

1947

Present : Howard C.J. and Windham J.

CHINNATHAMBY *et al.*, Appellants, and SOMASUNDERA
AIYER *et al.*, Respondents.

S. C. 74—D. C. Jaffna, 74.

Civil Procedure Code—Resistance to execution of decree—Petition of decreeholder—Section 325—Numbered as plaint under section 327—Must it disclose cause of action?—Trusts Ordinance, s. 102—Vesting order—Delivery of trust property.

Plaintiffs obtained an order under section 102 of the Trusts Ordinance appointing them trustees of a Hindu Temple and vesting the temporalities in them. Thereafter the plaintiffs obtained an order against the first defendant for delivery of possession of the temporalities to them. Execution of the order was resisted by certain persons who were not parties to the action and who claimed the right to manage the temple. The plaintiffs thereupon filed a petition under section 325 of the Civil Procedure Code and their petition was numbered as a plaint under section 327. The District Judge dismissed the plaintiffs' claim on the ground that the plaint did not disclose a cause of action.

¹ (1339) 53 L. J. Q. B. 450.

Held, that in proceedings under section 327 of the Civil Procedure Code what is required to be investigated is the claim and not the right of the decree holder. He does not have to show a cause of action. His right to maintain the action arises from his decree and the burden is on the claimant to support his claim as against that decree.

Held also, that in a suit under section 102 of the Trusts Ordinance decrees may be issued from time to time.

Held further, that a decree directing the delivery of trust property of a temple to new trustees is executable and not merely declaratory.

A PPEAL from a judgment of the District Judge of Jaffna.

H. V. Perera, K.C. (with him *G. C. Thambyah* and *C. Shanmuganayagam*), for the plaintiffs, appellants.

S. J. V. Chelvanayagam, K.C. (with him *M. M. Kumarakulasingham*). for first, second, third, fourth, seventh, ninth, tenth, eleventh and twelfth defendants, respondents.

N. E. Weerasooria, K.C. (with him *M. M. Kumarakulasingham*), for fifth, sixth and eighth defendants, respondents.

Cur. adv. vult.

October 2, 1947. WINDHAM J.—

The plaintiffs-appellants, who are persons interested in a place of worship known as the Kumpalavalai Pillaiyar Temple, after due compliance with the provisions of section 102 of the Trusts Ordinance, instituted an action No. 72 Trust in the District Court of Jaffna against the first and second defendants-respondents. The action was settled between the parties, and judgment by consent was entered, whereunder the Temple was declared to be a public charitable trust. In accordance with the terms of the settlement, a scheme of management was framed, trustees of the temple and its temporalities were duly elected, their appointment confirmed by the Court, and on October 20, 1943, a vesting order was made vesting the temple and its temporalities in them. This vesting order, which was attached to the decree of the Court as schedule 2, and was expressed to form part of that decree, contained the following clause:—

“Further the trustees thus appointed are hereby authorised to take all necessary steps according to law to take charge and possession of the said temple and properties and temporalities and collect incomes derived from all sources as aforesaid and to act in terms of the said scheme of management confirmed by this Court and to eject parties therefrom”.

On February 18, 1944, in pursuance of the above provisions of the vesting order, the plaintiffs obtained from the Court an *ex parte* order as against the first defendant-respondent for delivery of possession of the temple and its properties to the trustees. Since the second defendant was himself a trustee, the order obviously was not and could not be issued against him; but the first defendant was not a trustee and, while under the settlement he was to be allowed to continue as officiating priest during his lifetime, the order was thus properly issued against him.

Upon the Fiscal proceeding to execute the order, however, he met with resistance from the fifth and sixth respondents, who had not been parties to the action, but who claimed the right of officiating as priests and of managing the temple under a deed of June 18, 1943, said to have been executed in their favour by their mother, the eighth respondent.

The plaintiffs accordingly filed a petition against the present respondents, including those three, under section 325 of the Civil Procedure Code, and in accordance with the provisions of section 327 their petition was duly registered as a plaint. Issues were framed, and among these were five issues, Nos. 9 to 13, in the nature of preliminary objections to the plaint. They were in the following terms :—

- “ (9) Does the plaint disclose a cause of action ?
(10) On the footing of the allegations in the plaint do the plaintiffs have the status or right to maintain this action ?
(11) Is the plaintiffs' action bad for want of compliance with the provisions of section 101 and/or 102 of the Trusts Ordinance ?
(12) Is the plaintiffs' action bad for misjoinder of parties and causes of action ?
(13) Is the plaintiffs' action bad for non-joinder of parties, viz., of all trustees as plaintiffs ? ”

The learned District Judge proceeded to consider these five issues as preliminary objections to the plaint, and, finding against the plaintiffs on issues 9 and 10, he proceeded to dismiss the plaintiffs' claims forthwith, without going into the merits of the respondents' claim. It is against this that the present appeal is directed.

Now section 327 of the Civil Procedure Code requires the petitioner's (plaintiffs') petition of complaint to be “ numbered and registered as a plaint in an action between the decree-holder as plaintiff and the claimant as respondent,” and it further requires the Court to “ proceed to investigate the claim in the same manner and with the like power as if an action for the property had been instituted by the decree-holder against the claimant.” But these words, though no doubt they require the investigation to be treated as if it were a “ fresh action ” (and on that point I concur with what was said in *Fernando v. Fernando*¹) cannot in my view reasonably be construed as placing the plaintiff—the decree-holder—in the position of having to comply with all the technical requirements of the Civil Procedure Code, non-compliance with which might prove fatal to an actual fresh action brought by him. Nor is there any question of his having to show a “ cause of action ”. It is sufficient that he is the holder of a decree for the possession of the immovable property. Section 327 merely says that the claim shall be investigated *as if* it were an action by the decree-holder against the claimant. But it is the *claim* (i.e., the case of the person offering resistance to the decree) which is required to be investigated, and not the decree-holder's own right. For he holds the decree, and the onus is on the claimant to support his claim as against that decree. Accordingly I think the learned Judge of the District Court erred in dismissing the plaint on issues 9 and 10, i.e., on the

¹ (1923) 24 N. L. R. at p. 505.

ground that the plaintiffs had no cause of action or had no right to maintain their action. The very decree which they held gave them that right.

Mr. Chelvanayagam for the respondents has not seriously contested in principle the interpretation which I have placed on section 327. But his contention is that the plaintiffs had no right to avail themselves at all of the procedure laid down in sections 325 to 327, in that they were not the holders of a possessory decree. It was largely on this ground that the Court found against the plaintiffs on issues 9 and 10. Now it is true that the procedure prescribed in those sections is only available, in respect of immovable property, to the holder of a decree directing a person against whom it operates to yield up possession of the immovable property; the decree must fall within the category set out in paragraph (C) of section 217 of the Civil Procedure Code. But it seems to me that the decree in the present case did fall within that category. It authorises the trustees to "take all necessary steps according to law to take charge and possession of the said temple and properties and temporalities . . . and to eject parties therefrom". Of the two defendants to the action in which this decree was obtained, the "party" against whom it was directed was clearly the first defendant, for the reasons to which I have already alluded. It is said that this part of the decree was merely declaratory of the trustees' rights and was not an order for delivery of possession. But I think it must be read together with the order for ejectment of the first defendant which was issued consequent upon it—an order in the following terms:—"Order for delivery of possession issued against the first defendant, returnable 18.4.44." It was not merely declaratory but executory, and was completed by the order for ejectment. That a decree directing the delivery of trust property of a temple to new trustees is executable and not declaratory was held in the Indian case of *Varadaiah Chetty v. Narasimhalu Chetty*¹. And I agree with the proposition of Mr. H. V. Perera, for the plaintiffs, that upon a suit instituted (as here) under section 102 of the Trusts Ordinance, all the reliefs claimed thereunder need not, and frequently cannot, be embodied in one decree, but that decrees may be issued from time to time.

I accordingly hold that the procedure under sections 325 to 327 of the Civil Procedure Code was available to the plaintiffs, and that the learned District Judge erred in dismissing his claim on the preliminary points raised in issues 9 and 10, or in considering at all issues 9 to 13 inclusive.

The appeal is allowed, the judgment below set aside, and the case remitted to the District Court for decision on its merits, that is to say on the remaining issues. The plaintiffs to have their costs of the appeal; costs below to abide the result.

HOWARD C.J.—I agree.

Appeal allowed.

¹ A. I. R. 1932 Madras 41.