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ment has imposed in respect of those buildings, under the provisions of the Land Revenue Code. This decision does not in any way affect or prejudice such right as the plaintiff or Government may have in respect of the assessment on agricultural land. We express no opinion whatever as to the latter. The plaintiff's claim, as made in his plaint, and in his pleadings, was entirely confined to the extra assessment levied by Government in virtue of its right, under the provisions of the Land Revenue Code, to impose that assessment on occupants, who have built upon their respective lands. Our decision, therefore, is confined only to that extra assessment. For these reasons the decree must be confirmed with costs.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Hayward.

1911.

July 20.

THE COLLECTOR OF POONA (ORIGINAL PLAINTIFF), APPELLANT, v.
BAI CHANCHALBAI (ORIGINAL DEFENDANT NO. 1), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), section 539—Suit relating to public religious property—Ejection of trespasser—Party of suit—Joinder of parties—Practice and procedure.

Where a breach of trust is complained of and where the alienee of trust property denies that the property is the subject of a public trust for religious purposes, he is a proper and necessary party to a suit brought under the provisions of section 539 of the Civil Procedure Code of 1882, though no relief can be given as against him by way of a decree in ejection.

APPEAL from the decision of C. Roper, District Judge of Poona, confirming the decree passed by K. Barlee, Assistant Judge of Poona.

This was a suit filed under the provisions of section 539 of the Civil Procedure Code of 1882. It was brought by the Collector of Poona to formulate a scheme of management with respect to the village of Navli, which had been dedicated to the mosque known as the Shamanshasur Pir Dargah at Supa.

* Second Appeal No. 997 of 1910.

The village in question was mortgaged in 1875 with one Gulabchand by the then manager of the mosque in 1890. Gulabchand's son Harichand obtained a decree against his mortgagor. In the execution of the decree the right to the income of the village was sold to one Tatyaji on the 5th December 1893. Tatyaji sold to Harichand on the 31st May 1896, the rights which he acquired by the purchase.

From 1897 to 1905 Harichand made payment of small sums for celebrating the annual *Urus* at the mosque. These were discontinued in 1906.

In 1908, the Collector of Poona filed the present suit against Bai Chanchalbai (widow of Harichand) as guardian of her minor son Nemchand and others praying for the appointment of new trustees, for a declaration that the transactions of 1875, 1893 and 1896 were null and void, for an order vesting the village in the new trustees, and for an order for the eviction of Bai Chanchalbai from the possession of the village and delivery of it to the new trustees or in the alternative a permanent injunction directing her to pay the whole income or a portion of it to the new trustees every year.

Bai Chanchalbai (defendant No. 1) contended *inter alia* that the village of Navli was not a public religious trust property nor was the Dargah a public religious trust.

In the Court of first instance a preliminary issue was raised, *viz.*, Does the suit for the eviction of Nemchand fall within the province of section 539, Civil Procedure Code, and if not is this suit against defendant No. 1 maintainable? This issue was found in the negative; and the suit as against Bai Chanchalbai was ordered to be dismissed. On appeal, the District Judge took the same view. The plaintiff appealed to the High Court.

L. A. Shah, Acting Government Pleader, for the appellant.

D. R. Patwardhan, for the respondent.

CHANDAVARKAR, J. :—This was a suit brought by the Collector of Poona under section 539 of the old Code of Civil Procedure (Act XIV of 1882), alleging a breach of trust on the part of the

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trustee of the property in dispute, which is claimed to be a public trust for religious purposes. Defendant No. 2 is the trustee against whom the breach is alleged; defendant No. 1 represents the person to whom the property is alleged to have been alienated by the trustee. At the trial in the Court of the Assistant Judge at Poona, a preliminary question was raised, whether defendant No. 1 was a proper and necessary party to such a suit brought under section 539. That Court answered the question in the negative, on the authority of the decision of this Court, in *Lakshmandas Parashram v. Ganpatrav Krishna*⁽¹⁾, *Vishvanath Govind Deshmane v. Rambhat*⁽²⁾, *Kazi Hassan v. Sagun Balkrishna*⁽³⁾, that a suit to eject a trespasser from trust property is outside the scope of, and reliefs claimable under, that section. Accordingly, the suit was dismissed as against defendant No. 1. On appeal, the District Court has taken the same view.

It does not follow from the decisions, on which the Courts below have relied, that to a suit of this character, where a breach of trust is complained of and where the alienee denies that the property is a public trust for religious purposes, he is not a proper and necessary party, because relief cannot be given as against him by way of a decree in ejectment. Though such a decree does not fall within the reliefs which the Court can grant under section 539, it has jurisdiction to determine, for the purpose of the reliefs which can be granted, whether the property is a public trust for a religious purpose, if that question is in controversy. That was the question covered by the first and second issues raised at the trial, and the alienee (defendant No. 1) is interested in it. The question cannot be properly tried unless he is before the Court. He is, therefore, a necessary party, though possession cannot be recovered from him in this suit, if the issues in question are found against him.

There is a further ground why he is a necessary party. The plaint alleges that he has taken the property from the trustee

(1) (1884) 8 Bom. 365.

(2) (1890) 15 Bom. 148.

(3) (1899) 24 Bom. 170.

with full knowledge of its character as a public trust for religious purposes and that he has for some years paid part of the income to and for the trust. And in his written statement he asks the Court to direct him to make an annual payment out of the income of the property to the trusts, if the Court find that it is a public trust for a religious purpose. These pleadings may fairly raise the question whether defendant No. 1 has become a constructive trustee in virtue of the alienation on which he relies and by reason of his conduct. In that view of the case he would be a necessary party : *Jugalkishore v. Lakshmandas Raghunathdas*⁽¹⁾. It is impossible to say at this stage whether such a case will be established. That depends upon the evidence. But judging from the pleadings, we must hold that defendant No. 1 is a proper and necessary party, and that the suit as against him has been wrongly dismissed without trial.

The decree is reversed and the case remanded for disposal according to law. Costs including those of this appeal to be costs in the cause.

Decree reversed.

R. R.

(1) (1899) 23 Bom. 659.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Hayward.

NAGINLAL CHUNILAL (ORIGINAL PLAINTIFF), APPELLANT, *v.*
THE OFFICIAL ASSIGNEE (ORIGINAL DEFENDANT), RESPONDENT.*

1911.

July 27.

Presidency Towns Insolvency Act (III of 1909), sections 7, 86—Official Assignee—Third person's property taken in custody by Official Assignee—Suit by stranger—Civil Court—Right of suit.

Where the Official Assignee takes into his possession property as belonging to the insolvent which a third party claims as his own, the latter can bring a suit against the Official Assignee in a Civil Court to establish his right.

APPEAL from the decision of M. B. Tyabji, District Judge of Broach.

* Appeal No. 40 of 1910 from Order.

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