

(1923) 08 MAD CK 0053
In the Madras High Court

C.K. Subramania Mudaliar and Others	APPELLANT
Vs	
Parsuramier and Others	RESPONDENT

Date of Decision : 16-08-1923

Acts Referred:

Citation : AIR 1924 Mad 644 : 79 Ind. Cas. 953

Hon'ble Judges : Spencer, J;Devadoss, J

Bench : Division Bench

Judgement

1. We feel constrained to interfere with the District Judge's order granting leave for the institution of a suit in the form in which that leave has been given, as it appears that he has not exercised the power conferred on him by Section 18 of Act XX of 1863 in the manner contemplated by that provision of law.

2. The allegations are extremely vague and indefinite and the charges 2 to 10 as to breach of trust are no more specific than the respondents accusations. The sums of money kept uninvested in 1st counter-petitioner's hands, or lent to strangers, other sums said to be unaccounted for, the items of temple property dealt with contrary to the interests of the trust are not specified, with the consequence that the suit may be based on charges which have not been clearly made the subject of the order. The giving of sanction against any or all of the respondents, leaving the petitioners to choose which of them they will proceed against, is also improper as it supplies the petitioners with an instrument for extortion and makes it possible for them to let off the persons most responsible and get other members who are less guilty to account severally for the trust property. The Judge's order is, therefore, set aside and he is directed to make a fresh enquiry after calling upon the petitioners to give definite particulars of the charges made by them and after affording the counter-petitioners an opportunity to explain them.

3. He may then grant leave to the petitioners to proceed upon any charges which he finds to be prima for established against such of the counter-petitioners who in the opinion of the Judge are to be held responsible.

4. In making the above enquiry it will be open to the Judge under his powers given by Section 19 to have the accounts of the Committee produced and inspected in Court by the parties or their Vakils.

5. But the report of the two High Court Vakils who were asked to enquire into the allegations is not evidence, as the Judge is not entitled to delegate to others the duty of forming an opinion upon the facts before him, and the Vakils in question were not appointed as Commissioners to make a local investigation upon any matter which could not have been enquired into in open Court with equal convenience. The petition is remanded for fresh enquiry.

6. The respondents are directed to pay the costs of the petitioners in this Court and to bear their own.