

(1933) 05 MAD CK 0026
In the Madras High Court

Trikaderi Manekal Vasudevan Adiserpad and Others	APPELLANT
Vs	
Thekkumparambath Manakal Bhawadasan Nambudiri and Others	RESPONDENT

Date of Decision : 11-05-1933

Acts Referred:

Citation : 148 Ind. Cas. 1155

Hon'ble Judges : Ramesam, J;Cronish, J

Bench : Division Bench

Judgement

Ramesam, J.—This is an appeal against the decree of the District Judge of South Malabar in Order Section No. 3 of 1929. The suit was filed u/s 73 of the Madras Hindu Religious Endowments Act, II of 1927. In the plaint the following reliefs were prayed for:

- (a) removing such of the defendants from their places as trustees of Tirumullapath temple as the Court finds to be guilty of fraud or gross mismanagement;
- (b) framing a scheme of management for the Tirumullapalli temple in Karalamanna Amsorn, Walluvanad Taluk, in consultation with the Board of Religious Endowments.
- (c) directing defendants Nos. 1 to 5 and 11 and 12 to render an account of their management after producing all account books and documents and other temple property in their possession or power and pay such sums as are found due.
- (d) directing defendants Nos. 1 to 5 and 11 and 12 to surrender all temple articles, jewels, documents, keys etc. in their possession or power.
- (e) directing defendants Nos. 1 to 5 and 11 and 12 to pay damages for all loss caused to the temple by their fraud and mismanagement; and.
- (f) granting plaintiff's costs and such further relief as the nature of the case may require. The District Judge has given a decree directing that an account should

be taken of various items and that the defendants should pay to the Board of Religious Endowments such sum as may be found due on the taking of accounts and granting some other reliefs. Defendants Nos. 1, 3, 4 and 5 have filed this appeal. The 4th defendant afterwards died and his legal representative has been made a respondent.

2. Before considering the merits of this appeal it is first necessary to state the history of the institution up to the filing of the suit. The temple with which we are concerned is a saivite temple in the village of Tirumullapalli, Karlamanna Amsam, Walluvanad Taluk of South Malabar District. It is a very ancient institution managed by 10 hereditary trustees. These trustees are the karnavans of 10 Nambudiri Mams. These ten hereditary trustees are now defendants Nos. 1 to 10 in this suit. Up to the year 1915 the practice was for the karnavans to jointly appoint a kariastan and get all the business managed through him. In that year one Kunju Nedungadi was appointed as kariastan. Originally no security was taken from him. In October, 1927 a resolution was passed by the uralans that security should be demanded from Nedungadi. Consequent on this resolution Nedungadi resigned his appointment by the letter Ex. VII dated November 6, 1927. He followed his resignation by a criminal complaint before the Sub-Magistrate of Ottapalam (Ex. XXI, dated November 8, 1927). Afterwards one Chandu Nair who had previously been in charge of a portion of the properties belonging to the temple called the Karuva estate and who was also the accountant was appointed kariastan. On March 31, 1928, Nedungadi filed a petition (Ex. XXIII) before the Sub-Divisional Magistrate; of Malappuram complaining of forcible opening of the rooms in the patthayapura belonging to the temple. This was followed by a petition by some uralers to the Collector of Malabar (Ex. J., dated April 17, 1928). The Collector apparently referred the matter to the Religious Endowments Board. The Endowments Board then entered upon an enquiry. The Commissioner examined Chandu Nair on August 23, 1928, (Ex. B-I). On October 17, 1928, petitions were filed by four uralers (defendants Nos. 1 to 4) against six persons who are members of the families of uralers (defendants Nos. 6, 7, 8 and 10) complaining that 2 or 3 of the uralers took the side of the dismissed Nedungadi and were throwing various obstacles in the way of the peaceful management of the temple, that the accused have obstructed the management by Chandu Nair and the regular performance of the pujas of the temple, that they, tried to create trouble on the occasion of a festival, that the petitioners had to seek the help of the police, that they drove away the pujari with the help of a gang of rowdies and that they apprehended breach of peace in connection with a coming festival (Ex. XXVI). Thereupon the Sub-Magistrate of Ottapalam passed an order Ex. IX dated October 18, 1928, refusing to interfere in the matter. The Joint Magistrate also on a similar petition refused to take any action and referred the parties to a civil suit (Ex. XXVII, dated November 1, 1928). On March 22, 1929, the Endowments Board passed an order addressed to the Counsel directing the trustees to produce their accounts without any further delay (Ex. H) The Counsel's reply to this order was Ex. H-I dated March 28. He

sent the list of articles asked for but was unable to produce the account books. On April 1, 1929, the Board appointed the present plaintiff who is a junior member of the 8th defendant's Mom as interim manager of the temple and directed him to take possession of all the properties and accounts belonging to the temple and invested him with the sole power of taking further action in connection with the temple. (This order does not seem to have been exhibited but has been read over to us). On April 22, 1929, the Board framed a scheme for the better management of the temple. They provided for a committee of five members, and for the appointment of a manager by the Board to conduct, in consultation with the Board, the actual management including all civil, criminal and revenue proceedings. The members of the Committee were to be elected by the body of hereditary trustees. Unfortunately as the hereditary trustees were 10 in number and there was no provision in that scheme for a casting vote, the election of the Committee proved abortive and the scheme did not work. The interim manager appointed by the Board filed the present suit on July 1, 1929.

3. One of the objections taken in this appeal is that the suit in so far as it prays for the taking of accounts and for a decree directing the defendants to pay certain sums of money to the plaintiff is not maintainable. I will discuss this question lower down. But I think it is desirable to record findings even on the merits of the case apart from the question of law so raised.

4. The dismissed kariasthan Nedungadi and the new kariasthan Chandu Nair were originally impleaded as defendants Nos. 12 and 11 and some of the prayers in the plaint were directed against them along with defendants Nos. 1 to 5. In para. 10 of the plaint a number of charges are made against defendants Nos. 1 to 5 and occasionally against the 11th defendant. No reference is made to defendants Nos. 6 to 10 or 12 in this paragraph. In para. 11 it is alleged that defendants Nos. 11 and 12 have failed to render an account of their management and are guilty of large misappropriations. In para. 12 it is alleged that defendants Nos. 1 to 5 and 11 and 12 are in possession of temple properties and account books and that they are liable to surrender them. It is noticeable that so far as the plaint is concerned practically no specific reference is made to defendants Nos. 6 to 10. The 13th defendant is the Religious Endowments Board added on August 21 1929.

5. I think it is now necessary to state the findings of the learned District Judge generally, i.e., without touching upon the details in connection with the specific matters. In para 33 he observed:

The one point in favour of the uralers is that they have not been guilty of malversation. Some of them have improperly taken possession of devaswam land. Some of them have taken loans of devaswam money. This is improper. But the uraiers did not know that it is improper and most uralers in Malabar see nothing wrong in taking such loans The uralers have not misappropriated devaswam money. That is all that can be said for them. They have been grossly negligent. They have not attempted to do their duty as trustees. They all have

been guilty of one general passive breach of trust. I think it clear that their failure as a body to manage the affairs of the devaswam, to control the kariasthan and to make the kariastans render accounts amounts to what is known as wilful default.

Paragraph 35:

The failure of the uralers to do their duty was the result of their disunion. The cause of this disunion is a puzzle.

Paragraph 42:

I find myself unable to say that any one of the uralers is more or less responsible than any other. In my view all are equally responsible.

Paragraph 48:

I see no reason to hold that the defendants Nos 1 to 5 excluded the other defendants from the management and are more responsible for losses than the other defendants.

Paragraph 51:

Pressure could be made only by the body of the uralers and as the uralers did not function as a body payment was not demanded.

Paragraph 57:

It was the disunion among them that led to the bhandaram not being opened and the money not being invested.

Paragraph 60:

This situation as regards the arrears of rent is a sufficient commentary on the management during the last 15 years and is one more result of the disunion among the uralers. There has been no management. There have been no decisions about arrears, no suits to recover arrears, no suits in redemption and no writing off.

Paragraph 73:

I think that the 1st defendant and his supporters acted in the interests of the devaswam in putting an end to Nedungadi kariasthanship and I think it would be unreasonable to blame them because Nedungadi did not then render accounts or make over money.

Paragraph 92:

The charges against individuals are mostly of little account. The most serious of them is Charge A and that concerns the 1st defendant who, I should say, is one of the better uralers. The main cause of the trouble has been the disunion between the uralers. By a scheme it can be made difficult for disunion again to

paralyse the administration.

5. The above extracts containing general findings by the learned trial Judge show that the body of uralers is torn up into factions. It maybe generally said that there are two factions, one faction consisting of defendants Nos. 1 to 5 and the other consisting of defendants Nos. 6 to 10 and that the 1st defendant was mainly instrumental in getting rid of Nedungadi as kariastan. Thereupon Nedungadi started criminal proceedings and other proceedings which culminated in the present suit. In general it may be said that the Nedungadi's side was taken by defendants Nos. 6 to 10. It also appears that Chandu Nair is more subservient to defendants Nos. 1 to 5 and he therefore took their side. First, defendant as D.W. No. 5 admits:

1 told Chandu Nair not to hand over the accounts to Bhavadasan (plaintiff) as manager as I had objections to the appointment of Bhavadasan.

6. Of course Chandu Nair obeyed the 1st defendant. Tints we see that the new kariastan and defendants Nos. 1 to 5 formed another party. This explains why in general all the allegations in the plaint were directed against defendants Nos. 1 to 5 and 11, though in paras. 11 and 12 there is some slight reference to the 12th defendant. When the trial of the case was practically over, in March, 1930, the learned District Judge took the view that the suit was bad for misjoinder of parties and causes of action and therefore struck off defendants Nos. 11 and 12 from the record. Though I have doubts about the correctness of this procedure of the District Judge, it is unnecessary to say anything more on this matter, because no revision petition has been filed against that order by the Board. It is now suggested in the course of the argument on their memorandum of objections that notice should be issued to defendants Nos. 11 and 12 and they should be made parties to this appeal and they must be made liable primarily for the moneys and properties which have come directly into their hands and only secondarily should the trustees be made liable. Of course this suggestion was made in answer to the applicant's argument that it would be unfair to make the trustees liable for the items which had come in to the hands of the kariastans and in respect of which the present plaintiff or the Board pr both might have taken steps against one other of the two kariastans.

7. Now taking the charges made against defendants Nos. 1 to 5 in para. 10 of the plaint it is necessary to notice them only very briefly.

Charge (a): It is said that the 1st defendant or his son has" constructed a big building on a portion of the ground belonging to the temple and is carrying on a banking business there. As to this the learned Judge's decree is that the 1st defendant is liable to pay to the. Board any compensation which the devaswam may have to pay for the building. Now it is not suggested that the construction of the building was not known to the other trustees nor can such a suggestion be made as the construction of a new building cannot be carried on secretly and so as not to be known to the other trustees. There is nothing in the evidence to

suggest that any of the trustees objected to the construction of the building by the 1st defendant or his son. The 1st defendant does not claim ownership of the site. He admits that the temple is the owner of the site on which the building has been constructed and that he is liable to pay ground rent. No allegation is made that the ground rent which is being paid by him is inadequate having reference to the situation of the site. If the site was in a big town where sites would be valuable, a low ground rent would, of course, be objectionable. But that is not the case here and there is no evidence given that the ground rent paid is inadequate. Under these circumstances I do not think that any decree implying further action against the 1st defendant in respect of this building is justifiable. It can be said, is that the 1st defendant is liable to pay ground rent which has already been fixed, and if the ground rent is not regularly paid it should be recovered from him.

Charge (a): It is said that defendants Nos. 1 to 5 are in possession of some promissory notes and bonds in favour of the temple and that they allowed them to become barred by limitation. It appears that most of the documents were in the record room of the devaswam under many keys held by several uralers and it proved impossible for the Board's Inspector to get the record room opened. During the trial the learned Judge at the request of the parties had the record room opened by a Commissioner and the documents in it examined. It then turned out that one of the items mentioned in the charge was among the records. What has become of the other documents? The Judge had previously made a note that it was admitted that all the documents except items Nos. 10 and 11 existed and that they had not been discharged. Later on the 9th defendant said he had not borrowed Rs. 200 represented by item No. 7. The Judge made a note that this was a new case in view of the prior admission. He also thought that the new case had been made in view of the fact that it was somehow known to the 9th defendant that if the documents in the record-room were inspected, only one document would be found and the others would be missing. This rather suggests that many of the admitted documents were either not placed in the record room at all or they must have been removed from the room with the collusion of the kariasan. The evidence does not show that the lending of these amounts was known to all the uralers. In my opinion it is not fair to make the uralers jointly and the rally liable for the amounts of these notes and bonds. If hereafter any note can be proved and the amount recovered, it is well and good. If it cannot be recovered, in the case of such notes as are connected with a particular maybe that only that uralan should be liable. But in any event, I do not think that all the uralers ought to be made liable for this item.

8. In this connection it is necessary to observe that the main reason for the mismanagement of the temple affairs as observed by the learned Judge himself is the disunion among the uralers rather than their dishonesty. It is true that the trustees are liable not only to account for the moneys that have actually come into their hands but also for moneys which might have come into their hands if they had acted with due diligence and without gross negligence, and in all cases

they would be liable for the result of their gross negligence. But no authority has been shown to us according to which where there are a number of trustees and where there is such disunion among them that, however much a particular trustee or trustees are honest, diligent and willing to discharge their duty, it is practically impossible to carry on the management properly, the diligent trustee should under such circumstances be made liable for gross negligence or wilful, default. It is true in the present case it is very difficult to say that, some trustees are more diligent than others. But even then I do not see how all the trustees could be made jointly and severally liable for the impossibility of the management which has been the result of their disunion rather than gross negligence or wilful default. It has been admitted before us that the 1st defendant is one of the richest Nam bud iris and there seems to be a temptation on the part of the plaintiff and his advisers that if a joint; arid several decree can be obtained against all the uralers, the whole of the amount can be easily recovered from the 1st defendant. If the law is that all of them are jointly and severally liable, this would be right and we cannot exempt the 1st defendant simply on account of the hardness of the whole amount being recovered from him. But as already observed we are not shown any such authority by which under circumstances like these all the trustees could be made jointly and severally liable. The District Judge remarks that the 1st defendant is one of the better uralers and that he acted in the interests of the devaswam in putting an end to Nedungadi's Kariastanship. About October, 1927, the 6th defendant seems to have joined the party of defendants Nos. 1 to 5. This made it possible for the party of defendants Nos. 1 to 5 to get a majority. It was then that Nedungadi's services were dispensed with and Chandu Nair was appointed. But soon after, i.e., about February, 1928, the 6th defendant seceded from the party of defendants Nos. 1 to 5. Thus anything like action by a majority became possible only for a few months and the state of deadlock which had previously existed was again restored. The 6th defendant as D.W. No. 6 says in his evidence:

I approved of the removal of Nedungadi in 1103. (September 1927). I fell out with Chandu Nair at the utsavam in Kwnbham 1003 (February 1928). After that I did not co-operate in the management.

Charge (e): It is said that the 1st defendant and the other defendants acting with him allowed the prior kariastan Nedungadi to escape scotfree without accounting for the management and it is sought to make defendants Nos. 1 to 5 liable for the loss caused by Nedungadi. We already know the facts connected with this charge. Nedungadi was dismissed in about September or October, 1927. The new manager was appointed in November, 1927. From that time Nedungadi was practically defying defendants Nos. 1 to 5. The letter Ex. XII dated November 16, 1927, was signed by the first six defendants and some junior members of their illoms. Previously, on November 6, they had received a letter from Nedungadi (Ex. VII) to which they replied by Ex. VIII dated December 5, 1927 a perusal of which shows how defiant he had been to the trustees that dismissed him. Exhibit VIII shows that he tried to disavow responsibility as regards jewels,

vessels and records of the devaswam which had been entrusted to him. It also shows that he resigned his office under Ex. VII without any explanation whatsoever. Exhibit VIII shows that it was intended to take civil and criminal action against him. Finally the letter demands accounts, jewels, vessels, keys etc, and threatens him with civil and criminal proceedings. Now it is argued by the respondents that it was the duty of the nralers to have taken such proceedings having given this notice. But they had three years from November, 1927, within which to take action against Nedungadi. In December, 1927, no doubt, they were in a strong position because they formed a party of six men against the remaining set of trustees who were only four. But by February, 1928, this majority had ceased. Even assuming that there was then some duty on the part of the trustees to take action against Nedungadi it cannot be said that there was any particular time within which they should take such action. Meanwhile their own position had been made very hot by proceedings against them by Nedungadi before the Collector of Malabar and the resulting interference by the Board. The Board finally passed orders appointing the present plaintiff as sole manager displacing Chandu Nair and the trustees. This was in April, 1929. But for such orders the trustees had a year and seven months more to take action against Nedungadi. Under such circumstances it is impossible to make either defendants Nos. 1 to 5 or the other trustees responsible for the result of inaction against Nedungadi. The plaintiff himself could have tiled suits against Nedungadi. In the present suit Nedungadi was originally impleaded. Even if the District Judge exonerated defendants Nos. 11 and 12 there was nothing to prevent the plaintiff from filing independent suit against them so as to avoid the plea of misjoinder, in March, 1930, there were still eight months so far as action against Nedungadi was concerned and so far as Chandu Nair was concerned there was no question of limitation at all. In my opinion it is impossible to make any of the trustees liable for what might have been recovered from Nedungadi or Chandu Nair.

Charge (b): It would seem that a large sum of Rs. 5,000, was locked up in one of the rooms of the devaswam and it is now said that the interest on this amount was lost. When the Board sent its Inspector for the purpose of having the room opened the seventh defendant who had one of the keys said that his key was missing. The Inspector sent the report Ex. XVII on May 18, 1929. According to this report:

defendants Nos. 1,2,3,4 and 6 were willing to go on with the election. It was the opposite party who absented themselves and it was en account of them that election was not conducted yesterday (May 17).... Trikatteri Adisseripad (first defendant) and his party were willing and ready to open the cash chest yesterday in obedience to Board''s orders and they came and waited for about two hours with the keys " But at the nick of time Koyathodi Parame-swaran Somayajipad (seventh defendant) belonging to the opposite party of Trikatteri Adisseripad (first defendant; did not give the key in his possession for he said it was missing. I asked him to give me in writing the fact that the key was missing so that with his permission and with the permission of the other trustees I may

open the chest with the aid of a blacksmith. Trikatteri Adisseripad (first defendant) also was willing to do this. But Kayathodi Parameswaran Somayajipad (seventh defendant) refused to give me in writing the fact that the key was missing . . . Without getting a written statement that the key is not with him, I did not want to open the box with the aid of a blacksmith.

The Inspector appointed by the Board who sent the report Ex. XVII gives evidence as D.W. No. 1. In his evidence he says:

Defendant No. 3 said he had one key and that he was willing to open the room only if all the trustees especially Trikatteri Adibseripad (first defendant) agreed.

But anyhow it is clear that on May 18, it was because the seventh defendant did not produce his key that the chest could not be opened. Afterwards on June 8, the first defendant made a statement before Mr. Suraya Rao the Commissioner of the Endowment Board that he had no objection to break open the chest (Ex. B). The chest was accordingly opened. The money was taken by the Commissioner and we are informed it is now invested in a bank in Madras by the Endowments Board. On these facts I do not see how any particular trustee can be made liable for the loss of interest in connection with the noninvestment of this Rs. 5,000. If at all only the seventh defendant ought to be made liable and even he only for the interest between May 18 and June 8.

9. To the original charges which were made in para. 10 of the plaint afterwards some further charges were added and some of these will now be dealt with.

10. Item (a) of the decree refers to the amount of Verumpattam due from the tenants of the temple (other than the tenants of the Kuruva estate) which by lapse of time became irrecoverable between Kanni 1099 (September 19, 1923) and Kanni 1104 (September 16, 1928) so far as these rents are concerned it appears to us that primarily it was the duty of the kariastan to sue for them, and in a suit against Nedundgadi the question how far he was liable for the recovery of any rent may be gone into. But apart from this a perusal of the account of arrears of rent shows that the collection of rents is not so bad as it was suggested to be. The District Judge himself notes that 1096 was the year of the Moplah rebellion, and it is obvious that tenants must have lost a good deal of their properties in the year 1921-1922 and it is cruel for landlords to collect full rents from them in that year. Again there were floods in 1099 and 1100. It is well known fact and admitted by all. It would seem the practice of landlords in Malabar is to calculate interest at 20 per cent, upon arrears of rent and carry over the arrears with interest and if any amount was paid to credit towards the amount shown due and again carry over the balance. The Judge himself remarks in para. 58 of his judgment. "The figures of arrears include interest at 20 per cent, calculated, in some instances at any rate, from so far back as 1085 (1909-1910). The greater part of the arrears is interest and not principal." Under such circumstances whatever might be shown on paper surely landlords ought to be left some discretion in suing the tenants for sums found due by such

methods. The landlords should not be held liable for not taking drastic action against their tenants for the recovery of such rents. To sue the tenants for amounts found due in such a manner is really cruel and one cannot complain against landlords for not being so cruel as that. When the time comes for taking proper accounts it may be that even after calculating only six per cent, interest and after making allowances for bad years such as the year of Moplah rebellion and the year of flood some tenants may be found liable for some amount. We find looking at the account that in one year a tenant has paid six years arrears. It is only where there is do justification for letting off a tenant the kariastan or some one else may be held liable. If necessary we will have to call for a finding in the present case as to how much rent would be strictly found due after satisfying the conditions mentioned by me above. It is pointed out by the learned Advocate for the appellants that as a matter of fact no portion of the rent is barred because year after year payments are being made towards it. If necessary we will have to call for a finding as to whether any portion of the rent justly due is really barred or not and only then can the landlords or the kariastan be made liable for negligence. As regards rent not barred and which was justly due there was nothing to prevent the plaintiff from having filed suits against the tenants in July, 1929, when the present suit was filed. In my opinion for all items of rent in respect of which action could have been taken, by the present plaintiff in July, 1929, or afterwards it is improper to make the defendants liable.

11. Another item in respect of which complaint is made against the defendants is that the devaswam was subscribing for a chit fund started by the 9th defendant. After four subscriptions were paid to subscription was not continued. In Clause(d): of the decree the District Judge directs an account to be taken of the loss to the devaswam on account of the failure to pay, further subscriptions. We are now informed that the chit was afterwards closed and it was not carried to the end because the subscribers would not pay their subscription regularly. According to one of the clauses in the rules regulating the chit fund the various subscribers were entitled to the amount which they had subscribed. If the devaswam, was entitled to the amount subscribed for, steps may be taken to recover it. But there is no evidence on the record to show who smarted paying the subscription, whether it was known to all the trustees and whether it was proper to charge even one of the trustees with negligence in the matter of failure to continue the subscriptions. There is nothing to show that defendants Nos. 1 to 5 who got the management after November, 1927, knew anything about this item. But anyhow in the events that followed there is no reason to make them liable.

12. Another item complained of relates to interest on war bonds (Clouse(e) of the decree); the amount due for interest on these bonds could not he collected because there were a number of deaths among the uralers. The Judge accepts this explanation up to 19 6. But he thinks that the trustees ought to be liable for the loss of interest in 1926, 1927 & 1928. As already observed, defendants Nos. 1 to 5 were in a position of effective control only for a few months after

September or November, 1927 and even this favourable position was lost in February, 1928. The evidence does not show where the war bonds were kept. Presumably they ought to be in a room in the devaswam building which was under lock and key and which could be opened only in June, 1929. I do not think this item is clearly proved. In any event it is very trivial. Nor is six per cent, justified.

13. Another item relates to the rent of Kuruva estate. The same remarks already made with regard to verumpattam of the properties other than the Kuruva estate apply to this item also.

14. After making these remarks in connection with specific items, I now come to the important question in the case as to whether the suit as framed is maintainable. The suit was filed u/s 73 of the Madras Hindu Religious Endowments Act, II of 1927. This section on the face of it appears to be drafted with reference to Section 92, Civil Procedure Code, by omitting some of the sub-clauses in it. Clauses (a) and (b) of Section 92 are clubbed together as Clause (a) of Section 73(1). Clauses (c), (e) and (h) of Section 92 are reproduced as Clauses. (6), (c) and (d) of Section 73(1) Clauses (f) and (g) of Section 92 has been provided for in other sections, viz., Sections 57 and 63. These relate to schemes and alienations. Clauses (d) and (g) of Section 92 are not therefore reproduced in Section 73. Clause (d) of Section 92 especially relates to directing accounts. That clause did not exist in Section 539 of the older Codes of 1887 or 1882. There was a considerable conflict of opinion as to whether a trustee can be removed under the old Section 539 vide *Narasimha v. Ayyan Chetty* 12 M.157, *Subbayya v. Krishna* 14 M. 186 and *Ravgasami Naicken v. Varadappa Naicken* 17 M. 462. The final Madras view was that a trustee cannot be removed. The learned Advocate General for the respondents referred us to *Manchar Ganesh Tambekar v. Lokshmiram Govindarum* 12 B. 247 which was affirmed by the Privy Council in *Chotaal Lakshmiram v. Manohar Ganesh Tambekar* 24 B. 50 : 26 I.A. 199 : 4 C.W.N. 23 : 2 Bom.L.R. 516 : 7 Sar. 559 (P.C.). It was an instance of a suit where accounts were demanded and there was no objection in the suit that such a suit was not maintainable. The point was never raised nor argued by Mr. Mayne before the Privy Council nor is there a judgment on the matter. But assuming that u/s 539 there might be a prayer for taking accounts and that such a prayer comes under the last clause relating to "such further or other relief as the nature of the case may require," still the Indian legislature thought it necessary to make the matter clear by expressly inserting Clause(d) in Section 92 which relates to the taking of accounts in the Act of 1908. The question now is what significance is to be attached to the omission of Clause (d) of Section 92 in Section 73 and not whether a suit for taking accounts would be maintainable under a section standing like Section 539 without any prior history. In the present case prayer (c) of the plaint is a prayer demanding accounts and also for directing the defendants to pay such sums as are found due. But prayer (d) refers to the surrender of temple articles, jewels, documents, keys, etc., by the defendants. Surely a prayer like this does not come under the clause directing

accounts. It is a prayer for the recovery of specific property. Is such a prayer also to come under the general clause relating to further relief? We find as a matter of fact that provision has been made in Section 78 of the Endowments Act, which gives a summary remedy for the recovery of any property admittedly belonging to a temple. If there is any question whether property movable or immovable belongs to a temple and if issues arise with respect to title to such property, can it be said that a claim to recover such property falls under the general prayer for further or other reliefs in Section 73 and that issues as to title can be tried in such a suit? Similarly again we come to prayer (e) which asks that the defendants should be directed to pay damages for all loss caused to the temple by their fraud and mismanagement. Is this also a prayer like the one asking for accounts? Could a prayer like this fall under Clause (d) of Section 73 relating to further or other reliefs. It may be that under the Court Fees Act a prayer for accounting may be tentatively valued by the plaintiff vide Section 7, Clause (iv) of the Court Fees Act (VII of 1870) It may be that the Court Fees Amendment Act of 1922 allowed all suits for accounts and damages to be filed with a court-fee of Rs. 15. But this last: provision of law remained in force only for three years because in 1925 the Religious Endowments Act came into force and it provided for a court-fee of Rs. 50 for suits u/s 73 (vide Section 81, Schedule II). Section 81 says:

Notwithstanding anything contained in the first or second schedule to the Madras Court Fees Amendment Act, 1922.

15. This shows that the object of Section 81 and Schedule II was to raise the court-fee from Rs. 15 to Rs. 50 and not to make suits u/s 73 cheap. But the question is whether it was intended by Section 81 and Schedule II which permit a suit u/s 73 to be filed with a court-fee of Rs. 50 that suits not only for accounts but also for the recovery of properties movable or immovable whether admitted or not admitted to belong to a temple, suits for damages or loss on account of negligence, all such suits could be allowed to be filed with a court-fee of Rs. 50 only and without stating the valuation of such items. Prima facie it looks as if the legislature could not have intended such suits to be filed u/s 73. It is contended by the Advocate General which appeared for the respondents that Clause (2) of Section 73 shows that no suit claiming any relief in respect of the administration or management of a religious endowment can be instituted except as provided by the Act, i. e., by Section 73. But this construction proves a little too much for them for it is conceded that according to the decisions certainly there are suits which are held not to be covered by Section 73 though they do relate to the administration or management of a religious endowment. In (His Holiness Srila Sri) Vythilinga Pandara Sannadhi Avergal, Athinakarthar, of Tiruvaduthurai Athinam Vs. Temple Committee and Another, , it was held by my learned brother, Cornish, J, and Curgenven, J., that Section 73 is not a bar to the institution of a suit to establish a right of hereditary trusteeship of a temple and for certain consequential reliefs. It was also held that "except as provided by this Act in Section 73 meant "contrary to the provisions of this Act." It has not been

contended before us that this case is wrongly decided. And when a person wants to establish his right to the hereditary trusteeship of a temple as against other persons who deny it, it cannot be said that in some sense the suit relates to the administration or management of a religious endowment because if the plaintiff succeeds in such a case the endowment will have the benefit of his management as hereditary trustee but if he fails the endowment will not have his heirs as managers and such a suit will finally decide the, point whether a particular person., heirs also, shall take part or shall not take part in the management of the temple. In a general sense it cannot be said that such a suit does not relate to the administration or management of the temple. If the words of Section 73 are to be construed liberally such a suit would be barred by that section and yet it was held that it was not barred. Again in *Hazarimull Ghandulcchand v. Vedachala Chettiar* 138 Ind. Cas. 74 : 55 M. 549 AIR 1932 Mad 234 : (1932) M.W.N. 9 : 62 M.L.J. 180 : 35 L.W. 156 : Ind> Rul (1932) Mad> 493, my Lord the Chief Justice and my brother Cornish, J., held that a suit by the trustee of a temple to recover property from alienees is not governed by Section 73. Here again it is conceded that the decision is correct. If the words "in respect of administration or management" are to be construed in a liberal sense such a suit has relation to the administration or management of the temple because where property is lost to the temple, the trustee has to recover it; if an attempt is made to restore it, the result of the attempt is to improve the management for administration of the temple and to cure the result of past for administration. And yet it was held that Section 73 do not bar such a suit., Again in *Ranganiyaki Bai Ammdl v. Shivarama Dubey* 122 Ind. Cas. 337 : M.L.J. 104 : AIR 1930 Mad 286 : Ind. Rul. (1930) Mad. 305 : 31 L.W. 849 Curgenv, J., held that Section 7 J (1; a) does not enable the institution of a suit un provided for by the rest of the section and that a suit by some trustees for the removal of co-trustees does not fall under this section. I agree with all these decisions and the main principle underlying them. The principle underlying them is that Section 73 ought not to be construed as if it prohibits the filing of any suit relating to the administration or management of a religious endowment. Some limitation has to be placed upon the apparent generality of the language in Section 73, Clause (2). On what principle in such a limitation to be based? I think the key to the situation is to be obtained by reading Clause (2) as a pendant to Clause (1) and as prohibiting suits like those provided in Clause (1) from being filed except as provided for in that Act, i. e., u/s is. Formerly they could be filed u/s 92, Civil Procedure Code, and Order I, Rule 8. The object of Section 73 is to prevent the filing of such suits u/s 92 or under any other provision and to see that they are filed only u/s 73 of the Endowment Act, and to fix a Court fee of Rs. 50 for such suits. Its object is not to prevent other suits not falling under Clause (1) from being filed outside the Act. It is agreed on both sides that Clauses (1) and (2) should be construed so as to be consistent with each other. It is conceded on the one hand by the appellants that if Clause (2) prohibits the filing of all suits except as provided by the Act, Clause (1) should be so construed as to permit the filing of such suits. It is conceded by the respondents that if certain suits are not covered by Clause (1)

and should not be filed u/s 73, Clause (2) should not be so interpreted as to prohibit the filing of those suits under provisions outside the Act. To this extent both sides are agreed. But the respondents want as wide a construction to be given to Section 73 particularly so as to include suits of the kind before us and for the purpose of arriving at such a conclusion they rely on the language of Clause (2). But when we find a number of decisions excluding a number of suits from the operation of Clause (1), obviously, we must regard them as excluded also from the operation of Clause (I). They do not fall under the general words of Clause (d) "further or other reliefs". Then why should this particular suit be held to fall under Sections 7, 5. It prays for damages without any valuation of the damages. It prays for the recovery of property without any valuation of the property and without payment of any court-fee in respect of these two items. In my opinion Section 73, having regard to the manner in which it has come to be framed and taken with the provisions relating to court-fees, is confined to cases in which the main relief falls under any of the Clauses (a), (b), (c), and (d) covers relief only incidental to or ejusdem generis with the main reliefs and it is because it is to be confined to suits of such a simplified nature that the court-fee is made definite and limited to Rs.50. On the one hand suits u/s 73 are not made too cheap like the suits under the Court Fees Amendment Act of 19:2 or under the Court Fees Act, VII of 1870, where the notional valuation given by the plaintiff may be very small. On the other hand they are not made too costly because it is inexpedient to do so where the relief is for the removal of a trustee, or to vest property in a Receiver etc. But when it is ought to recover properties which may be worth thousands or even lakhs and to recover moneys as the result of taking accounts of gross mismanagement or as damages for some act of default to permit such suits to be filed with a court-fee of Rs. 50 seems not to have been intended by the Legislature, In my opinion beyond the reliefs expressly mentioned in (a), (b) and (c) of s, 73 and any relief incidental to them no further relief can be prays for in the suit. On this ground I allow the appeal in so far as it prays for taking of accounts and making defendants Nos. 1 to 10 liable for the amount found due on the taking of such accounts. As to the actual scheme, that has to be dealt with in the connected appeal against O.S, No. 4. of 1929 and it will be dealt with separately.

16. In the case of a devaswam which happens to be grossly mismanaged as in this case not on account of so much of the dishonesty of the trustees but on account of disunion among them, what one has to be more anxious about is the framing of a scheme which will place the future management of the temple on a sound footing. As to the past, if any one is actually found to have come into possession of moneys or properties of the temple, no doubt, steps ought to be taken against them for recovering them. Similarly in the case of gross negligence or wilful default. But it is inexpedient, that steps should be taken against hereditary trustees who discharged a thankless task for the consequences of their failure to discharge their duties on account of the impossibility of discharging those duties arising out of disunion among them. And men in the

position of the present plaintiff and the Board ought to concentrate their attention on placing the management of this temple on a sounder footing from the point of view of future management.

17. A memorandum of objections has been filed by the 8th respondent, the Endowments Board. It is urged that these trustees ought to be removed. We agree with the learned District Judge that in the circumstances of case has been made out for their removal and we hope that no such necessity will arise if a proper scheme of management is framed. It is then urged that we should make Nedungadi and Chandu Nair parties to this appeal; and give decrees against them. This does not strictly arise in a memorandum of objections. The proper remedy was to have filed a revision petition against the order exonerating them. It is true we have got inherent power now to make them parties and proceed against them. But we do not see any reason why we should exercise that power in this case. The memorandum of objections is therefore dismissed; we reserve the order as to the costs until the connected appeal is heard.

Cornish, J.

18. I agree that this appeal in respect of the decree for an account should be allowed. In my judgment it is not competent to the Court in a suit instituted u/s 73(1) to decree an account and inquiry; and this is a fatal objection to the decree made against the trustee-defendants in the present suit

19. A comparison of Section 78(1) of the Religious Endowments Act with Section 92(1) of the Code shows that Clauses(a), (b), (c) and (d) of Section 73 have been taken from Clauses (a) and (b), (c) (e), (h) of Section 92. There was no need to reproduce in Section 73 the Clauses (f) and (g) of Section 92, because provision is made elsewhere in the Act for sanction of a sale or mortgage of land belonging to a religious endowment (Section. 76) and for settling a scheme of management: (Vide Sections 57 and 63). Section 73 contains no clause corresponding with Clause (d) of Section 92 for "directing accounts and enquiries". The omission must have been made advisedly. It would indeed be strange if the framers of the Endowments Act with the precedent of Section 92(1), Civil Procedure Code, before their eyes and knowing that Clause (d), which had no counterpart in Section 539 of the 1882 Code had been inserted in Section 92(1) of the 1908 Code in order to make certain that which had been the subject of divergent views in the different High Courts See *Abdur Rahim v. Mohart.ed Bar-kat Ali* 108 Ind. Cas. 361 : 55 C. 519 P. 529 : AIR 1928 P.C. 56 : 55 I.A. 96 : 9 P.L.T. 65 : 1 L.T. 40 Cal. 19 : 27 L.W. 338 : 32 C.W.N. 482 : 26 A.L.J. 464 : 54 M.L.J. 609 : 30 Bom>L.R. 774 : 48 C.L.J. 55 : (1928) M.W.N. 926 (P.C.), should have chosen to leave it open to doubt whether a direction for an account and inquiry could be given as ancillary relief in a suit u/s 73(1) of the Act. I think there is a perfectly valid explanation of the omission from Section 73 of a clause corresponding to clause (d) of Section 92.

20. An effective machinery is set up by the Act for controlling the conduct of

trustees of religious endowments. The Act requires that accounts shall be kept by temple trustees and that these accounts shall be audited annually by Government auditors (Section 45). The audit report must specify all cases of improper expenditure or of failure to recover moneys due to the institution or of loss caused by neglect or misconduct of the trustee (Section 47). A failure to keep accounts would be a neglect of duty, for which, of course, a trustee of a non-excepted temple might be removed from office u/s 53, or, in the case of a trustee of an excepted temple, by means of a suit u/s 73(1). In view of the ample provisions in the Act for checking the accounts and fixing the liability of trustees, I think that a special provision enabling the Board or persons interested in the proper administration of the trust to sue for an account and inquiry would be superfluous. The audit will discover, as far as it is discoverable, the extent of a trustee's misappropriation or misapplication of trust money or of the loss occasioned by his neglect or default and the audit report fulfils the very purpose of a decree directing accounts and inquiries. This seems to me the explanation of the omission of Clause (d) of Section 92 of the Code from the reliefs classified in Section 73(1) of the Act. The money found due by a trustee on an audit report would be a debt by the trustee to the temple, and would be recoverable in a suit either by a co-trustee, or by a new trustee appointed in the place of the trustee in default, or, if a scheme has been framed, by the person or body appointed to the management.

21. It has been strongly argued that such a suit would be barred by Sub-section (2) of Section 73. I do not agree with this contention. It would be barred only if it was a suit that could be instituted in the manner provided by the Act. In (His Holiness Srila Sri) Vythilinga Pandara Sannadhi Avergal, Athinakarthar, of Tiruvaduthurai Athinam Vs. Temple Committee and Another, , it was held that the words in Section 73(2) "no suit in respect of such administration or management shall be instituted except as provided by this Act" mean no suit in respect of such administration or management shall be instituted contrary to the provisions of this Act." The Act makes specific provisions for the institution of suits in respect of the administration or management of religious endowments in Section 73(1) and in Sections 55(4), 57(5), 63(4), 65 and 67(4) and (5). A suit in respect of the administration of a religious endowment would not be contrary to the provisions of the Act if it is not a suit for which the Act has made provision, for this reason I think that such a suit as I have described would not be barred by Section 73(2). This view seems to me to be in conformity with the policy of Section 73(1) of the Act. The consent of the Board or temple committee which must be obtained by a party desirous of instituting a suit u/s 73(1) is obviously intended to serve as a check upon vexatious or frivolous suits against temple trustees. But there is no occasion for this check when the suit is to recover a debt ascertained and reported by the Official Auditors to be due by a trustee to the temple. In fact, it would be the duty of the persons in charge of the management of the endowment to cue for this debt.

22. Upon the merits generally of the appellants case and of the Memorandum of

Objections I do not wish to add anything to the observations of my brother Ramesam, J., with which I entirely agree. I think the circumstances of the case are such that the Court should be rather concerned to formulate a scheme to prevent mismanagement of the endowment properties in the future than to seek to visit the trustees with punishment for their past shortcomings.