APPELLATE CIVIL.

Before Mr. Justice Wadsworth.

RAMANATHA GURUKKAL *alias* PARAMESWARA GURUKKAL (PLAINTIFF), APPELLANT,

1938, August 4.

v.

V. V. R. ARUNACHALAM CHETTIAR AND ANOTHER (DEFENDANTS 1 AND 3), RESPONDENTS.*

Madras Hindu Religious Endowments Act (II of 1927), sec. 43—Hereditary archaka of a non-excepted temple—Dismissal of, by trustee—Appeal to Committee or Board not preferred under sec. 43 of Act—Suit by archaka against trustee—Jurisdiction of Civil Court to entertain.

The plaintiff, the hereditary archaka in a non-excepted temple the control of which was regulated by the Madras Hindu Religious Endowments Act of 1927, was dismissed from the office by the trustee, and the order of dismissal was communicated to the plaintiff. Instead of preferring an appeal to the Committee or to the Board, he filed a suit for a declaration of his right to the office and for an injunction restraining the trustee from interfering with the performance of his duties. The plaint averred *inter alia* that the order of dismissal was arbitrary.

Held that Civil Courts had no jurisdiction to question the propriety of the order of dismissal and that the suit was therefore incompetent.

The suit was in effect one to set aside a dismissal by a trustee in the exercise of the powers of administration and management conferred upon him under the Religious Endowments Act and was a suit in respect of the administration or management of the religious endowment within the meaning of section 73 of the Act and section 73 is a clear indication that the provisions of section 43 of the Act setting up a special machinery of appeal and conferring finality on the decisions in appeals by dismissed office-holders was intended to oust the jurisdiction

* Second Appeal No. 381 of 1934.

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of Civil Courts to question the propriety of an order of dismissal passed under that section and communicated to the person dismissed. A mere allegation that the order of dismissal was one which from its arbitrary nature deserved scrutiny would not be sufficient to confer jurisdiction on Civil Courts. Physical disability which made the plaintiff unfit to hold office might be treated as indicating an incapacity to hold office sufficient to clothe the trustee with the power to pass an order of dismissal under section 43 of the Act.

APPEAL against the decree of the Court of the Subordinate Judge of Trichinopoly, dated 18th December 1933 and passed in Appeal Suit No. 24 of 1933 preferred against the decree of the Court of the District Munsif of Kulittalai in Original Suit No. 240 of 1928.

T. V. Muthukrishna Ayyar for appellant.

N. Sivaramakrishna Ayyar for *M. Subbaroya Ayyar* for first respondent.

Second respondent was not represented.

JUDGMENT.

WADSWORTH J.

WADSWORTH J.—This appeal raises the question of the precise force of the words, " the decision of the Board shall be final " at the end of section 43, clause 3, of the Madras Hindu Religious Endowments Act (II of 1927).

The appellant was the hereditary archaka in a non-excepted temple the control of which is regulated by the Religious Endowments Act. It is found as a fact by the lower appellate Court that he was dismissed from the office by the trustee, the first defendant, and that the order of dismissal was communicated to him. Instead of preferring an appeal to the Committee or to the Board, he filed a suit praying for a declaration of his right to the office and for an injunction restraining the trustee from interfering with the performance of his duties. Various contentions have been raised

for the appellant by Mr. Muthukrishna Ayyar, some of which seem to me to have little force. It is contended that assuming that there is a statutory exclusion of the jurisdiction of Civil Courts, this exclusion can only relate to orders of dismissal which are not arbitrary and that once there is an averment that a temple servant has been dismissed in an arbitrary manner, the suit must be treated as one relating to an act which is not a legal order of dismissal at all and that the Civil Courts can exercise a jurisdiction which otherwise they would not possess. It seems to me that this contention is unsound and that if an order of dismissal validly communicated is one which the Civil Courts cannot scrutinise a mere allegation that it is an order which from its arbitrary nature deserves scrutiny would not be sufficient to confer jurisdiction.

It is also contended that section 43 applies only to punishments for causes enumerated in clause (1) of that section, namely, breach of trust, incapacity, disobedience, neglect of duty, misconduct or other sufficient cause and that the present order of dismissal does not fall within those categories. But actually in the present case, the reason put forward by the trustee for dismissing the plaintiff was that he suffered from a physical disability which made him unfit to hold office. Whether or not there in fact were other matters which led to the plaintiff's dismissal the ground of dismissal stated is, to my mind, one which, if true, might be treated as indicating an incapacity to hold office sufficient to clothe the trustee with the power to pass an order of dismissal under section 43 of the Act.

The substantial ground upon which this appeal is based relates to the machinery of appeal set up by section 43 and the interpretation of the word "final" in sub-clause (3) of section 43. Sub-clause (2) provides for an appeal to the Committee against an order

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of the trustee under sub-clause (1) and sub-clause (3) provides that :

"A hereditary office-holder or servant of a temple may prefer an appeal to the Board against the order of a Committee on an appeal under sub-section (2) and the decision of the Board shall be final."

It is argued the machinery of appeal set up in the section is not intended to oust the jurisdiction of the Civil Courts and that the word " final " means only final so far as the process of appeal to what I may call the executive authority is concerned. The argument is that the right of a hereditary archaka to his office is a common law right and that the jurisdiction of Civil Courts to protect that right cannot be taken away except by express words or by words of which the necessary implication is that the jurisdiction of the Court has been removed. The case law on this subject has been summarised by VARADACHARIAR J. in *Kamaraja Pandiya Naicker* v. *The Secretary of State for India in Council*(1). The principles underlying the cases have been stated in terms which I would respectfully adopt. The learned Judge points out that a statute may attach finality to particular orders in the sense of precluding a further appeal to the statutory authorities ; whether it was intended to go further and oust the jurisdiction of the Civil Courts as well, will depend not upon words of that kind but upon the general scheme of the particular legislation. He goes on to point out that the ordinary rule is that where a person's liberty or property is interfered with under colour of statutory powers he has a cause of action which the Civil Courts are bound to entertain unless a bar to such entertainment has been enacted expressly or at least by necessary implication. Applying these principles to the present case, what we have is a claim to be restored to a

(1) (1934) 69 M.L.J. 695.

common law office from which the plaintiff has been removed in the exercise of powers created by a particular statute, which statute prescribes two separate appeals to authorities specially constituted for the purpose and superior to the original disciplinary authority. *Prima facie* it would appear that there is a statutory limitation to a common law right which right has been restricted in its working by the procedure specially laid down for remedying any wrongs which may have been done to the holder of a common law right. It has been further contended on behalf of the respondent that not only is there a clear provision for a machinery for remedying the wrong of which the plaintiff complains but that there is also an express provision in the Act indicating the intention of the Legislature that Civil Courts should not deal with wrongs of the kind now under consideration. Reference is made to the last clause of section 73. Section 73 has obviously been drafted to take the place, so far as temples under the control of the Religious Endowments Board are concerned, of section 92 of the Civil Procedure Code. There is, however, a significant change in the wording of the final clause which restricts the jurisdiction of Civil Courts in suits of this nature in comparison with the corresponding provision of section 92, Civil Procedure Code. Clause (2) of section 92 clearly prohibits the filing of suits other than those instituted in the manner laid down in sub-section (1) only in so far as such suits claim reliefs specified in sub-section (1). Clause (3) of section 73 of the Religious Endowments Act, however, does not restrict the prohibition of suits in Civil Courts to suits claiming those reliefs specified in sub-section (1) of that section but it lays down in much more general language " no suit in respect of such administration or management shall be instituted

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except as provided by this Act." The words " such administration or management " have been interpreted by a Bench of this Court as referring back to the previous clause and meaning any suit in respect of the administration or management of a religious endowment; *Singam Aiyangar* v. *Kasturiranga Aiyangar*(1).

Undoubtedly a simple suit by a hereditary archaka to establish his right to succeed to the office would not be a suit in respect of the administration or management of a religious endowment. What has happened is that the archaka has been dismissed by the trustee in the exercise of his powers of administration and management conferred upon him under the Act. I am unable to hold that a suit which is in effect a suit to set aside a dismissal by a trustee in the exercise of these powers is not a suit in respect of the administration or management of the religious endowment. I am therefore of opinion that section 73 of the Act is a clear indication that the provisions of section 43 setting up a special machinery of appeal and conferring finality on the decisions in appeals by dismissed office-holders was intended to oust the jurisdiction of Civil Courts to question the propriety of an order of dismissal passed under that section and communicated to the person dismissed. A special remedy is created by the statute for any wrong which may have been caused in the exercise of disciplinary powers conferred by the statute and it is to my mind clearly not in accordance with the scheme of the Act to prosecute a pre-existing remedy provided by the Civil Courts and to ignore the statutory remedy laid down in the Act.

In the result therefore the appeal is dismissed with costs.

V.V.C.

(1) (1937) 2 M.L.J 931, 934.