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Therefore, just as I think that the decrees of the lower Courts were right in refusing a decree of dispossession against defendant No. 3, I think they were wrong in refusing to make defendant No. 3 responsible equally with defendants Nos. 1 and 2 for the arrears of rent. And so I agree with the decree proposed by my learned brother.

Decree amended.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Marten.

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HANSRAJ LADDASHET (ORIGINAL PLAINTIFF), APPELLANT *v.* ANANT PADMANABH BHAT AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), section 92—Suit by a Muktesar of a temple against superseded Muktesars—The superseded Muktesars also trustees of the endowment—Prayers for recovery of property belonging to the temple, mesne profits and for taking accounts of the management—Jurisdiction of Court to entertain suit—Religious Endowments Act (XX of 1863), section 14.

The plaintiff, who claimed to be heir of the original donor and a newly appointed Muktesar of a temple, sued the defendants who were the trustees of the endowment and the superseded Muktesars of the temple, praying for possession of immoveable and moveable properties belonging to the temple, for mesne profits and for accounts. The trial Court being of opinion that the suit was governed neither by section 92 of the Civil Procedure Code, nor by section 14 of the Religious Endowments Act, decreed it on merits. The suit was, however, dismissed by the District Judge on the preliminary ground that the cognizance of the suit was barred by section 92 of the Civil Procedure Code. The plaintiff having appealed :—

Held, that the suit clearly fell within the scope of section 92 of the Civil Procedure Code, inasmuch as taking the plaint as a whole the suit was one for the removal of the defendants from their position as trustees, for the restoration of the trust property to the plaintiff as Muktesar, for taking accounts and for damages for their wrongful acts as trustees.

Held, further, that the defendants were not in the position of strangers, for they were trustees and claimed as such to be entitled to hold the lands from generation to generation subject to the due fulfilment of the trust.

* Second Appeal No. 495 of 1916.

Per MARTEN, J. :—"There is much which is in common between the two sections (section 92 of the Civil Procedure Code and section 14 of the Religious Endowments Act) but section 92 is substantially the wider and provides *inter alia* for settling a scheme which is a jurisdiction of a very wide and beneficial nature. I think, therefore, that a plaintiff may proceed for appropriate relief under either Act, and that the opening words in section 92 (2) only mean that if he elects to proceed under the Religious Endowments Act, he is not to be prevented from so doing by section 92 ".

SECOND appeal from the decision of C. V. Vernon, District Judge at Karwar, reversing the decree passed by J. A. Saldanha, Subordinate Judge at Kumta.

The dispute related to the temple of Gopalkrishna at Gore. The temple was endowed with lands which Damodar Shet (an ancestor of the plaintiff) had purchased from Ramkrishnabhat (grandfather of defendant No. 1). The sale-deed (Exhibit 60), which was dated the 18th October 1864, embodied the following stipulations by the vendor :—

"It is stipulated by you (in connection thereof) and I agree that I shall from generation to generation enjoy the said lands and perform the daily and occasional services, &c., such as car festival, &c., at the Gopalkrishna temple under your instructions and out of the produce of the lands gifted by you after paying the Government due for the said lands together with the rent due to the Mulgars. I will perform the *Puja* (worship), *Naivedya* (offerings) and *Viniyogas* (services) of the said God in your name from generation to generation. On the default either of myself or my issue in performing the duties described above as heretofore done, you may deprive me of the land and services and engage any other person for the performance of those duties in which case I and my issues shall have no rights to protest against that; that the said land is for the exclusive use of the said God and they fully belong to the God and none else has any right to alienate the same ".

On the 19th October 1869, the vendor Ramkrishnabhat passed a surrender deed (Exhibit 61) to Damodar Shet, the material conditions of which were as follows :—

"It was agreed that I should pay off the Government dues out of the above income and should use the surplus in performing the daily and

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occasional ceremonies such as car festival, &c., at the temple of Gore Gopalkrishna God, whom we worship from our ancestors. According to the agreement as written in the said sale-deed, I have been performing all the services under your instructions out of the *Numfa* or profits of the said lands. But as I am unable to cultivate the said lands and make improvements on the same you should cultivate them according to your desire and as you say that I should surrender them in case of my inability to cultivate them, I have this day executed this surrender deed and handed over possession of the lands to you.....As I have surrendered all the lands to you, you must stand responsible for all the burdens on the said lands. That is to say, you should make arrangements for the performance through myself and my heirs of all the daily and occasional festivals at the Gopalkrishna temple as you had purchased from me those lands for the use of the Gopalkrishna temple without depriving the said God of the said gift ".

Damodar Shet executed a Rajinama (Exhibit 64) of the lands, on the 28th May 1873, binding himself to the following conditions :—

" The lands as stated above were purchased by me from Ramkrishnabhatta from the Viniyogas of Gore Gopalkrishna Dev. I used to pay the assessment thereof and give the produce of the said lands to the said Ramkrishnabhatta for the Viniyogas to be performed by him of the said God. But according to the covenant in the sale deed that he should pay the assessment, enjoy the lands and perform the Viniyogas from generation to generation and as now agreed upon by him to file a separate Kabulayat to the effect that he would be paying the assessment of the land beginning from this Fasli revenue year, I do hereby present this *Rajinama* to the effect that the Khata standing in my name should be transferred to his, and the assessment of those lands should be levied from him and that the said Ramkrishnabhatta should have the only right to perform the *Viniyogas* of the Shri Gopalkrishna God from the annual produce of 95 Mangis of rice and 900 cocoanuts upon paying the Government assessment therefrom, and that he shall not have any right to alienate by way of sale or mortgage by virtue of his mere right of cultivation as stipulated in the sale deed and that the Khata should be recorded as 'Ramkrishnabhatta on behalf of Gopalkrishna Dev of Gore' ".

On the same day, Ramkrishnabhatta executed a Kabulayat (Exhibit 65) for the lands, undertaking to perform certain services at the temple, as follows :—

" The lands as stated above were purchased by Damodar Shet from me for the Viniyogas of the Gore Gopalkrishna Dev and gifted (to the said God) ; but as the Khatedar presents a separate *Rajinama* on my consenting to pay

assessment for the Gopalkrishna God, according to the *Rajinama*, I do hereby state that I shall cultivate the lands from generation to generation and perform the Viniyoga of the said God from the annual produce of the land amounting to 95 Mangis of rice and 900 cocoanuts on paying the Government assessment therefrom and also preserve the boundary stones of the said lands.

As the lands belong to the God I shall enjoy them on condition of performing the Viniyogas of the God without alienating them by way of sale or mortgage. The Khata of the said land should be recorded as 'Ramkrishnabhatta on behalf of Gopalkrishna Dev' for the purposes of assessment. I shall have the right of only cultivation and paying assessment but not that of alienating the lands either by way of mortgage or sale (28th May 1873)".

Ramkrishnabhatta used to perform services at the temple and manage the endowed properties till his death. The management then passed to the Collector; but in 1889, when defendant No. 1 attained majority, he stepped into the management.

Defendant No. 10 applied to the Temple Committee to be appointed a Muktesar of the temple. The Temple Committee made an inquiry into the management of defendant No. 1. They passed a resolution on the 25th July 1894, whereby they enumerated the various services which defendant No. 1 had to perform at the temple. Shortly afterwards defendants Nos. 1, 8 and 9 were appointed Muktesars of the temple.

In course of time, the services at the temple were greatly disorganised and management of the properties was highly unsatisfactory. The matter attracted the attention of the Temple Committee in 1909, when they instituted inquiries into the complaints made, and came to the conclusion that defendants Nos. 1, 8 and 9 were not fit to be Muktesars of the temple. Accordingly defendants Nos. 1, 8 and 9 were removed from their post and the plaintiff and defendant No. 10 were appointed Muktesars in their place on the 9th November 1910.

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In 1911, the plaintiff filed a suit against the defendants in the Court of the Subordinate Judge at Kumta, praying for :

(1) The possesion of the temple property.

(2) Mesne profits till the possession of the lands was given up.

(3) The net income of the lands since the appointment of defendants Nos. 1, 8 and 9 as Muktesars and other incomes, *Taśtic* and presents from the devotees and price of the temple property used by the defendants Nos. 1 to 9 for their own use after deducting, actual expenses incurred on account of the deity.

(4) The compensation of damages caused by the misdoings of defendants Nos. 1 to 9 to the temple (Rs. 1,000).

(5) The moveable property belonging to the temple or its price (Rs. 600).

Defendant No. 1 contended *inter alia* that the suit was not maintainable owing to the provisions of section 92 of the Civil Procedure Code ; that he did not hold the lands as a Muktesar but as a trustee ; that under the early documents he was entitled to manage the properties and perform the services at the temple from generation to generation ; and that he had neither mismanaged the properties, nor discontinued any of the services.

The plaintiff put in a counterwritten statement wherein he contended among other things that the plaintiff was entitled to bring the suit as the duly appointed trustee of the deity and also as heir of the donor Damodar Shet ; and that no sanction under section 92 of the Civil Procedure Code was required for a suit by a trustee against servants and dismissed trustees.

The trial Court held that section 92 of the Civil Procedure Code was no bar to the maintainability of the suit; that the suit, except the prayer as to damages, did not fall under the operation of section 14 of the Religious Endowments Act; that the plaintiff was entitled to bring the suit; that defendants Nos. 1 and 2 were guilty of neglect in performing services at the temple; that defendants Nos. 1 to 9 had converted some of the temple properties to their own use; and that defendants Nos. 1, 2, 8 and 9 had been guilty of breach of trust. The suit was, therefore, decreed except as to the prayer for damages.

On appeal, the District Judge reversed the decree and dismissed the suit on the preliminary ground that the absence of the written consent of the Advocate General under section 92 of the Civil Procedure Code was a bar to the suit.

The plaintiff appealed to the High Court.

Nilkanth Atmaram and *G. P. Murdeshvar*, for the appellant:—Section 92 of the Civil Procedure Code has no application to the present case, first, because the plaintiff is the founder's representative; and, secondly, because the defendants became strangers to the trust on their dismissal by the Temple Committee. As regards the first ground, the legal title being in the plaintiff as the founder's representative, he is entitled to sue independently of section 92. The Rajinama and Kabulayat executed by Damodarshet do not destroy the legal title. A person having a legal title can sue even a trustee for a limited purpose, independently of section 92: see *Hidait-oon-Nissa* v. *Syud Afzul Hossein*[1]; *Gossamee Sree Greedharreejee* v. *Rumanlolljee Gossamee*[2]; *Sheoratan Kunwari* v. *Ram Pargash*[3] and *Lakshmandas Parashram* v. *Ganpatrav Krishna*[4].

(1) (1870) 2 N.-W. P. H. C. R. 420.
(2) (1889) L. R. 16 I. A. 137.
(3) (1896) 18 All. 227.
(4) (1884) 8 Bom. 365.

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Further, the defendants are now strangers to the trust and neither section 92 of the Civil Procedure Code nor section 14 of the Religious Endowments Act is a bar to the suit: see *Shri Dhundiraj Ganesh Dev* v. *Ganesh*[1]; *Miya Vali Ulla* v. *Sayed Bava Santi Miya*[2]; *Navroji Manekji Wadia* v. *Dastur Kharsedji Mancherji*[3]; *Manijan Bibee* v. *Khadem Hossein*[4]; *Budree Das Mukim* v. *Chooni Lal Johurry*[5]; *Muhammad Abdul Majid Khan* v. *Ahmad Said Khan*[6]; *Niamat Ali* v. *Ali Raza*[7]; *Ayatunnessa Bibi* v. *Kulfu Khalifa*[8]; *Ghelabhai Gavrishankar* v. *Uderam Icharam*[9].

G. S. Mulgaonkar and *A. A. Pais*, for respondents Nos. 1 to 7:—Section 92 of the Civil Procedure Code applies. Ramkrishnabhat became a trustee by virtue of the Rajinama executed by Damodarbhat, which passed the legal title. Secondly, the Temple Committee has no power to remove a trustee deriving title under a private document like a Rajinama. The Temple Committee has appointed my client as Muktesars; but the appointment does not touch the trust created by Damodar. The defendant's dismissal from Muktesarship does not affect their position as trustees under Damodar's deed.

G. P. Murdeshvar, in reply.

SHAH, J.:—The question of law that arises in this second appeal is whether the plaintiff's suit is barred by the provisions of the section 92 of the Code of Civil Procedure.

The plaintiff filed his suit in the Court of the Second Class Subordinate Judge at Kumta in the District of

(1) (1893) 18 Bom. 721.
(2) (1896) 22 Bom. 496.
(3) (1903) 28 Bom. 20.
(4) (1904) 32 Cal. 273.
(5) (1906) 33 Cal. 789 at p. 808.
(6) (1913) 35 All. 459.
(7) (1914) 37 All. 86.
(8) (1914) 41 Cal. 749.
(9) (1911) 36 Bom. 29.

Kanara. The suit relates to a public Hindu temple known as the Gopalkrishna temple of Gore. The plaintiff claims to be the representative of the original donor, Damodar Shet, who purchased certain lands from one Ramkrishnabhatt and endowed the temple therewith, and to be interested in the property dedicated to the temple. He also claims to be a Muktesar appointed by the Temple Committee duly constituted for the Kumta Taluka under the Religious Endowments Act, XX of 1863, read with Bombay Act VII of 1865. The defendants Nos. 1 to 7 are the representatives of Ramkrishnabhatt, the original owner of the lands, and defendants Nos. 8 and 9 are the representatives of another family, who with the defendants Nos. 1 to 7 claim to be the hereditary *Archakas* of the temple.

The plaintiff has set forth briefly the history of the endowment in the plaint and alleged that Ramkrishnabhatt accepted the endowment for the temple as a trustee and undertook to perform the services in the temple as an *Archaka*, that he was appointed a *Muktesar* by the Temple Committee, that subsequently defendants Nos. 1, 8 and 9 were appointed *Muktesars*, that they were ultimately dismissed from their office as *Muktesars*, and that he himself was appointed a *Muktesar* in November 1910. He has further alleged in the plaint as follows :—

"In addition to the lands which have been from times immemorial in the possession of all the defendants as worshippers for purposes of *Nandadeep*, worship and food offerings, although defendants Nos. 1 to 9 are liable to deliver over possession of the *Tastik* due to the God, and the possession of the moveable and immoveable properties charitably given by the abovementioned and other persons and although they are liable to make good the loss caused by them to the God and to pay the value of the articles appertaining to the buildings of the God's right and appropriated by them for their own use and to deliver the balance of the principal and interest after deducting from the income of the God the actual expenses incurred together with an account (in respect of the same), they did not do so although demand for them was made ever since 1910."

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He prayed for—

(*a*) possession of all the lands that may on inquiry be found to belong to the God :

(*b*) mesne profits ;

(*c*) accounts, and balance that may be found due after deducting the expenses in respect of the profits of the land, the income in respect of *Karnika* and *Tastika*, &c., due to the God, and the value of the property appropriated by the defendants out of the God's property, since their appointments as *Muktesars* to the date of the suit ;

(*d*) Rs. 1,000 as damages for the wrongful acts of defendants Nos. 1 to 9 ; and

(*e*) for the moveable property of the God in the possession of defendants Nos. 1 to 9.

Defendant No. 10 was stated to have been appointed a co-Muktesar with him but not to have been given the usual Sanad of his appointment and was joined as a defendant formally. This fact need not be noticed further as it does not touch the point which we have to consider.

Apart from the defence on the merits which it is not necessary to notice for our present purpose, it was contended by defendant No. 1 that the effect of the documents referred to in the plaint was that the property was to continue in his family from generation to generation and that his family was to receive the profits, and to perform the daily and occasional *Viniyogas* and car festival from generation to generation. He pleaded that he did not hold the lands as a *Muktesar* of the temple and that he had not neglected to perform the services, and that the suit was not maintainable in virtue of the provisions of section 92 of the Code of Civil Procedure.

In the trial Court several issues were raised including the issues as to section 92 of the Code of Civil Procedure and section 14 of the Religious Endowments Act. The trial Court was of opinion that the claim as

to damages was covered by section 92 of the Code or section 14 of Act XX of 1863, and was quite distinct from the other claims.

As to the rest of the suit, the trial Court held that it was not a suit, contemplated by either of the two sections and that it was maintainable. On the merits it held that the defendant No. 1 had committed a breach of the trust. It passed a decree allowing the defendants to continue as trustees and to remain in possession of the property on certain terms.

Both parties were dissatisfied with this decree and preferred cross-appeals to the District Court of Kanara. The preliminary question as to the jurisdiction was raised before that Court, which held that the suit was barred by section 92 of the Code of Civil Procedure. Accordingly the plaintiff's suit was dismissed.

In the appeal before us the learned pleader for the plaintiff has questioned the correctness of this view, mainly on the ground that the suit is to recover possession of the trust property from persons, who are in the position of strangers after they are properly dismissed by the Temple Committee from their office as *Muktesars*.

From the allegations in the plaint and the nature of the reliefs claimed, it is clear that the suit is one contemplated by section 92, Civil Procedure Code. It is common ground that the trust was created for public purposes of a religious nature. The plaintiff also alleges a breach of trust. The relief as to account is clearly covered by clause (*d*) of section 92, sub-section (1). The relief as to possession also involves an inquiry as to what are trust properties. Taking the plaint as a whole, it seems to me that it is a suit for the removal of the defendants from their position as trustees, for the restoration of the trust property to the plaintiff as the

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Muktesar appointed by the Temple Committee, for taking accounts, and for damages for their wrongful acts as trustees. Such a suit would be clearly within the scope of section 92 of the Code. The character of the suit is not changed either by omitting the prayer as to damages as distinct from other prayers as suggested by the trial Court or by omitting the prayer for accounts and for the balance that may be found due as suggested by Mr. Murdeshwar for the appellant here. The plaint must be taken as a whole for the purpose of determining the question of jurisdiction and whether we look to the allegations in the plaint or to the reliefs claimed, it is clear that the suit is one contemplated by section 92 of the Code.

This is not a suit against strangers as contended by Mr. Murdeshwar. It is not necessary to refer to the decisions cited by him. The question is whether in the present suit the defendants are in the position of strangers. In my opinion they are not. They are really trustees under the documents referred to in the plaint, and they claim to be trustees entitled to hold the lands from generation to generation subject to the due fulfilment of the trust. This position they came to occupy quite independently of their being *Muktesars* appointed by the Temple Committee and they are not strangers claiming to hold the lands adversely to the trust though they may not agree as to their obligations under the trust.

It is contended on behalf of the plaintiff that in virtue of their having accepted the office of *Muktesars* they ceased to be trustees and that having been properly dismissed from that office they were in the position of strangers. It is not alleged in this case that they accepted the trust and acquired the right to hold the property from generation to generation subject to the trust as *Muktesars*. No authority is cited in support

of the view that a *Muktesar* cannot be a hereditary trustee independently of his Muktesarship and I do not see anything either in the scheme of the Religious Endowments Act or in its provisions which lends support to such a position.

The suit being of a character contemplated by section 92 it cannot be entertained by the Second Class Subordinate Judge. Sub-section (2) of section 92 clearly provides that save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section. Admittedly the present suit is not brought in conformity with the provisions of sub-section (1) and cannot therefore be entertained.

It is also clear that the present suit is not filed as provided by the Religious Endowments Act. It is not filed in the District Court as provided by that Act, and the leave required by section 18 of the Act is not obtained. It is not necessary to express any opinion as to whether the plaintiff can file a suit under the Religious Endowments Act as a person interested in the temple in the performance of the worship or service thereof, and in the trust relating thereto after obtaining the leave of the District Court under section 18 and whether under the circumstances the reliefs that he can get in a suit under section 14 of the Act will be sufficient to meet the requirements of the trust. It is clear, however that any suit filed in accordance with the provisions of the Religious Endowments Act will not be open to the objection based on the provisions of section 92 of the Code of Civil Procedure.

It remains to notice the argument urged on behalf of the plaintiff that a suit filed by a properly appointed

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Muktesar to recover the property which is held by the ex-*Muktesars* who have been properly dismissed from their office by the Temple Committee, does not fall under section 14 of the Act. The decision in *Virasami* v. *Subba*[1] is relied upon in support of the argument. This argument does not help the plaintiff in this suit as it is a suit not merely by a *Muktesar* but by a person who also claims to be interested in the temple and its worship or service. The defendants as I have pointed out are not merely ex-*Muktesars* but also hereditary trustees. The Temple Committee have no jurisdiction to remove such trustees. It is not alleged that the defendants were trustees whose nomination was vested in or might be exercised by or would be subject to the confirmation of the Government or any public officer as provided by section 3 of the Religious Endowments Act. The defendants would be trustees contemplated by section 4 of the Act. Under the circumstances it would not be easy to hold that section 14 would not apply to a suit like the present suit, if it were filed in the proper Court with the necessary leave. But on the facts of this case it is not necessary to pursue the point any further.

The result, therefore, is that the appellant's contention must be disallowed and that the present suit must be held to be not maintainable in virtue of section 92 of the Code of Civil Procedure.

It is to be regretted that the present suit, which was filed in September 1911, has failed on a preliminary point and that the allegations as to the breach of trust and the misuse of the trust property cannot be dealt with on their merits.

Having regard to all the circumstances I think that each party should bear his own costs throughout.

(1) (1882) 6 Mad. 54.

I would, therefore, dismiss the appeal and confirm the decree of the lower Court except as to costs. Each party to bear his own costs throughout.

I agree with my learned brother that copies of the judgments and of the printed paper-book in this second appeal should be sent to the Advocate General in order that he may take such action as he thinks proper with reference to this trust. The Registrar may also furnish copies of such documents in the case as he may require before returning the record to the lower appellate Court.

MARTEN, J. :—The question before us is whether the lower appellate Court was right in dismissing this suit on the preliminary point that it was not maintainable without the written consent of the Advocate General under section 92 of the Civil Procedure Code.

It is clear that we have here a trust created for public purposes of a charitable or religious nature within the meaning of section 92. It is also clear that the Hindu Temple in question and its endowments which are all situate in North Kanara are within the operation of the Religious Endowments Act, 1863, but that the suit is not maintainable under section 14 of that Act as the requisite preliminary leave of the Court under section 18 has not been obtained. Consequently I think that in section 92 (2) of the Civil Procedure Code the opening words "Save as provided by the Religious Endowments Act" may in effect be disregarded in the present case. I apply those words here as meaning "Save in so far if at all as the plaintiff may institute his suit in accordance with the provisions of the Religious Endowments Act" and not as meaning that all suits within the operation of the Religious Endowments Act shall be brought as provided by that Act and that Act alone. There is much which is in common between the two

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sections but section 92 is substantially the wider and provides *inter alia* for settling a scheme which is a jurisdiction of a very wide and beneficial nature. I think, therefore, that a plaintiff may proceed for appropriate relief under either Act, and that the opening words in section 92 (2) only mean that if he elects to proceed under the Religious Endowments Act, he is not to be prevented from so doing by section 92.

Turning to the plaint in the present suit it is hardly an artistic specimen of pleading and it derives no assistance from an indifferent English translation. But I think we can see what the parties were aiming at, and we get assistance in this respect from the course the case took at the trial. As I read the plaint, it in effect charges defendant No. 1 and others with breach of trust, and claims—

(1) an enquiry as to what the trust property now consists of ;

(2) possession of what should be found to be the trust property as the result of that enquiry ;

(3) an account of the trust property both capital and income come to the hands of defendants Nos. 1, 8 and 9 or any of them from 1889 (when the lands were released by the Collector on defendant No. 1 attaining his majority, see Exhibit 67) to date ;

(4) an account of all expenses properly incurred by defendants Nos. 1, 8 and 9 ;

(5) damages for breach of trust.

The plaintiff sued as one of two co-Muktesars appointed by the Temple Committee in the place of defendants Nos. 1, 8 and 9 who had been dismissed "on account of their wrongful acts". The other co-Muktesar was alleged in para. 4 to be "under the constraining influence of the other defendants" and was accordingly

added as defendant No. 10. The plaintiff also sued as heir of the original donor Damodar Shet (see plaint para. 2 and reply, Exhibit 42, para. 9). Defendants Nos. 1, 2, 8 and 9 put in written statements and defendants Nos. 1 and 2, if not the others, pleaded section 92 of the Civil Procedure Code in bar. In his reply, Exhibit 42 (paras. 9 and 10) the plaintiff pleaded in effect that the suit was by a trustee against servants and dismissed trustees and that no consent under section 92 was necessary. At the trial only defendants Nos. 8 and 9 appeared, but issues Nos. 2 and 4 raised section 92 of the Civil Procedure Code and section 14 of the Religious Endowments Act respectively.

At the trial the trust was found by the learned trial Judge to be in a lamentable state. In para. 31 of his judgment the learned Judge stated as follows:—"There is in my opinion abundant evidence to prove that defendant No. 1 has been guilty of serious neglect of duty and breach of trust that amounts to sacrilege at least from a Hindu point of view towards the Deity for whose Viniyogas thousands of rupees had been sacrificed by Damodar Shet and his family and that defendant No. 1 was rightly dismissed from his trusteeship". The dismissal thus referred to was a sequel to a report by the Temple Committee, Exhibit 149, which after finding that defendant No. 1 had appropriated Temple lands to his own use and had removed stones and timber of the temple to build a house for himself elsewhere and that none of the defendants Nos. 1, 8 and 9 had kept any trust accounts, concluded as follows:—"It is apparent from this that Anant Padmanabh (defendant No. 1) has caused a great loss to the God for his self benefit. The other 2 Muktesars as they belong to Anant Padmanabh's family did not prevent him from doing that. From all this the Committee thinks that all the three are not fit to be the Muktesars of the temple".

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The result, however, which the learned trial Judge arrived at was hardly calculated to remedy these gross breaches of trust or to put the trust on a proper footing. In para. 37 he found himself constrained by section 92 to dismiss the claim for damages or compensation as being outside his jurisdiction in the absence of the requisite consent of the Advocate General. He, however, thought he had jurisdiction to deal with the rest of the case and eventually arrived at a conclusion which, I think, he had no power to do unless he was settling a scheme or administering the trust. The conclusion was in effect this. On defendants Nos. 1 and 2 undertaking to perform their religious duties in future, they were to remain trustees of the temple endowments but with a liability to be dismissed by the Temple Committee for future breach of duty. If, however, this undertaking was not given within six months, plaintiff could apply for possession and was then to be at liberty to appoint new trustees preferably from among the family of defendants Nos. 1 to 7.

The result of this decision was in effect to leave defendant No. 1 in possession of much of the alleged plunder and to restore this alleged fraudulent trustee to his office on a mere promise of future good behaviour. I use the word "alleged" because we are not now hearing the appeal on its merits. But the trial Judge found these allegations proved and having regard to the admission made by defendant No. 1 before the Temple Committee and to his non-appearance at the trial, it would seem unlikely that the findings of fact by the trial Judge are incorrect.

I have dealt with this judgment at some length because it is absolutely inconsistent with the plaintiff's theory that the suit is one for ejectment by trustees against mere trespassers.

To my mind it seems clear that the Judge could give no directions about the future trusteeship without in effect administering or executing the charitable trusts. Further the suit was by one Muktesar alone, the other one being a defendant. This would cause no difficulty in a suit for execution of the charitable trusts. I think, however, it might cause difficulty in a mere ejectment suit, for the Court could hardly decree possession to one of two Muktesars, and could not settle any dispute between them except by administering the trust. In England this difficulty could be got over by an application to the Chancery Court administering the trust for leave to sue in the names of both trustees.

The conclusion therefore which I have arrived at is that the plaint is clearly within section 92, and that the relief granted at the trial is also within section 92.

Under these circumstances I can deal shortly with the somewhat narrower ground relied on by the lower appellate Court, viz., that the suit was in effect a suit for the removal of a trustee, as the office of trustee and Muktesar were in the present case distinct and the Temple Committee could not remove defendant No. 1 from the trusteeship. This point depends on the true effect of the four documents, Exhibits 60, 61, 64 and 65, set out in para. 10 of the judgment of the trial Judge. These documents seem to me rather confused. They extend over some nine years and give interests both to Damodar and to Ramkrishna, and it is not easy to answer the question in whom was the legal ownership of the land upon trust for the God. Both Courts below have however held that Ramkrishna and his heirs became hereditary trustees, though the lower appellate Court would appear to confine this trust to income as it finds that the "tenant Ramkrishna became trustee of the *proceeds* of the land for the benefit of the God".

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For the present purposes it seems to me unnecessary to determine the precise nature of this hereditary trust. It is sufficient, I think, to say that such a trust existed, and that defendant No. 1 was not and could not be removed from it by the Temple Committee when they dismissed him from his office of Muktesar.

I agree, therefore, with the lower appellate Court in thinking that the suit was in effect a suit for *inter alia* the removal of a trustee.

The result is that the preliminary point under section 92 is, in my opinion, fatal to the plaintiff's suit and accordingly the appeal must be dismissed. I am, however, very dissatisfied with the position in which the trust is thus left after some seven years' litigation—a result which is largely due to the plaintiff's obstinacy in persisting that the consent of the Advocate General was unnecessary. Further as a rule the Court insists on at least two trustees and does not direct delivery of possession of trust property to a single plaintiff as is claimed here. I think, therefore, that the best course in the interests of the trust is to direct that the case be laid before the Advocate General as representing charity for his consideration as to what steps, if any, should be taken by him in the matter of this trust. In the meanwhile the record will be retained in the High Court.

As regards costs we have a judicial discretion under section 35 of the Civil Procedure Code, although in our view the Court had no jurisdiction to hear the suit. I think on the whole that the proper order here is to direct that each party bear his own costs throughout. The actual order of this Court will be as indicated by my learned brother.

Decree confirmed.