

(1914) 09 MAD CK 0050
In the Madras High Court

A. Thiruvengadatha Aiyangar and Another	APPELLANT
Vs	
R. Ponnappa Aiyangar and Others	RESPONDENT

Date of Decision : 15-09-1914

Acts Referred:

Citation : (1915) 28 MLJ 209

Judgement

1. This second appeal arises out of a suit by one of five trustees of a temple against the members of the temple committee and the other four trustees, the relief asked for being a declaration that two of the trustees have not been appointed lawfully by the temple committee. The Temporary Subordinate Judge of Tuticorin in whose Court the suit was filed dismissed the suit. The District Judge of Tinnevely on appeal set aside the decree of the lower Court and granted a declaration that the appointment of the trustees by the temple committee was not legally valid, ordered the cancellation of the appointments and issued an injunction restraining the newly appointed trustees from interfering with the management of the temple.

2. It is argued before us that the appointment was valid and that the District Judge has misapprehended the powers of a temple committee and wrongly thrown the burden on them of justifying the appointment. For the respondents it was contended, first that the appointment of the two trustees was in addition to the constituted number and thereby amounted to an alteration of the scheme which, it was argued, was entirely beyond the power of the temple committee; and secondly, that even if the committee had power to make the appointment it lay on them to justify it and that the District Judge having found that it was not justified, this Court could not interfere in second appeal.

3. We can dispose of the first point very shortly. There is nothing in the plaint to indicate that objection was taken on the ground that the appointment was a variation of the scheme nor was the view ever urged during the course of the protracted proceedings in both the Courts; nor does the District Judge base his judgment on that ground. Further it appears that there is no record of any

scheme ever having been settled and it is clear on the evidence, the admissions of the plaintiff and the findings of the Original Court that at one time there were actually five trustees, the number now constituted by the present appointments and that at the time of the plaintiff's own appointment there were actually four. This objection therefore fails on two grounds and the appointment could very fairly be justified as one filling up two vacancies which had improperly been allowed to exist for a considerable time. If these appointments are to be viewed as the filling up of vacancies they are clearly justified under the provisions of Regulation VII of 1817 as applied by the Religious Endowments Act, XX of 1863. The temple in question was, at the date of the passing of Act XX of 1863 one covered by the language of Section 3 of that Act, and, by Section 7 of the Act, a temple committee was constituted to exercise the powers of the Board of Revenue and the local agents vested in them by the Regulation. Turning to Regulation VII of 1817, it is clear that, under Sections 12 & 13, the Board of Revenue had power to appoint suitable persons as trustees and to fill up vacancies from time to time. We are of opinion, however, that even if these were not vacancies, the temple committee had power to appoint these trustees if they thought it advisable to do so in the interests of the endowment, the appointments, as we have already pointed out, not being a variation of an existing scheme. Reliance is placed by the Respondents on Venkatachella Pillai v. The Taluq Board Ssidapet ILR (1910) M. 375 and it is argued that that case is an authority for the proposition that the only powers of appointments recognised by the Regulation are appointments to fill vacancies. That is, however, not the ratio decidendi of the case. What was done in that case was that a trustee namely, the Taluq Board, had been appointed without the existing trustee being dismissed, and the Court held (vide page 335) that the Board of Revenue could not ignore the rights of existing trustees and appoint trustees to the prejudice of one who is in possession of the office under the instrument creating the trust. The duty of the Board was, first, to dis-miss the trustee which could be done for good cause shown and, then, there being a vacancy, to exercise the powers under Sections 12 & 13 of filling up the vacancy. That case, therefore, stands on an entirely different footing to the present. But it is to be noted that the power to dismiss a trustee was assumed to exist by virtue of Section 2 although no specific power to that effect is to be found in the words of the Regulation. This was on the authority of Chinna Ranga Aiyangar v. Subbaraya Mudali (1867) 3 M.H.C.R. 334 a case quoted with approval in Seshadri Aiyangar v. Nataraja Aiyar ILR (1897) M. 179 (vide page 199). Further, the Court points out that on the occasion of a vacancy various powers are given to the Board by Section 13 in that they need not fill up the vacancy but may make such other provision for the trust management or superintendence as may to them seem right and fit. Reliance was also placed on Nilayathakshi Ammal Vs. The Taluq Board, for the proposition that there was no power in the Board to appoint trustees except on the occasion of a vacancy. It is true that the Court in that case does doubt whether this power can be found in the Regulation other than in Section 13; but the Judges express no decided opinion on the point which was not necessary for the decision of the

case. What was decided there was that where the Taluq Board had taken over the management by virtue of Section 51 of the Local Boards Act it could not divest itself of its duty of management by appointing an independent trustee.

4. That case is, therefore, no authority for the broad proposition contended for and in our opinion it is untenable. We have no hesitation in holding that a power to appoint an additional trustee when such appointment is not a variation of the scheme is necessarily vested in the temple committee as successors to the Board of Revenue. It was specifically so held in *Sheik Davud Saiba v. Hussain Saiba* ILR (1893) M. 212. The judges there use language which seems to indicate that they base the right on Section 13 though it is not clear from the somewhat short judgment that this is so. They certainly lay down, however, that it is competent to the committee where there is no hereditary trustee, to add to the number of the existing trustees, if, in their opinion, it is advisable to do so in the interests of the trust. We prefer to find this power in Section 2 of the Regulation. *Chinna Ranga Aiyangar v. Subbaraya Mudaliar* (1867) 3 M.H.C.R. 331 which decides that the Board of Revenue has power to remove a trustee lays down that the Regulation does not contain any restriction on the performance of the duties of general superintendence and management and that decision was followed in *Ramiengar v. Gnanasambhandha Pandara Sannadhi* (1867) 5 M.H.C.R. 53 and in a later case *Virasami v. Subba* ILR (1882) M. 54 it was assumed that, in cases falling within Section 3 of Act XX of 1863, such a power as this, the power of dismissal, existed. Just as the authority to suspend or remove for just cause was held to be properly incidental to the other duties and responsibilities of the Board of Revenue and to have been impliedly given by the Court in *Chinna Ranga Aiyangar v. Subbaroya Mudali* (1867) 3 M.H.C.R. 331 so the power to add additional trustees for the purposes above mentioned must likewise be held to be properly incidental to the duties and responsibilities of the temple committee and to be inherent from their power of general superintendence.

5. The last argument addressed to us was that there was a distinction between the exercise of this power for administrative purposes and for punitive purposes. We are unable to accede to the argument that there is anything punitive in appointing fresh trustees where a temple committee are not satisfied that the existing trustees are dealing with the work successfully or properly. This contention is one that found favour with the learned District Judge and is the basis of his judgment. He remanded the case to the lower Court for the trial of an issue whether the appointments were a reasonable and bona fide exercise of the committee's power and in consequence of certain admission made by the temple committee's vakil held that the appointment was punitive, He then required the temple committee to justify the appointment and even tually set it aside on the ground " that no such punishment should have been inflicted, adding, however, that if it was made on purely administrative grounds it could not be supported since it did not result and, so far as has been shown would not necessarily result in the submission of accounts." We are unable to find any authority for this distinction between a punitive appointment of additional

trustees and an administrative one. The learned District Judge seems to rely on *Ganapathi Aiyar v. Sri Vedavyasa Alasinga Bhattar* ILR (1906) M. 534. That, however, was a case where additional trustees were appointed in such a manner as to alter the scheme of management already settled by the Board. As pointed out above, there is no evidence of a scheme of management ever having been settled or what its nature was. We hold that where no person is deprived of his freehold there is no duty cast on the temple committee to show affirmatively that the appointment was for just and sufficient cause. In our view the only limit to be imposed on the temple committee in the exercise of their discretion is by an analogy to Section 49 of the Trusts Act, II of 1882. "Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of Original Jurisdiction." This has been expressly held in *Sheik Davud Saiba v. Hussein Saiba* ILR (1893) M. 212 in circumstances resembling the present case. The learned District Judge has cast a higher duty on the temple committee than he should have done and his finding in the issue based on his view of the burden of proof and on his limitation of the materials for justification cannot be supported. We do not think it advisable to send this case back after having carefully considered the case ourselves. We propose, therefore, to exercise the powers conferred on this Court by O. XLI, Rule 24 of the CPC of resettling the issues and finally determining the suit ourselves. The issue will be whether the temple committee has not exercised its power of appointment in this case "reasonably and in good faith." The case is adjourned for further hearing for three weeks.