

**Somasundara Mudaliar Vs. Vythilinga Mudaliar and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/783541](http://sooperkanoon.com/783541)

**Court :** Chennai

**Decided On :** Mar-09-1896

**Reported in :** (1896)ILR19Mad285

**Judge :** Arthur J.H. Collins, C.J. and ;Benson, J.

**Appellant :** Somasundara Mudaliar

**Respondent :** Vythilinga Mudaliar and anr.

**Judgement :**

1. Mr. Ramasubba Ayyar for the counter-petitioners in this Court raises the preliminary objection that an order under Section 5, Act XX of 1863, is appealable, and that an application for revision under Section 622, Civil Procedure Code, is therefore inadmissible. He relies on Sultan Acken Sahib v. Shaik Bava Malimiyar I.L.R. 4 Mad. 295 ; but we are of opinion that this case is, in effect, overruled by the decision of the Privy Council in Minakshi v. Subramanya . That I.L.R. 11 Mad. 26decision was, no doubt, given with reference to an order made under Section 10 of Act XX of 1863. But we think that the principle on which that decision was based is also applicable to an order like the present made under Section 5 of Act XX of 1863.

2. We are therefore of opinion that no appeal lies.

3. We have now to consider whether we should interfere under Section 622, Civil Procedure Code.

4. The petitioner in this Court contends that the District Judge had no jurisdiction to pass an order under Section 5,[1] Act XX of 1863, on the ground that no dispute respecting the right of succession to the trusteeship had arisen, and that the office was not hereditary and that there could, therefore, be no 'right of succession.' The record does not show clearly what is the constitution of the trust, but the counter-petitioner, in his petition to the lower Court, claimed the office as hereditary trustee, and his claim was opposed by the petitioner. We think that this constituted a dispute respecting the right of succession to the office, and it is admitted that the institution is one falling under Section 4 of the Act. The District Judge, therefore, had jurisdiction to make the appointment. It has also been suggested that, as two trustees still remain, there is not such a vacancy as is contemplated by Section 5. We, however, are of opinion that as there were three trustees for many years prior to the death of the counter-petitioner's father in 1894, a vacancy such as is contemplated by the section arose when that death occurred.

5. It is also argued that the Judge acted with material irregularity in not having held an enquiry as to whether the office was of an hereditary character or not. Looking at the fact that the counter-petitioner's father and grandfather before him held the office of trustee, and that the Judge's proceeding was of a summary character, intended merely to provide for the vacancy, pending the decision by regular suit of the right of succession, we are unable to hold that the enquiry was defective or that our interference under Section 622, Civil Procedure Code, is necessary.

6. The petition fails and is dismissed with costs.

[1]

[Section 5: Whenever from any cause a vacancy shall occur in the office of any trustee,

manager, or superintendent, to whom any property shall have been transferred under the last

preceding section, and any dispute shall arise respecting the right of succession to such

office, it shall be lawful for any person interested in the mosque, temple, or religious

establishment to which such property shall belong, or in the performance of worship, or of

the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint

a manager of such mosque, temple, or other religious establishment: and thereupon such Court

may appoint such manager to act until some other person shall by suit have established his

right of succession to such office.

The manager so appointed by the Civil Court shall have and shall exercise all the

powers which, under this or any other Act, the former trustee, manager, or superintendent

in whose place such manager is appointed by the Court had or could exercise, in relation to

such mosque, temple, or religious establishment or the property belonging thereto.]

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