

rights to property. In my judgment the accident of the minor's death pending suit ought not to prevent the pursuit of those rights for the benefit of the minor's estate by his legal representative.

G.R.

RANGASAYI
v.
NAGA-
RATHNAMMA.

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Jackson.

KALAVACHERLA BAPIRAJU (SECOND PLAINTIFF),
APPELLANT,

1933,
January 26.

v.

RAMACHARNADAS BAVAJEE (DEFENDANT),
RESPONDENT.*

*Charitable and Religious Trusts Act (XIV of 1920), sec. 6—
Suit under—Persons competent to institute—Reliefs claim-
able in—Code of Civil Procedure (Act V of 1908), sec. 92—
Suit under, and appeal arising out of such suit—Abate-
ment of—Death of one of plaintiffs who obtained sanction
—Effect.*

The suit contemplated by section 6 of Act XIV of 1920 may be instituted by persons other than the particular individual who obtained the permission. The reliefs that can be claimed in the suit under section 92, Civil Procedure Code, filed in pursuance of permission obtained under section 6 of Act XIV of 1920 are, however, only those which arise out of the failure to produce the accounts and are connected with it. A declaration that the defendant is not the rightful mahant is not a relief arising out of the failure to produce accounts and cannot be claimed in such a suit.

A suit under section 92, Civil Procedure Code, or an appeal arising out of such a suit does not abate on the death of one of the plaintiffs who obtained sanction for instituting the suit.

* Appeal No. 131 of 1927.

BAPIRAJU
 v
 RAMACHARNA-
 DAS BAVAJEE.

APPEAL against the decree of the Court of the Subordinate Judge of Ellore in Original Suit No. 80 of 1926.

P. R. Ganapathi Ayyar and *V. Krishna Mohan* for appellant.

P. Somasundaram for respondent.

MADHAVAN
 NAIR J.

The JUDGMENT of the Court was delivered by MADHAVAN NAIR J.—The second plaintiff is the appellant. The appeal arises out of a suit instituted by the plaintiffs under section 92, Civil Procedure Code. Prior to the institution of the suit, the first plaintiff applied under the provisions of Act XIV of 1920 to the District Court to obtain orders from the Court under sections 3 and 4 directing the trustee to furnish accounts and give the necessary information about the trust. The learned District Judge repeatedly gave time to the defendant to produce accounts, but ultimately the order of the Court was not complied with and, under section 6, he passed an order giving permission to institute a suit under section 92, Civil Procedure Code. After obtaining such permission the other two plaintiffs joined the first plaintiff and instituted this suit against the trustee. In the course of the trial, the first plaintiff at whose instance permission was obtained from the District Judge dropped out of the suit and later on the third plaintiff also abandoned it. So, the only person who proceeded with the suit was the second plaintiff. In the suit, various reliefs were claimed. In paragraph 12 (a) an inventory was asked for from the defendant. In paragraph 12 (b) the defendant was sought to be removed and it was also requested that it should be declared that he is not the rightful mahant. In paragraph 12 (c)

a scheme was sought to be framed for the management of the properties and accounts were also asked to be rendered by the defendant-trustee. The learned Subordinate Judge dismissed the suit without going into the merits. He held that the plaintiff who obtained permission to institute the suit from the District Court having dropped out of the proceedings it was not competent for the other plaintiffs to proceed with the suit; and he also held that since the reliefs claimed in the suit exceeded and went beyond the particular relief with respect to which sanction was given by the District Judge the suit was incompetent.

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In appeal it is argued that the learned Subordinate Judge's decision on both these points is wrong. The first question is whether the suit contemplated by section 6 of Act XIV of 1920 cannot be instituted by persons other than the particular individual who obtained the permission. It is true that under sections 3, 4 and 5 the application should be made by a person interested in the trust. But once a breach of trust has been committed by the trustee by his refusal to produce the accounts, then section 6 says that a suit so far as it is based on such failure may be instituted without the previous sanction of the Advocate-General. The section nowhere says that such a suit should be instituted by the person who made the application under sections 3 and 4 of Act XIV of 1920. Under section 92, Civil Procedure Code, the previous sanction of the Advocate-General is required for the institution of a suit contemplated by that section. Under section 6 once the breach referred to in that section is committed by the disobedience of an order passed by the District

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Judge then a suit may be instituted under section 92, Civil Procedure Code. The necessity for obtaining the sanction of the Advocate-General is thus removed under section 6 ; and it does not say anywhere that the suit should be instituted only by the person who secures the order from the District Court, in the circumstances mentioned in the previous sections. In *Umrao Singh v. Har Prasad*(1) it was held that, when the order of the District Judge for filing of accounts under section 5 of the Charitable and Religious Trusts Act has not been complied with, there is a breach of trust by virtue of section 6 which could be made the basis of a suit under section 92, Civil Procedure Code. It should however be noted that the reliefs claimed in the suit under section 92 filed in pursuance of permission obtained under section 6 must be confined to those which arise out of the failure to produce the accounts and are connected with it. In this suit all the reliefs claimed arise out of the failure to produce accounts except the one regarding the declaration that the defendant is not the rightful mahant. Such a relief has nothing to do with the failure to produce the accounts and is not in any way connected with it. We think all the other reliefs can be based on the defendant's failure to produce the accounts ; and the suit cannot therefore be said to be incompetent as asking for reliefs which do not come within the scope of the suit contemplated by section 6 of Act XIV of 1920.

Then it is said that two of the plaintiffs having dropped out, it is not competent for one plaintiff

alone to proceed with the suit under section 92, Civil Procedure Code. This point has already been decided in this Court in *Gulam Gouse v. Mohammad Khan*(1) where it was held that a suit under section 92, Civil Procedure Code, or an appeal arising out of such a suit does not abate on the death of one of the plaintiffs who obtained sanction for instituting the suit. It cannot therefore be said that the present suit is incompetent because there is only one person left to conduct the suit.

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—
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NAIR J.

For the above reasons we hold that the decision of the learned Judge cannot be sustained. We set aside the decision and remand the suit for disposal according to law. The inquiry into the case will be confined as already pointed out to all the reliefs except the one contained in the first part of clause (b) in paragraph 12, viz., that it be declared that the defendant is not the rightful mahant. Costs of the appeal will abide the result. We do not interfere with the costs of the lower Court. The court-fee may be refunded.

A.S.V.

(1) (1924) 20 L.W. 882.