

Before Mr. Justice Dalal and Mr. Justice Pullan.

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ber, 14.

RUGGHAN PRASAD AND ANOTHER (DEFENDANTS) v.
DHANNO (PLAINTIFF) AND LACHHMI NARAIN AND
ANOTHER (DEFENDANTS).*

Religious endowment—Power of mutawallis to nominate successors—Death of both without making appointment—Suit by author of trust for declaration of his right to appoint—Civil Procedure Code, section 92—Act No. 1 of 1877 (Specific Relief Act), section 42.

Under the terms of a deed of endowment two *mutawallis* were appointed, and it was provided that each of the two had the power to appoint his own successor as *mutawalli* or a successor to the other in the event of his dying without making an appointment. Ultimately both *mutawallis* died without appointing any successors.

Held, that it was competent to the legal representative of the founder of the trust to sue to have it declared that the right of appointment had devolved upon himself, and that neither section 92 of the Code of Civil Procedure nor section 42 of the Specific Relief Act, 1877, was a bar to the suit.

Deokali Koer v. Kedar Nath (1), distinguished.

THE facts of this case were as follows:—

One Basant Lal, in 1906, executed a deed which he described as a *waqf* in favour of a temple situated in Sarsuiya Ghat in Cawnpore, in which he re-dedicated certain property which had already been dedicated for the same purpose by his father and grandfather. Under the terms of this deed of *waqf* two persons had been appointed as *mutawallis*, Bansidhar and Narain Das. Paragraph 9 of the deed laid down that each member should have power to appoint his successor, and if the member died without appointing his successor, the other member should appoint another person in his place. Bansidhar died in 1917 and appointed no successor. Narain Das also died

* First Appeal No. 505 of 1923, from a decree of Syed Iftilkhar Husain, First Subordinate Judge of Cawnpore, dated the 10th of May, 1923.
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without appointing a successor. Basant Lal then brought the present suit claiming a declaration that the right of appointing *mutawallis* for this endowment had reverted to him and that he had made a valid appointment of two other persons. Pending the suit Basant Lal died and his widow, Musammatt Dhanno, was brought on the record in his place. The suit was decreed by the lower court. The defendants, who were the alleged appointees of the surviving *mutawalli*, appealed.

Sir *Tej Bahadur Sapru* and Mr. *P. N. Sapru* for the appellants.

Munshi *Girdhari Lal Agarwala*, for the respondents.

THE judgement of the Court (DALAL and PULLAN, JJ.), after stating the facts as above, thus continued :—

An appeal has been preferred on the following grounds. Firstly, it has been argued that the suit should have been brought after obtaining the permission of the Legal Remembrancer under section 92 of the Code of Civil Procedure. Secondly, that the suit is barred by the provisions of section 42 of the Specific Relief Act. Thirdly, that the plaintiff has no cause of action because a valid appointment had been made by Narain Das. Section 92 of the Code of Civil Procedure enumerates certain suits which can be brought after obtaining permission of the Legal Remembrancer. These suits can only be brought when there has been an alleged breach of a trust, or where direction of the court is deemed necessary for the administration of any such trust. Secondly, these suits must be for one of the eight objects enumerated from (a) to (h) in the section. None of these clauses directly cover a suit of the nature of the present declaratory suit.

The essential difference is that the plaintiff in this case does not admit that there are any trustees in existence. His contention is that the trust has been left without any manager and that he is entitled to step in. In our opinion section 92 makes no provision for a suit of this nature and we cannot find that the plaintiff is debarred from suing directly in a civil court.

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Section 42 of the Specific Relief Act lays down the conditions under which a person may bring a suit for mere declaration without any consequential relief. It is argued before us that the plaintiff has under that section no right to bring the present suit and reliance is placed upon a ruling of the Calcutta High Court, reported in *Deokali Koer v. Kedar Nath* (1). In that case the plaintiff sought for a relief in respect of a certain property in which he had no interest, because of his interest in another property, and the court found that none of the declarations which he sought related to the plaintiff's legal character, or as to his right in the property. In the present case the declarations which the plaintiff seeks are as to his legal character because he claimed a right, as being either the founder of the trust or the successor of the founder of the trust, to appoint a *mutawalli*, and he also claims a right as to the property (if these words can be taken to include the right to interfere in the management of the property). Lastly, we have to consider the question of fact. Three witnesses are called to show that Narain Das made a valid appointment of his brother Rugghan Prasad as *mutawalli* of this trust. The lower court held wrongly that this suit was governed by the Indian Trusts Act and that, therefore, the omission to make an appointment in writing renders any appointment orally made by Narain Das invalid. But we are satisfied that the

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evidence is not sufficient to prove that even an oral appointment was made. It may be the fault of the counsel in the lower court, but neither Rugghan Prasad nor Kanhaiya Lal stated that Narain Das made any appointment to take effect after his own death and the third witness Balchand admitted that he did not know which of the two trusts in the management of Narain Das was being made over to Rugghan Prasad. It is also evident from all the evidence that the man who is really managing the trust is one Gaya Prasad alias Kammo. Another point which makes the evidence difficult to believe is the assertion of all the three witnesses that Basant Lal himself was present while Narain Das was making the appointment of his successor. If Basant Lal was present at the time and made no objection, no reason has been given why he should have raised this objection subsequently and filed a suit. In our opinion the plaintiff is entitled to the declaratory decree which he has obtained in the lower court, and we dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Dalal and Mr. Justice Pullan.

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ber, 23.

HARDEO DAS, NANAK CHAND (PLAINTIFF) v. RAM PRASAD, SHYAM SUNDAR AND OTHERS (DEFENDANTS).*

Act No. IX of 1872 (Indian Contract Act), section 30—Wagering contract—Principal and agent—Suit by principal to recover money deposited with agent as security.

An agent employed to carry out wagering contracts cannot plead the illegality of such contracts as a defence to an action brought by the principal to recover from the agent money received by him from the principal by way of security for

*Second Appeal No. 1217 of 1924, from a decree of Abdul Halim, Additional Judge of Meerut, dated the 3rd of May, 1924, reversing a decree of J. N. Mushran, Subordinate Judge of Meerut, dated the 30th of November, 1923.