

APPELLATE CIVIL.

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

1934,
November 8.

THE PRESIDENT OF THE BOARD OF COMMISSIONERS
FOR THE HINDU RELIGIOUS ENDOWMENTS,
MADRAS (PETITIONER), APPELLANT,

v.

THE SHIRUR MUTT BY ITS TRUSTEE LAKSHMINDRA
THIRTHASWAMIAR (RESPONDENT), RESPONDENT.*

Madras Hindu Religious Endowments Act (II of 1927), sec. 70 (2)—Application under, for recovery of amount of contribution—Limitation—Indian Limitation Act (IX of 1908), art. 182—Applicability—District Judge to whom application under sec. 70 (2) made—Legality of demand—Jurisdiction to consider.

An application under section 70 (2) of the Madras Hindu Religious Endowments Act (II of 1927) for the recovery of the amount of contribution is governed by article 182 of the Indian Limitation Act.

Re: Belvedere Jute Mills, Ltd. (Chaitram Sagormull v. Hardwarimull & Co.), (1927) 31 C.W.N. 1097, applied. Lakshmindra Tirta Swamiyar v. H.R.E. Board, Madras, (1933) I.L.R. 56 Mad. 712, referred to.

When an application is made under section 70 (2) the District Judge would be in the same position as any other executing Court and would be precluded from deciding whether the demand was right or wrong.

Mathura Prasad v. Sheobalak Ram, (1917) I.L.R. 40 All. 89, applied.

APPEALS against the orders of the District Court of South Kanara dated 28th February 1931 and passed respectively in R.E.P. Nos. 1 and 2 of 1931.

* Appeals against Orders Nos. 359 and 360 of 1931.

K. Subba Rao for *Government Pleader* (P. H.R.E. BOARD,
MADRAS
Venkataramana Rao) for appellant.

T. Krishna Rao for *B. Sitarama Rao* and *K. Srinivasa Rao* for respondent.

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Cur. adv. vult.

The JUDGMENT of the Court was delivered by KING J.—The appellant in these appeals is the President of the Board of Commissioners for Hindu Religious Endowments, Madras. In May 1930 the Board made a demand under section 70 of the Madras Hindu Religious Endowments Act upon the respondent, the trustee of two mutts in Udipi, for contributions for several years beginning with the fasli ending with 30th June 1925. The contributions were not paid, and in due course the Board applied (November 1930) under section 70 (2) to the learned District Judge of South Kanara to recover the amount of the contributions. The Board's applications were allowed in so far as the period subsequent to 30th June 1926 was concerned but the demands for the two faslies ending with that date were held to be barred by limitation. Against this part of the District Judge's order the Board has appealed.

KING J.

The clause in section 70 (2) of the Act which regulates the Court's proceedings is the following :

“The Court shall, on the application of the President of the Board . . . recover the amount as if a decree had been passed for the amount by the Court against the religious endowment concerned.”

Now it is contended for the appellant that such an application is governed by article 182 of the Limitation Act. For this position there is no direct authority, but we think the appellant is

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entitled to rely upon the ruling reported as *Re : Belvedere Jute Mills, Ltd. (Chaitram Sagormull v. Hardwarimull & Co.)* (1). In that case, the article of the Limitation Act applicable to the enforcing of an award under section 15 of the Indian Arbitration Act was being considered, and it was held that article 182 applied. The words of section 15 are quoted in the headnote, "shall be enforceable as if it were a decree of that Court", and it will be seen that these words are precisely similar in significance to the words in section 70 (2) of the present Act: "The Court shall . . . recover the amount as if a decree had been passed." This position also receives support, though the question of limitation did not there arise, from the ruling of a Bench of the Madras High Court in *Lakshmindra Tirta Swamiyar v. H.R.E. Board, Madras*(2). It was there held that an appeal lay under section 47, Civil Procedure Code, from an order of the Court passed under section 70 (2) of the Act as the words "as if a decree had been passed" attract to the order the whole procedure in execution and with it "the right of appeal". No ruling to any effect contrary to these authorities has been brought to our notice, and we accordingly hold that article 182 applies to the present cases. That being so, the applications of the Board could not have been made until three months had elapsed from the date of the Board's demand (i.e., until August 1930) and being made in November 1930 were clearly in time.

The only question which remains is whether the District Judge, even if he had held the applications to be in time, could yet have examined

(1) (1927) 31 C.W.N. 1097.

(2) (1932) I.L.R. 56 Mad. 712.

the demand of the Board on its merits and come to the conclusion that no demand should be made for more than three years' arrears of contribution. We do not think the District Judge would have this power. On the principles laid down in *Lakshmindra Tirta Swamiyar v. H.R.E. Board, Madras*(1), we think the District Judge would be in the same position as any other executing Court and would be precluded from deciding whether the demand was right or wrong, just as in execution it is forbidden to the executing Court to go behind the plain words of a decree. On this point, too, there is clear authority derived from the construction of the terms of a similar section in another Act. In section 42 (5) of the Co-operative Societies Act (II of 1912) it is provided that

“orders made under this section shall, on application, be enforced as follows:—(a) when made by a liquidator, by any civil Court having local jurisdiction in the same manner as a decree of such Court.”

Mathura Prasad v. Sheobalak Ram(2) deals with an instance of such a liquidator's order and it was held that the Court could not consider whether that order was right or wrong but was bound to enforce it.

We are therefore of opinion that the present order of the learned District Judge in so far as it is appealed against cannot be supported in any manner and must be set aside and the Board's applications restored to file and disposed of according to law. We are not unmindful of the possible injustice which might result from this interpretation of section 70 (2), as the learned District Judge has pointed out in the sixth

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(1) (1932) I.L.R. 56 Mad. 712.

(2) (1917) I.L.R. 40 All. 89.

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paragraph of his order, but that is a matter which can be remedied only by the Legislature and not by the Courts. The appeals are thus allowed with costs throughout of one appeal.

A.S.V.

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Before Mr. Justice Cargenven and Mr. Justice Cornish.

1934,
November 23.

LANKA RAMIAH AND ANOTHER (RESPONDENTS 2 AND 3),
APPELLANTS,

v.

THE HINDU RELIGIOUS ENDOWMENTS BOARD,
MADRAS, AND ANOTHER (PETITIONER AND FIRST
RESPONDENT), RESPONDENTS.*

*Madras Hindu Religious Endowments Act (II of 1927), sec. 70
(2)—Court making an order under—Jurisdiction of—
Validity or propriety of demand—Merits of decision upon
which demand made—Enquiry into—Jurisdiction—Execut-
ing Court—Decree under execution—Questioning of—
Jurisdiction.*

A Court in making an order under section 70 (2) of the Madras Hindu Religious Endowments Act (II of 1927) has the same powers, and is subject to the same limitations, as would be a Court executing an ordinary civil decree. It must execute the demand made by the Board as it stands and cannot enter into questions of its validity or propriety. In particular, no inquiry can be made into the merits of the decision upon which the demand is made. It is open to the Court to decide in any disputed case whether the property out of which it is proposed to realise the amount is a religious endowment within the meaning of the Act.

The trend of recent decisions is to incapacitate an executing Court from questioning the decree in any respect

* Appeals against Orders Nos. 322, 323 and 324 of 1932.