of suits from the operation of clause 2, obviously we must regard them as excluded also from the operation of clause 1. They do not fall under the general words of clause (d) "further or other relief". Then why should this particular suit be held to fall under section 73? It prays for damages without any valuation of the property and without payment of any court-fee in respect of these two items. In my opinion section 73, having regard to the manner in which it has come to be framed and taken with the provisions relating to court-fees, is confined to cases in which the main relief falls under any of the clauses (a), (b), (c), and (d), and covers relief only incidental to and *ejusdem generis* with the main reliefs and it is because it is to be confined to suits of such a simplified nature that the court-fee is made definite and limited to Rs. 50. On the one hand suits under section 73 are not made too cheap like the suits under the Court Fees Amendment Act of 1922 or under the Court Fees Act VII of 1870 where the notional valuation given by the plaintiff may be very small; on the other hand they are not made too costly because it is inexpedient to do so where the relief is for the removal of a trustee or to vest property in a receiver, etc. But when it is sought to recover properties which may be worth thousands or even lakhs and to recover moneys as the result of taking accounts or gross mismanagement or as damages for some act of default, to permit such suits to be filed with a court-fee of Rs. 50 seems not to have been intended by the Legislature. In my opinion beyond the reliefs expressly mentioned in clauses

(a), (b) and (c) of section 73 and any relief incidental to them no further relief can be prayed for in the suit. On this ground I allow the appeal in so far as it prays for the taking of accounts and making defendants 1 to 10 liable for the amount found due on the taking of such accounts. As to the actual scheme, that has to be dealt with in the connected appeal against Original Suit No. 4 of 1929 and it will be dealt with separately.

VASUDEVAN
ADISERPAD
v.
BHAWADASAN
NAMBUDIRI,
—
RAMESAM J.

In the case of a devaswom which happens to be grossly mismanaged as in this case not on account so much of the dishonesty of the trustees but on account of disunion among them, what one has to be more anxious about is the framing of a scheme which will place the future management of the temple on a sound footing. As to the past, if any one is actually found to have come into possession of moneys or properties of the temple, no doubt steps ought to be taken against him for recovering them. Similarly in the case of gross negligence or wilful default. But it is inexpedient that steps should be taken against hereditary trustees who discharged a thankless task for the consequences of their failure to discharge their duties on account of the impossibility of discharging those duties arising out of disunion among them. And men in the position of the present plaintiff and the Board ought to concentrate their attention on placing the management of this temple on a sounder footing from the point of view of future management.

A memorandum of objections has been filed by the eighth respondent, the Endowments Board. It is urged that these trustees ought to be removed. We agree with the learned District Judge that in

VASUDEVAN
ADISERPAD
v.
BHAWADASAN
NAMBUDIRI.
RAMESAM J.

the circumstances no case has been made out for their removal and we hope that no such necessity will arise if a proper scheme of management is framed. It is then urged that we should make Nedungadi and Chandu Nair parties to this appeal and give decrees against them. This does not strictly arise in a memorandum of objections. The proper remedy was to have filed a revision petition against the order exonerating them. It is true we have got inherent power now to make them parties and proceed against them. But we do not see any reason why we should exercise that power in this case. The memorandum of objections is therefore dismissed. We reserve the order as to costs until the connected appeal is heard.

CORNISH J.

CORNISH J.—I agree that this appeal in respect of the decree for an account should be allowed. In my judgment it is not competent to the Court in a suit instituted under section 73 (1) to decree an account and an inquiry, and this is a fatal objection to the decree made against the trustee-defendants in the present suit.

A comparison of section 73 (1) of the Religious Endowments Act with section 92 (1) of the Code shows that clauses (a), (b), (c) and (d) of section 73 have been taken from clauses (a), (b), (c), (e) and (h) of section 92. There was no need to reproduce in section 73 the clauses (f) and (g) of section 92, because provision is made elsewhere in the Act for sanction of a sale or mortgage of land belonging to a religious endowment (section 57) and for settling a scheme of management (to sections 57 and 63). Section 73 contains no clause corresponding with clause (d) of section 92 for "directing accounts and enquiries". The omission

must have been made advisedly. It would indeed be strange if the framers of the Endowments Act with the precedent of section 92 (1), Civil Procedure Code, before their eyes, and knowing that clause (d), which had no counterpart in section 539 of the 1882 Code, had been inserted in section 92 (1) of the 1908 Code in order to make certain that which had been the subject of divergent views in the different High Courts [see *Abdur Rahim v. Mahomed Barkat Ali*(1)], should have chosen to leave it open to doubt whether a direction for an account and inquiry could be given as ancillary relief in a suit under section 73 (1) of the Act. I think there is a perfectly valid explanation of the omission from section 73 of a clause corresponding to clause (d) of section 92.

An effective machinery is set up by the Act for controlling the conduct of trustees of religious endowments. The Act requires that accounts shall be kept by temple trustees and that these accounts shall be audited annually by Government auditors (section 45). The audit report must specify all cases of improper expenditure or of failure to recover moneys due to the institution or of loss caused by neglect or misconduct of the trustee (section 47). A failure to keep accounts would be a neglect of duty, for which, of course, a trustee of a non-excepted temple might be removed from office under section 53, or, in the case of a trustee of an excepted temple, by means of a suit under section 73 (1). In view of the ample provisions in the Act for checking the accounts and fixing the liability of trustees, I think that a special provision enabling the Board or persons

VASUDEVAN
ADISERPAD
v.
BHAVADASAN
NAMBUJIRI.
CORNER J.

VASUDEVAN
ADISERPAD
v.
BHAWADASAN
NAMBUDIRI.
CORNISH J.

interested in the proper administration of the trust to sue for an account and inquiry would be superfluous. The audit will discover, as far as it is discoverable, the extent of a trustee's misappropriation or misapplication of trust money or of the loss occasioned by his neglect or default; and the audit report fulfils the very purpose of a decree directing accounts and inquiries. This seems to me the explanation of the omission of clause (d) of section 92 of the Code from the reliefs classified in section 73 (1) of the Act. The money found due by a trustee on an audit report would be a debt due by the trustee to the temple and would be recoverable in a suit either by a co-trustee, or by a new trustee appointed in the place of the trustee in default, or, if a scheme has been framed, by the person or body appointed to the management.

It has been strongly argued that such a suit would be barred by sub-section 2 of section 73. I do not agree with this contention. It would be barred only if it was a suit that could be instituted in the manner provided by the Act. In *Vythilinga Pandara Sannadhi v. The Temple Committee, Tinnevelly Circle*(1) it was held that the words in section 73 (2) "no suit in respect of such administration or management shall be instituted except as provided by this Act" mean "no suit in respect of such administration or management shall be instituted contrary to the provisions of this Act". The Act makes specific provision for the institution of suits in respect of the administration or management of religious endowments in section 73 (1) and in sections 55 (4), 57 (3), 63 (4),

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

65 and 67 (4) and (5). A suit in respect of the administration of a religious endowment would not be contrary to the provisions of the Act if it is not a suit for which the Act has made provision. For this reason I think that such a suit as I have described would not be barred by section 73 (2). This view seems to me to be in conformity with the policy of section 73 (1) of the Act. The consent of the Board or temple committee which must be obtained by a party desirous of instituting a suit under section 73 (1) is obviously intended to serve as a check upon vexatious or frivolous suits against temple trustees. But there is no occasion for this check when the suit is to recover a debt ascertained and reported by the official auditors to be due by a trustee to the temple. In fact, it would be the duty of the persons in charge of the management of the endowment to sue for this debt.

VASUDEVAN
ADISERPAD
v.
BHAVADASAN
NAMBUDIRI.
CORNISH J.

Upon the merits generally of the appellants' case and of the memorandum of objections I do not wish to add anything to the observations of my brother RAMESAM J. with which I entirely agree. I think the circumstances of the case are such that the Court should be rather concerned to formulate a scheme to prevent mismanagement of the endowment properties in the future than to seek to visit the trustees with punishment for their past shortcomings.

A.S.V.
