

1921.

EMPEROR
v.
MARUTI.

That is a matter of prudence and not of law. Considering the state of terrorism which existed in the village and the probabilities of the case we feel sure that the statements of these two witnesses in the Magistrate's Court was the truth.

We accordingly confirm the conviction and sentence and dismiss the appeals.

Conviction and sentence confirmed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

June 7.

NILKANTH DEVRAO NADKERNY AND OTHERS (ORIGINAL PLAINTIFFS),
APPELLANTS v. RAMKRISHNA VITHAL BHAT AND OTHERS (ORIGINAL
DEFENDANTS), RESPONDENTS^a.

*Civil Procedure Code (Act V of 1908), section 92—Hereditary Muktesars—
Suit for a declaration that co-trustees not properly appointed—Suit not within
the scope of section 92.*

The plaintiffs as the hereditary Muktesars (trustees) of a temple sued for a declaration that the defendants Nos. 1 to 4 were not properly appointed trustees of the temple and for an injunction restraining them from interfering with the plaintiffs in the management of the affairs of the temple. A question being raised whether the suit fell within the provisions of section 92^a of the Civil Procedure Code, 1908,

Held, that the suit was outside the scope of that section as the plaintiffs were not suing on account of any breach of trust as contemplated by it, nor were they applying for any direction of the Court for the administration of trust.

Subramania Pillai v. Krishnaswamy Somayajiar⁽¹⁾, discussed and dissented from.

^a Second Appeal No. 269 of 1920.

(1) (1919) 42 Mad. 668.

1921.

NILKANTH
DEVBAO
v.
RAM-
KRISHNA
VITHAL.

Per MACLEOD, C. J. :—"Section 92 of the Civil Procedure Code, 1908, provides very distinctly that only in two cases does the section apply : either there must be an alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature ; or the direction of the Court must be deemed necessary for the administration of any such trust."

Per SHAH, J. :—"Unless the suit falls clearly within the scope of section 92, Civil Procedure Code, 1908, I do not think that the mere fact that it resembles in certain respects a suit which may properly be brought under section 92, can afford any good ground for holding that section 92 should apply to a suit like the present."

SECOND Appeal against the decision of V. M. Ferrers, District Judge of Kanara, reversing the decree passed by S. K. Patkar, Subordinate Judge at Karwar.

Suit for declaration and injunction.

The plaintiffs claimed to be the hereditary Muktesars (trustees) of the temple of Shri Durga at Ankola.

Defendants Nos. 1 to 4 were appointed trustees by the Temple Committee in 1913.

The plaintiffs sued for a declaration that the defendants Nos. 1 to 4 were not duly appointed trustees and for an injunction against the defendants restraining them from interfering with the plaintiffs in the management of the affairs of the temple.

The defendants contended *inter alia* that they were validly appointed trustees by the Temple Committee.

The Subordinate Judge held that the appointment of defendants Nos. 1 to 4 was not valid and therefore they were not entitled to take part in managing the temple affairs.

On appeal, the District Judge, held that the suit fell within the provisions of section 92, Civil Procedure Code, 1908 and, being brought without the sanction of proper authorities, was barred.

The plaintiffs appealed to the High Court.

S. V. Palekar, for the appellants.

G. P. Murdeshwar, for respondent No. 2.

MACLEOD, C. J.:—The plaintiffs sued for an injunction against defendants Nos. 1 to 4 restraining them from interfering with the plaintiffs in the management of the affairs of the temple of Shri Shanta Durga of Ankola, and for a declaration that defendants Nos. 1 to 4 were not the properly appointed trustees of the said temple. The first issue was whether the Court had jurisdiction to try the suit or whether it should lie in the District Court. The learned Judge said: "It is argued by Mr. Joshi that the suit is barred by section 92 of the Civil Procedure Code and also by section 14 of the Religious Endowments Act XX of 1863." It is not now suggested that the latter section applies. The learned Judge proceeds: "The relief claimed in this suit is that the appointment of defendants Nos. 1 to 4 as plaintiffs' co-trustees is invalid. Such a suit does not fall under section 92 of the Civil Procedure Code. That section applies where breach of trust is alleged or where the direction of the Court is deemed necessary for the administration of a charitable or religious trust of a public nature." He, therefore, proceeded to hear the suit and decided that the appointment of defendants Nos. 1 to 4 was not valid, and that they were not entitled therefore to take part in managing the affairs of the temple in question.

In first appeal the same question was argued, whether the suit was barred by section 92 as the plaintiffs had not sought or obtained permission to bring the suit. The learned Judge disagreed with the opinion of the Judge in the Court below, thinking that the allegations made in the plaint were allegations of a breach of

1921.

NILKANTH
DEVRAO
v.
RAM-
KRISHNA
VITHAL.

1921.

NILKANTH
DEVRAO
v.
RAM-
KRISHNA
VIPHAL.

trust, and that there was no question that the suit was a suit for the removal of trustees. The learned Judge said: "It is no doubt true that in form the suit is not a suit for the removal of a trustee. It is a suit for a declaration that defendants Nos. 1 to 4 have not been duly appointed as trustees. But this is a distinction without a difference. Section 92 is a section which ought (I think) to be liberally construed in favour of the subject." It seems to me that in bringing this suit by way of analogy within the provisions of section 92 he was construing the section liberally against the subject. However that may be, I am distinctly of opinion that the suit as framed does not lie within the provisions of section 92 of the Civil Procedure Code. That section restricts the powers of an individual to bring a suit of a particular nature without observing certain formalities, and, therefore, when a point is taken that a particular suit is of a nature coming within the provisions of that section, before the Court can bar the suit for want of necessary sanction, the Court must be satisfied that the suit comes within the actual four corners of the section. That section provides very distinctly that only in two cases does the section apply: either there must be an alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature; or the direction of the Court must be deemed necessary for the administration of any such trust. In either of these two cases when a suit is brought sanction must be obtained, and the section goes on to specify what reliefs may be obtained from the Court in suits filed under the section.

Now it seems to me that it is not necessary to direct one's attention wholly to the reliefs which the section says may be granted in particular suits governed by the section in order to decide whether or not the suit

comes within the section. We have to look, in the first instance, to the principal portion of the section which lays down in what cases sanction is necessary. I agree with the opinion expressed by the learned Subordinate Judge that the plaintiffs here do not sue on account of any breach of trust as is contemplated by the provisions of that section, nor do they apply for any direction of the Court for the administration of the trust. Once that is conceded then it appears that the Court had jurisdiction and no sanction was required. But, as far as I can see, we are asked to extend the provisions of the section to suits which do not come within the strict words of the section, but are suits of a cognate nature, because the relief asked in this suit may by the twisting of language be considered to be a relief something in the nature of one of the reliefs mentioned in section 92 which the Court can grant in suits brought under that section.

I quite admit that some foundation for this argument is provided by the decision in *Subramania Pillai v. Krishnaswamy Somayajiar*^(a). There the suit was one of a very similar nature to this suit. Two out of three trustees of a temple instituted a suit in a Subordinate Judge's Court, for a declaration that the appointment by the Devasthanam Committee of one of the defendants as a trustee in the place of a deceased trustee was invalid, and for an injunction to restrain him from interfering with the affairs and the property of the temple. Mr. Justice Abdur Rahim was of opinion that that was a case which might properly be described as one in which the direction of the Court was necessary for the administration of a public trust within the meaning of section 92. It seems to have been argued that the suit was one for the removal of a trustee. The learned Judge felt doubtful whether

1921.

NILKANTH
DEVRAOv.
RAM-
KRISHNA
VITHAL.

(a) (1919) 42 Mad. 668.

1921.

NILKANTH
DEVRAOv.
RAM-
KRISHNA
VITHAL.

the prayer in the plaint came within the words "removing any trustee." But he was of opinion that the object of the suit was to have it declared that the eighth trustee was not a trustee properly appointed and also to prevent him from acting in the capacity of a trustee. Therefore, that was a relief cognate to removal of a trustee. Mr. Justice Spencer said: "In effect, this is a suit for the removal of a trustee from the office. No doubt the relief asked for in the plaint is for a declaration that the appointment of the eighth defendant is invalid and for a permanent injunction restraining him from interfering with the affairs of the temple. But it cannot be denied that the eighth defendant has been appointed a trustee by a statutory body competent to make the appointment and therefore he is a trustee until he is removed from his office by a competent authority." He further says: "The language of section 92, sub-section (2), Civil Procedure Code, is very clear. It declares that no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is referred to in the section except in conformity with the provisions of sub-section (1). One of the reliefs is that of removing a trustee."

I think the section must be read as a whole. It must appear from the plaint that the suit is based either on a breach of trust alleged or on the necessity of the direction of the Court being given with regard to the administration of the trust, before the provisions of the section can apply. With all due respect, therefore, to the learned Judges in the case to which I have just referred, I do not think that this suit comes directly within the provisions of section 92, and I do not think that merely because the suit concerns the question of the validity of the appointment of defendants Nos. 1 to 4 as trustees of the

1921.

NILKANTH
DEVRAO
v.
RAM-
KRISHNA
VITHAL.

temple, and because it might on that account be considered that the suit is somewhat akin to suits which come within the provisions of section 92, that, therefore, we are entitled to hold that the suit in the language of English lawyers is a suit that comes within the equity of the Statute, and, therefore, sanction would be necessary before the suit could be instituted. I think, therefore, that the decree of the lower appellate Court must be set aside and the appeal must be remanded to that Court to be dealt with on its merits. Costs costs in the appeal.

SHAH, J. :—I agree that the present suit falls outside the scope of section 92 of the Civil Procedure Code. In form and substance the suit is for a declaration that the defendants Nos. 1 to 4 are not properly appointed trustees of the temple in question, and for an injunction appropriate to that declaration. There is no allegation of any breach of trust in the case, nor is there any direction sought for the administration of the trust in question. I do not think that the mere fact that defendants Nos. 1 to 4 claim to be validly appointed Muktesars could make any difference in the nature of the suit, nor could it be said on that account that the relief claimed by the plaintiffs is in the nature of a direction for the administration of the trust in question.

It is also difficult to accept the view that the suit is for the removal of the defendants as trustees within the meaning of clause (a) of sub-section (1) of that section. According to the plaintiffs, the defendants who claim to be validly appointed trustees are in the position of strangers; and it seems to me that it would not be reasonable to treat such a suit as a suit filed for the removal of a trustee whose position as such is an accepted fact. That is in dispute in the present case,

1921.

NILKANTH
DEVRAO
v.
RAM-
KRISHNA
VITHAL.

and, according to the plaintiffs, defendants Nos. 1 to 4 are not in the position of trustees at all. The case of *Subramania Pillai v. Krishnaswamy Somayajiar*⁽¹⁾, relied upon on behalf of the respondents, no doubt, supports the view taken by the lower appellate Court that the suit is within the scope of section 92, Civil Procedure Code. But generally for the reasons given by my Lord the Chief Justice, I am unable to agree with the view taken in that case. Unless the suit falls clearly within the scope of section 92, I do not think that the mere fact that it resembles in certain respects a suit which may properly be brought under section 92, can afford any good ground for holding that section 92 should apply to a suit like the present. I feel quite clear that a suit of this nature is not within the scope of section 92 of the Civil Procedure Code.

The *ratio decidendi* in *Miya Vali Ulla v. Sayed Bava Santi Miya*⁽²⁾, which was a case decided with reference to section 539 of the Code of 1882, appears to me to lend support to the view which we take of the scope of the corresponding section of the present Code.

*Decree set aside and
case remanded.*

J. G. R.

⁽¹⁾ (1919) 42 Mad. 668.

⁽²⁾ (1896) 22 Bom. 496.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

MAHADEO GOVIND SUKTANKAR (ORIGINAL PLAINTIFF), APPLICANT
v. RAMCHANDRA GOVIND SUKTANKAR AND ANOTHER (ORIGINAL
DEFENDANTS), OPPONENTS².

*Civil Procedure Code (Act V of 1908), section 16 (e)—Court—Jurisdiction—
Suit to recover mesne profits—Lands situated outside British India.*

² Civil Extraordinary Application No. 70 of 1920.

1921.

June 14.