

(1892) 04 MAD CK 0023
In the Madras High Court

Strinivasa Ayyangar and Others

APPELLANT

Vs

Strinivasa Swami

RESPONDENT

Date of Decision : 06-04-1892

Acts Referred:

Citation : (1893) ILR (Mad) 31

Hon'ble Judges : Parker, J; Arthur J.H. Collins, J

Bench : Division Bench

Judgement

1. The plaint in this suit was filed, with the consent of the Advocate-General, u/s 539 of the Code of Civil Procedure, and asks for two reliefs--(1)

for a declaration that defendant is not the duly appointed successor to the late head of the mutt, who died on 10th August 1888, and (2) that the

Court will fill up the vacancy by appointing a duly qualified disciple of the late jheer as his successor.

2. It is admitted that the defendant is in possession of the mutt and its properties. The learned Judge in the Court below has dismissed the suit on

the ground that Section 539 of the CPC does not apply to suits brought against a trespasser. Against this view it is argued that plaintiffs have a right

to sue whether the sanction of the Advocate-General is given or not, and that it is necessary the Court should make an appointment of a successor

to the late jheer, in order that there may be some person qualified to give religious instruction to the disciples of the mutt, and clothed with the

rightful authority to sue to eject the trespasser and to recover the mutt and its properties.

3. It appears to us that this suit is not of the character to which Section 539 of the CPC was intended to apply. That section merely enables two or

more of the general public having an interest in a trust, and having obtained the consent of the proper officer to sue the trustees to enforce the

better administration of the trust. It thus confers a right of suit against trustees which did not previously exist, and is not applicable to a suit brought

by the disciples of a mutt with the real object of ejecting a trespasser, which right of suit must have existed quite independently of the enactment of

Section 539. In addition to the unreported case of Arunachella Chetti v. Muttu Chetti Second Appeal No. 194 of 1880 unreported relied on by

the learned Judge, we may refer to Vishvanath Govind Deshmane v. Rambhat ILR 15 Bom. 148 and Giyana Sambandha Pandara Sannadhi v.

Kandasami Tambiran ILR 10 Mad. 375, from which it is clear that Section 539 does not apply to suits brought against trespassers.

4. It is then urged that the two plaintiffs have substantial individual interest of their own, and have a right to sue for the reliefs asked for, even though

the consent of the Advocate-General be regarded as an unnecessary formality. It appears to us that it is not necessary to determine in this suit

whether the provisions of Section 30 of the CPC apply. Assuming that the two plaintiffs can sue alone without joining other disciples under the

provisions of Section 30, the present suit must fail u/s 42 of the Specific Relief Act, inasmuch as the plaintiffs do not seek the consequential relief to

which on their plaint they would be entitled. On the facts stated by them they are entitled to ask that some duly qualified person be appointed as

the head of the mutt and approved by the Court, and that the mutt and its properties be handed over to the person so appointed, the defendant

being ejected therefrom. A similar course was approved by the High Court in Kadambi Strinivasa Charlu v. Aubudhi Appeal No. 10 of 1887

unreported, and is evidently necessary to avoid multiplicity of suits.

5. We think the fee fixed in the District Court was too low and will allow Rs. 50.

6. Upon these grounds we confirm the decree of the Court below and dismiss this appeal with costs.