
(1949) 08 MAD CK 0001
In the Madras High Court

T. Ganapathia Pillai

APPELLANT

Vs

N. Somasundaram Pillai and Others

RESPONDENT

Date of Decision : 19-08-1949

Acts Referred:

Hindu Religious Endowments Act — Section 73

Citation : (1949) 2 MLJ 602

Hon'ble Judges : Mack, J

Bench : Division Bench

Judgement

Mack, J.—Petitioner is a defendant who seeks to revise an order by the learned Subordinate Judge of Mayavaram declining to decide first

an issue of jurisdiction raised by the petitioner, as a preliminary issue and directing the suit for reasons he gave to be disposed of once and for all

on all issues. The issue of jurisdiction appears to be one of mixed law and fact, namely, whether the suit filed u/s 92, Civil Procedure Code, with

the consent of the Advocate-General does not also come within the scope of Section 73 of the Hindu Religious Endowments Act requiring

sanction of the Hindu Religious Endowment Board. There are said to be both secular and religious trusts mingled in a general trust being

administered by the defendant who has been acting as a trustee of a longstanding family trust. Under Order 14, Rule 2, Civil Procedure Code, a

Court has ample discretion to try an issue of law if it is of opinion that the case or any part thereof may be disposed of on issues of law only and for

that purpose may postpone the settlement of issues of fact till after the issues of law have been determined.

2. Piecemeal trial of suits have been deprecated in many decisions. In the prolix pleadings which characterise mofussil suits every conceivable legal

position is taken as to jurisdiction and maintainability and so on. They are frequently put forward without much basis only to be abandoned at the time of actual hearing. Trial Judges have to be constantly on guard against falling into the trap of giving findings on preliminary issues of law which may be taken up to higher Courts in appeal or in revision with the object of protracting the litigation indefinitely at the instance of a defendant. I am far from saying that the issue of jurisdiction raised in the present case is of such a nature. Mr. Jagadisa Iyer has drawn my attention to a Patna decision by Courtney-Terrell, C.J., in Janki Das and Another Vs. Kalu Ram and Another, , in which he interfered in revision and directed an issue of law framed in the suit as to whether it was barred by the principle of res judicata to be tried first as a preliminary issue. He observed that to refuse to exercise revisional jurisdiction in a case of that kind might give rise to the greatest hardship and that the injured party might be put to enormous expense in having issues elaborately tried which were quite unnecessary if the suit was in fact barred. The discretion that a trial Court is called upon to exercise under Order 14, Rule 2 is a nice one to be determined by the facts of each case, in other words, whether the preliminary issue of law raised would be sufficient and is so clear cut that it will decide the suit finally once and for all. Mr. Venkatarama Aiyar for the respondents points out that the defendant filed a Civil Miscellaneous Appeal (C.M.A. No. 14 of 1949) in this litigation against the appointment of a receiver. That appeal was dismissed. I do not desire to make any observation as regards the merits. The learned Subordinate Judge has in his order referred to the assurance of the learned vakil for the plaintiffs that very little oral evidence had to be taken on all the issues which had to be decided mainly on documents which were in Court. I am unable to see in what manner the learned Subordinate Judge has acted with material irregularity in the exercise of his discretion under Order 14, Rule 2, Civil Procedure Code. In fact, I think, in the circumstances he has properly exercised that discretion.

3. The petition is dismissed with costs.