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**(1942) 11 MAD CK 0012**  
**In the Madras High Court**

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| The Manjeshwar Srimad Anantheshwar Temple | APPELLANT  |
| Vs                                        |            |
| M. Vaikunta Bhakta and Others             | RESPONDENT |

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**Date of Decision :** 02-11-1942

**Acts Referred:**

Madras Hindu Religious Endowments Act, 1923 — Section 73

**Citation :** AIR 1943 Mad 228 : (1942) 2 MLJ 757

**Hon'ble Judges :** Horwill, J

**Bench :** Division Bench

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## Judgement

Horwill, J.—The suit out of which this appeal arises was one under the general law by the trustees in office against ex-trustees for an account

of their trusteeship, with allegations of misfeasance, non-feasance, and malfeasance.

2. The principal question that falls for decision is whether Section 73 of the Madras Hindu Religious Endowments Act bars such, a suit. The

learned Subordinate Judge gave a precis of each of the numerous cases cited before him and then proceeded to draw his general conclusions.

They were that the suit could not be brought in its present form and that the remedy of the plaintiffs was to get the accounts audited and to sue for

the amount shown to be due. The learned District Judge in appeal did not attempt to discuss the various decisions. He says:

I have been taken through a long chain of decisions on both sides and the matter is exceedingly intricate and difficult to come to a conclusion upon

as slight differences in the facts of each case appear really to have determined the conclusion in the particular case. But the final effect of my

consideration of the matter leads me to the conclusion that the correct proposition to follow is that of Mr. Justice Varadachariar in Sundara Ayyar

and Others Vs. Morari Varada Ayyar and Others, , that Section 73 contains, a general prohibition that no suit in respect of the management or administration shall be maintained except in accordance with the provisions of the Act.

He found that Kovalakudi Singam Aiyangar and Others Vs. K. Kasturiranga Aiyangar and Others, was to the same effect. It is conceded here that neither of these decisions has any bearing on the matter now in issue.

3. The argument of the respondents is divided into two parts: the first is that the general scope of Section 73 of the Act is not the same as Section

92 of the Code; while the other is with regard to the meaning of the expression.

No suit shall be instituted except as provided by this Act.

On the first point there can be no doubt; because all the cases quoted below emphasise the fact that the application of Section 92 of the CPC was

definitely excluded from the limited class of trusts with which the Hindu Religious Endowments Act was concerned because its provisions were

embodied in Section 73 and other sections of the Act. That means that Section 73, as Section 92 of the Code of Civil, Procedure, applies to suits

by persons interested in the trust against a person who purports to administer the trust. This was emphasised in Venku Chettiar v. Doraiswami

Chettiar (1921) 14 L.W. 38 by Napier and Odgers, JJ., who held that Section 92 governs only suits for the vindication of the rights of the public in

public charitable trusts and not to suits for vindicting the plaintiff's right of management and getting possession for the purpose of management of

the trust properties. Mr. Rajah Aiyar concedes that a suit of the nature that we are now considering would not come within the scope of Section

92, which relates to suits against trustees by persons interested in the institution and not by trustees against other persons; and his contention that

the scope of Section 73 is different from that of Section 92, Civil Procedure Code, does not find support in any judicial decisions. In Chanduk

Chand v. Vedachala Chettiar (1931) 62 M.L.J. 180 : ILR 55 Mad. 549 for example, Beasley, C.J., said that there was nothing in Section 92 Civil

Procedure Code, which had not been taken out of that section and placed either in Section 73 or other sections of the Madras Hindu Religious

Endowments Act and that if the suit was not within the scope of Section 92, Civil Procedure Code, then it would not be governed by the Hindu

Religious Endowments Act. In Venkatacharyulu v. Harihara Prasad (1935) 42 L.W. 757. Varadachariar, J., expressed his opinion that Section 73

relates to suits against trustees.

4. The earliest of the cases dealing with the second point is His Holiness Srila Sri Vythilinga Padara Sannadhi Avergal, Athinakarthar of

Thiruvaduthurai Athinam Vs. The Temple Committee and Another, , which is in respect of a suit to establish the rights of a hereditary trustee. The

same argument was advanced there as here, namely, that the suit related to the management and administration of the institution and that Section

73 was therefore a bar. The learned Judges pointed out that Section 73 of the Madras Hindu Religious Endowments Act was modelled very

closely upon Section 92, Civil Procedure Code, and that the type of suite contemplated by Section 73 of the Act are precisely those contemplated

by Section 92 of the Code. With reference to the type of case they were considering they held that a suit in respect of the administration or

management did not include a claim for personal reliefs. They discussed the meaning of the words on which much argument was based there as

here, namely:

No suit shall be instituted except as provided by this Act,

and said that if one gives these words a strict interpretation, then it might be urged that as even a suit relating to the hereditary trusteeship was

connected with the management of the temple, it was barred by Section 73 of the Act; but they pointed out that this clause might be interpreted in

another way, namely, that: "No suit shall be instituted contrary to the provisions of this Act.

The learned Judges thought that meaning preferable to that put forward in appeal that no suit could be instituted unless provided for by the Act;

because a literal interpretation would mean that large classes of important disputes could not be decided by any Court at all.

5. The next case in point of time was Chanduk Chand v. Vedachala Chettiar (1931) 62 M.L.J. 180 : ILR 55 Mad. 549. That does not have much

to say with regard to the second part of Section 73 of the Act; but the learned Judges were clear that the purpose of Section 73 (2) [which is now

Section 73 (3)] was the same as Section 92 (2) of the Code of Civil Procedure, i.e., it bars suits which would fall within the scope of the first part

from being tried otherwise than in accordance with that section. The wording of Section 73 of the Act had to be varied from that of Section 92 of

the Code, because it was intended to affect not only the first part of the section but also the other sections of the Code.

6. In *Vasudevan AdisERPAd v. Bhavadasan Nambudri* ILR (1933) Mad. 315, Ramesam and Cornish, JJ., were considering a suit against the

trustees--which of course fell within the primary purpose of Section 73 of the Act--for the removing of the trustees, framing a scheme, taking

accounts, etc. Most of the discussion was with regard to, the taking of accounts, which is to be found in Section 92 of the Code, but is omitted in

Section 73 of the Act; and they considered that that omission was deliberate and that the legislature did not intend complicated suits of that nature,

relating perhaps to large sums of money, to be tried on a court-fee of Rs. 50 under the Hindu Religious Endowments Act. So they held that the

suit--which was filed u/s 73 of the Act--could not be decreed with regard to that particular relief. They seemed to be of opinion, however, that

because the clause of Section 92 of the Code relating to taking accounts had been excluded from Section 73 of the Act, the plaintiff would have

had a remedy under the general law if he had paid sufficient court-fee. That opinion strongly favours the appellant; for the present suit has not been

filed u/s 73 of the Hindu Religious Endowments Act. Both the learned Judges expressed an emphatic opinion that Section 73 (2) of the Act as it

then was and Section 73 (1) should be read together and that Section 73 (2) was therefore intended only as a prohibition against the filing of suits

covered by Section 73 (1) and other sections of the Code in any manner contrary to the provisions of that section. Any suit not covered by

Section 73 (1) of the Act or some other section of the Code could be tried under the general law.

7. In *Vythilinga Pandara Sannadhi v. Ranganatha Mudaliar* (1933) 66 M.L.J. 98 : ILR 57 Mad. 362, Ramesam, O.C.J. and Venkatasubba Rao,

J., were considering a suit for the administration and management of a Kattalai. Much the same problems were discussed as in *Vasudevan*

*AdisERPAd v. Bhavadasan Nambudri* ILR (1933) Mad. 315. They held that a suit in respect of the administration or management of a Kattalai was

not covered by Section 73(1) and that therefore a suit with respect to a Kattalai could not be decreed under that section but only under the general

law. They reaffirmed the principles laid down in *Vasudevan Adiserpad v. Bhavadasan Nambudri* ILR (1933) Mad. 315.

8. It will be seen therefore that from His Holiness Srila Sri Vythilinga Padara Sannadhi Avergal, Athinakarthar of Thiruvaduthurai Athinam Vs. The

Temple Committee and Another, , onwards there was a considerable body of opinion that the general scope of Section 73 of the Hindu Religious

Endowments Act is the same as Section 92 of the Code of Civil Procedure, that the last paragraph of Section 73 of the Act is meant to refer only

to the classes of cases referred to in Section 73 (1) and other sections of the Act, and that suits which do not fall within the scope of these sections

can be tried under the general law. I have not come across any case in which these opinions were dissented from or contrary opinions expressed.

9. It follows, therefore, that the decisions of the Courts below are wrong and that this second appeal has to be allowed. The suit will therefore be

remanded for trial on the merits. The court-fee paid on the appeal in this Court and in the lower appellate Court will be refunded to the appellant.

The costs in this Court and the lower appellate Court will abide the result.