

APPELLATE CIVIL.

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

DAMODAR B'ATJI AND OTHERS (ORIGINAL PLAINTIFFS). APPELLANTS, v.
BEAT BHOJLAL KASANDAS AND OTHERS (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1898.
September 30.

Religious endowment—Hindu temple, manager of—Trustees—Removal of trustees—Trustees misapplying funds by mistake—Jurisdiction of Courts in India—Code of Civil Procedure (Act XIV of 1832), Sec. 539—Scheme of management of Hindu temple, form of.

Courts of Equity in England have always allowed themselves some latitude in dealing with the trustees of a public charity who under a mistake have misapplied the funds of the institution, and Courts in India can similarly allow themselves some degree of latitude in dealing with the managers and *pujaris* of public Hindu temples, who for a long time have been accustomed to deem themselves owners of the temples of which in law they are only trustees, managers and priests, and to overlook the past while taking care that for the future the administration of the temple is placed on a sound footing.

The Courts have jurisdiction to deal with the managers of public Hindu temples, and, if necessary for the good of the religious endowment, to remove them from their position as managers. There is, however, no hard and fast rule that every manager of shrine, who has arrogated to himself the position of owner, should be removed from his trust; each case must be decided with reference to its circumstances.

*Chintaman v. Dhondo*¹ referred to.

Cross appeals from the decision of G. McCorkell, District Judge of Ahmedabad.

Plaintiffs sued under section 539 of the Code of Civil Procedure (Act XIV of 1832) to have the defendants removed from the management of the temple of Koteshwar Mahadev and of the lands appertaining thereto; to have new trustees appointed; to have accounts taken from the defendants of the temple and its appurtenances, and to have a scheme prepared for the future management of the temple.

Defendants pleaded (*inter alia*) that the temple property was not public, charitable or religious property, but private property of their own, and that the suit was brought merely out of enmity

* Cross Appeals, Nos. 3 and 7 of 1895.

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and not from any genuine desire to benefit the institution and the public.

The District Judge held that the property in dispute was public property; that the defendants held and managed it as trustees and that they were bound to render accounts. Being, however, of opinion that the suit was the outcome of enmity against the defendants he declined to make an order removing them from their position as trustees and managers of the temple. He, therefore, passed a decree directing the defendants to continue to manage the temple and requiring them to keep accounts, &c., &c.

Both parties appealed to the High Court.

Ganput Sudashiv Rao for the appellants in Appeal No. 3 and respondents in Appeal No. 7.

Macpherson (with him *S. G. Ajinkya*) for respondents in Appeal No. 3 and appellants in Appeal No. 7.

FARRAN, C. J :—We have come to the conclusion in this case not to disturb the decree of the District Court. Courts of Equity in England have always allowed themselves some latitude in dealing with the trustees of a public charity who under a mistake have misapplied the funds of the institution, and we think that we can similarly allow ourselves some degree of latitude in dealing with the managers and *pujāris* of public Hindu temples who for a long time have been accustomed to deem themselves owners of the temples of which in law they are only trustees, managers and priests, and to overlook the past while taking care that for the future the administration of the temple is placed on a sound footing. The judgment in the Chinchwad case (*Chintaman Bajaji Dev v. Dhondo Ganesh Den*⁽¹⁾) while it established the jurisdiction of the Courts to deal with the managers of public Hindu temples, and, if necessary, for the good of the religious endowment to remove them from their position as managers, did not, we think, intend to lay down a hard and fast rule that every manager of a shrine who arrogated to himself the position of owner should be removed from his trust, though the Court in that case did remove the manager and appoint new trustees, deeming that course to be for the

(1) I. L. R., 15 Bom., 612.

advantage of the endowment. Each case must, we think, be decided with reference to its own circumstances.

Here the District Judge on a review of all the circumstances relating to the temple of Koteswar Mahadev at Ahmedabad has arrived at the opinion that it is not necessary in the interests of the temple and of the public who resort to it to remove the defendants from the office of *pujāris* and managers. The devotees of the temple do not appear to desire that course. The suit, the Judge considers, has been brought by an individual out of enmity to the defendants rather than from a genuine desire to benefit the institution and the public. There are no endowments attached to the temple, which is supported by the offerings of the devotees and worshippers at the shrine, by the rents of some buildings, and land in the vicinity of the temple; and the origin of the temple is so ancient that there is some excuse for the defendants believing and acting on the belief that their uncontrolled and undisputed authority over the funds constituted them in truth the owners of them.

We vary the decree of the District Judge by substituting the following scheme for the management of the temple of Koteswar Mahadev at Ahmedabad:—

1. The defendants and their heirs shall, during their good conduct, be the trustees and managers of the temple of Koteswar Mahadev at Ahmedabad, and of the property belonging to the said temple.

2. They shall, as Tapodhan Bráhmīns, be bound to maintain a proper system of worship. The doors of the temple shall be open daily from 7 A.M. till noon and from 2 to 9 P.M.

3. The income of the temple consists of offerings made to the idol, of rents for temple buildings and temple lands, and of an annual cash allowance of two rupees from Government.

4. The managers shall not allow persons of low caste to reside on the temple lands either inside or outside the temple compound, and they shall not allow Kolis or Marwādīs to reside within the temple compound.

5. It shall be the duty of the managers to keep the compound and other temple lands in a clean and sanitary condition, and to keep the temple buildings in repair so far as the funds permit.

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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.

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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 dargahs 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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October 1.