

(g) awarding damages and costs "against any such trustee, manager, superintendent, or member of a committee in respect of any such misfeasance, breach of trust, or neglect of duty ;

(h) directing the removal of any trustee, manager, superintendent, or member of a committee, and, if necessary, directing the appointment of any new trustee, manager, superintendent, or member of a committee ;

(i) directing the specific performance of any act by any trustee* manager, superintendent, or member of a committee ;

(j) granting such further or other relief as the nature of the case may require.

(2) The interest required in order to entitle a person to sue under this section need not be a pecuniary or immediate interest, or such an interest as would entitle the person suing to take any part in the management or superintendence of the trust. Any person who is connected with the trust as donor, or by family or hereditary interests, or who for a period of not less than twelve months has been in the habit of attending at the performance of the worship or services of, or connected with, the place or establishment in question, or of contributing to the general or any special expenses incidental to such worship or services, or of partaking in the benefit of any distribution of alms thereat, or in connection therewith, or of otherwise enjoying the benefit of the trust, shall be deemed to be a person interested within the meaning of this section.

(3) No action shall be entertained under this section unless the plaintiffs shall have previously presented a petition to the Government Agent of the Administrative District in which such place or establishment is situate praying for the appointment of a . commissioner or commissioners to inquire into the subject-matter of the plaint, and unless the Government Agent shall have certified that an inquiry has been held in pursuance of the said petition, and that the commissioner or commissioners (or a majority of them) has reported—

(a) that the subject-matter of the plaint is one that calls for the consideration of the court ; and

(b) either that it has not proved possible to bring about an amicable settlement of the questions involved, or that the assistance of the court is required for the purpose of giving effect to any amicable settlement that has been arrived at.

(4) It shall be the duty of the Government Agent, in any case in which he shall have good reason to believe that the persons presenting such petition or any five of them are persons interested within the meaning of subsection (2) of this section, for which purpose he may require to be satisfied by affidavit or otherwise, to appoint for the purposes of the inquiry a commissioner or commissioners whom he may consider to be a person or persons of acknowledged standing and repute in the general or local religious community concerned ,

Provided that the Government Agent may appoint himself as the commissioner or as one of the commissioners ;

Provided further, that the Government Agent may require the petitioners to deposit with him an amount sufficient to cover the reasonable expenses of the commissioner or commissioners in respect of travelling expenses and subsistence incidental to the inquiry prayed for and any such costs certified by the Government Agent to have been properly incurred for the purposes of the inquiry and to have been duly paid shall be deemed to be costs in the action.

(5) It shall be the duty of any commissioner or commissioners appointed for the purpose of any such inquiry to render a report in terms of subsection (3) hereof within such time as shall be specified for the purpose by the Government Agent, or within such further time as he may from time to time authorize.

(6) The report shall be Filed in the office of the Government Agent, and the petitioners and the trustee shall be entitled, on payment of the usual copying charges, to be furnished with a copy thereof.

(7) The court shall not be precluded from amending the plaint so as to include therein any matter arising in the course of the proceedings by the fact that such matter was not included in the petition to the Government Agent, if it shall be of opinion that in all the circumstances of the case such matter may be equitably included in the action.

(8) This section shall not apply to any Christian religious trust.

Power to refer matter for arbitration or inquiry.

103. In any action instituted under the last preceding section, it shall be lawful for the court—

- (a) on the application of the parties, to order any matter in difference therein to be referred for decision to - one or more arbitrators ;
- (b) to appoint a committee for the purpose of making an inquiry and reporting to the court 'with reference to any matter involved in the action or arising in the course thereof, or for the purpose of assisting the court in the exercise of its powers under the last preceding section, or for the settlement or adjustment of any matter involved in the action or arising in the course thereof.

Powers of commissioners, &c.

104. (1) The following persons, that is to say—

- (a) any commissioner or commissioners appointed under section 102 (4) ;
- (b) any persons directed to make inquiries under section 102 (1)(d) ;
- (c) any arbitrator or committee appointed under section 103,

shall, in addition to any other powers necessary for the effective discharge of the duties imposed upon such persons, have the following powers, that is to say—

- (i) to summon witnesses ;
- (ii) to administer oaths or affirmations ;
- (iii) to require the trustee or any witness summoned for the purpose to give all particulars that may be within his knowledge relating to any immovable property which is or

ought to be comprised in the trust, the offerings received for the purposes of the trust, the expenses incidental to its administration and the manner in which it is conducted.

(2) Any person who, without due excuse, the proof of which shall lie on him, shall make default in complying with any summons authorized under this section, or who shall refuse to answer to the best of his ability any question or inquiry addressed to him under the provisions of this section, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding two hundred rupees.

105. In the exercise of its powers under section 102, without prejudice to its general as to accounts. powers under that section, the court may—

- (a) order any trustee of any place or establishment therein mentioned to file accounts for a period not exceeding three years prior to the date of the order ;
- (b) hold or direct an inquiry into the matters complained of or accounts so filed;
- (c) surcharge and falsify any item in the accounts ;
- (d) require the trustee to make good any defalcation, irregular payment, or deficiency ;
- (e) in any case in which it shall be satisfied that owing to the manner in which the trust incidental to such place or establishment has been conducted in the past it is not possible for the trustee to furnish accounts, require as a condition of the continuance of the trustee in his office that he shall deposit for the purposes of the trust a specified amount not exceeding the amount for which, in the opinion of the court after inquiry into all the circumstances of the case, he may be reasonably held to be responsible in respect of the three years prior to the date of the order ;
- (f) indemnify the trustee on such terms as it may deem equitable in respect of any past neglects, misfeasances, or irregularities ;

- (g) direct the manner in which all future accounts shall be kept;
- (h) authorize in any scheme framed under the said section the devotion of a portion of the income of the trust property to the education of children of the religious community interested in the trust, and, if necessary, the utilization of any immovable property comprised in the trust as a site, for; the said purpose.

Application of religious law.

106. In settling any scheme for the management of any trust under section 102, or in determining any question relating to—

- (a) the constitution or existence of any such trust;
- (fr) the devolution of the trusteeship ;
- (c) the administration of the trust;

the court shall have regard—

- (i) to the instrument of trust (if any) ;
- (ii) to the religious law and custom of the community concerned ;
- (iii) to the local custom or practice with reference to the particular trust concerned ;

and may have regard to any arrangement *de facto* in force for the purpose of the administration of the trust.

Defacto trusts.

107. In dealing with any property alleged to be subject to a charitable trust, the court shall not be debarred from exercising any of its powers by the absence of evidence of the formal constitution of the trust, if it shall be of opinion from all the circumstances of the case that a trust in fact exists, or ought to be deemed to exist.

Special powers of court.

108. In settling any scheme for the management of a charitable trust (without prejudice to its general powers), the court shall have the powers following :—

- (a) to provide for the periodical auditing of the accounts of the trust property by auditors appointed by or subject to the approval of the court, or otherwise as the court may deem expedient ;
- (b) to provide for the visitation of the charity ;

- (c) to provide for the settlement of the remuneration of the trustee :

Provided that no such remuneration shall in any case exceed ten *per centum* of the gross income of the trust;

- (d) to devote any surplus income that may be available after the reasonable satisfaction of the objects of the trust to the extension of such objects, or, if the court see fit, to purposes of education.

109. This Chapter shall not apply—

- (a) to religious trusts regulated by the Buddhist Temporalities Ordinance ;
- (b) to religious trusts regulated by the Muslim Mosques and Charitable Trusts or Wakfs Act.

Exclusion of trusts under the Buddhist Temporalities Ordinance and the Muslim Mosques and Charitable Trusts or Wakfs Act.

CHAPTER XI

MISCELLANEOUS

110. (1) No trust shall operate to create Rule against an interest which is to take effect after the perpetuities. lifetime of one or more persons living at the date of the constitution of the trust, and the minority of some person who shall be in existence at the expiration of that period and to whom, if he attains full age, the interest created is to belong.

(2) If owing to any trust an interest is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of the provisions of this section, such interest fails as regards the whole class.

(3) Where an interest fails by reason of the provisions of this section, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

(4) In any case in which any interest intended to be created fails by reason of the provisions of this section, the court shall have power to give effect to the trust in such a manner as to carry out as nearly as practicable the intentions of the author of the trust, subject to the limits imposed by this section, and may make any order necessary for the purpose.