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BHOGARAJU VENKATA JANAKIRAMA RAO

v.

THE BOARD OF COMMISSIONERS FOR HINDU RELIGIOUS ENDOWMENT ANDHRA PRADESH

(P.B. GAJENDRAGADKAR, K. SUBBA RAO, K.N. WANCHOO, N. RAJAGOPALA AYYANGAR AND J.R. MUDHOLKAR JJ.)

Code of Civil Procedure, 1908 (*Act* 5 *of* 1908), *s.* 2(2)—*Order passed on application under s.* 57(9) *modifying scheme framed under s.* 92 *of the Code of Civil Procedure—Whether decree—Point not raised in pleadings—Effect of—Madras Hindu Religious Endowment Act*, 1927, *s.* 57(9).

A suit was filed by certain worshippers of a temple under s. 92 of the Code of Civil Procedure for the settling of a scheme for its proper management and administration. The scheme was framed by the subordinate Judge and the same was confirmed by the High Court.

On August 4, 1947 the Board of Commissioners of Hindu Religious Endowments filed a petition under s. 57(9) of the Madras Hindu Religious Endowments Act. 1927 in the Court of the District Judge for the modification of the scheme. Out of the many issues raised, two of them related to the remuneration allowable to *Archakas* and the *Karnam*, two classes of temple officials. The decision of the District Judge was that no case was made out for varying the remuneration payable to *Archakas* and *Karnam* under the original scheme. In appeal, the High Court substantially modified the provisions regarding remuneration. The High Court held that the *Archakas* should be entitled to claim only half share in the *Dibbi* collections and to a similar share in the pumpkins and rice offered at the time of the dedication of a calf to the deity and to no other perquisites or emoluments. As regards the *Karnam*, the High Court held that he should be entitled to a salary of Rs. 25 per mensum. He might appoint a deputy in his place who should be a person acceptable to the executive officer. The *Karnam* was not to get any share in the *Dibbi* collections even if he chose to perform his duties personally. The appellants came to this Court after obtaining a certificate from the High Court.

The first contention raised by the appellants was that as the present proceedings originated on an application filed under s. 57(9) of the Madras Hindu Religious Endowments Act, 1927, in the absence of any provision for an appeal conferred on the aggrieved party by the Act, the appeal to the High Court was incompetent and hence the changes made by the High Court were without jurisdiction. It was also contended that there was no justification

for interfering with the items of remuneration, emoluments and perquisites sanctioned by custom and usage which had been recognised after contest by decrees of courts.

Held: The appeal filed by the Board of Commissioners in the High Court against the order of the District Judge was competent and the High Court had jurisdiction to entertain and deal with the appeal. A scheme framed under s. 92 of the Code of Civil Procedure which is deemed to be a scheme under s. 75 of the Madras Hindu Religious Endowments Act, 1927 is one which is framed in a suit and the scheme itself is a part of the decree in the scheme-suit. It is for the modification or cancellation of such a scheme or rather of the scheme which is part of the decree that s. 57(9) makes provision by the machinery of an application. If after hearing the application under s. 57(9), the scheme itself is cancelled, the previous decree will cease to exist. In such a case, it cannot be said that the vacating of the decree passed under s. 92 does not itself amount to a decree within the meaning of s. 2(2) of the Code of Civil Procedure. It does not make any difference if instead of the decree being vacated by cancellation, the same is modified. An order passed on an application under s. 57(9) is an amended decree against which an appeal lies under s. 96 of the Code of Civil Procedure.

(*ii*) The reasoning of the High Court that the remuneration enjoyed by the *Archakas* should be disallowed to them because of the vagueness of the items, was not open on the pleadings and was not justified on the facts and hence the High Court was wrong in modifying the scheme.

(*iii*) The High Court was wrong in modifying the scheme regarding the *Karnam*. There was no prayer in the application under s. 57(9) to abolish the office of *Karnam* and along with that his right to customary emoluments. The High Court erred in depriving the *Karnam* of doing his duty himself and earning the remuneration customarily payable to him for his work. That was not even the relief claimed in the application. There was no justification for reducing the remuneration of the *Karnam* to a nominal figure. Merely because some portion of his responsibilities for keeping proper accounts of *Dibbi* collection was entrusted to an executive officer did not warrant the virtual abolition of his office.

Rajagopala Chettiar v. *Hindu Religious Endowments Board*, I.L.R. 57 Mad. 271 (F.B.), referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 531 and 532 of 1961.

Appeals from the judgment and decree dated January 31, 1957, of the Madras High Court in Appeal Suit No. 357/1951.

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T. Satyanarayana, for the appellant (in C.A.No. 531/1961) and respondents Nos. 3, 4, 6, 7 and 10 to 12 (in C.A. No. 532/61).

A.V. Viswanatha Sastri, and *T.V.R. Tatachari* for the appellants (in C.A. No. 532/1961).

C.K. Daphtary, *Attorney-General*, *R. Ganapathy Iyer* and *R.N. Sachthey*, for the respondent (in C.A. No. 531/1961) and Respondent No. 2 (in C.A. No. 532/1961).

October 31, 1963. The Judgment of the Court was delivered by

AYYANGAR J.—These two appeals arise out of a single judgment of the High Court of Andhra Pradesh and are filed by two distinct parties who felt aggrieved by it, pursuant to the grant of certificates of fitness granted by the High Court under Art. 133(1) of the Constitution.

In Dwaraka Tirumalai—a village in the West Godavari district of Andhra Pradesh, there is a temple dedicated to Sri Venkateswaraswami. The administration of the affairs of this temple was being conducted under a scheme settled on the 28th August, 1930 by the Subordinate Judge of Eluru in Original Suit No. 1 of 1925 on his file. That was a suit filed by certain worshippers of the temple under s. 92 of the Civil Procedure Code for the settling of a scheme for the proper management and administration of the institution. The hereditary trustees of the temple as well as the office holders thereof, and in particular the *archakas* and the *Karnam* were party-defendants to that litigation. There had, even then, been controversy as regards the rights of the two office holders whom we have named and as regards the items of remuneration to which they were entitled and these were considered and findings recorded by the Court and the provisions of the scheme framed embodied the findings on these points. From the decision of the learned Subordinate Judge appeals were filed to the High Court both by the worshipper plaintiffs as well as by the *Dharmakartas* who were

members of the family of the Zamindar of Mylavaram which was the hereditary trustee of the temple—but both the appeals were dismissed and the scheme, as framed by the trial Judge, was confirmed.

During the pendency of this suit in the Court of the Subordinate Judge, the Madras Legislature enacted the Madras Hindu Religious Endowments Act (Madras Act II of 1927) which we will hereafter refer to, as the Act. It was an enactment to provide, as its preamble recited, for "the better administration and governance" of certain Hindu Religious Endowments. The temple of Venkateswaraswami was an institution to which the Act applied and according to the nomenclature adopted by the Act the temple in question was an "excepted temple"—an expression which was defined as meaning "a temple, the right of succession to the office of trustee whereof.....has been hereditary". As already stated, the family of the Zamindars of Mylavaram were the hereditary trustees of this temple.

Section 75 of the Act ran :

> "75. Where the administration of a religious endowment is governed by any scheme settled under section 92 of the Code of Civil Procedure, 1908, such scheme shall, notwithstanding any provisions of this Act which may be inconsistent with the provisions of such scheme, be deemed to be a scheme settled under this Act, and such scheme may be modified or cancelled in the manner provided by this Act."

The scheme framed by the Subordinate Judge and confirmed by the High Court thus being a scheme which was "deemed to be a scheme settled under the Act", the provisions of s. 57(9) were attracted and this sub-section ran:

> "57. (9) Any scheme of administration settled by a court under this section or which under section 75 is deemed to be a scheme settled under this Act may, at any time for sufficient cause, be modified or cancelled by the court on an

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application made by the Board or the trustee or any person having interest, but not otherwise."

In accordance with the powers contained in that behalf the Board of Commissioners for Hindu Religious Endowments (for shortness the Board) who were the authorities constituted to administer the Act filed an original petition on August 3, 1947—O.P. 76 of 1947—in the Court of the District Judge, West Godavari for the modification of the scheme. The points upon which the modifications were sought were numerous and several of these were accepted by the Court but only two of them are now in controversy and are the subject-matter of the appeals and these relate to the remuneration allowable to two classes of temple officials (a) Archakas, and (b) the *Karnam*, both of these holding their office by hereditary right. The learned District Judge accepted the contention raised by these two sets of office-holders that no case had been made out for varying the remuneration which had been held payable to them under the original scheme in O.S. 1 of 1925. Against this decision of the District Judge an appeal was filed to the High Court by the Board of Commissioners and the learned Judges allowed the appeal in part and substantially modified the provisions as to the remuneration payable to the two office-holders. It is only necessary to add that the archaka-respondents filed a memorandum of cross objections to the appeal preferred by the Board, but this was dismissed. That dismissal has now become final and the claims made in that memorandum cannot be and are not the subject of challenge before us. Questioning the correctness of the judgment of the High Court in the appeal by the Board both the archakas as well as the *Karnam* filed petitions for certificates of fitness under Art. 133 and these having been granted, their appeals are now before us. Civil Appeal No. 531 of 1961 is the appeal filed by the hereditary *Karnam* of the suit-temple, while Civil Appeal 532 of 1961 is by the Archakas.

Civil Appeal No. 532 of 1961 :

We shall, first, take up for consideration Civil Appeal 532 of 1961 which is concerned with the grievance of the archakas against the variation made by the High Court against the scheme as settled by the learned District Judge. According to the appellants, they are entitled to several items of remuneration. The major one among these is a half share in the votive offerings in the shape of cash etc. deposited by the worshippers in the Hudni or dibbi kept in the temple to which they claimed title by virtue of long usage and custom. It was said that the total collections from the dibbi amounted to near Rs. 50,000 per year. The manner in which the dibbi collections were gathered, accounted for and divided is set out in the judgment in O.S. 1 of 1925 and from its contents it is manifest that this usage had been recognised by several previous decisions in litigations to which the temple was a party. We might, here, mention a matter which is of relevance only to Civil Appeal 531 of 1961 and that is that from the half share to which the temple was entitled the Karnam of the temple was by custom given for his services a one-anna or a 1/16th share. As regards these the learned Subordinate Judge in his judgment in O.S. 1 of 1925 observed :

> "The archakas and the Karnam of the temple were allowed to take their respective shares in the collections in dibbi for a long time and though the origin of such a right is not known, it cannot be said that it had no legal origin. It might have been recognised by the founder himself, of the temple."

Besides a share in the dibbi collections the archakas also laid a claim to a share in the bhogam and besides, certain fees on the occasion of marriages or Upanayanams performed in the temple, monies dropped on the plate on the occasion of Dweeparadhana and certain claims to Padaraksha Kanukalu and certain pumpkins which were brought to the temple as offerings to the deity. It was their claim that their right

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to these items of extra remuneration was founded on custom and had been recognised and given effect to from time immemorial by Courts on occasions when their right to any of these items was disputed. The learned Subordinate Judge who framed the scheme in O.S. 1 of 1925 did not specifically set out these minor items in the scheme that he framed, though some of these matters were the subject of discussion and finding in the judgment to which the scheme was a schedule but in line with the terms of s. 79 of the Act which, by the date his judgment was pronounced, had come into force and which read:

> "79. Save as otherwise expressly provided in or under this Act nothing herein contained shall affect any established usage of a math or temple or the rights, honours, emoluments and perquisites to which any person may by custom or otherwise be entitled in such math or temple."

added in paragraph 23 of the scheme these words:

> "Nothing contained in the scheme shall affect established usage with regard to the rights, honours, emoluments and perquisites to which any person may by custom or otherwise be entitled in the temple."

There was, however, a specific reference in the scheme in cl. 12 for the division of the dibbi collections and the handing over to the archakas of the half share to which they were entitled.

It was of the terms of this scheme that modifications were sought by the petition filed under s. 57(9) of the Act. The petition while conceding, in paragraph 4(e), the right of the archakas to the half share in the dibbi collections, proceeded to state in paragraph 7(g),

> "7. (g) The archakas claim a half share in the dibbi collections; such half share exceeds Rs. 18,000 per year; in spite of this the archakas claim further moneys. As payment of such a claim is against the interests of the temple,

provision has to be made that the archakas are not entitled to any remuneration or fee or share or in the shape of lands or income from the lands, other than their share in the dibbi collection."

and in sub-paragraph (h) :

"7. (h) The practice of giving a share of the bogums to certain temple servants is against the interests of the temple."

The modification thus sought was objected to by the archakas who were impleaded as respondents to the petition and they averred in paragraphs 11 and 12 that their right to the bogums and the other fees and perquisites which they were claiming and which were being received and enjoyed by them up to then, were rightfully theirs and that there was no reason, in law or equity, to deprive them of these items. The learned District Judge, after accepting several suggestions made by the Board for the modification of the scheme in the matter of the manner in which the dibbi accounts were to be kept, how the dibbi was to be opened etc. which are no longer the subject of complaint. observed as follows in regard to the archakas and the Karnam with whom we are concerned:

"So far as the archakas, and the karnam are concerned most of their rights are governed by the decrees, usage, custom, etc., and they should be adhered to... ..... For doing these definite duties irrespective of the question whether the worshipper visits the temple or not, they are paid their share in the dibbi collections. .....The person incharge of the deity at the time of the worship will be the archakas or archakas attached to the temple.....They may be required to perform special worship or conduct other ceremonies according to usage and custom and be paid accordingly. It is unnecessary and it will be dangerous to disturb the established

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usage in the temple or to create misunderstandings which will detrimentally affect the worshipping public and the smooth working of the institution intended primarily for the propitiating of God by the worshippers who go there seeking temporal and spiritual advantages. So far as the other offerings by the donors to the temple of the deity are concerned which are not put in the dibbi the archakas or others can lay no claim.....The archakas have got certain rights in the prasadams. There is no reason why that right should be commuted. These things have to be left to the good sense of the archakas and sthanikar..... According to P.W.1, the quantities to be supplied for each bhogum are fixed. *These things should not be changed as no trouble has been experienced with regard to it.*" (Italics ours).

Thus in effect the learned District Judge, though he made substantial modifications in the details of the administration, refused to disturb the mode or quantum of remuneration which had previously prevailed in the temple.

It was from this judgment that the Board preferred an appeal to the High Court. The learned Judges of the High Court modified the direction of the learned District Judge by stating:

"The appellant seeks also the modification of clause (14) of the scheme in so far as it provides that the archakas shall be entitled to claim as and for their remuneration 'only half the share of the income from the dibbi installed in the temple and such other emoluments, perquisites etc., allowed under the decrees of Courts, or usage'. We are in agreement with the learned Counsel for the appellant that the provision as regards 'other emoluments, perquisites etc., allowed to them under the decrees of courts and 'usage' is too vague and likely to give rise to

difficulties. We think that their claim should be restricted to a half share in the dibbi collections and to a similar share in the pumpkins and rice offered at the time of the dedication of a calf to the deity—a right which appeared to have been recognised for long. In our opinion, they should be entitled to no other perquisites or emoluments. This part of clause (14) will be modified accordingly.",

and later in the judgment the learned Judges dealing with the claims made in the memorandum of cross-objections, added :

"Mr. Vishnurao for the archaka-respondents has urged that the scheme needed no modification. His main and substantial contention is in relation to the emoluments receivable by the archakas. He contends that his clients are entitled to a half share in all the votive offerings made to the deity. We are not satisfied that the archakas are entitled to such a share. It is notorious that on account of bad management, the archakas of temples all over this part of the country have been claiming rights far in excess of what is legitimate and proper. In the case of lands belonging to the deity and put in their possession, claims have been generally advanced to full ownership thereof repudiating the title of the deity thereto. Such claims have been negatived and an arrangement has been recently arrived at, so far as the erstwhile Andhra State is concerned, whereby the archakas are allowed to enjoy a portion of the land for their services. We have no doubt that the claim now set up to half of whatever is offered to the deity is a similar unfounded claim and cannot be justified on the ground of ancient usage. In our opinion, the provision we have already suggested for the remuneration of the archakas in dealing with the contentions of the appellant is adequate."

In consequence, clause (14) of the scheme was modified to read :

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"The archakas shall be entitled to claim as and for their remuneration only half share in the dibbi collections and to a similar share in the pumpkins and rice offered at the time of the dedication of a calf to the deity and shall be entitled to no other perquisites or emoluments."

It is the legality and correctness of this modification in the scheme that is the subject of the appeal by the archakas—Civil Appeal 532 of 1961.

Two points were urged by Mr. Viswanatha Sastri—learned Counsel for the appellant. The first was that no appeal lay from the order of the District Judge modifying the scheme and that the learned Judges of the High Court were in error in entertaining the appeal and modifying the provision in cl. (14) regarding the remuneration permissible for the archakas. (2) If, however, it be held that the appeal by the Board was competent he urged that the learned Judges committed an error in effecting the modification which they did.

We shall deal first with the submission that no appeal lay to the High Court from the decision of the District Judge in the Original Petition seeking modification of the scheme in O.S. 1 of 1925. The steps in the argument on this point were as follows. Appeals are statutory and unless some specific statutory provision could be pointed out enabling an appeal to be filed, any order passed by an authority would be final. No doubt, the proceedings were in the Court of the District Judge and that would by itself ordinarily attract rights of appeal appurtenant to the decisions of that Court. But there was no scope for the application of this principle because the proceeding under s. 57(9) of the Act before the District Judge was initiated by an application or an original petition and not by a suit. The resultant decision of the District Judge was, therefore, not "a decree" as defined by s. 2(2) of the Civil Procedure Code which runs, to quote the material words:

"The formal expression of an adjudication which so far as regards the Court expressing it, con-

clusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include..... ..."

The order passed on O.P. 76 of 1947 was therefore not a decree so as to attract the provision in s. 96 of the Civil Procedure Code but merely an order and as from such an order no appeal lay under the Civil Procedure Code, the right to appeal was dependent on the existence of some special provision in the Act itself. Section 84 of the Act contained a provision for appeals from certain orders of District Judges on applications made to the Court to set aside or modify certain decisions of the Board, but there is no such provision in relation to the orders passed by a District Judge on an application to him under s. 57(9). This necessarily led, the argument ran, to the result that the order of the District Judge disposing of the application by the Board was not appealable. In support of this submission reliance was placed on the decision of a Full Bench of the Madras High Court in *Rajagopala Chettiar* v. *Hindu Religious Endowments Board*[1]. Section 84(1) of the Act enacted :

"If any dispute arises as to whether a math or temple is one to which this Act applies or as to whether a math or temple is an excepted temple, such dispute shall be decided by the Board."

Pursuant to the power thus conferred the Board decided after an enquiry that the temple whose trustee was the appellant before the High Court, was not an "excepted temple". From this decision the aggrieved trustee availed himself of the remedy provided by s. 84(2) which ran:

"A trustee affected by a decision under subsection (1) may within one year *apply* to the Civil

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Court to modify or set aside such decision, but subject to the result of *such application* the order of the Board shall be final."
(italics ours).

The District Judge refused to set aside or modify the order of the Board but confirmed it. Under s. 84 as it then stood, there was no specific provision for appeals being filed against an order of the District Court on an application filed to it under s. 84(2). Nevertheless the aggrieved trustee filed an appeal to the High Court and thereupon a preliminary objection was raised to the maintainability of the appeal which question was referred to a Full Bench for its decision. The learned Judges sustained the preliminary objection for the reason that the order of the District Court did not fall within the definition of a decree within s. 2(2) of the Civil Procedure Code, because the proceeding in which the order was passed was an application and not a suit and consequently s. 96 of the Civil Procedure Code was not attracted. There being no specific provision conferring a right of appeal against orders under s. 84(2), the Full Bench held that no appeal lay to the High Court. On the analogy of this decision it was urged before us that as the proceedings in the case before us originated on an application filed under s. 57(9), in the absence of any provision for an appeal conferred on the aggrieved party by the Act, the appeal to the High Court was incompetent.

We are clearly of the opinion that the principle of the Full Bench decision cited does not apply to the application before us and that the appeal was competent. Section 57 of the Act deals with two types of cases. The first is that comprised in subss. (1) to (7). These deal with the power of the Board to frame schemes and the proceedings in relation thereto. Sub-section (1) empowers the Board to settle a scheme for the proper administration of a temple and the endowments attached thereto and specifies the manner in which proceedings for the purpose may be initiated. Sub-section (2) enumerates

the provisions which may be contained in the scheme to be framed. Sub-section (3) sets out the matters incidental to the determination of the properties pertaining to the temples which are to be made part of the scheme framed. Sub-section (4) reads:

> "57. (4) The Board may, for good and sufficient cause, suspend, remove or dismiss any executive officer appointed in pursuance of a scheme settled under sub-section (1) or direct the removal of such officer."

and sub-s. (5)

> "57. (5) The Board may at any time by order and in the manner provided in sub-section (1) modify or cancel a scheme settled under that sub-section."

Sub-section (6) directs the publication in the prescribed manner of the orders of the Board settling, modifying or cancelling a scheme under the section. This completes the fasciculus of sections dealing with the power of the Board to frame a scheme and matters ancillary thereto. Up to this stage the proceedings are all before the Board. Next, we have sub-s. (7) which reads :

> "57. (7) The trustee or any person having interest may within six months of the date of such publication institute a suit in the court to modify or set aside such order.
>
> Subject to the result of such suit and subject to the provisions of sub-section (9), every order of the Board shall be final and binding on the trustee and all persons having interest."

Therefore in the case of schemes framed by the Board itself it is clear that parties aggrieved have a right to file suits and against the decrees passed in such suits it need hardly be said that there would automatically be a right of appeal under the Code. The next relevant sub-section is that numbered (9) which we have set out earlier. The question is whether a different result as to appeals was intended in regard to proceedings taken under s. 57(9). A scheme which is framed under s. 92, Civil Procedure Code

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which is "deemed to be a scheme under s. 75 of the Act", is one which has been framed in a suit and the scheme itself is part of the decree in the scheme-suit. It is for the modification or cancellation of such a scheme or rather of the scheme which is part of the decree that s. 57(9) makes provision by the machinery of an application. If, after hearing the application under s. 57(9), the scheme itself is cancelled, —and s. 57(9) provides for such a contingency and contemplates such an order—the previous decree will cease to exist. In such an event it would scarcely be open to argument that the vacating of the decree passed under s. 92 of the Civil Procedure Code would not itself amount to a decree within the meaning of s. 2(2) of the Civil Procedure Code. Does it make any difference in that instead of the decree being vacated by cancellation, it is modified? We are clearly of the view that it makes no difference. The same matter might be viewed from a slightly different angle. The scheme-decree itself might have contained a provision granting liberty to a party to the decree to move the Court by an "application" for the modification of the scheme in stated contingencies. If in pursuance of such liberty reserved, an application were made to amend the scheme-decree, the resultant order though passed on an "application" would certainly be an amended decree against which an appeal would lie under s. 96 of the Civil Procedure Code. We need only add that the legality of such a reservation of liberty has recently been upheld by this Court. If the reservation of power or the liberty in the decree would produce such a result and render the amendment of the scheme an amended decree so as to satisfy the definition of a decree within s. 2(2) of the Civil Procedure Code, it appears to us that it makes no difference that such a liberty to move the Court to modify the decree is conferred not by the scheme-decree but by an independent enactment such as the Act now before us. In the circumstances, we consider that the appeal by the Board to the High Court was competent and that the learned Judges had jurisdiction to entertain and deal with the appeal.

Coming next to the merits of the decision of the High Court, learned counsel for the appellant pointed out that there were seven families of *archakas* who held the office by hereditary right, who divided the share of the *dibbi* collections and the other minor items between themselves. Worship in the temple went on from 5 A.M. every day to 9 P.M. and during this entire period, 4 or 5 of the *archakas* have to function continuously. Besides, there were between 40 and 50 festivals every year which entail heavy work. From out of the remuneration and perquisites they received the *archakas* had to engage Srivaishnavite cooks to prepare the *naivedyams* and items of food prepared for the deity and there were also other expenses of a similar nature to be incurred by them. In the face of these and other circumstances to which he drew our attention he submitted that there was no justification for interfering with the items of remuneration, emoluments and perquisites sanctioned by custom and usage which had been recognised after contest by decrees of courts. These matters were brought to our attention with a view to demonstrating that the remuneration and perquisites which the learned District Judge held them to be entitled, were not so utterly out of proportion to the duties which they had to discharge in connection with the worship in the temple. In view, however, of the circumstances to be presently mentioned we consider that it is not necessary to pursue this line of argument. The appellants did not dispute that the share of *dibbi* collections etc. and other items of perquisites which had been fixed by custom and usage was really a remuneration for the services performed. If that were so, it would follow that a radical change in circumstances might justify its revision. It might be upward or it might be downward. This position also was not disputed by learned counsel. But learned counsel was well-founded in his submission that on the pleadings in the case and on the evidence that was led, there was no justification for the High Court to interfere with paragraph 14 of the scheme as framed by the learned District Judge. It would

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be noticed that the learned District Judge had, in that paragraph, after making provision elsewhere for safe-guarding the interests of the temple and for streamlining the administration, allowed to the *archakas* the remuneration to which they were held entitled by custom and usage which had been proved to be established after contest in courts. In O.P. 76 of 1947 which had been filed by the Board seeking modification of the scheme settled in O.S. 1 of 1925 they stated in paragraph 7(g) whose terms we shall repeat;

> "The archakas claim a half share in the dibbi collections; such half share exceeds Rs. 18,000 per year. In spite of this the archakas claim further moneys. As payment of such a claim is against the interests of the temple, provision has to be made that the archakas are not entitled to any remuneration or fee or share or in the shape of lands or income from the lands, other than their share in the dibbi collections."

From this the following seems to be clear: (1) The claim of the archakas to a half share in the dibbi collections was not disputed, nor was the payment said to be improper. (2) Further claims of the archakas which was explained as being one to a share of the lands or of the income from the lands other than the half share in the dibbi collections was disputed. In sub-paragraph (h) an objection was raised to giving a share in the bhogams to the temple servants in which term the archakas would be included in these term:

> "The practice of giving a share of the bhogams to certain temple servants is against the interests of the temple. Provision may be made for the framing of suitable rules and regulations by the trustees subject to the confirmation of the Board in regard to the remuneration of the temple servants."

In the counter-statement filed on behalf of the archakas-respondents they asserted their right to what had already been established by decrees of courts and

also to their share in the *bhogams*. The learned District Judge examined this question on the basis of the evidence, upheld their claim to certain perquisites and the result of his finding he recorded in paragraph 14 of the scheme already extracted. The Board filed an appeal against this decision to the High Court. In regard, however, to paragraph 14 of the scheme the only ground urged was ground 13 which ran:

> "The lower court erred in allowing the archakas as much as half of the dibbi collections".

In other words, no objection was raised to their enjoyment of their share in the bhogam as well as the miscellaneous items of remuneration which they had been receiving some of which we have set out earlier. The learned Judges of the High Court at the stage of the appeal did not disturb the finding as regards the share of the dibbi collections. Indeed, they could not have, because there was not even a prayer for interfering with that share in O.P. 76 of 1947 that was filed by the Board notwithstanding the line adopted in ground 13 of their memorandum of appeal. To sum up, the position as it emerged at the hearing of the appeal by the High Court was this. In their application to the District Court the Board had conceded the right of the archakas to the half share in the dibbi collections and desired no modification of the scheme in O.S. 1 of 1925 in that regard. They, however, prayed for a modification in so far as the original scheme recognised and made provision for the right of the *archakas* to a share in the bhogams. The District Judge had, of course, maintained the right to a share of the dibbi collections which was not in dispute, but had decided against the Board as regards the modification sought as regards *bhogams* in para 7(h) of the Original Petition. The Board filed an appeal. There was no ground of appeal as regards the right of the *archakas* to a share of the *bhogams* so that except with the leave of Court they were not in a position to canvass the propriety of the rejection of the relief they sought.

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The Board, however, questioned the right of the archakas to a share of the dibbi collections which, having regard to the contents of their petition, was not at all open to them. The ground upon which the learned Judges modified paragraph 14 of the scheme by eliminating all items other than the half share of the dibbi collections was that the paragraph was too vague and might give rise to difficulties. In this connection the learned Judges failed to take into account the fact (1) that these items of remuneration had been claimed by them and had been, after contest, allowed by decrees of courts in which their quantum and the circumstances in which they were to be received had been fixed, so that though the clause which made a reference to custom and usage appeared *prima facie* vague, in reality there was no vagueness about them, (2) This apart, that the scheme framed by the Subordinate Judge in O.S. 1 of 1925 had been working for over a quarter of a century and had not given rise to any difficulties notwithstanding that the items were not set out in the scheme with precision, a matter which is specifically referred by the learned District Judge in the passage extracted earlier which we have underlined. (3) That even in O.P. 76 of 1947 filed by the Board there was no allegation that the terms of the scheme framed in O.S. 1 of 1925 which was couched in similar language had given rise to troubles of interpretation or that they had been productive of confusion as to need clarification and particularly by way of elimination which is certainly not any clarification. The reasoning of the learned Judges, therefore, that the remuneration theretofore enjoyed by the archakas should be disallowed to them because of the vagueness of the items was not open on the pleadings and was not justified by the facts. In these circumstances we consider that the learned Judges were in error in modifying cl. 14 of the scheme framed by the learned District Judge.

Civil Appeal No. 532 of 1961 is accordingly allowed and the original paragraph 14 of the scheme

as framed by the learned District Judge is restored. The appellants are entitled to their costs in this Court, which will be paid by respondents 1 and 2.

CIVIL APPEAL NO. 531 OF 1961 :

This appeal, as stated earlier, relates to the remuneration payable to the Karnam who also holds his office by hereditary right. Under the scheme framed in O.S. 1 of 1925 the remuneration of the Karnam consisted of the payment to him of a 1/16th of the half share in the dibbi collections. Remuneration on this basis for the duties discharged by the Karnam had been established by custom and ancient usage and it was this that was specifically set out in the scheme-decree passed in O.S. 1 of 1925. In its application to the District Court the Board had prayed that the remuneration so fixed might be modified. The allegation in the petition in relation to this matter is to be found in paragrapn 8(g) where it stated:

> "The Karnam of the temple who now gets a share of the dibbi collections never does service but employs a deputy on a pay which has no proportion to the remuneration that he—the Karnam—gets from the dibbi. The work that the deputy does is inadequate and thus the temple loses. A provision has to be made in the Scheme that if the Karnam does not himself do duty but employs a deputy, the temple is bound to pay out of the dibbi only the actual salary of the Karnam."

In the counter-statement filed by the Karnam who was impleaded as the 9th respondent to the petition he averred

> "The duties of the karnam of the temple or his deputy consists of sitting at the dibbi and maintaining a chitta of the offerings deposited in the dibbi by the pilgrims. In accordance with immemorial custom and usage, the dibbi collections are counted every day in the presence of the manager, the archakas and the karnam or their representatives, weighed and divided as per their respective shares"

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and in the later paragraphs an objection was raised to the mode of remuneration suggested in cases where a deputy was employed as being contrary to long established usage and custom. In the judgment of the learned District Judge he said this in regard to the Karnam:

> "So far as the karnam is concerned, he should preferably render the duty himself, but if for any reason he prefers to engage himself in other work, he will be entitled to have a qualified deputy who should be accepted by the executive officer and the managing hereditary trustee. The deputy will not be entitled to any share in the dibbi income, but only the karnam who will make his own arrangements for payment to him."

This was embodied in paragraph 17 of the modified scheme as framed by the District Judge, and this ran:

> "17. The karnam should render duty himself. He should not appoint a deputy and if he does, the karnam will not be entitled to have any share in the dibbi income. Any deputy appointed by the karnam will be allowed to do his duties only if the deputy is approved by the Executive Officer and he will be paid only such salary as may be fixed by the Executive Officer. Deputies can be appointed by the karnam only with the previous approval of the executive officer."

The Board felt aggrieved by this direction and in the memorandum of appeal it complained:

> "The lower court should have seen that the provision in cl. 17 for the office of the karnam is not in the interests of the institution."

The learned Judges of the High Court modified paragraph 17 by depriving the karnam of his share in the dibbi collections, even if he chose to perform duties personally and after the modification the paragraph read:

"The karnam shall be entitled to a salary of Rs. 25 per mensem. He may appoint a deputy in his place who should be a person acceptable to the executive officer."

The reasons assigned for making this modification were two: (1) As a result of the modifications effected by the learned District Judge, as regards which no objection was raised, provision had been made for the appointment of an executive officer whose duty it was to keep regular accounts, which would show the particulars of the offerings made in the dibbi from which the share due to the archakas could be computed, the karnam's duties and responsibilities had been lessened, if not eliminated., (2) Since the karnam, as a matter of practice, discharged his duties through deputies appointed by him, it was not necessary that the trustees should insist upon his personal attendance and the temple might therefore benefit from the practical abolition of this hereditary office. The learned Counsel for the appellant contests the correctness of this approach to the problem and we agree with him that the learned Judges were in error in modifying s. 17 of the scheme in the circumstances of the case. The office of Karnam was held by hereditary right and without entering into a discussion of the question as to whether such an office could be abolished and if so, in what circumstances, there was no prayer in the application by the Board to abolish that office and along with it the right of the karnam to the customary emoluments. The averment in paragraph 8(g) which we have extracted earlier, was (a) a complaint that the Karnam employed deputies on a nominal salary paid by him and that the work of these deputies was unsatisfactory, (b) Consequent on this, there was a prayer for a direction whereby when the karnam entrusted his duties to a deputy, the karnam should not be entitled to the customary remuneration of an 1/16th part in the half share of the dibbi collections which pertained to the temple but only to the actual wages paid to the deputy. The subject-matter of the dispute which had to be

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resolved by the District Court and of the High Court on appeal was only whether the scheme framed in O.S. 1 of 1925 should be modified so as to provide for the payment of a lesser remuneration where the karnam employed a deputy. The learned District Judge had considered these matters and had given his directions in paragraph 17 of the scheme.

The learned Judges of the High Court, however, did not address themselves to the pleadings and to the only matter in controversy before them *viz.*, (1) should the karnam be entitled to appoint deputies to perform his duties and if so, in what circumstances and subject to what conditions, (2) in such an event what should be the remuneration payable to the karnam. Instead they proceeded practically to abolish the hereditary office and permitted him a nominal remuneration. It is unnecessary to consider whether it was such a drastic change that was intended to be urged in the relevant ground of appeal to the High Court which we have set out earlier, for we are clearly of the opinion that the learned Judges were in error in modifying in the manner they did para 17 of the scheme. Let us see the actual effect of para 17 of the scheme as framed by the learned District Judge. He recognised the customary remuneration of the office-holder. But that remuneration was not by custom intended to be a *sine cure*, to be drawn and enjoyed by the Karnam, he being at liberty to appoint a deputy at a nominal salary to perform the duties of the office. Normally the Karnam himself had to perform the duties and it was only when owing to unavoidable reasons he could not do so that custom sanctioned the employment of a deputy. By the order that he passed he recognised this also, and made it incumbent on the Karnam to do duties personally in order to entitle him to claim the customary remuneration. The conditions set out in para 17 therefore were just both as regards the institution as well as the office-holders and gave effect to the customary rights and obligations of both. But by their order the learned Judges

deprived the Karnam of doing duty himself and earning the remuneration customarily payable to him for such service. That, as we have pointed out, was not even the relief claimed in the application—assuming that such relief was claimable and could have been granted by the Court functioning under the Act having regard to the terms of s. 79 we have extracted earlier, a matter about which we prefer not to express any opinion.

The learned Judges themselves appeared to recognise that the office being hereditary they could not abolish it. But if this were so, it was not proper to direct the virtual abolition of this office and depriving the office-holder of his customary remuneration merely because some portion of the responsibilities for keeping proper accounts of dibbi collections was entrusted to an executive officer. Learned Counsel for the appellants pointed out that the appointment of an executive officer would not by itself elminate the need for a Karnam and the performance of the duties which custom and usage laid on him. We agree with him in this submission. In the circumstances, we see no justification for reducing his remuneration to a nominal figure. We consider the directions given by the learned District Judge proper and sound and are clearly of the opinion that they did not call for any interference by the learned Judges of the High Court.

Civil Appeal 531 of 1961 is also allowed and paragraph 17 of the modified scheme, as framed by the District Judge, is restored. The appellant would be entitled to the costs of their appeal in this Court.

Appeals allowed.