(1930) 11 BOM CK 0023

Bombay High Court

Case No: First Appeal No. 92 of 1929

Chandraprasad Ramprasad		APPELLANT
	Vs	
Jinabharthi Narayanbharthi		RESPONDENT

Date of Decision: Nov. 20, 1930

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 47, 92, 93

Citation: (1931) 33 BOMLR 520 : (1931) ILR (Bom) 414

Hon'ble Judges: Patkar, J; Broomfield, J

Bench: Division Bench

Judgement

Patkar, J.

In this case a scheme was framed by the District Court on April 19, 1921, in connection with the temple of Siddhanath Mahadev. An application was made by one of the plaintiffs under Clause (b) of the scheme of management that two persons should be removed from the membership of the temple committee, and that the scheme of management may be so modified as to take away from the Bawa the right of nominating a person of his choice in the temple committee and give the District Judge a right to so nominate, and that an honorary secretary be appointed to assist the present ex-officio secretary of the temple committee.

2. Clauses 4, 5 and 28 of the scheme of administration are as follows:--

4. A committee once properly constituted shall ordinarily exist for five years only. On the aforesaid period being over a new committee shall be appointed by the District Court, but the old committee shall be entitled to continue-the administration till the appointment of the new committee.

5. The District Court shall have powers to dismiss a member at any time on strong grounds.

28. The Surat District Court shall upon an application of the party interested or on its own initiative and after giving a public notice, make alterations or amendments in the rules of this scheme or add a now rule thereto.

3. Under Rule 5 the District Court has the power to dismiss a member on strong grounds.

4. The learned District Judge, following the decision of the full bench of the Madras High Court in the case of Veeraraghavachariar v. Advocate General, Madras ILR (1927) Mad. 31., and the decision in the ease of Abdul Hahim Baig v. Burramiddin ILR (1933) Mad. 580, dismissed the application on the ground that the proper remedy was by a suit u/s 92 of the CPC and not by an application under the liberty to apply under Clause 28 of the scheme.

5. The reasoning underlying the Madras decisions is, first, that when a scheme is settled the suit comes to an end, and that the suit cannot be said to be pending for all time from the mere fact that the scheme framed contains a provision for an application being made for altering the scheme, and, secondly, that when Section 92 of the CPC directs that for the settlement of a scheme and for any other relief the sanction of the Advocate General should be obtained, it would be ultra vires for any Court to obtain jurisdiction by inserting a clause in the scheme whereby a person interested in the scheme or others are enabled to apply to the Court for an alteration of the scheme A distinction, however, is made where libery to apply is reserved to ask for directions as to carrying out the scheme and where permission is given to apply to the Court for alteration or modification of the scheme. In the former case if the assistance can be given without contravening the provisions of Section 92, there is no objection to such a rule being framed, but in the latter case the liberty for an application for an alteration or modification of the scheme offends against Section 92 of the Code and is ultra vires.

6. In Damodurbhat v. Bhogilal ILR (1899) 24 Bom. 45, 1 Bom. L.R. 609, where, after the settlement of & scheme of management of a certain temple, an application was made for the removal of the trustees and was dismissed on the ground that the trustees could not be removed in execution proceedings, it was held that the proper procedure was to amend the scheme of management so as to include a provision for the removal of the trustees, if necessary, and not to file a separate suit. Candy J. observed as follows (page 49):--

We doubt whether the proper course, in order to remove the trustees, ii necessary, is for the plaintiffs to bring a fresh suit u/s 539 (corresponding to Section 92 of the present Civil Procedure Code) : the more convenient and obvious procedure is for the scheme to be amended so as to include in it a provision for the removal of the trustees, if necessary.

7. The practice of this Court has always been to embody in the scheme a rule giving liberty to any person interested in the trust" to apply for modification or alteration

of the scheme. The Privy Council have approved of such rules in schemes giving liberty to apply for carrying out the directions of the scheme and for alteration and modification of the scheme. In Prayag Doss Ji Varu, Mahant v. Tirumala Srirangacharlavaru ILR (1905) Mad. 319 it was held that the Courts in sanctioning a scheme may provide for the appointment of additional or new trustees even though such appointment was not in conformity with the original constitution of the trust in the same manner as the Court of Chancery in England has exercised such powers, and that a scheme framed by the Court may be liable to variation for good cause shown. The same case went on appeal to the Privy Council and their Lordships of the Judicial Committee settled the scheme with liberty to the Mahant or any person interested to apply to the District Court with reference to the carrying out of the directions of the scheme and to the High Court for any modification in it which might appear to be necessary or convenient. See Prayag Doss Ji Varu v. Tirumala Srirangaoharla Varu ILR (1907) Mad. 138, 9 Bom. L.R. 688. Clause 11 of the scheme indicates that their Lordships of the Privy Council approved of a direction to apply to the Court by the petition for modification of the scheme. Though the question of the validity of the Clauses was not raised before their Lordships, the fact that the Privy Council approved of those rules indicates that such rules are not palpably ultra vires. Another instance in which the Judicial Committee have accepted a scheme containing similar Clauses is to be found in the Dakore Temple case of Sevak Kirpashankar v. Gopalrao (1912) 15 Bom. L.R. 13 Clause 20 of the scheme is as follows:--

The provisions of the scheme may be altered, modified, or added to, by an application to His Majesty''s High Court of Judicature at Bombay.

8. It appears that several persons made an application to the District Court under Clause 12(7) of the schema and appealed from the order of the District Court to the High Court treating the orders of the District Court as passed in execution proceedings u/s 47 of the Civil Procedure Code, and also made an application to the High Court under Clause 20 of the scheme referred to above. No question was raised before the High Court as to the maintainability of the appeal, as not only appeals were filed against the orders of the District Court but also applications in revision were made, and there was a separate application under Clause 20 of the scheme. The High Court of Bombay passed orders on those appeals and applications and the matter went to the Privy Council in Jeranchod Bhogilal Vs. Dakore Temple Committee, where a point was taken before the Privy Council that no appeal lay to the Privy Council from the order of the High Court as it was a Court of ultimate jurisdiction in the framing of the rules and orders. The Privy Council, however, came to the conclusion that the orders of the District Court were not orders falling u/s 47 of the CPC and therefore no appeal lay to the High Court, but their Lordships observed as follows (page 876):-

The High Court, at Bombay had power conferred upon it by Clause 20 of the scheme confirmed by his Majesty''s Order in Council upon an application made to it with that object to alter, modify or add to the rules sanctioned by the District Judge, but it had no other power, and that power it did not exercise; it may, however, still be exercised upon application properly made to it.

9. It would, therefore, appear that not only Clause 20 giving liberty to apply for modification of the schema was not considered by the Privy Council as ultra vires, but the Privy Council directed that on a proper application the High Court might exercise the powers under Clause 20 of the scheme.

10. In Manadananda Jha v. Tarakananda Jha (1925) 37 C.L.J. 281 the Calcutta High Court in framing a scheme gave liberty to any person interested to apply to the District Court with reference to the carrying out of the directions of the scheme, and to the High Court for any necessary modification of the scheme, Mookerjee J, followed the principle adopted in the previous decision of the same Court in Umeshananda Dutta Jha v. Sir Ravaneshwar Prasad Singh 17 C.W.N. 841 and observed as follows (page 283):--

The authority of the Court to amend the scheme from time to time has not been and cannot possibly be questioned. As was pointed out by Mr. Justice Subrahmaniha Ayyar in the case of Prayag Doss Ji Varu, Mahant v. Tirumala Srirangacharlaiaru, which was subsequently affirmed by the Judicial Committee in Prayag Doss Ji Varu v. Tirumala Sriragacharla Varu, there is ample authority for the proposition that a Court which has sanctioned a schema for the administration of a charitable trust is competent from time to time to vary the scheme as exigencies of the case may require. Reference need only be made to the decisions in The Attorney-General v. Bovill (1840) 1 Ph. 762, Att.-Gen. v. Bishop of Worcester (1851) 9 Hare 328, Mayor of Lyons v. Advocate General of Bengal (1876) 1 App. Cal. 91, ILR 1 Cal. 303., and He Browne''s Hospital, Stamord (1889) 60 L.T. 288.

11. The view taken by the Calcutta High Court was followed by the Patna High Court in Md, Waheb v. Abbas Hussain AIR [1923] Pat. 420. The view of the Madras High Court was followed by the Rangoon High Court in U.Po Maung v. U. Tun Pe ILR (1928) Ran. 594. There is thus a conflict between the views of the Madras and Rangoon High Courts on the one hand and the Calcutta and Patna High Courts on the other. The consistent practice of the Bombay High Court has been in accordance with the decision in Damodarbhat v. Bhogilal. After the decision of the Privy Council in Jaranchod v. Bakore Temple Committee, the Gors applied to High Court under Clause 20 of the scheme for elimination of certain rules and other modifications in the scheme in the case of Shankarlal v. Dakar Temple Committee (1925) 28 Bom. L.R. 309 where it was held that the rules framed under the powers given by a scheme of management which became part of the scheme, are liable to be altered or superseded by the Court which has the power to alter or modify the scheme itself.

12. As regards the reasoning underlying the decision of the full bench of the Madras High Court in Veeraraghavachariar v. Advocate General, Madras, so far ns it proceeds on the ground that when a scheme is settled, the suit u/s 92 comes to an end, and that the suit cannot be pending for all time from the mere fact that the scheme framed contains a provision that an application can be made for altering the scheme, it appears that in administration decrees and maintenance decrees liberty to apply has always been reserved. In the case of Gopikabai v. Dattatraya ILR (1900) 24 Bom. 386, 2 Bom. L.R. 101 Parsons J. observed (page 890):--

...in decrees whore maintenance is awarded, Courts should insert words which would enable them on application to set aside or modify their orders as circumstances might require, and in such cases the remedy would be the more appropriate one by application under the leave reserved.

13. Where a scheme is once settled it precludes a suit to establish a private right to manage the property which if established would interfere with the scheme settled by the Court, and the proper remedy in such cases would be by an application under the leave to apply reserved under the scheme. In Sakharam Daji v. Ganu Raghu , 23 Bom. L.R. 125 it was held that a suit by a hereditary Pujari of a temple to recover from the Guravs offerings placed by devotees before the idol fell within the purview of Section 92 of the Civil Procedure Code, and following the decision in Ramados v. Hanvmantha Rao ILR (1911) Mad. 364 it was further held that a scheme once settled by the Court cannot be altered except by the Court, and that where liberty to apply is not expressly reserved under the scheme,ILR (1920) 45 Bom. 683 such reservation can always be implied and the only remedy to the parties was to have a direction from the Court as to the offerings before the deity. At page 693 Shah J. observed:--

It has been accepted before us at the Bar that it is open to any one interested in this fund to apply to the District Court which framed the scheme to supplement or modify the same. It is not suggested that a separate suit u/s 92 is necessary. Though no liberty to apply is reserved under the scheme, such a reservation can be always implied. An application to the District Court seems to be the obvious, and, as I hold, the only remedy opens to the parties under the circumstances to have a direction from that Court as to the offerings laid before the deity.

14. Unless liberty is reserved, a second suit may probably be barred by the principle of res judicata u/s 11, explanations IV and VI. The full bench of the Madras High Court in Veeraraghavachariar v. Advocate General, Madras ILR (1927) Mad. 31., made a distinction between a liberty to apply reserved by the Court in respect of a relief which would come within Section 92 of the CPC and a reservation to apply in respect of a relief which does not offend Section 92 of the CPC or any other provision of the law. In the latter case liberty to apply would be intra vires. This view appears to me to conflict with the reasoning that as soon as a scheme is framed, the suit is at an end and the suit should not be deemed to be pending for ever, I think, therefore, that even though a suit u/s 92 is decided and is at an end for all practical

purposes, liberty to apply for modification or alteration of the scheme can be given in order to avoid multiplicity of suits. The suit u/s 92 of the CPC is a representative suit brought on behalf of the public for the administration of public trusts of a religious or charitable nature. See (1928) ILR 55 519 (Privy Council) , I think it is both desirable and necessary that such liberty should be given in the framing of the scheme for subsequent alterations according to change of circumstances.

15. With regard to the second point that so far as the relief mentioned in Section 92 of the CPC is concerned, the remedy is not by way of an application but by a suit with the consent of the Advocate General, it appears to me that the consent of the Advocate General is required u/s 92 for the settling of a scheme whore no scheme existed before, and not for the modification or alteration of the scheme. Though the provision for the consent of the Advocate General is salutary in so far as it would tend to prevent vexatious suits, I think that when once the Court has seizin of a case relating to charitable and religious trust involving the framing of a scheme, the more appropriate and speedy remedy would be by way of an application rather than the cumbrous procedure of a suit, in case a modification is required of the scheme owing to change of circumstances. In the mofussil instead of the Advocate General bringing a suit or giving consent to a suit by the relators, the powers of the Advocate General can be exercised by the Collector or such other officer as the local Government may appoint in that behalf u/s 93 of the Civil Procedure Code. It can scarcely be said that the Collector or such other officer appointed u/s 93 has the same legal knowledge or can exercise the powers in the same efficient manner as the Advocate General in the Presidency towns. Section 35A of the CPC is a sufficient safeguard against frivolous or vexatious applications. The Court which has already framed a scheme is in as good a position if not better than the Advocate General to consider the desirability of an amendment of the scheme, if necessary. In my opinion, the consent of the Advocate General is only required when a scheme has to be drawn for the first time and not when it is necessary to have an amendment or alteration or modification of the scheme.

16. I am not, therefore, satisfied that the rule giving liberty to apply to the Court for alteration or modification of the scheme is ultra vires. As observed in Att.-Gen. v. Bishop of Worcester (1851) 9 Hare 328 :--

This Court is in the constant) habit of altering schemes which have been settled under its decrees, as the alterations of times and circumstances have-required; and it has frequently done so upon petition in the causes in which the decrees have been made; and I do not think that the power of the Court to make such alterations can depend upon the character in which the decree has been made by the Lord Chancellor.

...it is obvious, 1 think, that the Court must proceed upon such applications with the utmost possible caution; that what has been done by the Court must not be disturbed, except upon the most substantial grounds, and upon the clearest

evidence, not only that the scheme does not operate beneficially, but that it can by alteration be made to do so consistently with the object of the foundation.

17. In Halsbury''s Laws of England, Vol. IV, para. 328, page 188, it is observed as follows:--

A scheme settled by the court for the administration of a charily can be altered by the court if the lapse of time and change of circumstances render it for the interest of the charity that the alteration should be made. But schemes so settled are not altered except upon substantial grounds, and upon clear evidence not only that the existing scheme does not operate beneficially, but that it can be made to do so consistently with the object of the foundation.

18. Though the consent of the Advocate General may probably be necessary in England for an application for an alteration or modification of the scheme as laid down in para. 329 of Halsbury''s Laws of England, Vol. IV, and the cases referred to by the Madras High Court in the full bench decision, Section 92, if strictly construed, requires the consent of the Advocate General to a suit praying for settling a scheme and not for modification or alteration of the scheme after it is once settled.

19. I, therefore, regret my inability to agree with the conclusion arrived at by the full bench of the Madras High Court, and would prefer to follow the practice of this Court which has prevailed for a long time and has been approved by the Privy Council, until the point is settled by the legislature or by a higher tribunal.

20. I think, therefore, that the rules in the scheme giving liberty to apply are not ultra vires. One of the rules gives the District Court power to remove the trustees for strong reasons. The prayers, therefore, made in the application are covered by the rules in the scheme.

21. The next question is whether the order passed by the lower Court is an order passed in execution proceedings or an application in the suit. According to the decision of the Privy Council in Jeranchod Bhogilal Vs. Dakore Temple Committee, , P.C., the order cannot fall as an order in execution proceedings u/s 47 of the CPC and an appeal would not be competent. I think that the order in such a case would be an order on an application in the suit under the liberty to apply reserved in the scheme. It is doubtful whether such an order passed is a decree against which an appeal would lie. The point whether such an order can be considered as passed in an application in the suit, or an application under the scheme relates to a matter of form rather than of substance. I would, however, treat the order passed by the lower Court as subject to revision by this Court u/s 115 of the Civil Procedure Code. The learned District Judge had jurisdiction to entertain the application and failed to exercise the jurisdiction vested in him by law.

22. I would, therefore, allow this appeal to be turned into a revisional application, and following the decision on this point in Abdul Hakim Baig v. Burramiddin ILR

(1925) Mad. 580, reverse the order of the learned District Judge and direct him to decide the application on the merits. Costs in these proceedings will be costs in the application to the lower Court.

Broomfield, J.

23. The facts have been fully stated in the judgment of my learned brother. In Abdul Hakim Baig v. Burramiddin ILR (1925) Mad. 580 and Veeraraghavachariar v. Advocate General, Madras ILR (1927) Mad. 31., on the strength of which the District Judge has held the present application to be incompetent, it has been laid down that any clause in a scheme which allows relief�s of the nature referred to in Section 92 to be granted by the Court on application under the scheme (without a fresh suit) is ultra vires and void. It is contended that relief�s (c) and (d) in para. 12 of the application are not relief�s of the nature referred to in Section 92, but it is admitted that relief (a), that is, the prayer for the removal of the present trustees, is a relief of that nature, and the main question in the appeal is whether the decisions of the Madras High Court should or should not be followed. I say in the appeal, but it was practically admitted at the outset that no appeal lies in view of the decision in Jeranchod Bhogilal Vs. Dakore Temple Committee, (See also the decision of this Court in Lambodar v. Dharnidhar (1925) 28 Bom. L.R. 64 A question of jurisdiction is involved, however, and if the District Judge was wrong in holding that he had no jurisdiction to entertain the application it is open to us to interfere in revision.

24. The following cases were cited in support of the view that this Court should not follow the above-mentioned, decisions of the Madras High Court. Sevak Kirpashankar v. Gopalrao (1912) 15 Bom. L.R. 13, P.C. and Jeranchod v. Dakore Temple Committee are two cases relating to a scheme for the Dakore temple where the Bombay High Court sanctioned a scheme on appeal from the District Court and the Privy Council confirmed it with some modifications which were assented to by counsel. Clause 7 of that scheme provided for the removal of members of the committee by the District Judge for good cause shown and for the filling up of vacancies. Clause 20 allowed alterations and modifications and additions to be made on application to the High Court. Damodar v. Bhat Bhogilal ILR (1896) 22 Bom. 493 and Damodarbhat v. . Bhogilal ILR (1899) 24 Bom. 45, 1 Bom. L.R. 509 related to a scheme for the Koteshvar temple. There a scheme was framed by the High Court "subject to such modifications as may be made hereafter by the High Court on the application of the parties interested in the said temple," There was also a provision that the "defendants and their heirs shall during their good conduct be trustees and managers," There was no clause providing for the removal of the trustees. It was held in Damodarbhat v. Bhogilal that in order to obtain the removal of the trustees the procedure would be to amend the scheme of management so as to include a provision for the removal of the trustees if necessary, and not to file a separate suit. That was stated to be the "more convenient and obvious procedure." Then in Prayag Doss Ji Varu, Mahant v. Tirumala Srirangacharlavaru ILR (1905) Mad. 319 the High

Court gave the following directions for the amendment of a scheme framed by the District Court (page 327):--"Power should be reserved for application by the trustees or by persona interested being made to the District Court with reference to the carrying out of the directions of the scheme." Damodarbhat v. Bhogilal was followed. It was also provided that "power should be reserved for application being made to the High Court by the trustees or by persons interested for any modification of the scheme that may be found necessary." In Prayag Doss Ji Varu v. Tirumala Srirangacharla Varu ILR (1907) Mad. 138, 9 Bom. L.R. 588 the Privy Council confirmed the scheme with certain modifications, leaving the clauses above referred to stand with the addition of the words "or convenient" after "may be found necessary" in the last clause. It has been urged on behalf of the appellants that it may fairly be assumed from these cases that the Privy Council did not consider provisions of this kind in a scheme to be ultra vires, and also that Damodarbhat v. Bhogilal is a direct authority for the view that a provision in the scheme and not a separate suit is the proper method of removing unsatisfactory trustees.

25. In Kadri v. Khubmiya (1930) 33 Bom. L.R. 546 we have had to deal with a similar application for the removal of trustees under a clause in a scheme giving liberty to apply. There are special difficulties in that case arising from the fact that the "scheme did not contain any express provision for the removal of trustees and the fact that the application is not made by any of the original parties but by other persons claiming to be interested. But the principal question in that case also is whether in view of the Madras decisions the application is tenable. The circumstances of that case are interesting for our present purpose. On a former application, No. 254 of 1913, in that case the District Judge Mr. Kennedy made an order in which he expressed the opinion that he had ample powers under the decree to remove the trustees from the management. He did not consider it necessary to do so, however, and instead made certain modifications in the scheme. The matter came before the High Court in appeal and Mr. Justice Batchelor, who as District Judge had originally framed the scheme in the case, delivered the following opinion:--

The learned Judge refers to the trouble which this mosque has already caused him and if further trouble of the same kind is continued later it seems to me it will be for the District Judge to consider whether it will not be right to remove the mulawallis from the appointment on a properly based application coming from persons prejudicially affected by the laxity of management.

26. The arguments in favour of the view which has been taken hitherto by the Bombay High Court are summarised in the referring judgment of Odgers J. in Veeraraghavachariar v. Advocate General, Madras ILR (1927) Mad. 31. In that judgment decisions of the Calcutta and Patna High Courts to the same effect have been referred to. The only weakness in the argument is that in the cases referred to the matter has rather been taken for granted than decided after discussion or

consideration. There was no issue as to the legality of such provisions in a scheme before the Privy Council. The difficulties which have been pointed out in the Madras case have not been dealt with. The only other High Court which appears to have considered Veeraraghavachariar v. Advocate General, Madras, is the Rangoon High Court and that has approved and followed it in U. Po Maung v. U. Tun Pe ILR (1928) Ran. 594. Nevertheless it is not easy to believe that the question of the competency of the Courts to frame schemes of this nature, if there is any question about it, has simply escaped the notice of so many tribunals on so many different occasions.

27. The grounds on which the Madras High Court decided in Abdul Hakim Baig v. Burramiddin ILR (1925) Mad. 580 appear to have been mainly two. There is first the difficulty in the way of holding that a suit u/s 92 is to remain pending for over, as, to all intents and purposes, it may be said to do if alterations can be made from time to time on application to the Court. Devadosa J. says (page 583):--

When a scheme is settled, the suit) comes to an end. To say that any person could apply to alter the scheme once framed would necessarily mean that the suit is pending. It cannot be said that the suit is pending for all time from the more fact that the scheme framed contains a provision that an application can be made for altering the scheme.

28. Then, there is the argument that the sanction of the Advocate General, which is necessary for the institution of a suit in which a scheme is framed, is equally necessary for any substantial modification of the scheme in order that the trustees may be protected from frivolous attacks. Wallace J. says (p. 590):--

The principle underlying Section 92, I take it, is that no trustee shall be removed or new trustees appointed, or any other relief s of the nature specified therein granted except by way of a suit filed under the sanction of the Advocate-General, so that trustees may be afforded some protection against frivolous and vexatious attempts to remove them, I do not think the legislature intended this principle to be any the less applicable when a scheme for the administration of a public trust has once been framed, or intended to countenance any procedure by which, when once a scheme has been framed, Section 92 will no longer have any application to the trust and that in future if a scheme has been framed the interesting game of attacking, harassing and removing trustees may go on merely on an application under the scheme without any guarantee, such as the necessity of obtaining the sanction of the Advocate-General affords, that the proceedings are either in the interests of the public or in the interests of the institution.

29. Wallace J. mentions a further point that if the Court has power to alter the scheme originally framed the subsequent modification would appear to be final. He says (page 593):--

The difficulty of holding any other view is enhanced when I consider what remedy a trustee removed under such a removal clause in such a scheme has. If he had been

removed by a suit u/s 92 ho has the right of appeal but if he is removed under a clause in the scheme it is very doubtful if he has any right of appeal, even though the scheme confers it.

30. The learned Judge then referred to the decision of the Privy Council in Jeranchod Bhogilal Vs. Dakore Temple Committee, where it was held that an application to the District Judge under a scheme for sanction of rules was not made in execution of a decree and that no appeal lies from an order passed on such an application. In Lambodar v. Dharanidhar (1925) 28 Bom. L.R. 64, to which I have already referred, it was held that no appeal lies to the High Court from an order passed by a District Judge as a persona designata under a scheme for management of a charitable institution. In that case a scheme of management had been settled by the High Court which provided inter alia for the removal of incompetent trustees by the District Judge.

31. No further reasons were given in the full bench case of Veera-raghavachariar v. Advocate General, Madras, the judgment of the learned Chief Justice there being mainly taken up with an attempt to show that the Privy Council cases are not conclusive. Of course if the Privy Council cases were conclusive there would be an end to the matter. The question for us is whether the reasoning which appealed to the Madras High Court is sufficiently cogent to induce us to hold that the view hitherto taken by Courts in this Presidency and in Bengal and until recently in Madras also as to the powers of the Court u/s 92 is based on a misunderstanding of what is enacted by that section, or to hold in particular that the Court has no power to remove a trustee under the provisions of a scheme unless moved to do so by a fresh suit in that behalf. With all deference to the learned Judges who decided Abdul Hakim Baig v. Burramiddin and Veeraraghavaehariar v. Advocate General, Madras, I am not prepared to dissent from the current of authority in this Presidency. The considerations which have mainly impressed me are the following. It is practically impossible to frame an automatic scheme which is capable of functioning in perpetuity without the necessity for any modification or for any control by the Court, In particular, however sound and complete the scheme may be, some provision for the removal of an unsatisfactory trustee must always be necessary. According to the view expressed in Damodarbhat v. Bhogilal ILR (1899) 24 Bom. 45, 1 Bom. L.R. 509 no scheme can be considered complete without such a provision. It becomes a choice, therefore, between a multiplicity of suits and a multiplicity of applications, and on principle one does not see why the latter should be a greater evil than the former. The natural tendency of public charitable and religious trusts is to cause a good deal of trouble both to the Courts and to the persons who consent to act as trustees, and it would seem to make little difference in either respect whether the Courts be approached by way of an application or by way of a suit. The Courts have powers which enable them to deal appropriately with merely harassing and frivolous applications. In the Presidency towns, suits u/s 92 may be instituted by the Advocate General in person or may be conducted under his supervision. But in the

mofussil, where most of these institutions are situated, the powers of the Advocate General are exercised by the Collector, who, once he has given his sanction to the institution of a suit, takes no part in it and has nothing to do with the framing of the scheme. The Court which frames the scheme appears to be the proper authority to decide whether modifications are necessary, and, in my opinion, if the Courts are permitted to make modifications on good cause shown and to remove unsatisfactory trustees on proper applications under the scheme, we shall not be sacrificing any safeguard which it is necessary to maintain either in the interests of the trustees or of the public. If this view implies that a suit in which a scheme is framed remains pending indefinitely, that may be anomalous, but it is not an insuperable objection. Moreover, speaking for myself, I am not satisfied that it is necessary to hold that the suit itself continues by reason of a clause in the scheme giving liberty to apply, It would seem to be permissible to hold that the suit is at an end and that any orders subsequently passed are passed under the scheme and not in the suit. Indeed the decision of this Court in Lambodar v. Dharanidhar (1925) 28 Bom. L.R. 64 negativing the right of appeal from orders passed on applications under a scheme rather points to this conclusion, since if the orders are to be taken as passed in the suit they would appear to amount to modifications of the decree or fresh decrees. In that connection I may refer to Abdul Hakim Baig v. Burramiddin ILR (1925) Mad. 580. On this particular point, therefore, I respectfully dissociate myself from the views expressed by my learned brother. The point referred to by Wallace J. in Abdul Hakim Baig v. Burramiddin that a trustee removed on application under a scheme has no remedy by way of appeal has caused me some difficulty, but as far as I am aware there is no good reason why the scheme itself should not provide for an appeal, if it be considered desirable, and in any case the limitation of opportunities for litigation is not necessarily an evil.

32. For these reasons, with the greatest deference to the Judges who decided the Madras cases, I am unable to agree that there is anything in Section 92 to prevent the Court from framing schemes which contain within themselves complete machinery for carrying them into effect and modifying them as occasion demands. So far as this Presidency is concerned such schemes have always been regarded as perfectly legal. Several such schemes have received the sanction of the Privy Council, and though the question of their legality does not appear to have been directly raised the very fact that it has not been raised hitherto is an argument that the objections have no real substance. I agree that we should interfere in revision in this case and direct the District Judge to entertain the application and dispose of it according to law.