Present : Bertram C.J. and De Sampayo J.

1922.

SATHASIVAM *et al.* *v.* VAITHIANATHAN *et al.*

151—D. C. Colombo, 2,002.

Appointment of receiver—Action in respect of a charitable trust—Trusts Ordinance, No. 9 of 1917, s. 102—Civil Procedure Code, s. 671.

An action brought in respect of a religious charitable trust under section 102 of the Trusts Ordinance, No. 9 of 1917, is subject to the general provisions of the Civil Procedure Code, and it is competent to the Court to appoint a receiver in respect of the trust property under section 671 of the Civil Procedure Code.

THE facts appear from the judgment.

A. St. V. Jayawardene, K.C. (with him *Keuneman* and *Spencer Rajaratnam*), for appellants.—Section 102 of the Trusts Ordinance is not exhaustive as regards the remedies available in respect of trust properties. All actions under the Ordinance are governed by the

[1] *(1916) 2 C. W. R. 77.*

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rules relating to civil procedure, section 116, Ordinance No. 9 of 1917, and section 671, Civil Procedure Code, gives the remedy to have a receiver appointed to safeguard the trust property *pendente lite*.

Appellants, as members of the congregation, are entitled to have a receiver appointed. They need not necessarily have a right to the immediate possession of the property in question. It was held in *Ganesh Tambekar v. Lakhminan Govindram*[1] that persons interested in the maintenance of a religious trust are entitled to have a receiver appointed to protect the trust property. This was affirmed by the Privy Council (*24 I. L. R. Bom. 50*). The affidavit of the appellants discloses a *primâ facie* case, which is not at all rebutted by the affidavit of the respondents. So a second chance should not be given to them to traverse the facts, but an order appointing a receiver could be immediately made. The selection of the person may be left to the District Judge.

Arulanandan (with him *Retnam*), for defendants, respondents.—The defendants, respondents, are in a position to disprove all the material allegations in the plaintiffs' affidavit and have not done so, as they relied on a matter of law. If the case goes back to the District Court, the defendants ought to be given an opportunity of disproving the allegations. In the absence of our affidavit, it is impossible for the Supreme Court to decide the question of the necessity for appointing a receiver. The trial is fixed a few days hence, and it may be that it will be quite unnecessary to decide the question of appointing a receiver.

Jayawardene, in reply.

January 20, 1922. BERTRAM C.J.—

This is an appeal against an order of the District Judge of Colombo refusing to appoint a receiver in an action brought in relation to a religious charitable trust under section 102 of the Trusts Ordinance, No. 9 of 1917. The learned Judge, though an affidavit alleging extensive facts was put before him, decided the application on grounds of law. The first ground was that section 102 of the Trusts Ordinance does not provide for the appointment of receivers; and the second was, or at any rate it seems to have been, that chapter L. of the Civil Procedure Code has no application to the present case, because the plaintiffs have not a right to the immediate possession of the particular property in respect of which the application was made, or a vested interest in it sufficient to entitle them to have it protected. The learned Judge bases the latter ground upon a previous decision of this Court (*Seyadoris v. Hendrick*[2]).

It seems to me that the grounds on which the learned Judge bases his judgment are mistaken. It does not matter that nothing

[1] *(1888) 12 I. L. R. Bom. 247.* [2] *1 S. C. R. 358 and 2 C. L. R. 167.*

is said about an appointment of a receiver in section 102 of the Trusts Ordinance. Any action instituted under that section is subject to the general provisions of the Civil Procedure Code (see section 116 of the Ordinance itself). Further, the learned Judge appears to have misconstrued section 671 of the Civil Procedure Code. The action relates to property subject to the trust, and the plaintiffs have every right, if they establish their facts, to the remedy which the section provides for.

There is only one other point. Mr. A. St. V. Jayawardene contends that in deciding this matter all that we should have regard to is the affidavit filed in the case. He says, as I understand him, that we ourselves are competent to appoint a receiver upon these facts, or that, if the matter is remitted to the District Judge, he should be restricted to the facts disclosed in the affidavit in coming to a decision. Certainly, I do not understand the procedure adopted in the case; nor do I understand why the facts alleged were not traversed. I cannot believe that it was the intention of the defendants to admit these facts, because if they had done so, they would have in fact admitted the whole cause of action of the plaintiffs. In any case I think that the learned Judge, before granting an order of this description, ought to investigate the facts to see whether so exceptional a remedy is really required. In my opinion the case should go back to him for that purpose. It may well be that one of the circumstances he will take into account will be the fact that the action is fixed for hearing within a very few days, and it may not be convenient to go into the allegations of the affidavit separately. On the other hand, there is an advantage in an interim order of this description. Supposing the learned Judge grants the prayer of the plaintiffs and an appeal is taken, in the present condition of the work of this Court that appeal could not come on for hearing until about nine months after judgment. Whereas if he makes an interlocutory order, and if an appeal is taken, that appeal will be heard within a very short interval. The learned Judge will, doubtless, when he hears the case, keep the circumstances in mind, if he finds facts established, that call for immediate action. The respondents having chosen to rest their case on a point of law in the Court below, and having failed, must, I think, pay the costs of the appellants on this appeal and the costs in the Court below of the hearing of the application.

DE SAMPAYO J.—I agree.

Set aside.