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tion after 21 days, but that application, although purporting to be an application under section 22, was from its very nature not an application under section 22. We therefore hold that in this case the plaintiffs did not elect to pursue their remedy under section 22 and inasmuch as there was no determination on the merits before this suit was instituted, they were within their rights in seeking their remedy by a regular suit. We therefore dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

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MUFTI ALI JAFAR AND ANOTHER (PLAINTIFFS) *v.* FAZAL HUSAIN KHAN AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1908), *section* 92—*Suit relating to a trust created for public purposes of a charitable or religious nature—Provisions of section* 92 *compulsory, where applicable—Act No. I of* 1877 *(Specific Relief Act), section* 42—*Suit for a declaration merely.*

Where circumstances are alleged to exist in which a suit relating to an express or implied trust created for public purposes of a charitable or religious nature, may be instituted under the provisions of section 92 of the Code of Civil Procedure, the suit must be instituted in accordance with those provisions. It is not open to the would-be plaintiffs to evade the requirements of the Code by framing their suit as one under section 42 of the Specific Relief Act, 1877.

THE facts of this case are fully set forth in the judgment of PIGGOTT, J.

Dr. *Surendra Nath Sen* and Maulvi *Mukhtar Ahmad*, for the appellants.

Babu *Piari Lal Banerji*, for the respondents.

PIGGOTT, J :—It is impossible to understand the questions raised by this first appeal without going back to the facts of a previous litigation, determined by a decree of this Court dated the 20th of March, 1914, and a subsequent compromise. One Ghazanfar Husain Khan, a Shia gentleman residing at Jaunpur, executed, shortly before his death, a deed of endowment by which he constituted a trust for public purposes of a charitable and religious nature and appointed three trustees for the management of the said trust. The heirs-at-law of the deceased founder of the trust brought a suit against the trustees contesting the validity of the entire transaction. The eventual result was that the deed of endowment was declared invalid and the heirs-at-law of Ghazanfar Husain Khan were found to be the rightful owners as regards the larger part of the property affected by the deed of endowment,

* First Appeal No. 393 of 1919, from a decree of Pyare Lal Chaturvedi, Second Additional Subordinate Judge of Jaunpur, dated the 15th of March, 1919.

but the deed was affirmed in respect of a certain portion of the property affected. The trustees filed an application for leave to appeal to His Majesty in Council and obtained from this Court the necessary certificate entitling them to maintain such an appeal. While this was pending, however, a compromise was effected between the parties to that litigation, that is to say, between the heirs-at-law of Ghazanfar Husain Khan on the one side and the trustees under the deed of endowment on the other. Virtually the parties agreed to abide by the division of the disputed property effected by the decree of this Court. There remained, however, for determination the question of the liability of the trustees for costs of the litigation and also for the mesne profits claimed by the plaintiffs in that suit. The trustees were of opinion that they could not meet these claims and could not save any portion of the trust property without making alienations of the said property. They disposed of the matter by selling a small portion of the trust property to the plaintiffs and mortgaging the remainder with possession for a period of years. The net result of the transaction was that the whole of the property covered by the trust passed for the time being into the hands of the heirs-at-law of Ghazanfar Husain Khan, but subject to this condition that, after a stipulated period of years, the bulk of the property which (according to the decision of this Court) had been made the subject-matter of a valid endowment, returned to the trustees to be used for the purposes set forth in the deed of trust. This litigation having been thus concluded, the present suit was instituted on the 20th of September, 1917. The plaintiffs are two gentlemen belonging to the Shia community residing at Jaunpur. They claimed to sue as beneficiaries under the trust, in a representative capacity, on behalf of all the other members of their community in that place who were equally interested with themselves in the administration of the trust. They have not obtained the permission of the Advocate General, or of the proper officer appointed in this behalf in these provinces, to entitle them to maintain their suit under section 92 of the Code of Civil Procedure; but they have obtained from the trial court permission under order I, rule 8, of the Civil Procedure Code to maintain their suit in a representative capacity. The allegations made in the plaint are of a most serious character and the object of the suit, on the very face

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of it, was to reverse the whole result of the previous litigation and, if possible, to recover for the purposes of the public trust in question the whole of the property covered by Ghazanfar Husain Khan's original deed of endowment. According to these plaintiffs the trustees appointed by that deed of endowment had been guilty of a series of breaches of trust, all the more objectionable in character because they had been cloaked by a pretence of honest zeal in the support of the endowment. It was suggested that the trustees were from the first in collusion with the heirs of Ghazanfar Husain Khan; that they did not honestly defend the suit brought by the said heirs, either in the trial court or in this Court; that the compromise which they eventually entered into was a dishonest one and that, in any case, the alienations effected by sale and mortgage in accordance with the terms of that compromise were outside the power of the trustees and the making of them constituted a breach of trust on the part of the latter. The trial court has in effect held that the plaintiffs are not entitled to re-open any of the questions determined by this Court's decree of the 20th of March, 1914, and that there seems no reason for re-opening those questions. It has come to a clear finding in favour of the trustees, that they were not in collusion with the plaintiffs in that litigation and that they defended the interests of the trust zealously and to the best of their ability. As regards the compromise, however, the court below has come to the conclusion that the trustees could not lawfully alienate by sale or by mortgage any portion of the trust property without the sanction of some competent court of civil jurisdiction, such sanction being necessary to represent and replace the permission of the Qazi required by the ancient principles of Muhammadan law. It has further been found that none of the orders passed by this Court, either the decree itself or the subsequent order upon the compromise, amounts to the granting of such permission. Upon the question raised, whether or not it was competent for himself to grant such permission retrospectively, the learned Subordinate Judge has doubted whether he could give such retrospective sanction, but has held that on the materials before him he could find no adequate grounds for doing so. The result has been that the greater portion of the plaintiffs' suit has been dismissed, but that they have been granted a decree which simply declares that the alienations of the trust

property effected by way of sale and mortgage by two documents dated the 14th of June, 1915, executed in accordance with the compromise, are invalid. We have before us a petition of appeal by the plaintiffs, in which they challenge that portion of the decree of the trial court which has gone against them, upon a great variety of grounds. It would seem, however, that these plaintiffs have found themselves in difficulties over the maintenance of this litigation, upon which they had seen fit to enter ostensibly for the benefit of the entire community of which they are members. They have not found it possible to take the steps required by the rules of this Court in order to enable their appeal to be effectively prosecuted. They have not caused to be translated or printed any papers or documents on the record for the information of this Court and for the use of their counsel. The result is that the learned counsel representing the plaintiffs appellants has very properly and very candidly admitted to us to-day that he is not in a position to argue this appeal, because his clients have not furnished him with proper materials for doing so. We do not think it is necessary for us to go into this matter further. We have read so much of the judgment of the trial court as involves questions of law which are challenged in the plaintiffs' memorandum of appeal, and on the materials before us, it is quite sufficient for us to say that we find no valid reason for interfering with the decree of the court below on any of the grounds taken by the plaintiffs.

We have, however, before us a petition of cross objections, filed by the defendants trustees under order XLI, rule 22 of the Code of Civil Procedure, which contains one or two pleas going to the very root of this litigation. We have had the advantage of hearing these pleas satisfactorily argued on both sides and we have come to the conclusion that they must prevail and that the suit before us ought to have been entirely dismissed. The actual result of that suit as it stands is obviously most unsatisfactory. A certain deed of sale and a certain mortgage have been declared invalid. The trustees themselves, as parties to the deed of compromise, are probably not entitled to take any action upon this declaration in the way of challenging the right of the vendee or of the mortgagee in possession, even supposing that they feel inclined to do so. There is nothing in the decree of the court below which lays the trustees defendants under any legal obligation

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to take any action of any sort or kind, and there is no operative portion of the decree of which the successful plaintiffs can take out execution in order to obtain any result whatsoever. The consequence is that we have before us a decree which, without some further litigation, can lead to no practical consequences. Now this result has really been brought about by the frame of the plaint and the nature of the reliefs therein claimed. Those reliefs have obviously been framed in order to avoid the operation of section 92 of the Code of Civil Procedure. We entertain the gravest doubts whether a suit of this nature is maintainable at all, by two persons in the position of these plaintiffs, without previous action taken under section 92 of the Code of Civil Procedure. The proper view of that section seems to be that it is intended to be an exhaustive statement of the law applicable to suits based upon any alleged breach of any express or constructive trust, created for public purposes of a charitable or religious nature. It must be remembered that sub-section (2) of this section contains a provision introduced for the first time into the Civil Procedure Code of 1908. The express prohibition (subject only to a proviso which does not concern us here) of any suit claiming any of the reliefs specified in sub-section (1) in respect of any such trust therein referred to, except in conformity with the provisions of that sub-section, was not to be found in the Code of Civil Procedure as it stood before the year 1908. It may be contended that it is perfectly possible, as the plaintiffs in the present case have attempted, to evade the provisions of section 92, sub-section (1), by judiciously framing the reliefs sought so as to avoid the operation of that sub-section. Even if the point is to be looked at from a purely technical point of view, it would seem that some effect must be given to the words of clause (*h*) of the sub-section, which refer to the granting of such further or other relief as the nature of the case may require. It seems very difficult to hold that the relief by way of declaration regarding the invalidity of the sale and mortgage in question in this suit could not have been brought within the provisions of section 92, sub-section (1), clause (*h*) above referred to. We are content, however, to dispose of the matter by carrying the question one step further. In their effort to avoid the provisions of sub-section (1) the plaintiffs have sought relief by way of a series of declarations. The declarations sought by them, and

certainly the only declarations actually decreed in their favour, are, as we have already pointed out, of such a nature that they are not calculated to produce any effect whatsoever, unless it be as a stepping stone to a fresh litigation. The position thus arrived at is contrary to the general principles governing the proper exercise of the discretion of a court in the matter of granting relief by way of declaration, even if it is not covered by the express provisions of section 42 of the Specific Relief Act. It is idle to contend that in the present suit the plaintiffs, assuming their allegations of fact to be true, could not have obtained effective relief by asking for the removal of these trustees, the appointment of other trustees, the vesting of the trust property in the new trustees so appointed, the taking of accounts from the defaulting trustees and perhaps the settling of a scheme for the management of the trust. Of course any trustees guilty of such gross breaches of trust as those alleged in this plaint would presumably be liable to be removed; but even if it was considered, after inquiry, desirable that the present trustees should continue in management of the trust property, the court would have been entitled upon a suit framed under section 92, sub-section (1), not merely to declare these transfers void, but to replace the trustees in possession of the property. If it be suggested on behalf of the plaintiffs that they are not affected by the proviso to section 42 of the Specific Relief Act because they could not, *in the suit as brought*, seek further relief than a mere declaration, being forbidden to do so by the provision of section 92, sub-section (1) of the Civil Procedure Code, it seems a sufficient answer to say that they ought to have availed themselves of those provisions and brought their suit in conformity with the same. For these reasons we are satisfied that the cross-objections must prevail. We dismiss the plaintiffs' appeal and, on the objections of the transferee defendants, we set aside the decree of the trial court and dismiss this suit altogether, with costs against the plaintiffs throughout.

WALSH, J.:—I agree, and I agree in substance with the learned Judge's decision. He is probably right in the conclusions which he has come to with regard to Muhammadan Law. Where he seems to have gone wrong is just this. The plaintiffs were in a dilemma. If the act of the trustees in entering into the compromise was a breach of trust because

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it offended against the general principle of the Muhammadan Law, which is the only reason which the learned Judge gives, he having found all the other allegations in their favour, the plaintiffs could not sue in respect of it except under section 92. If, on the other hand, it was not a breach of trust, the plaintiffs had no cause of action in respect of the compromise, so that, in either event, the plaintiffs were bound to fail.

I agree that suits with regard to trusts relating to public charities must either be brought under section 92 or they cannot be brought at all. The Court has to look at the substance and not the form. It is easy to see that the relief in this case was carefully framed so as not to come within the reliefs specified in section 92, and obviously a court would not lend itself to a dodge of this kind adopted by a litigant for the purpose of evading ancient and salutary provisions. As far as I can see, the main difficulty about section 92 is to bring certain classes of claims, which persons are forced to make, within its terms. A person who wants to keep out of it is clearly acting *malâ fide*.

Appeal dismissed.
Cross-objections allowed.

Before Mr. Justice Gokul Prasad and Mr. Justice Stuart.

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RAM KISHAN RAI (DEFENDANT) *v.* CHHEDI RAI AND ANOTHER (PLAINTIFFS).*

Hindu law—Joint Hindu family—Liability of sons for father's debts—Bonds executed in renewal of previous bonds which were time-barred.

Inasmuch as the Hindu law does not recognize any rule as to the extinction of claims by efflux of time, the sons in a joint Hindu family are not exempt from payment of bonds executed by their father merely because such bonds were given by way of renewal of other bonds which at the time of execution of the second set were barred by limitation. *Narayanasami Chetti* v. *Samidas Mudali*, (1) followed.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Maulvi *Iqbal Ahmad*, for the appellant.

Pandit *Uma Shankar Bajpai*, for the respondents.

GOKUL PRASAD and STUART, JJ :—This is an appeal by the defendant in a suit brought by the plaintiffs for recovery of the amount due to them on three bonds executed by the

* Second Appeal No. 59 of 1921, from a decree of Baijnath Das, District Judge of Ghazipur, dated the 10th of August, 1920, confirming a decree of Zamirul Islam Khan, Munsif of Ghazipur, dated the 15th of September, 1919.

(1) (1883) I. L. R., 6 Mad., 293.