for the uniform practice of this Court and of the Bombay and Calcutta High Courts I should have been inclined to agree with the opinion of SOMAYYA J. which is the same as the opinion expressed by the Allahabad High Court. I do not feel that the language of section 241 is sufficiently clear to set aside this long practice, more especially when a strict interpretation is likely to lead to this result, namely, that there would be no provision in the Act for an agent of an executor in a foreign country to apply for letters of administration in this country in circumstances similar to those present in this case.

Solicitors for appellant :—*King and Partridge.*

G.R.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Krishnaswami Ayyangar.

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

1939, November 22.

v.

V. V. R. ARUNACHALAM CHETTIAR, MANAGER OF TIRUPALATHURAI SIVA DEVASTHANAM AND ANOTHER (RESPONDENTS), RESPONDENTS.*

Hindu Religious Endowments Act, Madras (II of 1927), sec. 43—Dismissal of archaka by trustee—Right of archaka to sue in Court—"Final" in sec. 43—Meaning of.

An archaka of a temple dimissed from his office by the trustee has no right to challenge the correctness of the trustee's action in a Court of law. His remedy is limited by section 43 of the Madras Hindu Religious Endowments Act, 1926,

* Letters Patent Appeal No. 75 of 1938.

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to an appeal to the temple committee or to the Religious Endowments Board as the case may be.

The word "final" in section 43 of the Act has the same meaning as that attaching to it in sections 53 and 54. It means that it is final to the extent even of excluding the right of an office-holder or servant of a temple to challenge the decision in a Court of law.

APPEAL under clause 15 of the Letters Patent against the judgment of WADSWORTH J. in Second Appeal No. 381 of 1934, preferred against the decree of the Court of the Subordinate Judge of Trichinopoly in Appeal Suit No. 24 of 1933 (Original Suit No. 240 of 1928, District Munsif's Court, Kulitalai).

T. V. Muthukrishna Ayyar for appellant.

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

Second respondent was not represented.

The JUDGMENT of the Court was delivered by

LEACH C.J.

LEACH C.J.—This appeal raises the question whether an archaka of a temple who has been dismissed from his office by the trustee has a right to challenge the correctness of the trustee's action in a Court of law or whether his remedy is limited by section 43 of the Madras Hindu Religious Endowments Act, 1926, to an appeal to the temple committee or to the Religious Endowments Board as the case may be.

The appellant is admittedly a hereditary archaka of the Thiruppalathurai temple in the Trichinopoly district. He is suffering from leucoderma and he was dismissed from his office by the trustee ostensibly on this ground, but it would appear from the findings of both the lower Courts that the trustee was actuated by ill-will towards the appellant. Section 43 (1) of the Act states:

"All office-holders and servants attached to a temple or in receipt of any emolument or perquisite from the temple

shall be under the orders and control of the trustee ; and the trustee may fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of lawful orders, neglect of duty, misconduct or other sufficient cause."

By sub-section 2 an office-holder or servant of a temple other than an excepted temple may appeal to the committee whose decision shall, in the case of a non-hereditary office-holder or servant, be final. By sub-section 3 a hereditary office-holder or servant of a temple other than an excepted temple may prefer an appeal to the Board against the order of the committee on appeal under sub-section (2) and the decision of the Board shall be final. The temple of which the appellant was an archaka is a non-excepted temple, but the appellant did not then appeal to the committee against his dismissal by the trustee, but instituted a suit in the Court of the District Munsif, Kulitalai, for an injunction restraining the trustee from interfering with the appellant's exercise of his office. The District Munsif held that the suit could be maintained and granted an injunction restraining the trustee from interfering with the discharge of the duties of his office. An appeal was filed in the Court of the Subordinate Judge of Trichinopoly, who held that the appellant had no right to suit, and this decision was accepted by WADSWORTH J. on second appeal.

The right of the subject to appeal to the Court to redress a simple wrong can only be taken away by statute. As VARADACHARIAR J. observed in *Kamaraja Pandiya Naicker* v. *The Secretary of State for India in Council*(1), the ordinary rule is 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

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

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such entertainment has been enacted expressly or at least by necessary implication. It is said on behalf of the trustee that the right of the appellant to have recourse to the Court is taken away by section 43. It is also said that section 73 operates as a bar to the suit.

It is not necessary to consider the arguments which have been based on the wording of section 73, because we accept the argument of the respondent that section 43 must be read as taking away the right of the appellant to file a suit. If section 43 stood alone there would be much to be said for the appellant's argument that his right to sue had not been taken away. It might be said that the word "final" in section 43 was only to be read as meaning final so far as an appeal under the Act was concerned and not as intended to shut out the jurisdiction of the Court as was said in *Valli Ammal* v. *The Corporation of Madras*(1), a case which arose under the Madras City Municipal Act of 1904. But section 43 does not stand alone, and when the scheme of the Act and the provisions of sections 53 and 54 are considered, no reasonable doubt can exist that the Legislature has used language which is intended to have the effect of ousting the jurisdiction of the Courts. The scheme of the Act is to put under the control and management of the Board matters relating to temples in this Province. Section 53 gives the temple committee, which is under the control of the Board, power to suspend, remove or dismiss the trustee of a temple. A trustee against whom action has been taken under this section may appeal to the Board, but a hereditary trustee may, in lieu of appealing to the Board, apply to the Court to modify or cancel the order of the committee. The order of the committee shall when there has been no appeal to

(1) (1912) I.L.R. 38 Mad. 41.

the Board be final, and when an appeal is preferred or an application is made to the Court the order of the Board or of the Court shall be final. Section 54 states :

" (1) A non-hereditary trustee shall cease to hold his office, if he (*a*) is sentenced by a Court to such punishment as is described in sub-section (2) of section 26 and subject to the proviso contained therein ;

(*b*) applies to be adjudicated or is adjudicated an insolvent ; or

(*c*) ceases to profess the Hindu religion.

(2) A hereditary trustee shall cease to hold his office if he ceases to profess the Hindu religion.

(3) If a hereditary trustee becomes subject to any of the disqualifications described in clause (*a*) or clause (*b*) of sub-section (1), the committee may supersede him and appoint a fit person to administer the temple until the disability of the trustee ceases to exist or another trustee succeeds to the office.

(4) The Board shall, in cases of dispute or doubt, determine whether a trustee is disqualified under this section and its decision shall be final."

There can be no doubt that in a case falling under section 53 or 54 the decision of the Board ousts the jurisdiction of the Court, and unless there is something in section 43 which compels us to place a different meaning on the word " final " used in that section from the meaning attaching to it in sections 53 and 54, we must hold that it is intended to be final to the extent even of excluding the right of an office-holder or servant to challenge the decision in a Court of law. There is nothing in the wording of section 43 which gives any indication that the word " final " is used in a different sense to what it is used in sections 53 and 54. The Court will naturally be averse to closing its doors to a litigant who seeks a hearing, but where the Legislature has used language which clearly indicates its intention

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to take away the right of recourse to Court, effect must be given to the intention.

For the reasons indicated we consider that section 43 of the Act does preclude the appellant from challenging the trustee's action in a Court of law. His remedy is in an appeal to the committee and we understand that such an appeal has since been filed.

The present appeal must be dismissed with costs.

N.S.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Krishnaswami Ayyangar.

1939, November 29.

CHERUTTY *alias* VASU AND ANOTHER, MINORS BY NEXT FRIEND NANGAMPARAMBIL IMBICHUTTY (PLAINTIFFS 3 AND 4), APPELLANTS,

v.

NANGAMPARAMBIL RAVU *alias* KUTTAMAN AND EIGHT OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu law—Maintenance—Hindu coparcener, whether entitled to sue for maintenance—Suit for partition, if necessary—Unmarried daughter of coparcener, if entitled to sue manager for maintenance.

A Hindu coparcener, whether a major or a minor, who is denied maintenance by the head of the family is entitled to sue for maintenance alone : he need not sue for partition.

Observations to the contrary in the decisions of the Bombay High Court in *Himmatsing Becharsing* v. *Ganpatsing*(1), *Ramchandra Sakharam Vagh* v. *Sakharam Gopal Vagh*(2) and *Bhupal* v. *Tavanappa*(3), not followed.

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* Letters Patent Appeal No. 98 of 1936.

(1) (1875) 12 Bom. H.C.R. 94. (2) (1877) I.L.R. 2 Bom. 346.
(3) (1921) I.L.R. 46 Bom. 435.