
(1917) 09 MAD CK 0041
In the Madras High Court

Annavarapu Nacharamma

APPELLANT

Vs

Malladi Venkatapayya (Dead) and Others

RESPONDENT

Date of Decision : 03-09-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : 70 Ind. Cas. 903 : (1922) 16 LW 922

Hon'ble Judges : John Wallis, C.J;Kumaraswami, J

Bench : Division Bench

Judgement

1. This is an appeal from the, judgment of the Temporary Subordinate Judge of Guntur removing a trustee in a suit brought u/s 92 of the CPC and holding her accountable. The defence in the suit was that, though provision has been made in the Will of the deceased of which the defendant is executrix for the constitution of the trusts in respect of which the suit was brought, it turned out on administration that there were not sufficient assets, and it was further pleaded that, on the facts, this suit u/s 92 of the CPC did not lie. We think this Objection must be supported.

2. Section 92 deals with completed trusts and is inapplicable where that stage has not been reached as is alleged for the defendant in the present case. The Will of the deceased, no doubt, bequeathes a legacy for the constitution of a trust and the proper remedy to enforce the provisions of the Will is a suit for administration. It may be that it is competent to sue an executor or administrator of the Will for a particular legacy without joining all the necessary parties to an administration suit as held in Purshottam v. Kala Goviniji 3 Bom. L.R. 932 but such a suit is nonetheless a suit for partial administration. It has been held in Bapuji Jagannath v. Govindlal Kasandas Shah 439 Bom. L.R. 335 that a suit for the ,administration of the trusts of a Will which contained dispositions for charitable purposes was not bad because it was not brought u/s 92.

3. That was a decision that Section 92 is not applicable to the case because if

Section 92 is applicable then in its present form the suit can only be brought under it. This necessarily involves, and indeed it appears to have been so held by an Indian Court which is not a High Court Official Assignee v. Abdul Hussein 28 Ind. Cas. 116 that a suit u/s 92 for the administration of the trusts of a Will which contains charitable bequests; is not maintainable.

4. The suit has been misconceived. The appeal must be allowed and the suit must be dismissed. We do not think it necessary to make any order as to costs against the plaintiffs in this case as the suit was instituted with the authority of the Collector. The defendant is at liberty to indemnify herself for the costs of the litigation out of the estate.