

APPELLATE CIVIL—FULL BENCH.

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

1935,
March 26.

JANAKI BAI AMMAL (DEFENDANT-RESPONDENT),
APPELLANT,

v.

SRI THIRUCHITRAMBALA VINAYAKAR OF THE TEMPLE
AT MELMANDAI BY GANAPATHY ODUVAR, MINOR BY GUARDIAN,
VELLIAMMAI (PLAINTIFF-APPELLANT), RESPONDENT.*

*Code of Civil Procedure (Act V of 1908), sec. 92—Suit under—
Test—Whether it depends upon the character in which the
plaintiff sues or nature of the reliefs sought—Public chari-
table or religious trust—Breach of—Suit in respect of—
Reliefs prayed for, specified in sub-sec. 1 of sec. 92—
Sanction of Advocate-General—If necessary.*

The question whether a suit falls within section 92 of the Code of Civil Procedure depends, not upon the character in which the plaintiff sues, but upon the nature of the reliefs sought. If the suit is in respect of an alleged breach of a public charitable or religious trust and for any of the reliefs specified in sub-section 1 of section 92, the Advocate-General's sanction is necessary to its institution.

The opinion of SUNDARAM CHETTI J. in *Krishna Aiyangar v. Alwarappa Aiyangar*, (1932) 63 M.L.J. 703, approved. *Appanna Poricha v. Narasinga Poricha*, (1921) I.L.R. 45 Mad. 113 (F.B.), distinguished.

APPEAL against the order of the Court of the Subordinate Judge of Tuticorin, dated 30th September 1931, and made in Appeal Suit No. 78 of 1930 (Original Suit No. 65 of 1929, District Munsif's Court, Kovilpatti).

K. R. Rama Aiyar for appellant.—The suit is stated to be filed by the idol. It alleges breaches of a public religious or charitable trust and prays for reliefs mentioned in section 92

* Appeal Against Order No. 437 of 1931.

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of the Code of Civil Procedure. The suit is really one by the general trustee against a special trustee. Such a suit could not be brought without the sanction of the Advocate-General; see *Saminatha Pillai v. Sundaresa Pillai*(1). This decision is followed by the Full Bench in *Appanna Poricha v. Narasinga Poricha*(2). In *Abdur Rahim v. Mahomed Barkat Ali*(3) it is laid down that the applicability of section 92 is not determined by the character of the parties who bring the suit but by the nature of the reliefs sought. This is followed by SUNDARAM CHETTI J. in *Krishna Aiyangar v. Alwarappa Aiyangar*(4), and the tests for the applicability of section 92 are therein laid down.

K. V. Sesha Ayyangar for respondent.—It has been held that an idol is a juristic person; see *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*(5). The pujari is only its next friend. The suit is in form and substance one by the idol as beneficiary. To such a suit section 92 does not apply; see *Madhavrao v. Shri Omkareshvar Ghat*(6). The decision in *Saminatha Pillai v. Sundaresa Pillai*(1) does not apply to the facts of the present case and it must be deemed to be overruled by *Appanna Poricha v. Narasinga Poricha*(2). The decision in *Nellaiyappa Pillai v. Thangama Nachiyar*(7) is still good law and the decision in *Krishna Aiyangar v. Alwarappa Aiyangar*(4) requires reconsideration and is opposed to *Vythilinga Pandara Sannadhi v. Temple Committee, Tinnevelly Circle*(8).

K. R. Rama Aiyar replied.

Cur. adv. vult.

JUDGMENT.

CORNISH J.—The plaintiff in the suit from which this appeal arises is an idol represented by its manager or kariasthar. CORNISH J.

The defendant, the widow of the late zamindar of Melmandai, was sued as trustee of a fund established for meeting the expenses of public worship and other duties, including repairs, connected with the temple in which the idol is installed.

(1) (1920) 14 L.W. 238 (F.B.).

(2) (1921) I.L.R. 45 Mad. 113 (F.B.).

(3) (1927) I.L.R. 55 Calc. 519 (P.C.).

(4) (1932) 63 M.L.J. 703.

(5) (1925) I.L.R. 52 Calc. 809 (P.C.).

(6) (1928) 31 Bom. L.R. 192.

(7) (1897) I.L.R. 21 Mad. 403.

(8) (1931) I.L.R. 54 Mad. 1011.

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Admittedly this is a public charitable or religious trust. The short question is whether the suit is one to which section 92 of the Code of Civil Procedure is applicable. The District Munsif held that it was, and dismissed the suit as it had not been instituted with the sanction of the Advocate-General. The Subordinate Judge held otherwise and restored the suit. The defendant has appealed from this decision.

The plaintiff alleges that a fund called the "pilliarvari", representing a tax on the villagers in the zamin, has been collected by the zamindars for the abovementioned purposes of the temple, under an arrangement that the zamindar on request by the kariasthar should pay to the kariasthar the money so collected. And it is further stated that the defendant and previous zamindars have been paying the plaintiff's kariasthar and his predecessors at the rate of Rs. 35-2-8 per annum. The cause of action is that there is an accumulated balance of the collections in the hands of the defendant which the defendant has refused to pay to the plaintiff. This appears from paragraph 10 of the plaintiff which alleges :

"Though plaintiff's kariasthar had been asking the defendant several times that an account should be taken of the plaintiff's moneys in the defendant's hands and the same should be handed over to him since the plaintiff's temple for the past several years has deteriorated and is in a very dangerous state and that more amount should be given to him and that the amount collected every year as 'pilliarvari' should be handed over to him since the amount paid by the defendant was insufficient for conducting the plaintiff's temple affairs owing to difference in the prices of the past and of the present, the defendant has been putting off with vain words."

This paragraph imputes to the defendant a breach of trust. And among the reliefs for which the plaintiff prays is that an account be taken and that the defendant be directed to pay to the plaintiff such sum as may thereby be found due. From the frame of the plaint, therefore, it appears that this is a suit founded upon an alleged breach of trust in respect of a public religious trust, claiming one of the reliefs specified in section 92 (1). If such be the nature of the suit it can only be instituted with the sanction of the Advocate-General. Section 92 is clear in its terms, although the many cases cited in the argument show that the section is not always easy of application.

It has been contended before us that the suit is in reality a dispute between two trustees ; and the Full Bench decision in *Appanna Poricha v. Narasinga Poricha*(1) has been relied on. But that was quite a different case. The plaintiff there was suing for a declaration that he was entitled to joint possession of the suit property as a co-trustee and for an account from the defendants. The Full Bench ruled that the suit did not come within the scope of section 92. KUMARASWAMI SASTRI J. approved of the opinion expressed by WALLIS C.J. in an unreported case that the section governed suits for the vindication of the rights of the public in public charitable trusts and had no application to suits for the vindication of the rights of management by hereditary trustees or to disputes *inter se* as to their terms of management. And the learned Judge himself emphasised this view by pointing out that the public had no interest in the assertion of personal claims by one

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trustee against another. Indeed, section 92 reflects the principle upon which the Attorney-General's right in England to interpose on behalf of charitable trusts is founded. It is that the Crown as *parens patriae* superintends the administration of public charities, and for that purpose acts by the Attorney-General; see Tudor on Charities, 5th edition, page 187.

Mr. Sesha Ayyangar has also sought assistance for his contention from the order of reference made by WALLIS C.J. in *Saminatha Pillai v. Sundaresa Pillai*(1). That was a suit in which a temple trustee sued a kattalaidar to enforce the performance of his duties under a trust. The learned CHIEF JUSTICE expressed the opinion that section 92 was applicable to the suit, and his opinion was upheld by a Full Bench. But he suggested that the section would not deprive the plaintiff of any separate cause of action he might have. That suggestion conforms with what was said by KUMARASWAMI SASTRI J. in the later Full Bench case to which reference has already been made. It does not assist the plaintiff in the present case, who has founded his suit upon an alleged breach of trust by the trustee of a public religious trust and seeks as a consequent relief the taking of an account. This brings it within the scope of section 92 as interpreted by their Lordships of the Privy Council in *Abdur Rahim v. Mahomed Barkat Ali*(2). Their Lordships said :—

“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.

(1) (1920) 14 L.W. 238 (F.B.).

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

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 only suits claiming any of the reliefs specified in sub-section 1 shall be instituted in conformity with the provisions of section 92, sub-section 1."

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And their Lordships laid it down that the effect of the amendment introduced into the section by sub-section 2 was that a suit, founded upon a breach of such public trust, which prayed for any of the reliefs mentioned in sub-section 1, could only be instituted in conformity with its provisions.

The question, therefore, whether a suit falls within section 92 depends, not upon the character in which the plaintiff sues, but upon the nature of the reliefs sought. This view is supported by the opinion of SUNDARAM CHETTI J. in *Krishna Aiyangar v. Alwarappa Aiyangar*(1). If the suit is in respect of an alleged breach of a public charitable or religious trust and for any of the reliefs specified in sub-section 1 of section 92, the Advocate-General's sanction is necessary to its institution.

Applying this test to the case before us there is no doubt that it could not be instituted without that sanction, and that it was on that account properly dismissed by the District Munsif. The appeal is allowed with costs here and in the lower Court. The order of the Subordinate Judge that plaintiff should get a refund of court-fee on his memorandum of appeal is set aside.

BEASLEY C.J.—I agree.

PANDRANG ROW J.—I agree.

G.R.