

successful as against the defendant, were entitled to a joint decree, which would leave it open to them to adjust their respective claims subsequently. And the District Judge ought not to have allowed one plaintiff to appeal against the other, or to have decided the rights of different plaintiffs *inter se* (see *Bhagirihbai v. Baya* (1)). As these erroneous proceedings had their origin in the illegal order of the Subordinate Judge in admitting on the record two rival claimants as the legal representatives of the deceased plaintiff, instead of either staying the suit until the matter in dispute had been determined in another suit, or deciding at or before the hearing of the suit who should be admitted to be the legal representative for the purpose of prosecuting the suit, it is necessary that the case should be reconstituted on a legal basis.

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We, therefore, reverse the decrees of both the lower Courts and the order admitting Vithu and Bhima as the legal representatives of Rama, and remand the case to the Court of first instance, in order that it may adopt the procedure laid down in s. 367 of the Code of Civil Procedure, and re-hear the case according to law. Costs to abide the result.

Decree reversed and case sent back.

15 B. 148.

[148] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

VISHVANATH GOVIND DESHMANE (*Original Plaintiff No. 2*), Applicant v. RAMBHAT (*Original Defendant*), Opponent.* [17th September, 1890.]

Civil Procedure Code (Act XIV of 1882), ss. 539 and 622—Suit by trustees to eject persons in wrongful possession of trust property—High Court's powers of revision—Jurisdiction—Practice.

Section 539 of the Code of Civil Procedure (Act XIV of 1882) has no application to a suit brought by the trustees of a religious endowment to eject persons in wrongful possession of the trust property.

The plaintiffs sued, as trustees of a temple, to recover certain trust property from defendants, who were alleged to be in wrongful possession. The defendants pleaded that they were owners of the property in dispute and applied the income thereof for the purposes of the temple. They disputed the plaintiff's title to the management or possession of the same. The Subordinate Judge, who tried the case in the first instance, held that the defendants were trustees with respect to the property in their possession, and that the suit was one of the nature contemplated by s. 539 of the Code of Civil Procedure (Act XIV of 1882). He, therefore, returned the plaint for presentation to the District Judge. This order was confirmed on appeal.

Held, that the Subordinate Judge had jurisdiction to entertain the suit.

Held, also, that the High Court had power, under s. 622 of the Code of Civil Procedure, to interfere in this case, the Subordinate Judge having failed to exercise a jurisdiction vested in him by law.

Held, also, that the suit was not one falling under s. 539 of the Code of Civil Procedure.

[F., 24 B. 170 (181) = 1 Bom.L.R. 649; 36 B. 29 = 13 Bom.L.R. 989 = 12 Ind. Cas. 577; 33 C. 789 = 10 C.W.N. 581; Rel., 16 M. 31 (32); R., 21 B. 537; 35 B. 470 = 13 Bom.L.R. 690 = 12 Ind. Cas. 30; 18 Ind. Cas. 555 = 24 M.L.J. 112 = 13 M.L.T. 60; 3 O.C. 299 (302); 8 O.C. 257 (259).]

* Application No. 96 of 1890 under Extraordinary Jurisdiction.

(1) 5 B. 264.

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SECOND appeal from the decision of S. Tagore, District Judge of Sholapur, in miscellaneous appeal No. 6 of 1889.

This was an ejection suit.

The plaintiff stated that there was an ancient *devasthan* and temple of Shri Malkarjun Mahadev at Pandharpur; that the plaintiff No. 1 was a *pujari* or worshipper of the idol of Shri Mahadev, and that he and plaintiff No. 2 were the hereditary managers of the *devasthan*, and had been carrying on the management of the said *devasthan*; that certain shops situate within the temple compound, though built by the defendants, belonged to the temple, and that the plaintiffs, as managers, were entitled to receive the rents thereof and to spend them upon the temple, [149] that the defendants had for some time been allowed to collect the rents of these shops, and they were bound to hand them over to the plaintiffs for temple purposes, but that they had failed to do so, and had appropriated the rents to their own use.

The plaintiff prayed that it might be declared that the shops and the *devasthan*, of Shri Malkarjun Mahadev being public charitable property, the plaintiffs, as the rightful managers of the said *devasthan*, were entitled to collect the rents and profits of the said shops and to expend the same for the benefit of Shri Mahadev, and that the plaintiffs should be awarded possession of the said shops.

The defendants pleaded (*inter alia*) that the suit ought to have been filed, with the previous sanction of the Advocate General, under s. 539 of the Code of Civil Procedure (Act XIV of 1882); that the plaintiffs were not the hereditary trustees or managers of the *devasthan*; that they (the defendants) were owners of the shops in dispute, and had been in exclusive possession and management of the same ever since they were built; that they applied the rents of the shops to the purposes of the *devasthan*: and that the plaintiffs were not entitled to collect the rents or recover possession of the shops from the defendant.

The suit was filed in the Court of the Second Class Subordinate Judge at Pandharpur.

The Subordinate Judge was of opinion that the defendants were trustees of the temple so far as they collected the rents of the shops and applied the same to the use of the temple; and that as the plaintiffs sought to eject the defendants and remove them from the management of the shops, the suit was of the character contemplated by s. 539 of the Code of Civil Procedure. He, therefore, held that he had no jurisdiction to entertain the suit. He returned the plaint for presentation to the District Court.

This decision was confirmed, on appeal, by the District Judge.

The plaintiffs thereupon applied to the High Court under s. 622 of the Code of Civil Procedure.

A rule *nisi* was issued to the defendants to show cause why the orders of the Courts below should not be set aside.

[150] *Narayan Ganesh Chandavarkar* showed cause.—This is not a case falling under s. 622 of the Code of Civil Procedure. Both the lower Courts had jurisdiction to decide whether the suit was brought in the proper Court. Their decisions on this point, however erroneous, cannot be disturbed by this Court in the exercise of its revisional powers.

Shantaram Narayan, contra.—Where the direct question at issue is one of jurisdiction, this Court can interfere under s. 622 of the Code—*Amratrao Krishna Deshpande v. Balkrishna Ganesh Amrapurkar* (1). I further contend that s. 539 of the Code of Civil Procedure has no application to the present case. The plaintiffs do not sue as *relators*; they do not allege a breach of trust on the defendants' part. They do not sue the defendants as trustees. They do not seek for any of the reliefs contemplated by s. 539. They sue to eject the defendants as trespassers wrongfully in possession of the trust property. Such a suit does not fall within s. 539; see *Lakshmandas Parashram v. Gunpatrao Krishna* (2); *Revichand Bhaichand v. Somal Shivram* (3).

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It may be that the Court has to decide the question as to which of the parties to the suit are the rightful trustees of the endowment. But the determination of such a question does not bring the case within s. 539.

Narayan Ganesh Chandavarkar, in reply.—The lower Courts have found that the defendants are trustees with respect to the property in suit. The plaintiffs alleged a breach of trust on our part. They charge us with misappropriation of the trust-funds; and they, moreover, seek to remove us from the trust property. The case, therefore, falls under s. 539.

JUDGMENT.

PARSONS, J.—In this case the Subordinate Judge having held that the District Court alone had jurisdiction and having returned the plaint to be presented in that Court, and the District Judge on appeal having confirmed that order, application has been made to this Court to exercise its extraordinary jurisdiction, under s. 622 of the Code of Civil Procedure, to set [151] aside the orders of the Courts below. We think that we can deal with the application under that section. The Subordinate Judge has refused to exercise a jurisdiction which, if he is wrong, is by law vested in him, and we can examine his order to see if he is right in his refusal. The same view has been taken by the Allahabad High Court—*Badami Kuar v. Dinu Rai* (4).

The Subordinate Judge has held that he has no jurisdiction, because he is of opinion that "the suit partakes of the nature of a suit contemplated by s. 539 of the Civil Procedure Code." "The defendants," he says, "undoubtedly are trustees in possession and they actually manage the trust property. The plaintiffs, as *pujaris* of the temple, claim the property into their possession and seek to remove the defendants from the management of the temple." This is not quite an accurate description of the suit as it appears on the pleadings. In their plaint, the plaintiffs ask for a declaration that, as managers of the temple, they are entitled to collect the rents of certain shops and spend those rents upon the temple. They allege that the shops, though built by the defendants, belong to the temple, and that though the defendants have been allowed for some time past to collect the rents, they were bound to hand them over to the plaintiffs for the temple purposes, but that lately they have failed to do so, and have been appropriating them to their own use. The defendants deny that the plaintiffs are the managers of the temple, and contend that they themselves have the

(1) 11 B. 488.

(2) P. J. for 1886, 273.

(3) 8 B. 365.

(4) 8 A. 111.

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right to collect the rents of the shops which were built by them and of which they are the owners:

Such being the pleadings, it was, we think, wrong to hold that the suit falls within the terms of s. 539. The suit is not one against trustees, but by trustees against persons who are alleged to be wrongfully in possession of the trust property. The suit does not, therefore, fall within the scope of s. 539, and no such decree is asked for as is mentioned in any of the clauses of that section. Assuming that the defendants are found to be trustees of the temple, the plaintiffs do not seek to remove them from that trust; they only assert a right to collect the [152] rents of certain property which they allege is temple property. Even if it was a case of contest as to who are the lawful trustees of the temple, the suit would not be one falling within s. 539. We do not, however, see that the defendants make any claim to be the trustees of the temple; they claim the shops as the owners thereof, and they deny that the plaintiffs are the managers of the temple entitled either to collect the rents of the shops or to interfere with their collecting the rents.

The questions at issue in the suit are really very simple, *viz.*, (1) whether the plaintiffs are the managers of the temple, (2) whether, as such, they are entitled to collect the rents of the shops in suit. The issues framed by the Subordinate Judge are well suited to bring these questions to trial. If these questions are found in the affirmative, the plaintiffs will be entitled to a decree. If found in the negative, their suit will have to be dismissed. There is nothing in s. 539 which takes away the jurisdiction of the Subordinate Judge to hear and determine these questions and pass a decree in the suit.

We reverse the orders of the lower Courts and direct the Subordinate Judge to accept the plaint and dispose of the suit on the merits in accordance with law. Costs hitherto incurred to be costs in the cause and to be apportioned in the final decree.

Order reversed and case remanded.

15 B. 152.

CRIMINAL REFERENCE.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

IN THE MATTER OF HUCHAPA AND SHIVAGANGAVA.*
[24th September, 1890.]

Criminal Procedure Code (Act X of 1882), s. 145—Time at which Magistrate is to determine who was in possession.

Under s. 145 of the Code of Criminal Procedure (Act X of 1882) a Magistrate is required to decide which of the parties between whom a dispute exists is in possession of the subject of the dispute *at the time* when the Magistrate decides the question of possession, and not at any time *previous* thereto.

[F., 18 M. 41 (42).]

[153] THIS was a reference, under s. 438 of the Code of Criminal Procedure (Act X of 1882), by J. L. Johnston, Sessions Judge of Dharwar.

* Criminal Reference, No. 64 of 1890.