
(1928) 12 MAD CK 0025
In the Madras High Court

Mundarcheri Koman alias Mundancheri Mootha Nair	APPELLANT
Vs	
Thachangath Puthan Vitill Achuthan Nair and Others	RESPONDENT

Date of Decision : 14-12-1928

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109

Citation : 117 Ind. Cas. 300

Hon'ble Judges : Phillips, J;Odgers, J

Bench : Division Bench

Judgement

1. 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 a final order within the meaning of Section 109, Civil Procedure Code. The suit was

brought by the plaintiffs u/s 92 of the CPC alleging that the suit temples were public 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 rights of the defendants and, therefore, it is final within the meaning of Section 109, Civil Procedure Code. 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 *Tirunarayana, v. Gopalasami* 13 M. 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 *Nayari Venkata Ranga Row Garu Vs. Raja Keesara Venkatarama Narasimha Row and Others*, and *Vaddiparthi Mangayya v.*

Vaddiparthi Venkataramana Murthi 48 Ind. Cas. 132 : (1918) M.W.N. 844. It is contended that that decision has in effect been overruled by the

Privy Council in *Rahimbhoy Habibbhoy v. Turner* 15 B. 155 : 18 I.A. 6 : 15 Ind. Jur. 35 : 5 Sar. P.C.J. 639 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. The only case which supports the petitioner's contention is *Sathappa Chetty and Others Vs. S.N.*

Subramanian Chetty and Others, in which it is remarked, that the case in *mahant Ishargar Budhgar v. Caudasama Amarsang* 8 B. 548 on which

Tirunarayana v. Gopalasami 13 M. 349 was based, was not accepted as good law by Lord Hobhouse in *Rahimbhoy Habibbhoy v. Turner* 15 B.

155 : 18 I.A. 6 : 15 Ind. Jur. 35 : 5 Sar. P.C.J. 639 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. Caudasama Amarsang* 8 B. 548 although it had been utilised in the argument for the

respondent. The facts of *Mahant Ishvargar Budhgar v. Caudasama Amarsang* 8 B. 548 are entirely different from those of *Rahimbhoy Habibbhoy*

v. Turner 15 B. 155 : 18 I.A. 6 : 15 Ind. Jur. 35 : 5 Sar. P.C.J. 639 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 *Tirunarayana v. Gopalasami* 13 M. 349 has been consistently followed. *Mahant Ishvargar Budhgar v.*

Caudasama Amarsang 8 B. 548 on which it relies was referred to and apparently approved in *Habib-un-Nissa v. Munawar-un-Nissa* 25 A. 629 :

A.W.N. (1903) 159 and *Ahmad Husain v. Gobind Krishna Narain* 9 Ind. Cas. 932 : 33 A. 391 : 8 A.L.J. 192 and we are of opinion that this

case is governed by the principle there laid down and must refuse to grant leave to appeal. The Civil Miscellaneous Petitions are dismissed with costs. (Vakil's fee Rs. 250.).

2. The stay order is cancelled.