

PRIVY COUNCIL.

GULZARI LAL (DEFENDANT) v. COLLECTOR OF ETAH
(PLAINTIFF)

J. C.*
1931
March, s. 9.

[On appeal from the High Court at Allahabad.]

Civil Procedure Code, section 93—Public trust of charitable or religious nature—Suit to administer public trust—Suit outside Presidency-towns—Sanction of Local Government—Direction to Collector to bring suit—Previous appointment of Legal Remembrancer to exercise powers of Advocate-General.

Under section 93 of the Code of Civil Procedure, 1908, the Local Government can appoint the Collector, or any other officer, to prosecute a particular suit to administer a trust for public purposes of a charitable or religious nature, although that Government has previously appointed the Legal Remembrancer to exercise the powers conferred on the Advocate-General by sections 91 and 92, which powers include by section 92 power to institute or consent to the institution of a suit of that nature. There must be a previous sanction by the Local Government to every suit, consequently the earlier general appointment cannot result in two concurrent suits by separate officers.

APPEAL (No. 93 of 1929) from a decree of the High Court (December 17, 1926) varying preliminary and final decrees of the District Judge of Aligarh.

The suit was instituted by the respondent Collector against the appellant and another, as trustees under what was concurrently held to be a trust for public purposes of a charitable or religious nature. The plaint alleged breaches of trust and claimed removal of the trustees, accounts and a scheme for administering the trust.

The institution of the suit by the Collector was specifically authorised by the Government of the United Provinces by a letter of December 5, 1921. At some earlier date the Local Government had made a general order, appearing in the Manual of Rules and Orders relating to the Legal Remembrancer, whereby that officer

*Present: Lord BLANESBURGH Lord ATKIN and Sir LANCELOT SANDERSON.

was appointed under section 93 of the Code of Civil Procedure to exercise within the limits of the United Provinces the powers conferred on the Advocate-General by sections 91 and 92 of the Code, which (by section 92) include power to bring and to consent to suits in relation to trusts for public purposes of a charitable or religious nature.

The High Court (LINDSAY and SULAIMAN, JJ.) held that the trust was one for public purposes of the above nature, and that the Collector had a right to institute the suit. The decree of the District Judge was affirmed so far as it removed the trustees and formulated a scheme to administer the trust; it was varied as to the sum due from the appellant.

1931. February 11, 12. *Wallach*, for the appellant.

E. B. Raikes, K. C., and *Dube*, for the respondent were not called upon.

March, 9. The judgment of their Lordships was delivered by Lord BLANESBURGH:—

This is an appeal from a decree of the High Court of Judicature at Allahabad, dated the 17th December, 1926, varying preliminary and final decrees of the court of the District Judge of Aligarh.

These three decrees were passed in a suit for the administration of what was alleged, and what each court has found, to be a trust for public purposes of a charitable nature. The appellant and his co-defendant, Kesri Chand, were the surviving trustees of the trust, and in the suit a claim was made against the appellant for Rs. 1,33,000 of its funds, said to have been misappropriated by him. The plaintiff also sought to have the appellant removed from his position as trustee and to have a scheme promulgated for the future administration of the trust. The preliminary decree of the District Court directed the appellant to be so removed. It ordered him to account for the trust property which had come into his hands. It propounded a scheme

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for the future administration of the trust and ordered the appellant to pay the respondent's entire costs of suit. The District Court, after accounts had been taken, found Rs. 63,573-15-4 to be due from the appellant; and it so decreed.

By the decree of the High Court of the 17th December, 1926, the decrees of the District Court were affirmed so far as the removal of the appellant from his trust and the promulgation of a scheme were concerned. But the sum of Rs. 63,573-15-4 which had been found to be due from him on his accounts was reduced to Rs. 17,766, and the greater part of the costs of the respondent, the plaintiff in the suit, was, in relief of the appellant, charged upon the trust property.

The appellant complains of this decree, relatively trifling although his liability thereunder is, when contrasted with the claim originally made upon him. He says he is free from all liability and he asks that the suit as against him should be dismissed.

[The judgment then discussed the facts in detail and held that on the merits the decree appealed from was correct.]

It was, however, contended on the appellant's behalf that the suit against him ought to have been dismissed for two other reasons. The first, that the trust in question was only superficially a trust created for public purposes of a charitable or religious nature. It was really a family arrangement, private in its character. This contention was rejected by both courts in India, and the numerous authorities on the subjects are conclusive against its correctness. In their Lordships' judgment the trust is indubitably a public trust for charitable purposes, and this objection on the part of the appellant, in reality an objection, to the suit with the Collector as plaintiff; is untenable.

It was, however, secondly objected that, even so, the suit was bad, in that it ought to have been instituted

not by the Collector but by the Legal Remembrancer who, under section 93 of the Code of Civil Procedure, had been appointed to exercise within the limits of the United Provinces the powers conferred by sections 91 and 92 on the Advocate-General, in respect of suits relating to trusts created for public purposes of a charitable or religious nature. It was objected by the appellant that the Legal Remembrancer was the only official who could in these circumstances maintain the suit.

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It appears to their Lordships that this objection is answered by the terms of section 93 itself, which are as follows: "The powers conferred by sections 91 and 92 on the Advocate-General may, outside the Presidency towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf." The effect of that section as it seems to the Board is that no suit like the present, being one outside the Presidency towns, may be brought without the previous sanction of the Local Government, whether by the Collector or by any officer whom that Government may appoint for the purpose; so that the fact that the Legal Remembrancer is in the United Provinces invested as a rule with the duties elsewhere discharged by the Advocate-General in this behalf is no reason why for the purposes of a particular suit the Local Government may not appoint the Collector or any other officer to prosecute it. The fact that there must be a previous sanction by the Local Government to every suit makes it impossible that two suits by separate officials will ever be concurrently instituted. Accordingly no inconvenience results from this construction of the section. It follows that this objection to the competence of the suit also fails.

Little remains to be said. Objection was taken by the appellant that the deductions made in his favour by the High Court from the Rs. 66,573 charged against

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him in the court of the District Judge were insufficient; that the allowances made him were still inadequate; and that on his accounts properly taken no balance whatever was due from him.

[These objections were then discussed.]

In the result the objections taken by the appellant to the decree of the High Court fail in every particular.

Their Lordships will accordingly humbly advise His Majesty that this appeal from that decree be dismissed with costs.

Solicitor for appellant: *H. S. L. Polak.*

Solicitor for respondent: *Solicitor, India Office.*

REVISIONAL CIVIL.

1931
 April, 15.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice,
 SABIR HUSAIN KHAN (PLAINTIFF) v. JAN MUHAMMAD
 (DEFENDANT).*

Limitation Act (IX of 1908), article 97—Failure of consideration, suit on—Purchase of a decree which is subsequently declared void—Decree declaring voidness reversed on appeal but restored on second appeal—Time from which limitation runs.

The plaintiff purchased a decree from the defendant; this decree was subsequently declared to be void on the ground of fraud; this decision was reversed in appeal but was restored by the High Court in second appeal. Within three years of the decision of the High Court, but more than three years after that of the trial court, the plaintiff sued the defendant for refund of the price on the ground of failure of consideration: *Held* that time should begin to run from the date of the High Court's decree, and not from that of the trial court which was superseded in appeal, and the suit was not barred by limitation.

Mr. Mushtaq Ahmad, for the applicant.

The opposite party was not represented.

SULAIMAN, A. C. J.:—This is a plaintiff's revision from a decree of the Court of Small Causes. The plaintiff had purchased a decree which was ultimately set aside on appeal to the High Court. The