

(1927) 04 MAD CK 0027
In the Madras High Court

Devi Ramanujacharyulu and Others

APPELLANT

Vs

Alapati Sriramulu and Others

RESPONDENT

Date of Decision : 28-04-1927

Acts Referred:

Citation : AIR 1927 Mad 1033 : (1927) 26 LW 581

Judgement

1. This is an appeal against the decree in a suit filed for the removal of the defendants-appellants from the trusteeship of the plaint temple and for the framing of a scheme. The lower Court has ordered the removal of the trustees and framed a scheme. Objection is now taken mainly on the ground that the suit is bad as not being in accordance with the sanction granted to the plaintiffs by the Collector. In that sanction the Collector granted permission to oust the present trustees by filing a scheme suit. The contention for the appellants is that, under Ss. 92 and 93, Civil P. C., under which sections this sanction was granted, the various reliefs mentioned in Section 92 are mutually exclusive, and that when a suit is filed for any one of these reliefs there must be specific sanction to that effect. The logical effect of this argument is that if sanction is given under Clause (g) for settling a scheme no orders could be passed by the Court directing accounts in the future or declaring what portion of the trust property shall be allocated to any particular object, or authorizing any part of the trust property to be let, etc. But in a scheme for the management of a temple these are almost necessary incidents, and certainly proper incidents, in the management thereof; consequently it cannot be held that all these reliefs are mutually exclusive when there is no provision to that effect in the section. In the present case sanction was given to file a scheme suit, namely a suit to settle a scheme for the proper management of the plaint temple. In framing such a scheme a Court must undoubtedly provide for some one to manage the institution, and in so doing would be appointing a trustee under Cla. (b) to Section 92. The appointment of a new trustee is the chief ground of the appellant's complaint, for he cannot contend that sanction was not granted for the removal of the defendants themselves. Such a complaint, as shown above, has no force. The only prayer in

that suit, to which exception can be taken, is that which asks the trustees to render an account of their management, but that prayer was withdrawn and has not been granted.

2. Mr. Venkatarama Aiyar argued that that withdrawal is not sufficient to cure the defect, but that the suit should have been dismissed in toto, and relies on several cases in support of this proposition. The first one is *Srinivasa v. Venkata* [1888] 11 Mad. 148 where it was held that when a sanction had included a claim for damages against the trustees, and such a claim had been omitted in the plaint, the suit was not within the terms of the sanction. In *Venkatesha v. Ramaya Hegade* [1915] 38 Mad. 1192 where a sanction had been granted to two persons and one alone sued, it was held that the suit was bad; and similarly in *Bhagavanarayana v. V. Perumalacharyulu* [1915] 29 M. L. J. 231 where two plaintiffs sued out of four to whom sanction had been granted. The principle underlying all these cases is that where it appeared to the Court that, if the plaint, as presented in Court, had been before the authority granting the sanction, and it was possible that the sanction would not have been accorded to such a plaint, that plaint was bad. Here the facts are quite different. The suit is in accordance with the sanction, but an additional prayer which has not been sanctioned has been added and subsequently removed. Several similar cases have been cited, and we may refer to *Syed Hussain v. Collector of Kaira* [1897] 21 Bom. 257 *Niza-mul-Haq v. Muhammad Oshak* [1919] 50 P. W. R. 1919 and appeal No. 373 of 1924 of this Court. In all these cases it was held, not that the suit was bad, but that the extra reliefs sought for could not be granted, but the other prayers were allowed. In the present case the lower Court has already disallowed the extra relief and, therefore its decree is correct.

3. On the merits, of the case it was sought to be argued that the plaint property was the archaka service inam of the defendants and not the property of the temple. At the time of the inam enquiry, statements were taken from various persons and we have the inam statement Ex. A and the Inam Register, Ex. B. From these two documents it is clear that the inam was granted to the temple and not to the archakas. At the time of the inam enquiry in 1860 the defendants' ancestors were in actual possession of the lands and were parties to the enquiry. When therefore the matter was decided they must have known that the lands belonged to the temple and not to them. The defendants have been unable to adduce any evidence to show that they bona fide believed that they had a right to the property or that circumstances have changed since 1860. Inasmuch as they have set up their own right as against the temple and also have made alienations of the property it is clear that they have been properly removed from the trusteeship. It is useless for them to contend, even if they were not Archakas which is another disqualification for the office of trustee, that they ought to be appointed now. A scheme has been framed by the lower Court and the only objection taken by the appellants is that the word "faslis" in Clause 2 is wrong. A perusal of the decree shows that this is a clerical error for "families" and it may be corrected accordingly. There are, however, serious objections to the scheme

as framed by the lower Court e. g., the provisions made in it for the exercise by the Court of superintendence over the temple. It is not the Court on which this duty should fall, for it is within the province of the various temple committees appointed throughout the presidency. Under this scheme, therefore, for the word "the Court" there will be substituted the words "the temple committee having jurisdiction over the suit village" in paragraph 1 and in the succeeding paragraphs where the word "Court" occurs the words "the said temple committee" shall be substituted. As a result of this para. 20 must be struck out and we also think that paras. 18 and 19 must be removed as they confer a right of procedure which is not strictly in accordance with law.

4. Objection has been taken to the appointment of the three plaintiffs as the new trustees, but the lower Court has apparently exercised its discretion in the matter and we have no materials on which we can say that the discretion has been improperly exercised. With the above modifications the decree is confirmed and the appeal is dismissed with costs.