The result, therefore, is that the decree of the lower appellate Court is set aside, and the suit remanded to the trial Court for disposal on the merits. All costs up to date to be costs in the suit.

BATCHELOR, J. :—I am of the same opinion.

With great respect to the learned Judges who decided the case of *Sri Rajah Venkata Narasimha Appa Row* v. *Sri Rajah Rangayya Appa Row* [1] I am unable to doubt that the texts are in favour of the appellant's contention ; and on the question of principle, apart from the texts, I see no difficulty in holding that property which vested in A as being the son of B becomes divested when A ceases to bear that character.

Decree set aside,

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Heaton.

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February 14.

BAPUJI JAGANNATH (ORIGINAL DEFENDANT), APPELLANT *v.* GOVINDLAL KASANDAS SHAH (ORIGINAL PLAINTIFF) RESPONDENT.*

Civil Procedure Code (Act V of 1908), section 92—Suit by a trustee against a co-trustee—Administration suit—Will—Charitable or religious trusts—Jurisdiction—Practice.

The plaintiff as one of the two surviving executors of the will of one Harjivandas Purshottam dated the 15th June 1892 sued the defendant executor in the First Class Subordinate Judge's Court at Ahmedabad—(*a*) for accounts of the property of the deceased from 1899 and onwards, (*b*) for an injunction restraining the defendant from further management of the estate without plaintiff's consent, and (*c*) for an injunction restraining the defendant from interfering with the plaintiff's management of the said estate. The

[1] (1905) 29 Mad. 437.

* Appeal No. 47 of 1915 from Order.

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will showed that the property was worth Rs. 89,500 out of which Rs. 19,500 were set apart for legacies and the balance of Rs. 70,000 was bequeathed to purely charitable and religious purposes. The Subordinate Judge held that he had no jurisdiction to entertain the suit as it fell within the purview of section 92 of the Civil Procedure Code, 1908. The Joint Judge, in appeal, was of opinion that the suit as framed by the plaintiff was to obtain the assistance of the Court for the purpose of securing co-operation with the defendant in the due administration of the estate according to the provisions and directions in the will and in so far as it sought this relief it did not come under section 92 of the Civil Procedure Code, 1908. He, therefore, reversed the decree and remanded the case. The defendant having appealed,

Held, affirming the order of remand made by the Joint Judge, that the Subordinate Judge had jurisdiction to entertain the suit, for there was nothing in the plaint to suggest that the suit was framed in relation to any charitable or religious trusts and the plaint contained no prayer for relief of any of the kinds specified in section 92 of the Civil Procedure Code, 1908.

PER CURIAM :—If any questions relating to charitable bequests should arise in the present case before the Subordinate Judge, his proper course would be to give notice to the Advocate General in order that that officer might decide whether any action should be taken under section 92 of the Civil Procedure Code in order to get any of the specific reliefs referred to in that section. It would be quite possible for the Subordinate Judge to continue the administration of the estate up to the point of separating the funds appropriated for particular charities as to which schemes would have to be framed, and holding those funds in the possession of a Receiver until the Advocate General or the Collector had obtained the directions of the Court, if such were necessary with reference to the disposal of those funds under some suitable scheme. Such directions of course would have to be taken from the District Court under section 92.

APPEAL against the order passed by C. N. Mehta, Joint Judge, Ahmedabad, reversing the decree passed by Vajeram M. Mehta, First Class Subordinate Judge at Ahmedabad.

Suit for accounts and management of property.

The property in suit belonged to one Harjivandas Purshottam of Dhandhuka in Ahmedabad District. By his will dated the 15th June 1892, Harjivan appointed the plaintiff, the defendant, and one Thakordas as

trustees. The will showed property worth about Rs. 89,500 out of which private legacies amounted to Rs. 19,500 and the rest Rs. 70,000 were devoted to purely charitable and religious purposes. Thakordas having pre-deceased Harjivan, the probate was obtained by the plaintiff and the defendant alone in the year 1895. Till 1899 they managed the property jointly, but thereafter the defendant alone took possession of the whole property and managed the same without consulting the plaintiff. The plaintiff, therefore, sued the defendant in the First Class Subordinate Judge's Court at Ahmedabad—(*a*) for accounts of the property of the deceased Harjivan from 1899 and onwards, (*b*) for an injunction restraining the defendant from further managing without the plaintiff's consent; and (*c*) to restrain the defendant from interfering with the plaintiff's management of the estate.

On a preliminary issue, the Subordinate Judge held that he had no jurisdiction to entertain the suit.

The Joint Judge, in appeal, reversed the decree and remanded the case for trial on the merits, observing as follows :—

"A plain reading of section 92 shows that it contemplates the following two classes of cases, *viz.*, (1) when there is any alleged breach of any express or constructive trusts created for public purposes of a charitable or religious nature, and (2) where the direction of the Court is deemed necessary for the administration of any such trusts. Now a perusal of the plaint will show that one of the plaintiff's grievances is that though he has been appointed a co-trustee by the founder of the trust by the will, exhibit 58, and though the District Court, Ahmedabad, has given a probate of that will to both the parties in this suit, still the defendant has been managing the property exclusively and that accordingly he wants the Court's assistance to be joined with the defendant, in the due administration of the estate according to the provisions and directions in the will. The suit, in so far as it seeks this relief, does not in my opinion, come within the purview of section 92 of the Civil Procedure Code : vide *Miya vali Ulla* v. *Sayad Bava Santi Miya*, I. L. R. 22 Bom. 496, pp. 498-9."

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G. N. Thakor, for the appellant:—The will of the deceased read as a whole shows that the bequests are all for charities. That was admitted by the plaintiff himself. If so, the First Class Subordinate Judge had no jurisdiction to entertain the suit which was solely within the jurisdiction of a District Court under section 92 of the Civil Procedure Code. By the will Rs. 19,000 are given in private legacies and Rs. 70,000 for public charities and there is no allegation that any private legacy remained unpaid. The Court of first instance took the correct view and rightly applied the case of *Tricumdass Mulji* v. *Khimji Vullabhdass*.[1] The present suit is nothing but a suit by a trustee of a public trust for account and removal of a co-trustee and to enforce the trust. The lower appellate Court makes out a new case for the plaintiff and is of opinion that the suit does not fall within the purview of section 92 of the Civil Procedure Code. The wording of the plaint, however, brings the suit within that section. The suit is bad if taken as brought by an executor. One executor cannot sue another executor: William's Law of Executors and Administrators, 10th Edition, Vol. I, page 726.

T. R. Desai for the respondent after referring to *In re Lea* [2] for the English practice was stopped.

SCOTT, C. J.:—The plaintiff brought this suit as one of two surviving executors of the will of one Harjivandas Purshottam dated the 15th June 1892. The defendant executor is alleged to be an Audich *brahmin* of the age of 80, and is charged with having mis-applied the property of the testator, and prayer is that the defendant should be held responsible for all sums of money which would be found to have been given, or caused to be given, to friends and relations, or proved to have

(1) (1892) 16 Bom. 626. (2) (1887) 34 Ch. D. 528.

been mismanaged, after taking an account from the year 1899 and onwards, since when he has been in sole management of the property of the late Harjivandas, and for a permanent injunction restraining the defendant from managing without the consent of the plaintiff and restraining the defendant from preventing the plaintiff from managing. The plaint is a document of some length, and contains no description of the trusts or directions contained in the will of the testator. But the suit may be treated as a general administration suit brought by one trustee against another with whose conduct he is dissatisfied, and the stamping of the suit as a suit for an account at the value of Rs. 150 does not prevent the Court from imposing an adequate Court-fee in the event of any decree being passed for the payment of money by the defendant.

That, however, is not the question now before the Court: it is whether the learned Judge in the District Court was wrong in remanding the case for trial after the suit had been rejected by the Subordinate Judge on the ground that it was a suit framed under section 92 of the Civil Procedure Code, and as such could only lie in the District Court. There is not a word in the plaint to suggest that the suit was framed in relation to any charitable or religious trusts. There is no prayer for relief of any of the kinds specified in that section, and upon the face of the plaint we see no reason for holding that the Subordinate Judge had not power to entertain the suit. That learned Judge, however, states in his judgment that from the will it appears that the property was worth about Rs. 89,500, out of which private legacies amount to Rs. 19,500, and the rest Rs. 70,000 are to be used for purely charitable and religious purposes.

The learned Joint Judge in appeal pointed out that it did not follow that because money was to be used for

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the benefit of charities, that therefore a scheme would be necessary in the case of those charities. In England the difficulty arising from superior and inferior jurisdictions does not arise, and any question relating to charitable bequests could be disposed of in an administration suit by the addition of the Attorney General, who corresponds to the Advocate General in this country, as a party to the suit. As an instance, we may refer to *In re Lea*,[1] which was a general suit for administration. The report relates to a question arising with reference to a particular charitable bequest involving the question whether a scheme should be framed or whether money should be paid by the executors direct to the legatee named as the controller of the charity. It appears to us that if any questions relating to charitable bequests should arise in the present case before the Subordinate Judge, his proper course would be to give notice to the Advocate General in order that that officer might decide whether any action should be taken under section 92 of the Civil Procedure Code in order to get any of the specific reliefs referred to in that section. It would be quite possible for the Subordinate Judge to continue the administration of the estate up to the point of separating the funds appropriated for particular charities as to which schemes would have to be framed, and holding those funds in the possession of a Receiver until the Advocate General or the Collector had obtained the directions of the Court, if such were necessary with reference to the disposal of those funds under some suitable scheme. Such directions of course would have to be taken from the District Court under section 92. But we know nothing at present of the position of the charities in question. We do not know whether any schemes will be necessary, and it appears to us, as it appeared to the

(1) (1887) 34 Ch. D. 528.

Joint Judge, that it will be altogether premature to say that this suit, as framed, cannot be disposed of by the Subordinate Judge.

The only other question which has been referred to is whether the Joint Judge was wrong in not giving effect to what has been described as an application for a decree in terms of the compromise. We have been referred to documents upon which the point is based, and it appears that there was no application for a decree in terms of the compromise. There was only a mention of a previous agreement, and it was requested that the Court would admit the papers on to the proceedings. According to the judgment of the Joint Judge the only issue raised before him at the time of the appeal was whether the lower Court had erred in holding that the suit fell within the purview of section 92 of the Civil Procedure Code, and that the Court had no jurisdiction to entertain it. Upon that issue we think that the Joint Judge was right in holding in the affirmative and in remanding the suit. We affirm the order and dismiss the appeal. Costs, costs in the cause.

Order affirmed.

J. G. R.