

(1949) 10 OHC CK 0005
In the Orissa High Court
Case No : A.F.A.D. No. 60 of 1945

Basudev Moharan

APPELLANT

Vs

Ogadhu Ponda

RESPONDENT

Date of Decision : 18-10-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Orissa Hindu Religious Endowments Act, 1939 — Section 54(1)

Citation : AIR 1950 Ori 99

Hon'ble Judges : Ray, C.J.;Narasimham, J;Jagannadhadas, J

Bench : Full Bench

Advocate : B.K. Rath and K. Patnaik, for the Appellant; P. Mishra and B. Das, for the Respondent

Judgement

Ray, C.J.—This reference arises in Second Appeal NO. 60 of 1945. One Baaudev Moharan, Secretary of Hathotto Co-oparative Society, (defendant-appellant) preferred this appeal against the confirming judgment of the Additional Subordinate Judge of Berhampur upholding the decree of the Munsif in a suit for declaration of title and either confirmation or recovery of possession of the disputed Inam lands. The same lands had been the subject of attachment and sale at the instance of the appellant-Society in execution of a decree against a member of the Society, a brother of Ogadhu Pooda, the trustee of Sri Jaganuath Mohaparabhu of Hathotto village. The decree was passed against the former, qua, an individual as distinguished from a trustee. Admittedly, the endowment was not bound by the debts, far lees, by the decree, the execution, the attachment, the sale and the proceeding for delivery of possession that followed. The contention, inter alia, that the plaintiff was not entitled to sue, was reiterated in the second appeal which wag heard by a Division Bench constituted by Das and Narasimham J. The question, that waa very seriously pressed before them, was that non-compliance with the requirements of 3. 64, Orissa Hindu Religious Endowments Act (Orissa Act IV [4] of 1939) interposed an effectual bar to the institution of the suit. In the course of the arguments at the Bar, a decision

of the Patna High Court, reported in Upendra Prasad v. Akhandaleswar A. I. R. 1918 Pat.133 : 13 C. L. T. 54 Was Cited. My learned brothers felt dubious as to the correctness of that decision. The decision had been recorded by me sitting singly in the Cuttack Circuit of the Patna High Court. Hence this reference. Their Lordships have framed the following questions in their referring judgment. The questions referred to the Special Bench to which I concurred are:

1. (a) Whether the trustee (whether hereditary or not) of a religious endowment is a "person having interest" within the meaning of Sub-section (1) of Section 54, Orissa Hindu Eeligioua Endowments Act, 1939.

(b) Even if such a trustee as described in (a) is held to be a "person having interest", will the provisions of Section 54 of the said Act apply to suits instituted by such a trusted in respect of matters specified in Sub-section (1)?

2. Whether Clause (a) of Sub-section (1) of Section 54 applies to a suit for possession against a person claiming dehors the trust and in the position of a trespasser.

3. Whether consent obtained subsequent to the institution of the suit is sufficient compliance with the provisions of Section 54.

2. The answers to the questions, as formulated, necessarily depend the construction of Section 64, Orissa Hindu Religious Endowment Act (hereinafter referred to as "the Act") so far as it bears on its applicability to the present suit. Though the words of the section are the best guide in the matter of construction, the Court should not be oblivious of the history of the Legislation. Although the Court may not be at Liberty to construe an Act of Parliament by the motive which influenced Legislature, yet when the history of law and legislation tells the Court what the object of the Legislature was, the Court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view to finding what it means and not with a view to extending it to something that was not intended. Section 64 of the Act is a word for word reproduction of Section 73, Madras Hindu Religious Endowments Act (Act I [1] of 1926) (hereinafter referred to as the "Madras Act") as amended as it then stood except, if any, in some very minor details. It would not be far from correct to adopt the view taken by the Madras High Court, of the meaning of the corresponding section in its application to suits of the nature contemplated therein. Section 73 of the Madras Act historically descends from Section 92, Civil P.C. (hereinafter referred to as the Code) which it replaces, so far as it goes. On account of inartistic drafting, the section has presented some difficulty of construction as will appear from the Madras decisions that shall be reviewed presently in this judgment. For facility of reference, Section 92 of the Code is reproduced here :

"92. Public Charities--(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of

any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the consent in writing of) the Advocate-General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Provincial Government within (he local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree:

(a) removing any trust; (b) appointing a new trustee; (c) vesting any property in a trustee ; (d) directing accounts and inquiries; (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust; (f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged; (g) settling a scheme; (h) granting each further or other relief as the nature of the case may require :

(2) Save as provided by the Eeligioua Endowments Act, 1863 (XX [20] of 1863), no suit claiming any of the reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section."

3. In this connexion, it has to be borne in mind that the Legislature, in enacting Section 64 of the Act, like the Madras Legislature in legislating Section 73 of the Madras Act, has rendered nugatory Section 92 and certain other relevant provisions of the Code, in their application to any suit claiming any relief in respect of the administration or management of religious endowment, vide Sub-section (2) of Section 54 of the Act which corresponds to Sub-section (3) and (4) of Section 73 of the Madras Act (as amended up-to-date).

4. A priori to the extent, the field of Section 92 of the Code is replaced by it, Section 54 of the Act must be taken to have covered it. The opening words of Sub-section (1) of Section 92 of the Code are sufficiently indicative of the nature of the suits or proceedings contemplated therein. According to these words, occasion for exercise of the right of suit conferred or created thereby would arise either in the case of any alleged breach of public trust or where there is need for direction of the Court for its administration. The reliefs contemplated in Section 54 of the Act, are, mainly if not wholly, the same as those in Section 92 of the Code. The reliefs, enumerated in Clauses (f) & (g) of Sub-section (1) of the Code, have, however, though not imported into the section, been provided for in the Act otherwise than in Section 54, that is, Section 58 of the Act deals with alienation of immovable trust-properties by way of sale, mortgage, exchange or lease, and Section 33 vests the Commissioner with the power of framing scheme of administration--Court's interference in the matter being confined to either modification or cancellation of the same: vide Sub-section (5) of the section. All the rest are found carried over bodily into the Section 54 of the Act, besides one innovation introduced into Sub-section (1)(a) of the section. This relief, however, is absent from Section 73 of the Madras Act. I have my great doubts if this relief is appropriate to the intendment, so far as it is not warranted in the interest of administration or management of the trust. It should be borne in mind that

neither the Commissioner nor "any person having interest" in the trust is entitled to remain in possession of the trust-property. I shall, in this connexion, refer to Section 61 of the Act, which prohibits the Provincial Government or any of its Executive Officers from undertaking or assuming the superintendence of any land or any other property granted for the support or other, wise belonging to any Math or temple. This prohibition, however, is subject to the condition indicated in "save as provided in this or any other Act". This saving clause notwithstanding, prima facie, the general power of superintendence assigned to the Commissioner u/s 11 of the Act hardly entitles him either to be in possession of any trust-property or to engage himself in the actual management thereof. He must not intrude upon a trust himself except when his measure is intimately connected with maladministration or non-administration of the trust. The relief seems to be out of keeping with the object of the section. The very comprehensive language, in which it has been expressed, might very often be a source of difficulty of construction as it is in the instant case. Sub-section (2) of the section and the nature of the reliefs enumerated are sufficiently indicative of the identity of the scope of Section 92 of the Code and the section, under consideration, in relation to their respective fields of operations in relation to Hindu Religious Endowment of public character.

5. In the case of Hazarimull Chandukchand (died) represented by Chuni Bai Vs. N.R. Vedachala Chettiar and Another, it was observed by Beasley C. J. :

"It seems to me that there is nothing in Section 92, Civil P. C. which has not been taken bodily out of that section and placed either in Section 73 or in other sections of the Madras Hindu Religious Endowments Act."

6. If I may say so with great respect I am in entire agreement with these observations. I do not think that the same thing cannot be said of the Act and particularly with regard to Section 54, notwithstanding addition of Clause (a) in the Sub-section (1) of the section. This clause, I have no hesitation in thinking, was not meant for extending the operational orbit of Section 54 but was added only by way of clarification of a doubtful point. This relief of recovery of possession of trust property is either incidental or cognatic to the relief of vesting of any property in a trustee, the former being pre-requisite of the latter.

7. I owe it to a commentator of Madras Act (Mr. P. Ramnath Iyer) that that Act had, for its model, in some of its essential features, the English Charitable Trusts Act, 1853. This induced me to embark upon some investigation into the working out of that Act. Section 17 thereof is pertinent to the purpose in hand. The section may be re-stated here, as far as is material for this case :

"Before any suit, petition or other proceeding for obtaining any relief, order, or direction concerning or relation to any charity or the estate, property, or income thereof, shall be commenced, presented, or taken, by any person whomsoever, there shall be transmitted by such person to the said Board (the Charity Commissioners), notice in writing of such proposed suit, petition, or proceeding,

and such statement, Information, and Particulars as may be requisite or proper, or may be required from time to time, by the said Board, for explaining the nature and objects thereof; and the said Board, if upon consideration of the circumstances, they so think fit, may, by an order of certificate signed by their Secretary authorise or direct any suit, petition, or other proceeding to be commenced, presented, or taken with respect to each charity, either for the objects and in the manner specified or mentioned in such notice, or for such other objects, and such manner and form, and subject to such stipulations or provisions for securing the charity against Liability to any costs or expenses, and to such other Stipulations or Provisions for the protection or benefit of the charity, as the said Board may think proper;.... (save as herein otherwise provided) no suit, petition, or other proceedings for obtaining any such relief, order, or direction as last aforesaid shall be entertained or proceeded with by the Court of Chancery, or by any Court of Judge, except upon and in conformity with an order or certificate of the said Board."

8. The meaning of this section had to be determined in several Chancery suits, or proceedings in the Court in England. To mention a few of them will not be without profit. It is common knowledge that the statutes in India have so far been inspired by and to a large extent modelled upon the pre-existing legislation of the British Parliament on the identical subjects. The principles underneath the parliamentary statutes have formed a ground work for Indian statutes, either Central or Provincial, always however subject to such variations as are dictated by the local, social and environmental conditions that prevail in India. It can, therefore, be vouchsafed, without any fear of contradiction, that Section 92 of the Code owed its origin to the law prevailing in England in relation to the Court's power over administration, or management of public charitable trusts. Under the Charitable Trusts Act, 1853, the Attorney-General, ex-officio, has right to commence a suit, petition, or other proceeding concerning or relating to any charity or estate, funds, property, income thereof. Within the purview of Section 92 of the Code, the Advocate General has similar powers. The same has now descended upon the Hindu Religious Endowments Commissioner under the schema set up in the provisions of the Act. It will not be out of place, therefore, to refer to some decisions of the Chancery Division of the Supreme Court of England. As I find from the Reports, the case of *Holme v. Guy* is the leading case on the subject. It is reported in (1877) 5 Ch D. 901: 46 L. J Ch. 648. The facts giving rise to this case were that the governor of an endowed school commenced an action against the master to restrain him from presenting himself at the school or continuing to occupy the schoolhouse, on the ground that he had never been properly appointed to the mastership, was unfit to fulfil its duties, and had been removed by a resolution of the governors. The master demurred, on the ground that it did not appear that the action had been sanctioned by the Charity Commissioners. It was held that the sanction of the Charity Commissioners to a proceeding of this nature was not requisite. The decision was arrived at on a construction of Section 17, Charitable Trusts Act, 1853, already quoted. The

Master of the Rolls (Jessel M. R.) described the form of the action in the following words:

"This is simply what would formerly have been termed an action of ejectment, and nothing else. It is substantially an action to turn the school-master out of possession of the house to which he has no right whatever; it is a legal demand of possession and nothing else. It is properly nothing but an action for the recovery of land ..."

9. After thus defining what the action in substance was, the Master of Rolls proceeds:

"If you bring an action for trespass, for breaking into and entering the close of a charity, it is an action for trespass, though in a sense it relates to the property of the charity, but only in a sense. The action is for a disturbance of the possession. It would be speaking in a very wide sense to call that an action asking for relief relating to a charity and estate of a charity."

10. This decision of Jessel M. R. was upheld by the Court of appeal. James L.J., in defining the scope and object of the Section 17, Charitable Trusts Act, 1853, observed:

"It is, in my judgment, clear that the Section 17, Charitable Trusts Act 1853, was never intended to interfere with the rights and powers of the trustees of a charity in their character of owners of property, or to interfere with their rights in the character of masters who are employing servants. Its object was to prevent strangers from coming in as relators in suits in Chancery, or as Petitioners under Sri Samuel Romilly's Act, to complain of the management of a charity, unless the Charity Commissioners are first satisfied that such proceedings ought to be taken. It was not intended to prevent the trustees of a charity from bringing an action of ejectment against a tenant holding over, or an action of covenant against a tenant who would not pay his rent, or to prevent their taking proceedings by way of distress against a defaulting tenant, or to prevent their taking proceedings against a man, who, as according to the statement is the claim in the case here, never was properly appointed to an office, but will persist in retaining it, and in thrusting himself on the property of the charity as a trespasser."

11. The next case, that largely depends upon the decision of *Holme v. Guy* 1877 Ch. D. 901: 46 L. J. Ch. 648) is the case of *Bendall v. Blair*, (1890) 45 Ch.D. 139 ; 69 L. J. Ch. 641. The master of charity school brought an action in the Chancery Division against the managers of the school for an injunction to restrain them from dismissing him from his office and from ejecting him from the schoolhouse. The question raised by the action was whether the managers had been properly appointed. The plaintiff had not obtained, u/s 17, Charitable Trusts Act, 1853, the leave of the Charity Commissioners to bring the action. *Bowen and Fry L. JJ.*, held :

"Although the action might incidentally involve the consideration of the deed of trust of the Charity, it was not such an action as required the consent of the Charity Commissioners."

12. It was held:

"Even if the consent of the Charity Commissioners were necessary, it was not necessary to obtain it before the commencement of the action, and that it would not be right to dismiss the action without giving the plaintiff opportunity of ascertaining whether the Commissioner would give their consent."

13. A passage from the judgment of Bowen, L. J., is worth quoting in this connexion:

"Speaking broadly, I think that this section does not deal with or touch actions which are brought to enforce common law rights, whether such rights arise out of contract or out of tort or out of common law duty, I ought rather to say."

14. The same view was taken as to the meaning and requirement of Section 17, Charitable Trusts Act, in the case of *Fisher v. Jackson* (1891) 2 Ch. D. 84 : 60 L. J. Ch. 482. In that case, the plaintiff, who was appointed master of an endowed school, in terms of a deed of trust establishing it, by the vicars of three specified parishes, commenced an action against the two vicars who had signed the notice of his dismissal and moved for an interlocutory injunction to restrain them from removing him from his office. The defendants demurred. They took the plea that the action was not maintainable as the consent of the Charity Commissioners to the bringing of the action u/s 17, Charitable Trusts Act had not been obtained. North J. held :

"In my opinion, that leave is not required for the present application. The plaintiff seeks to remain in the position of schoolmaster, to which he was validly appointed, and which he still holds unless that position has been effectually determined by what has taken place."

15. He said:

"The observation of Lord Justice Bowen (in the case of *Rendall v. Blair* (1890) 45 Ch. D. 139: 59 L. J. Ch. 641 already referred to in this judgment) apply exactly here, because the plaintiff's right is really a common law one depending on a contract, viz., the right to keep the place to which he has been validly appointed, until he is turned out of it by persons who have observed the necessary formalities for that purpose."

16. It has been said on high authority that the object of the Act (Charitable Trusts Act, 1853) was to stop enormous abuses which had grown up in the administration of charities in reference to proceedings which used to be instituted to the good of no one (per The Lord Chancellor Lord Cranworth in the matter of *Lister's Hospital* (1855) 43 E. R. 1202 : 6 D. G. M. & G. 184.

17. The object of Section 92 of the Code, and the sections like Section 73,

Madras Act and Section 54 of the Act which later took its place in the Statute Books of the Provinces is almost similar or rather the same I would say.

18. In the case of *Abdur Rahim v. Abu Mahomed Barkat Ali* 55 Cal. 519: A. I. R. 1928 P. C. 16 Lord Sinha, delivering the judgment of their Lordships of the Privy Council, spoke, as to the meaning of 8. 92 of the Code:

"It is unlikely that in a Code regulating procedure the Legislature intended without express words to abolish or extinguish substantive rights of an important nature which admittedly existed at that time."

19. This case arose out of a suit for declaration that the property belonged to a wakf. It was objected that the sanction of the Advocate-General had not been obtained. It was held that the relief prayed for was not within the Section 92 of the Code, and, to that extent, was not a suit of a representative character.

20. I shall next refer to a few cases of the Madras High Court dealing with the point, in issue, arising first u/s 92 of the Code and then u/s 73, Madras Act. There had been three Full Bench decisions of that Court dealing with applicability of Section 92 of the Code. They are: (1) *Appanna v. Narasingha* 46 Mad. 113: A. I. R. 1922 Mad. 17 ; (ii) *Saminatha Pillai v. Sundaresa Pillai* 14 M. L. W. 238: AIR 1921 Mad. 479 ; & (iii) *Tirumalai Tirupati Devasthanams Committee v. Krishnayya Shanbhaga* A. I. R. 1943 Mad. 466 ; I. L. R. (1943) Mad. 619 .

21. The latest of them is the case of *The Tirumalai Tirupati Devasthanams Committee Vs. Udiavar Krishnayya Shanbhaga and Others*, . The facts of that case were that the trustee of a certain temple having had, qua trustees, the right of recovering from the trustees of another temple moneys which the latter had collected, on behalf of the former temple, filed a suit against the latter to compel them to render account of receipts and to deliver what was found due. They had not clothed themselves with the sanction of the Advocate-General. The relief that they prayed for in the suit was one of those enumerated in Section 92 of the Code and was in relation to a trust fund. The question arose if Section 92 of the Code was applicable. The Full Bench decision of that Court, *Swaminath Pillai v. Sundaresa Pillai* 14 M. L. W. 238 : A. I. R. 1921 Mad. 479 was relied upon in respect of the proposition that the case fell u/s 92. This case, however, was distinguished by Leach C.J., who delivered the judgment of the Full Bench, with the following words:

"While it may be accepted that the general trustee of a temple may not sue a special trustee except under the provisions of Section 92, when the general trustee is seeking relief, which, if granted, will lead to a change in the management of the special trust, it is quite a different matter when the general trustee seeks to recover for the benefit of the temple moneys in the hands of the special trustee, which the special trustee is in duty bound to pay over to the general trustee."

22. His Lordship quoted with approval the observation of Kumarswami Sastriar J.

in the case of Appanna Poricha Vs. Narasinga Poricha and Others, . that is:

"Directing account and enquiries in Clause (1) (d) of Section 92, should be confined to suits by the Advocate-General or by two or mote persons with his consent, against all the trustees for an account of their management, and not one or more trustees against others, as each trustee has a right to call upon the other to account to him for trust funds which he has received, even though the other trustee commits no breach of trust."

23. His Lordship also accepted the view taken by himself and Yardachariar J. in the case of Sanmukham Chetty v. Govinda Chetty I. L. R. (1938) Mad 39 : A. I. R. 1938 Mad. 92. This decision was to the effect that Section 92 of the Code deals merely with the procedure to be adopted in a representative suit for relief in respect of a public trust; that to come within the section, there must be a breach of trust or the necessity for the direction of the Court with regard to the administration of a trust; that there must be, at least, two plaintiffs (unless of course the Advocate-General himself sues) and the Advocate-General must give his sanction to the institution of the suit; and that it is not every suit claiming any of the reliefs specified in Sub-section (1) of Section 92, that should be brought with the consent of the Advocate-General, but those suits only which, besides claiming any of those reliefs, are brought by individuals as representatives of the general public.

24. The learned Chief Justice summed up the position accepted by the Full Bench in the following words:

"After hearing the arguments of learned counsel in the present case, we can see no reason for disagreeing with anything said in Sanmukham v. Govinda I. L. R. (1933) Mad. 39 : A. I. R. 1938 Mad. 92. On the other hand we find ourselves in fall agreement with the opinion of Vardachariar J. that in deciding whether a salt falls within Section 92, the Court must go beyond the reliefs and hare regard to the capacity in which the plaintiffs are suing and to the purpose for whioh the suit is brought. The judgment of the Privy Council in Abdur Rahim v. Abu Mahomad 55 Cal. 519 : A. I. R. 1928 P. C. 16 lends no support lor the opinion expressed by the Full Benah in Janaki Bai v. Vinayakar of Melmandai 68 Mad. 988 : A. I. R. 1935 Mad. 825 F. B.)."

Their Lordships overruled the Fall Bench decision reported in Janaki Bai v. Vinayakar Melmandai 58 Mad. 986 : A. I. R. 1935 Mad. 825.

25. A very illuminating passage occurring in the Fall Bench (Division Bench?) decision of Venku Chettiar v. Doraiswami Chettiar 14 M. L. W. 38 ; A. I. R. 1921 Mad. 403, is worth quoting:

"Section 92, governs not suits for vindicating the plaintiff's right of management and getting possession for the purpose of management of the trust-properties."

26. In the result, according to the settled view of the Madras High Court, a

trustee, as such, in enforcing any of the rights inherent in the position and status that he holds, did not then stand in need of Advocate-General's consent in order to commence an action for such reliefs as fall u/s 92 of the Code.

27. Next, I shall refer to the cases of that Hon'ble Court which are more directly in point. In the case of *The Manjeshwar Srimad Anantheshwar Temple Vs. M. Vaikunta Bhakta and Others*, ; Horwill J., after a careful review of the authorities, held that Section 73 of the Madras Act was modelled very closely upon Section 92 of the Code and that the type of suits contemplated by Section 73 of the Madras Act are precisely those contemplated by Section 92 of the Code and that a suit by trustee-in-office against ex-trustees for an account of their trustship with allegations of misfeasance, non-feasance and mal-feasance is maintainable under the general law, and that Section 73 of the Madras Act does not bar such a suit.

28. In the case of *Tayi Narasimha Rao, Executive Officer and Another Vs. Pasupaleti Suranna and Others*, Horwill and Bell JJ. held that Section 73, of the Madras Act is to the same effect as Section 92 of the Code, and its implications and therefore the decisions relating to Section 92 of the Code can usefully be employed in considering the meaning of Section 73. With regard to the suit which the plaintiff, a duly appointed trustee of a temple, brought for possession of temple lands in possession of the defendant who was de facto trustee prior to his appointment, their Lordships held that the suit was not one contemplated by Section 73 of the Madras Act. The plaintiff was not a person having an interest in the sense that he was a member of the public who wished to see that the temple and the trust-properties were properly administered but he was a person who was bound in law to recover the property having been appointed as trustee of it. He was endeavouring to exert his right to possession of the trust, property and to coat the defendant who, by reason of the plaintiff's appointment, had become no more or less than a trespasser.

29. In the case of *Vangipuram Venkatacharyulu Vs. Sri Rajah Vasireddi Harihara Prasad Bahadur Manne Sultan and Another*, Vardachariar J. held that the bar u/s 73 of the Madras Act is only in respect of suits relating to the administration or management of the trust, that is, proceedings against the trustee and not in respect of proceedings against the person who is wrongly in possession of the property in which the trust is interested. The suit in that case was brought by a trustee of a temple for a declaration that the defendant had acquired no right under the sale-deed taken by him on the ground that it was inalienable being burdened with a service to the temple; Vardachariar J. held that such a suit was not barred by Section 73 of the Madras Act.

30. In the case of *Vythilinga Pandara Sannadhi Vs. G. Ranganadha Mudaliar and Others*, it was held that suits merely to recover money found due by the defendant on the taking of accounts or to recover property belonging to the trust but in the possession of the defendant or to recover damages for a tort committed by the defendant would always be maintainable under the general

law, as they would not be suits relating to the administration and management of religious endowments.

31. In consideration of the premises aforesaid, I shall conclude that a suit in order that it may fall under the purview of Section 64, of the Act would not only embrace any one or more of the reliefs enumerated in it but would also relate to and be intimately connected with the administration and management of the trust and that it should have been commenced either by the Commissioner or by "person having interest in the trust."

32. "A person having interest in the trust," it has been strenuously urged, includes "a trustee" either hereditary or non-hereditary, or appointed within the meaning of the Act. Referring to the plain grammatical meaning of the terms, the argument may carry some measure of conviction ; but it is inconsistent with the scope of the section. The section purports to regulate the procedure for certain classes of actions. It lacks express words that would amount to cutting down substantive rights pre existing. Another aspect from which the construction of the section can be approached is that it enables certain persons to commence a suit in the interest of a trust in order to ensure its due administration and management. It can never be interpreted to have any reference to those who possess unfettered right of suit not only in fulfilment of their duties but also in virtue of their status and for the purpose of vindication thereof. A trustee is the person who, *virtue officii*, has right of management and possession of the trust-property and such rights do include right of suit. It is open to a Legislature to cut down those rights and to reduce him to the position of a "person having interest" and then to clothe him with a permissible right of suit. But the question is has the Legislature thought fit to do so? A trustee's right and obligations have been left unimpaired for the purpose of this Act (*vide* Section 14). The only curtailment, if at all, of his rights may be his subjugation to all lawful directions (under the provisions of the Act) which a competent authority may issue in respect of the administration of the affairs and application of the funds and properties of an endowment. Strictly speaking, this may not be a curtailment, as under the previous law, he was subject to the direction of the Court when invoked. He has been enjoined to deal with the affairs, funds or properties of an endowment with such care as a man of ordinary prudence, if they were his own. In Sub-section (a) of the section, his powers incidental to the provident and beneficial management of the religious endowment and to do all things necessary for the due performance of the duties imposed upon him have been left unimpaired. In view of this provision, it would be begging the question to say that under the provisions of Section 54 of the Act, he is endowed with right of suit subject to consent of the Commissioner. It is hardly likely that the Legislature would place him at the mercy of what (to use words of Bowen J. in the case of *Rendall v. Blair* 1890 45 Ch. D. 139 : 59 L. J. Ch. 641 may turn out to be an irresponsible tribunal or an irresponsible department of the State in order that he may exercise his common of right. That the Legislature did not so intend as to the meaning and operation of Section 54 in relation to the rights and

obligations of a trustee is abundantly clear from the definitions of the two words "(i) person having interest, and (ii) trustee" vide Section 6 (10) and (14). For the purpose of the Act, they belong to the categories in relation to their respective status as assigned to them. A trustee has certain obligations attached to its office, and these, mainly if not solely, correlate to his rights. Throughout the Act, these terms are used in juxta-position as describing two separate entities. The sections, in which they have been assigned different roles, are 20, 93, 38, 39, proviso to Section 39 (c), 41 and 42 (1) and (2) amongst many others. In Sub-section (2) of Section 20, any person having interest in the muth or temple as it is provided therein, has to obtain the consent of a trustee or a Commissioner in order that he may apply to the Collector for resumption of an inam. "Any person having interest" has been used in several sections in different parts of the Act. The object of defining a word for the purpose of the Act is to ensure unanimity of meaning and uniformity of the provisions. According to Section 33 (1), the Commissioner in settling a scheme has to consult "the trustee" and "the person having interest." If the "trustee" was included within the person having interest, "the Legislature would be guilty of redundancy in wording the section in the manner in which it has been done. The same criticism can be employed to Section 39 (1). The proviso to Section 39 (c) would make predominately clear that "trustee" can never mean "a person having interest." The proviso is to the effect that "persons having interest" in a muth can be associated with "trustee or trustees" for participating or assigning in its administration. I do not wish to dilate upon this point any farther and it is self-evident according to the texture and frame-work of the Statute.

33. In short, Section 54 of the Act provides for a measure of expediency. It enables persons other than those who have implicit In their statute right of suit to sue for various reliefs beneficial to and called for by the trust interest. This is by way of abundant caution. A trust is preeminently represented by the trustee. Qua trustee, he has certain right and obligations. He, however, is not irremovable nor immune from interference. When he derelicts from his duty to the impairment of trust-interest, the law in Section 54 provides a machinery for its protection a factor that needs inevitably a right of suit. Such suits are ex concessio representative suits or else there may be endless litigation on the same subject-matter entailing enormous abuses of trust-funds. Who can represent the public or the public-trust is specified in the section. One of such persons is Commissioner who represents the sovereign power, who is the ultimate arbiter in the matter of upkeep of public trust, and others are persons having interest as defined "in the Act. The definitions of "trust" and "person having interest" are mutually exclusive. As in the case of next friend or guardian-ad-litem of an infant, the law provides minimum of requirements to be fulfilled before one can represent the trust or the public, as the case may be, in a suit having for its object certain reliefs specified in the section. A trustee, by far at the least, does not require any clothing of powers for the purpose, as he already virtue officii owns them.

34. The present is a suit instituted by a trustee as against a stranger to the trust foe having it declared that the order of attachment and sale of the trust-property is invalid and not binding upon the trust, and, as ancillary relief, he wants to recover possession thereof. In substance, it is a suit in ejectment which he is bound to maintain in fulfilment of his duties qua trustee. From the nature of the suit and from his status, the suit is outside the purview of Section 54 of the Act. I should, therefore, hold that the view taken in Upendra Prosad Padhi and Another Vs. Sri Sri Akhandaleswar Mahadeb and Others, is correct and answer the questions referred in the following manner : (1) (a) A "trustee," whether hereditary or not, of a religious endowment, is not "a person having interest" within the meaning of Sub-section (1) of Section 54 of the Act; (b) Does not arise. Even if it arises, I would answer it in the negative ; (a) My answer would be in the negative and (3) Does not arise, and the question need not be answered.

Jagannadhadas, J.

35. After having had the benefit of reading the learned and exhaustive judgment of my Lord the Chief Justice (if I may say so with respect), I do not think I need do anything more than express my agreement with the same. I have never had any doubt about the correctness of the general principle as expounded by my Lord the Chief Justice in its application to Section 92, Civil P. C. The only reason for reference of this case to the Full Bench was the doubt raised with reference to the definition of "person having interest" as comprehensive enough to include "a trustee." But as has been pointed out by my Lord the Chief Justice, the Act itself uses in various sections the "trustee" and "the person having interest" as distinct. It is therefore clear that the opposite view suggested is untenable.

36. I think it right, however, to notice one matter, while expressing my full concurrence with the judgment of my Lord the Chief Justice. My Lord has expressed the view that the relief specified in Clause (a) of Sub-section (1) of Section 54 is either incidental or cognatic to the relief of vesting any property in a trustee. I am inclined to agree with it, but would prefer not to express any final view on the matter as the question has not been raised and argued before us.

Narasimham, J.

I agree with my Lord the Chief Justice.