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6. One-third of the rents shall be expended in repairing the temple, compound wall, and buildings belonging to the temple. Out of the remaining income of the temple, the managers shall defray the temple expenses and maintain themselves.

7. The managers shall keep regular accounts of all rents, and of expenditure on repairs. The accounts shall be submitted to the District Court annually within one month after the Diváli, and shall be examined by an auditor appointed by the Court at the cost of the managers. A copy of the accounts shall be supplied by the managers and shall be affixed to the notice-board of the District Court for the information of the public.

These accounts shall be kept from the date of the High Court's decree.

8. This scheme shall be subject to such modifications as may be made hereafter by the High Court on the application of the parties interested in the said temple.

The appellants in each case to bear the costs of the appeal.

Decree varied.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

MIYA VALI ULLA (ORIGINAL PLAINTIFF), APPLICANT, v. SAYED BAVA SAHEB SANTI MIYA AND OTHERS (ORIGINAL DEFENDANTS), OPONENTS.*

Civil Procedure Code (Act XIV of 1882), Sec. 539—Pensions Act (XXIII of 1871), Sec. 4—Cash allowance allowed to worship of idól—Personal grant.

A plaintiff claimed to be a co-trustee of certain dargas and entitled to a share in the management and in the profits thereof, which consisted of a certain cash allowance from Government. He sued the defendants for an account and for the recovery of his share.

Held, that the suit did not come within the purview of section 539 of the Civil Procedure Code (Act XIV of 1882) and did not require sanction under that section.

* Application, No. 129 of 1893, under Extraordinary Jurisdiction.

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Held, also, that the suit, so far as it related to the cash allowance from Government, required a certificate under section 4 of the Pensions Act (XXIII of 1871).

A cash allowance attached to the worship of an idol is a grant of money within the meaning of section 4 of the Pensions Act, 1871.

The Pensions Act applies to religious endowments as well as to personal grants.

Vyankaji v. Sarjarao⁽¹⁾ concurred in.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) to set aside an order made by Gilmour McCorkell, District Judge of Ahmedabad.

The applicant in his plaint alleged that he and defendant No. 1 were equal sharers in a four-annas' share in the management of certain dargas and in the cash allowance made by Government and other property belonging thereto, and that the defendants had excluded him from his share in the management and property. He, therefore, prayed for an account and to recover his share of the allowance and rents and to have a sum of Rs. 176, which he had expended, debited to the darga accounts and recovered from the defendants.

The Subordinate Judge directed the plaint to be returned to the plaintiff, holding that he could not entertain the suit, inasmuch as it was a suit under section 539 of the Civil Procedure Code (Act XIV of 1882) and required sanction under that section. He also held that it required a certificate under the Pensions Act (XXIII of 1871).

On appeal by the plaintiff the District Judge confirmed that order.

The plaintiff applied to the High Court in its extraordinary jurisdiction and obtained a rule *nisi* to set aside the order of the Judge.

O. II. Setalvad for the applicant (plaintiff) in support of the rule.

Ráo Sáheb Vasudev J. Kirtikar (Government Pleader) appeared for the opponents (defendants) to show cause.

(1) I. L. R., 16 Bom., 537.

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The following cases were referred to in the arguments :—*Sayad Hussenmian Dadumian v. The Collector of Kaira*⁽¹⁾; *The Secretary of State v. Abdul Hakkim*⁽²⁾; *Kolandai Mudali v. Sankara Bharadhi*⁽³⁾; *Atharulla v. Gouse*⁽⁴⁾; *Vyankaji v. Sarjarao*⁽⁵⁾; *Maharval Mohansingji v. The Government of Bombay*⁽⁶⁾.

HOSKING, J. :—The applicant Sheth Miya Vali Ulla valad Habibulla presented a plaint in the Court of the First Class Subordinate Judge at Ahmedabad, in which he alleged that he and defendant No. 1, Sayed Bava Sahab Santi Miya, were equal sharers in a four annas' share in the management of two dargas and the cash allowances and other property belonging to the dargas, and that the defendants acting in collusion had excluded him from sharing in the management and in the property; accordingly he prayed for an account and for the recovery of his share of allowances and rents, and also to have Rs. 176-4 expended by him in holding four *urns* debited to the darga accounts and recovered from defendants.

The First Class Subordinate Judge held that the suit fell under section 539 of the Civil Procedure Code and could not be entertained by him; that it required the sanction prescribed by that section, and that it also required a certificate under the Pensions Act, 1871. The Subordinate Judge further expressed an opinion that the claim for Rs. 176-4-0 should be brought in the Small Cause Court. He, therefore, directed the return of the plaint to the plaintiff.

On appeal the District Judge agreed with the Subordinate Judge in holding that the suit falls under section 539 of the Civil Procedure Code, and also requires a certificate under the Pensions Act.

We are of opinion that the lower Courts have erred in holding that section 539 of the Civil Procedure Code is applicable to the present suit. A suit has only to be brought under section 539 "in case of any alleged breach of any express or constructive trust created for public, charitable or religious purposes, or whenever

(1) P. J., 1895, p. 329; I. L. R., 21 Bom., 48. (4) I. L. R., 11 Mad., 288.

(2) I. L. R., 2 Mad., 294.

(5) I. L. R., 16 Bom., 537.

(3) I. L. R., 5 Mad., 302.

(6) L. R., 8 I. App., 77.

the direction of the Court is deemed necessary for the administration of any such trust." The plaintiff does not sue on account of any such breach of trust as is contemplated by these provisions, nor can he be said to require the direction of the Court for the administration of the trust. His complaint merely is, that he, claiming to be a co-trustee, has been excluded from a share in the management and in the profits of such management. We hold that such a suit does not come within the purview of this section. The case cited by the Government Pleader—*Sayad Hussenmian Dadumian v. The Collector of Kaira*⁽¹⁾ deals with the nature of the reliefs which may be given under section 539 and the necessity that the sanction should cover the relief sought, but before those questions arise it must be shown that the suit comes within the section.

We think that the lower Courts have rightly held that the suit, so far as it relates to the cash allowances from Government, cannot be entertained without a certificate under section 4 of the Pensions Act, 1871. It has been ruled in several cases by the Madras High Court that the provisions of the Pensions Act are applicable to personal grants and not to endowments for religious purposes—*The Secretary of State v. Abdul Hakkim*⁽²⁾; *Kolandai Mudali v. Sankara Bharadhi*⁽³⁾; *Athavulla v. Gouse*⁽⁴⁾. These rulings are relied upon by applicant's counsel, but this Court has taken a different view of this question. In *Vyankaji v. Surjarao*⁽⁵⁾, *Jardine and Parsons, JJ.*, have held that a cash allowance attached to the worship of certain idols is a grant of money within the meaning of section 4 of the Pensions Act, and that a suit by the trustee of the devasthan to recover such an allowance would not lie in the absence of the Collector's certificate. The Madras rulings are not mentioned in the judgment, but the learned Judges refer to *Maharaval Mohansingji v. The Government of Bombay*⁽⁶⁾ in which the Lords of the Privy Council say that the expression 'grant of money or land revenues' in the Pensions Act is not to be limited to rights *ejusdem generis* with pensions. We concur

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(1) P. J., 1895, pp. 329 and 473; I. L. R., 5 Mad., 302.

21 Bom., pp. 48 and 257.

(4) I. L. R., 11 Mad., 283.

(2) I. L. R., 2 Mad., 294.

(5) I. L. R., 16 Bom., 537.

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in the view taken in *Vyankaji v. Sarjarao*, and hold that the Pensions Act applies to religious endowments as well as to personal grants.

We accordingly reverse the decrees of the lower Courts, and direct that the First Class Subordinate Judge do accept the plaint, and allow the plaintiff a reasonable time to obtain a certificate as to the cash allowances under section 4 of the Pensions Act, as we presume that there will be no objection on the part of the Collector to grant it, but should the certificate not be granted, the Subordinate Judge will proceed with the hearing of the rest of the claim. Costs of this application to be costs in the suit.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

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ABDUL RAHIMAN AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 4),
APPELLANTS, v. MAIDIN SAIBA AND OTHERS (ORIGINAL PLAINTIFFS).
RESPONDENTS.*

Limitation—Limitation Act (XV of 1877), Sch. II, Art. 179—Decree—Appeal against part of decree only—Appeal dismissed—Execution—Application for execution of original decree—Time runs from date of appellate decree.

On the 26th June, 1891, in a suit against seven persons who were members of a Mahomedan family, the plaintiff obtained a decree on a mortgage. The decree directed the sale of $\frac{63}{72}$ of the mortgaged property, but it exonerated from liability the share of a female member (defendant No. 2) of the family, which was $\frac{7}{72}$ of the whole estate. The plaintiff appealed as to the $\frac{1}{72}$ share only. He made all the defendants respondents to the appeal, but the name of the first defendant was afterwards struck out, as he could not be served with notice. His interests, however, were identical with those of defendants Nos. 3 to 7. On the 30th July, 1892, the plaintiff's appeal was dismissed. On the 3rd July, 1895, the plaintiff applied for execution of the original decree. The defendants contended that as the appeal related only to that part of the decree which related to the $\frac{1}{72}$ share of the second defendant, the rest of the decree was unaffected by the appeal, and that consequently the plaintiff's application for execution of that

* Second Appeal, No. 452 of 1896.