
(1928) 12 MAD CK 0026
In the Madras High Court

Mundancheri Koman

APPELLANT

Vs

(Thachangath Puthan Vittal) Achuthan Nair and Others

RESPONDENT

Date of Decision : 14-12-1928

Acts Referred:

Citation : AIR 1929 Mad 308

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—In these petitions for leave to appeal to His Majesty in Council a preliminary objection has been taken that no appeal lies as the

order of this Court is in the nature of an interlocutory order and is not final order within the meaning of Section 109, Civil P C. The suit was

brought by the plaintiffs u/s 92, Civil P.C. alleging that the suit temples are private temples and that the defendants as trustees were liable to

account for alleged breach of trust and asking for the framing of a scheme. The only issue that was tried in the lower Court was whether the suit

temples were private temples or public temples and it was found that they were private temples. On appeal to this Court that finding was upset, it

being held that the suit temples were public temples. It is contended for the petitioners that the order of the Court was a final adjudication between

the parties and finally determined the right of the defendants and therefore it is final within the meaning of Section 109, Civil P.C. It, no doubt, has

the effect of holding that the defendants are not the owners of the temples as private trustees, which was the case set up by them, but that they are

trustees of public institutions, but the order has not the effect of making the defendants liable to render account as prayed for unless other facts are

proved viz., that: they have been guilty of breach of trust. The finding therefore that the temples, are public temples does not finally dispose of the

matter in dispute between the parties. It was held in *Tiru Narayana v. Gopalaswami* [1891] 13 Mad. 349 that, when the validity of an adoption

was finally decided and that that finding did not finally dispose of the suit, it was an order which was not appealable to the Privy Council. That case

was followed in *Venkataranga Rao v. Narasimha Rao* [1915] 88 Mad. 509 and *V. Mangayya v. Venkataramana Murthi* [1918] M.W.N. 844. It

is contended that that decision has in effect been overruled by the Privy Council in *Rahimbhoy Habibbhoy v. G.A. Turner* [1891] 15 Bom. 155

where it was held that a decree directing the defendant to account to the plaintiff was a final order as there was nothing further to be determined by

the parties to make him accountable. The facts of that case are very different from the one before us, where the defendant has not yet been called

upon to account because his liability to do so has not been proved.

2. The only case, which supports the petitioner's contention is *Sathappa Chetty v. Subramanian Chetty* AIR 1922 Mad. 510 in which it is

remarked that the case in *Ishvargar Budhgar v. Caudasama Amarasang* [1884] 8 Bom. 548, on which *Tiru Narayana v. Gopalaswami* [1891] 13

Mad. 349 was based, was not accepted as good law by Lord Hobhouse in *Rahimbhoy Habibbhoy v. C.A. Turner* [1891] 15 Bom. 155 but on a

reference to the judgment in that case it appears that Lord Hobhouse made no mention whatever of the case in *Mahant Ishvargar Budhgar v*

Gaudasama Amarasang [1884] 8 Bom. 548 although it had been utilized in the argument for the respondent. The facts of *Ishvargar Budhgar v*

Caudasama Amarasang [1884] 8 Bom. 548 are entirely different from those of *Rahimbhoy Habibbhoy v. C.A. Turner* [1891] 15 Bom. 155 and it

is difficult to see how it can be said that the latter decision disapproves of the former. In this Court we find that *Tiru Narayana v. Gopalaswami* has

been consistently followed and *Ishvargar Budhgar v. Gaudasama Amarasang* on which it relies was referred to and apparently approved in

Habbib-un-nissa v. Munawar-un-nissa [1903] 25 All. 629 and *Ahmad Hussain v Govind Krishna Narain* [1911] 83 All. 891 and we are of

opinion that this case is governed by the principle there laid down and must refuse to grant leave to appeal, he Civil Miscellaneous Petitions are

dismissed with costs. Vakil"s fee Rs. 250. The stay order is cancelled.