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February 23.

RAJE ANANDRAO
v.
SHAMRAO AND OTHERS.

(P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Religious Endowment—Suit under s. 92, C.P.C.—Scheme providing for modification in future—Modifications, if can be made by application or separate suit—Code of Civil Procedure, 1908 (V of 1908), s. 92.

The appellant was the trustee of a temple, which was an endowment for the public by his ancestors, and the respondents were its Pujaris with hereditary rights. Dissatisfaction with the management of the temple having arisen a suit under s. 92 of the Code of Civil Procedure was filed in which it was finally decided that the office of the Pujaris was hereditary and they were subject to the control of the appellant. Some of the Pujaris were not parties to the suit but they were bound by the scheme framed therein as members of the worshipping public. Subsequently again trouble arose and on the report of a commissioner appointed to investigate the working of the temple, the District Judge passed an order by which he revised the scheme which was then in force. The Pujaris went to the High Court in revision which was allowed. On appeal by special leave the main question arising for decision was how far it was open to the Court to amend a scheme once framed under s. 92 of the Code of Civil Procedure where a power to amend the scheme is reserved in the Scheme itself.

Held, that in a suit under s. 92 for the settlement of a scheme it was open to provide in the scheme for modifying it whenever necessary by inserting a clause to the effect.

A suit for the settlement of a scheme is analogous to an administration suit and so long as the modification in the scheme is for the purpose of administration, such modification can be made by an application under the relevant clause of the scheme without the necessity of a separate suit under s. 92 of the Code of Civil Procedure the provisions of which are not violated by such a procedure.

Chandraprasad Ramprasad v. *Jinabharthi Narayanabharthi* (1931) I.L.R. 55 Bom. 414, *Sri Swami Rangacharya* v. *Gangaram* (1936) I.L.R. 58 All. 538, *Umeshananda Dutta Jha* v. *Sir Ravaneswar Prasad Singh* (1912) 17 C.W.N. 841, *Manadananda Jha* v. *Tarakananda Jha Panda* A.I.R. 1924 Cal. 330, *Srijib Nyayatirtha* v. *Sreemant Dandy Swami Jagannath Ashram* A.I.R. 1941 Cal. 618, *Mahomed Waheb Hussain* v. *Syed Abbas Hussain* A.I.R. 1923 Pat. 420 and *Gangaram Govind Pashankar* v. *Sardar K. R. Vinchurkar* I.L.R. [1947] Bom. 466, approved.

Prayaga Doss Jee Varu v. *Tirumala Anandam Pillai Purisa Sriranga Charylu Varu* (1907) L.R. 34 I.A. 78 and *Sevak*

Kirpashanker Daje v. *Gopal Rao Manohar Tambekar* (1913) 24 M.L.J. 199, referred to.

Veeraraghavachariar v. *The Advocate-General of Madras* [1928] I.L.R. 51 Mad. 31, disapproved.

A suit under s. 92 is a representative suit and binds not only the parties to the suit but all those who are interested in the trust. The mere fact that the Pujaris were not parties to the suit would not take away the jurisdiction of the District Judge to modify the scheme, if the modification was with respect to the administration of the trust and if it did not affect the private rights of the Pujaris.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 370 of 1956.

Appeal by special leave from the judgment and order dated November 25, 1955, of the former Nagpur High Court, in Civil Revision No. 333 of 1954.

A. V. Viswanatha Sastri, Shankar Anand and *Ganpat Rai*, for the appellant.

W. S. Barlingay and *A. G. Ratnaparkhi*, for the respondents.

1961. February 23. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This is an appeal by special leave against the judgment of the Nagpur High Court. The brief facts necessary for present purposes are these: There is an ancient temple of Balaji at Deolgaon Raja in the Buldana District. Before 1866 the management of the temple was in the hands of a family bearing the name of Lad. A suit was filed in 1866 with respect to this temple by Raje Mansingh Rao under the guardianship of his mother for a declaration that the temple was his property. The defendants in that suit were certain pujaris. The suit was decreed by the first court but on appeal it was held that the temple was not the private property of the Raja but was an endowment for the public founded by the ancestors of the Raja and that the Raja was entitled as against the pujaris to the possession and control of the institution. A receiver was appointed during the minority of the Raja but in due course the Raja took over the direct management of the temple. In 1872 it seems that there was some dispute between the Raja and the pujaris whose offices were also hereditary; and an agreement

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was arrived at between them. By this agreement it was provided that any offerings up to Rs. 5/- would go to the pujaris who were to defray the expenses of *dhoop*, *deep* and *neivedya* from this amount keeping the balance to themselves. There were also certain provisions in the agreement as to offerings in kind. The agreement also provided for other matters relating to worship and imposed certain duties on the pujaris. Finally, it provided that the parties should carry on all the duties stated in the agreement and other duties besides them as before according to the usual *wahiwat* and that earnings would be taken as stated in the agreement and proper arrangement of expenses would be kept and the pujaris would take all possible care not to take more than what was fixed in the agreement. This agreement seems to have held the field thereafter till we come to 1904.

It seems that there was dissatisfaction with the management of this temple by Raje Anandrao and in consequence a suit was filed after obtaining permission of the Advocate-General in February, 1904, for framing a scheme for the management of the temple. This suit was finally decided on April 29, 1916, by the Additional Judicial Commissioners. They set aside the order of the trial court for the removal of Raje Anandrao from the management by declaring that the right to manage the affairs of the shrine which was an office was hereditary in the family of the Raja; but they further held that a scheme should be framed providing—

"(i) for the management of the trust pending any dispute as to who is the present holder of the office of trustee and manager;

(ii) for the management of the trust during the minority of the appellant if he should be established to be the present Raja;

(iii) for the continuance of control by the Court after the present hereditary incumbent enters upon the office of manager *sui juris*; and

(iv) for the modification of the scheme from time to time as circumstances may demand."

In consequence the matter went back to the District Judge who framed a scheme on February 16, 1918, for

the management of the temple. This scheme was later substituted by another scheme dated November 25, 1926. Finally, on October 16, 1935, another scheme was framed in substitution of that framed in 1926. It may be mentioned that the pujaris as such were not parties to this suit in which the scheme was framed, though they would be as much bound by it as members of the worshipping public as the parties to it. It seems that about that time there was another suit pending in the court of the Additional Subordinate Judge, II Class, Buldana, between the appellant and the pujaris. That suit was decided on April 30, 1936, and it was held therein that the agreement of 1872 which was binding on the appellant recognised that the office of pujari was hereditary. It was also held that the trustee (namely, the Raja) was entitled to control the pujaris in the exercise of their rights and to see that they performed their duties properly. In other words it was held that the pujaris were entitled to retain their office during good behaviour. It was also held that the hereditary nature of their right had not invested them with any immunity from all control and they were not entitled to act with impunity and yet retain their office. It was further held that they could not establish a right to enjoy the fruits of their office though absolutely incompetent to do so. Further it was held that the power of dismissal in the event of misbehaviour undoubtedly belonged to the Raja but that it should not be lightly exercised and should be subject to the control of the District Judge. Finally it was made clear that the Raja had no right to dispose of any part of the income of the pujaris nor had he any right to interfere in matters of succession amongst them. The office of pujari was thus held to be hereditable unless there was misconduct or misbehaviour which caused forfeiture. A declaratory decree was therefore passed to the effect that the pujaris who were defendants in that suit were holding hereditary office of the pujaris of Shree Balasaheb Sansthan and that they were in the discharge of their duties subject to the control of the plaintiff (namely, the Raja) and they were bound to respect his authority and rightful

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orders and that they held their office subject to good behaviour.

Next we come to the year 1953. It seems that there was some trouble in the temple and consequently the District Judge visited the place on November 30, 1953. At that time it was agreed that a Commissioner with wide terms of reference be appointed to investigate the working of the temple *vis-a-vis* the pujaris, the trustee and the general public and he should report how far the present scheme was working, what were the defects and shortcomings and what new proposals or alterations in the scheme and in the agreement of 1872 were necessary in the light of the working till then and the changed circumstances. Many of the pujaris-respondents who were present on that date were agreeable to this course. Eventually, the Commissioner reported to the District Judge and objections were called to that report. The matter was then gone into and the District Judge passed an order on April 12, 1954, by which he revised the scheme which had been in force since 1935.

Thereupon the pujaris went in revision to the High Court and their contention was that the District Judge had acted beyond his jurisdiction in revising the scheme in so far as it affected them. The High Court went into the question whether the District Judge had any power to modify the scheme and came to the conclusion that if the matters sought to be introduced by modification of the scheme are covered by s. 92 of the Code of Civil Procedure, an application for modification is not the appropriate remedy. It further held that unless the power reserved to the court under the scheme is invoked for a purpose analogous to execution of the decree, no modification of the scheme was possible under s. 92. It therefore held that unless the rights of any persons were the subject of *lis*, the scheme could not be modified so as to affect them except by a suit under s. 92. Finally, it came to the conclusion that as the pujaris were not parties to the suit of 1904 or to the scheme that was framed, it was not possible to modify the scheme so as to affect their rights without recourse to s. 92. The

revision was therefore allowed and the scheme framed by the learned District Judge was ordered to be read subject to the order of the High Court.

Thereafter an application was made by the appellant to appeal to this Court, which was later converted into an application for review of the earlier order. This application was rejected. Then the appellant applied to this Court for special leave and obtained the same; and that is how the matter has come up before us.

The main question that arises in this appeal is how far it is open to a court to amend a scheme once framed under s. 92 of the Code of Civil Procedure, where a power to amend the scheme is reserved in the scheme itself. It is not seriously disputed in this case that the power to amend the scheme has been reserved in view of the judgment of the Additional Judicial Commissioners already set out above and paragraph 17 of the scheme dated October 16, 1935. The High Court has held that as the pujaris were not parties to the suit under s. 92, the scheme could not be amended so as to affect their rights, for even where a power is reserved in the scheme to modify it, it could only be invoked for a purpose analogous to execution of a decree. It is the correctness of this view which has been challenged before us.

The leading case in support of the view taken by the High Court is *Veeraraghavachariar* v. *The Advocate-General of Madras* (1). It was held in that case that—

> "if in a decree for a scheme framed under s. 92, Civil Procedure Code, liberty is given to persons to apply to the Court for directions merely to carry out the scheme already settled, such reservation of liberty in the decree will be *intra vires* if the assistance of the Court can be given without offending s. 92; but where liberty is given to apply to the Court for alteration or modification of the scheme, such reservation is *ultra vires* as offending s. 92."

On the other hand the leading case taking the opposite view is *Chandraprasad Ramprasad* v. *Jinabharathi Narayana bharathi* (2). In that case the scheme

(1) (1928) I.L.R. 51 Mad. 31. (2) (1931) I.L.R. 55 Bom. 414

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authorised the District Court to remove a trustee and also to alter or amend the scheme upon an application of a party interested or on its own initiative after giving public notice. An application was made to the District Court for the removal of certain trustees and for the modification of the scheme. The District Judge dismissed the application on the ground that the proper remedy of the applicant was by a separate suit under s. 92 of the Code of Civil Procedure. On appeal, however, the High Court held that the District Court was competent to grant the reliefs asked by virtue of the powers conferred upon it under the rules of the scheme and that no separate suit under s. 92 of the Code of Civil Procedure was necessary. Further it held that the rule which gave power to the court which sanctioned the scheme to alter or modify it was not *ultra vires*.

The view taken by the Bombay High Court as to the power to modify the scheme by application if such power is reserved in the scheme has been followed by the Allahabad High Court in *Sri Swami Rangacharya* v. *Gangaram* (1). The Calcutta High Court has also accepted the view that where there is a provision in a scheme for its modification it can be modified by an application; (see *Umeshananda Dutta Jha* v. *Sir Ravaneswar Prasad Singh* (2) *Manadananda Jha* v. *Tarakananda Jha Panda* (3) and *Srijib Nyayatirtha* v. *Sreemant Dandy Swami Jagannath Ashram* (4)). The Patna High Court also in *Mahomed Waheb Hussain* v. *Syed Abbas Hussain* (5) held the same view. In *Gangaram Govind Pashankar* v. *Sardar K. R. Vinchurkar* (6), the Bombay High Court has gone further and held that the court had inherent power under s. 151 of the Code of Civil Procedure to alter a scheme even in the absence of a clause giving "liberty to apply" if circumstances have subsequently arisen which make it desirable for it to be altered to meet the ends of justice.

Reference was also made to two decisions of the Privy Council. In *Prayaga Doss Jee Varu* v. *Tirumala*

(1) (1936) I.L.R. 58 All. 538.
(2) (1912) 17 C.W.N. 841.
(3) A.I.R. 1924 Cal. 330.
(4) A.I.R. 1941 Cal. 618.
(5) A.I.R. 1923 Pat. 420.
(6) I.L.R. [1947] Bom. 466.

Anandam Pillai Purisa Sriranga Charylu Varu (1), the Privy Council itself framed a scheme and one of the terms in the scheme was that liberty was reserved to persons interested from time to time to apply to the High Court for any modification of the scheme that may appear to be necessary or convenient. Similarly, in *Sevak Kirpashanker Daji* v. *Gopal Rao Manohar Tambekar* (2), the scheme which was framed by the Privy Council in that case contained in cl. 20 a direction that the provisions of the scheme might be altered, modified or added to by an application to His Majesty's High Court of Judicature at Bombay. It is true that in these cases, the Privy Council was not considering whether such a clause could be legally inserted in a scheme; but the fact remains that in these two schemes the Privy Council did insert a clause in each authorising its modification by an application to the High Court.

Apart from authorities, however, let us see if there is anything in s. 92 of the Code of Civil Procedure which militates against providing a clause in a scheme framed thereunder for its modification by an application to the court framing the scheme. Section 92 permits a suit in the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature or where the direction of the court is deemed necessary for the administration of any such trust to be filed either by the Advocate-General or two or more persons having an interest in the trust with the consent in writing of the Advocate-General. Reliefs that can be obtained under that section are—

"(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(cc) directing a trustee who has been removed or a person who has ceased to be trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

(d) directing accounts and inquiries;

(1) (1907) L.R. 34 I.A. 78 (2) [1913] 24 M.L.J 199.

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(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require."

Further sub-s. (2) of s. 92 bars a suit claiming the above reliefs unless the suit is filed in conformity with s. 92(1). In the present appeal we are concerned only with the modification of a scheme; we are not concerned with appointment or removal of trustees or any other matter enumerated in sub-s. (1) of s. 92. We do not therefore propose to consider whether it would be open to appoint or remove trustees etc., on the ground of breach of trust without recourse to a suit under s. 92. We shall confine ourselves only to the question whether in a case where there is a provision in the scheme for its modification by an application to the court, it is open to the court to make modifications therein without the necessity of a suit under s. 92. So far as the scheme is concerned, s. 92 (1) provides for settling a scheme and if a suit is brought for this purpose it has to comply with the requirements of s. 92(1); but where such a suit has been brought and a scheme has been settled, we see nothing in s. 92 (2) which would make it illegal for the court to provide a clause in the scheme itself for its future modification. All that that sub-section provides is that no suit claiming any of the reliefs specified in sub-s. (1) shall be instituted in respect of a trust as is therein referred to except in conformity with the provisions of that sub-section. This sub-section therefore does not bar an application for modification of a scheme in accordance with the provisions thereof, provided such a provision can be made in the scheme itself. Under sub-s. (1) the court has the power to settle a scheme. That power to our mind appears to be comprehensive enough to permit the inclusion of a provision in the scheme itself which would make it alterable by the court if and

when found necessary in future to do so. A suit under s. 92 certainly comes to an end when a decree is passed therein, including the settlement of a scheme for the administration of the trust. But there is nothing in the fact that the court can settle a scheme under s. 92(1) to prevent it from making the scheme elastic and provide for its modification in the scheme itself. That does not affect the finality of the decree; all that it provides is that where necessity arises a change may be made in the manner of administration by the modification of the scheme. We cannot agree that if the scheme is amended in pursuance of such a clause in the scheme it will amount to amending the decree. The decree stands as it was, and all that happens is that a part of the decree which provides for management under the scheme is being given effect to. It seems to us both appropriate and convenient that a scheme should contain a provision for its modification, as that would provide a speedier remedy for modification of the manner of administration when circumstances arise calling for such modification than through the cumbrous procedure of a suit.

In *Veeraraghavachariar's* case (1), the Madras High Court was cognizant of the two decisions of the Privy Council in which clauses had been inserted in the scheme providing for its modification by an application. But the learned judges were of the view that the point was never raised much less decided by the Privy Council and therefore it could not be said that the Privy Council was of the opinion that such a clause would be *intra vires*. They thought that inserting such a clause in the scheme would imply that the suit would remain pending for ever. It is not necessary to hold that a suit under s. 92 in which a scheme is framed providing such a clause is pending for ever. The scheme deals with the administration of the trust and for the purposes of the scheme it would not be wrong or improper to treat a suit under s. 92 as analogous to an administration suit. On that view it would in our opinion be just and convenient to provide for a clause in the scheme which is framed for the administration

(1) (1928) I.L.R. 51 Mad. 31.

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of the trust to allow for its modification by an application. We therefore accept the view of the Bombay, Calcutta, Allahabad and Patna High Courts in this matter and hold that it is open in a suit under s. 92 where a scheme is to be settled to provide in the scheme for modifying it as and when necessity arises, by inserting a clause to that effect. Such a suit for the settlement of a scheme is analogous to an administration suit and so long as the modification in the scheme is for the purposes of administration, such modification can be made by application under the relevant clause of the scheme, without the necessity of a suit under s. 92 of the Code of Civil Procedure. Such a procedure does not violate any provision of s. 92. The view taken by the Madras High Court that insertion of such a clause for the modification of the scheme is *ultra vires* is incorrect. It was therefore open to the District Judge in the present case to modify the scheme.

The next question is whether the modification in this case is for the purposes of administration alone for then it will be justified and within jurisdiction or whether by this modification the private rights of the pujaris are in any way affected. It is true that the pujaris were not parties to the suit under s. 92 but the decision in that suit binds the pujaris as worshippers so far as the administration of the temple is concerned, even though they were not parties to it, for a suit under s. 92 is a representative suit and binds not only the parties thereto but all those who are interested in the trust. Therefore, the mere fact that the pujaris were no parties to the suit will not take away the jurisdiction of the District Judge to modify the scheme, if the modification is with respect to the administration of the trust and if it does not affect the private rights of the pujaris. According to the High Court, the modification in the scheme was only with respect to three paragraphs, namely, paragraphs 3, 4 and 12. Learned counsel for the pujaris has admitted that there is no modification in paragraph 4. This is also clear from a comparison of paragraph 4 of the 1935 scheme with paragraph 4 of the revised scheme, for the two paragraphs are word for word the same. So

we are left with the modification in paragraphs 3 and 12. Paragraph 3 originally provided that "the managing trustee shall have authority to regulate the performance of the pooja according to usage which is not in any way repugnant to public interest and morals", and to this part of paragraph 3, the revised scheme adds the words "but which encourages the use of *vedic yagnik*". Learned counsel for the pujaris admits that there can be no objection to this addition, for it only brings out what was implicit in the old scheme. Further the following addition is made to paragraph 3 in the revised scheme :—

> "The rules may provide, *inter alia*, that the persons actually doing the worship should have the requisite knowledge of the *mantrik* ritual and in case any one has not such knowledge, the actual worship and ritual may be performed by his substitute having such knowledge and he may not be allowed to do the worship himself. These rules will be printed and published locally and shall be enforced by the trustee."

Now the old paragraph 3 also provided for framing of rules with the approval of the District Judge after hearing the public and the pujaris, for the worship of the deity. The revised paragraph 3 also contains a direction regarding the making of such rules with the approval of the District Judge after hearing the public and the pujaris. It has further been provided that such rules should be printed and published locally and should be enforced by the trustee. There can in our opinion be no objection to this addition, for the enforcement of the rules was already implicit in old paragraph 3 and their printing and publication is only a matter of convenience to all and can in no way affect the private rights of the pujaris. Learned counsel for the respondents did not object to this addition either. He objects to that part of the addition which says that "the persons actually doing the worship should have the requisite knowledge of the *mantrik* ritual and in case any one has not such knowledge, the actual worship and ritual may be performed by his substitute having such knowledge." Now this provision merely

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says what the rules for pooja to be approved by the District Judge after hearing the public and the pujaris should provide among other things. This provision is on the face of it reasonable, for it is unthinkable that a pujari, even though he may be a hereditary pujari, should perform puja, when he does not know anything about the *mantrik* rituals. Learned counsel for the respondents has no objection to this provision either except that he contends that the rule seems to give the right to provide a substitute to the managing trustee (namely, the appellant). As we read the rule, however, we do not think that that is what it means. All that it says is that where the hereditary pujari does not know the *mantrik* ritual, the puja may be performed by his substitute. It means that the substitute has to be provided by the pujari and not by the managing trustee. The fact that the substitute is pujari's substitute has implicit in it that it is the pujari who has to provide a substitute in his place in case he does not know the rituals. Learned counsel for the respondents concedes that if this is the meaning of the addition in paragraph 3, there can be no objection to it. We therefore make it clear that when the addition in paragraph 3 speaks of a substitute for the pujari who is ignorant of rituals, it is the pujari who has the right to provide the substitute and not the managing trustee. So read, this addition does not in any way affect the private rights of the pujaris in the matter of puja. Thus the entire addition in paragraph 3 deals with the administration of the temple with respect to puja and with the clarification which we have given above there is no trespass on the private rights of the pujaris by this addition. Therefore, the revised paragraph 3 was within the jurisdiction of the District Judge and cannot be taken exception to on that score.

Turning now to paragraph 12 we find that there are additions in that paragraph in the revised scheme and we shall deal with each addition *seriatim*: The first addition (i.e., cl. a) is that " the Raje Anandrao shall have power to keep such dependants like *kirtankars*, *puraniks*, etc., for proper performance of the religious

rites of the deity customarily so performed and to fix their allowances or remunerations, as the case may be." This addition does not in any way affect the private rights of the pujaris; it deals with persons other than the pujaris who perform other duties beside the puja, like *kirtan*, reading of *purans*, etc. The managing trustee (namely, the Raja) has been given the power to appoint such persons and to fix their allowances or remunerations. Obviously, such allowances and remuneration will not be paid out of the income which is secured to the pujaris under the agreement of 1872 and will have to come out of other income of the temple. If this provision is so read—and this is the only way in which it can be read—the learned counsel for the respondents has no objection to this provision either. It relates to the administration of the trust and does not, if read in the manner indicated above, in any way affect the private rights of the pujaris.

Then comes cl. (b), which is as follows:—

> "Raje Anandrao, and in his absence, the manager or the agent of Raje Anandrao, will have power to grant leave to, or fine, or punish the pujaris for misconduct, as in the case of his office staff and other dependants because the responsibility is on the trustee to see that the puja is performed regularly and properly. The dismissal of the pujaris for misconduct or other reasons shall not be made without the previous sanction of the District Judge, West Berar."

This clause again deals with the administration of the temple. We have already referred to the decision in the suit of 1935 between the appellant and the pujaris-respondents. In that suit it was made clear that the pujaris in the discharge of their duties were subject to the control of Raje Anandrao and were bound to respect his authority and rightful orders and that they held their office subject to good behaviour. It is this decision inter parties which is being carried out in cl. (b), which has been added in the revised scheme. The power of control which the Raja has over the pujaris in the discharge of their duties

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implies that he is the person to grant them leave or fine or punish them for misconduct, if they do not perform their duties regularly and properly. Learned counsel for the respondents feels however that this power to punish might be misused by the Raja, for it is uncontrolled, unlike the power to dismiss which could only be exercised with the previous sanction of the District Judge. The clause as it stands therefore does not in any way affect the private rights of the pujaris and does not go beyond what was decided in the suit between them and the appellant. It concerns the administration of the temple and therefore it was within the jurisdiction of the District Judge to insert it in the scheme when revising it. At the same time there may be something in the apprehension entertained by the pujaris that the power to punish may be abused. We therefore think that in this clause a further sentence should be added to the following effect:—

> "In case Raje Anandrao or his manager or agent fines or punishes the pujaris for misconduct, the pujaris will have the right to appeal to the District Judge against such orders and the order of the District Judge thereon will be final."

Then we come to cl. (c) which is as follows:—

> "The pujaris will be entitled to their shares in the offerings as per the agreement of 1872 after deduction of the expenses for the pooja, etc., as per my detailed remarks in my separate order passed today. The management will work out those instructions for day-to-day working in accordance with rules to be included in the puja rules."

The main attack of the respondents is on this clause, for, according to them, it affects their right to offerings to which they are entitled under the agreement of 1872. This clause is not self-contained, for it refers to the detailed remarks in the separate order of the District Judge passed on that very day and leaves it to the management to work out those instructions for day to day working in accordance with rules to be included in the puja rules. Now under the separate order of the same date it is provided that offerings up to

Rs. 5/- to which the pujaris are entitled subject to the expenses of *dhoop, deep* and *neivedya* according to the agreement of 1872 should be kept in a separate box which should be opened once every week, or fortnight or month or at any stated period as agreed by the pujaris, in the presence of some respectable persons of the town and the signatures of the representatives of the pujaris and of the trustees or his representative should be taken in a separate note-book to show the exact amount found in the box. In case the pujaris do not agree to some period the box may be opened once every month. It is further said that the expenses of *dhoop, deep* and *neivedya* should be met from this money and such expenses should be found out from the pujaris' account. If the pujaris do not disclose their accounts it would be for the Raja to settle the amount which is to be spent on *dhoop, deep* and *neivedya* and then require the pujaris to spend that much amount for the purpose. This amount should be paid to the pujaris on their showing what they had spent on *dhoop, deep* and *neivedya*; but if the pujaris fail to spend anything, the trustee should see that the expenses are properly incurred and debited to the pujaris in their *khata* and the balance of this *khata* should be divided among the pujaris.

The respondents are afraid that these directions would mean that the management will take away the money found in the box whenever it is opened and the pujaris would thus be at the mercy of the management for meeting the expenses of *dhoop, deep* and *neivedya* and also for the balance to which they are entitled for their upkeep. Up to now this amount of offerings up to Rs. 5/- was going direct to the pujaris and they were incurring expenses on *dhoop, deep* and *neivedya* out of it. The appellant contends that under the Madhya Pradesh Public Trusts Act, No. XXX of 1951, he has to maintain proper accounts under s. 15, to prepare a budget under s. 18 and to have the accounts audited under s. 16. Therefore it is necessary that he should show the amount received in offerings up to Rs. 5/- in his budget and should also show how much of it goes to the pujaris for their personal use and how much of

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Wanchoo J.

it is spent on *dhoop*, *deep* and *neivedya*. There is no doubt that in order that puja in the temple in the shape of *dhoop*, *deep* and *neivedya* is performed properly, it is necessary to have check in this income from offerings up to Rs. 5/- from which this expenditure is incurred, leaving the balance for the personal use of the pujaris. Even so it seems to us necessary that the interests of the pujaris are also safeguarded and they should not be left entirely at the mercy of the appellant, who may take away the entire money found in the box and may not pay them for long periods to what they are entitled as the balance. Though therefore the District Judge was right in making the arrangement for putting the offerings up to Rs. 5/- in a separate box so that they may be accounted for, we think some more provisions are necessary in order that cl. (c) may not affect adversely the private rights of the pujaris to the balance of these offerings after incurring the expenses on *dhoop*, *deep* and *neivedya*. It is also essential that some safeguard should be provided for the pujaris so that the amount put in the box is not surreptitiously taken away. Though therefore the main provision in cl. (c) dealing as it does with the administration of the trust is not objectionable, it is necessary that it should be made self-contained and should also contain safeguards for the pujaris. We therefore direct the District Judge to amend cl. (c) of paragraph 12 in order to bring into it the provisions contained in his detailed order. We also direct that the District Judge should provide for the protection of the interests of the pujaris by including the following in cl. (c):—

(1) The box in which these offerings up to Rs. 5/- are put should be double locked—one lock to be put by the appellant and the other on behalf of the pujaris.

(2) It should be opened in the presence of a representative of the management and a representative of the pujaris who shall be chosen by the pujaris in such manner as they think fit and two respectable persons of the town.

(3) The box may be opened once in a month or oftener as desired by the pujaris but not more than once in a week.

(4) The amount found in the box may be noted by the management; the whole of it should be handed over to the chosen representative of the pujaris on behalf of all the pujaris in case the expenditure for *dhoop*, *deep* and *neivedya* for the period prior to the opening has been met by the pujaris. In case however such expenditure has been met by the management, the balance after deducting such expenses, shall be immediately paid to the chosen representative of the pujaris on behalf of them all.

The last provision has been made to make it clear that the management will not take away the money but immediately give it to the representative of the pujaris for distribution among them. The provisions of the Public Trusts Act will be satisfied, in that the management will be in a position to know how much has gone to the pujaris including the amount spent on *dhoop*, *deep* and *neivedya*. This provision will also take away any objection about there being interference with the private rights of the pujaris under the agreement of 1872.

We therefore allow the appeal, set aside the order of the High Court and restore the revised scheme subject to the modifications suggested by us above. The District Judge will see that these modifications are embodied in the revised scheme. In the circumstances of the case we order parties to bear their own costs.

Appeal allowed.

JIBON CHANDRA SARMA DOLOI

v.

ANANDI RAM KALITA AND OTHERS.

1961

February 23.

(P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Brahmottar land—If alienable—Burden of proof—Assam Land and Revenue Regulation, 1886 (Reg. I of 1886), ss. 3(g), 8(1)(a), 9.

The plaintiff-appellant filed a suit alleging that the lands in suit were unauthorisedly transferred to the predecessors in title