
(1938) 10 MAD CK 0023
In the Madras High Court

A. Venkatasubbu Mudaliar and Another	APPELLANT
Vs	
G. Narayanaswami Chetty and Others	RESPONDENT

Date of Decision : 12-10-1938

Acts Referred:

Hindu Religious Endowments Act — Section 11

Citation : AIR 1939 Mad 346 : (1939) 1 MLJ 9

Hon'ble Judges : Gentle, J

Bench : Division Bench

Judgement

Gentle, J.—The Sri Kapaliswarar Temple in Mylapore is one to which the provisions of the Hindu Religious Endowments Act (XX of 1863)

hereinafter called "the Act" apply, and it is included amongst the temples falling within Section 3 thereof. Defendants 1 to 11 are sued as the

members of the Madras Hindu Devasthanam Committee, which Committee is responsible for the superintendence of this, amongst other temples.

The plaintiffs were trustees of the temple appointed by the Committee. The second plaintiff was appointed as interim trustee; the 12th defendant

was appointed as interim trustee at a meeting of the Committee whereat the second plaintiff was dismissed from his office of interim trustee.

2. The plaintiffs claim

(1) the following declarations:

(a) that the dismissal of the second plaintiff as interim dharmakarta was irregular and illegal and that he is entitled to continue in his office;

(b) that the appointment of the 12th defendant in place of the second plaintiff was illegal and void;

(c) that the resolution of the Committee dated 6th May, 1935, relating to the

above dismissal and appointment were illegal, ultra vires and invalid;

and

(2) An injunction restraining the defendants from interfering with the plaintiffs' possession and management of the temple and its properties.

3. Since the suit was filed, defendants 2, 5 and 6 have died, and the tenth defendant has become an insolvent. No legal representatives have been

brought on record to represent the deceased defendants and the suit has proceeded against the remainder. No point is made by either party in

regard to this. Several issues were settled as arising in the suit, but at the outset, counsel on behalf of all parties agreed that the only matter for

decision is whether the second plaintiff was properly dismissed.

4. At this temple, it has been customary to have two trustees or dharmakartas, one appointed from the interested community, the Poonamalle

Ooyarthuluva Vellala community and one from the members of the family of the founder of the temple. Prior to the month of April 1934, the two

trustees of the temple were the first plaintiff and M.N.A. Annamalai Mudaliar. In that month, the latter trustee died. The first plaintiff represented

the above community and at the date of the death of the deceased trustee there was no one available amongst the members of the founder's family

for appointment as a trustee to fill the vacancy. At this period, the second plaintiff was a member of the Committee. Under the provisions of

Section 11 of the Act, a member of the Committee is incapable of being or acting as a trustee of any temple under the superintendence of the

Committee. A meeting of the Committee was held on 28th April, 1934, and the second plaintiff, having resigned from membership of the

Committee, he was thereupon appointed as an interim dharmakarta. From that date, the plaintiffs functioned as trustees of the temple. At this

temple, there is an office of overseer," and this appointment would seem to be peculiar to this temple.

5. Almost from the outset, difficulties and friction between the trustees and the Committee arose. The annual temple accounts and report of the

auditor, Ex. B-1, for the year ending" 12th April, 1933, were sent to the plaintiffs with the Committee's letter, Ex. B-2 dated 7th May, 1934, and

the plaintiffs remarks were invited upon the various points mentioned in the letter. The second plaintiff was not a trustee during the period covered

by the accounts and report. The plaintiffs delayed some months before forwarding their observations and were repeatedly urged by the Committee to reply to the above letter. On 25th January, 1935, Ex. A-8, the plaintiffs wrote along communication to the Committee setting out in detail their remarks and observations upon the accounts and report, and they, also dealt with various other matters. The Committee did not take any exception to or criticise this letter or suggest that the contents were not accurate statements of fact, and Mr. Nataraja Mudaliar, the 10th defendant, the only witness called on behalf of the defendants, also did not in any way canvass the contents of this letter. At no time was it ever suggested that it was: inadequate or unsatisfactory.

6. At a meeting of the Committee held on 6th May, 1935, the second plaintiff was dismissed (or as the plaintiffs desire to express it, his services as interim dharmakarta were terminated) with effect from 10th May, 1935. The reasons put forward by the Committee for this being done are set out in the proceedings of the Committee, Ex. A-2, to which I shall refer presently. At the same meeting, Mr. M. Alagappa Mudaliar was appointed an interim dharmakarta of the temple from 10th May, 1935, until further orders.

7. The second plaintiff contends that his dismissal was invalid and irregular for the following reasons:

(1) He was not guilty of any act which justified dismissal and no good cause existed for the termination of his services;

(2) The meetings and proceedings at which the Committee purported to terminate his services and dismiss him were irregular because-

(a) the consideration of his conduct was not a subject upon the agenda of the meeting and notice of this was not given to members of the

Committee;

(b) No notice was given to the second plaintiff that there were charges against him or that his conduct was to be considered at the meeting of the

Committee;

(c) He was not afforded an opportunity to meet the charges made against him.

(3) The second plaintiff was appointed an interim trustee until a member of the founder's family was available and he was not removable in the

absence of good cause or misconduct save upon the appointment of such a person.

8. Mr. V.V. Srinivasa Aiyangar, on behalf of the defendants, contended that the temple properties are vested not in the trustees but in the

Committee, and the former are merely clerks or servants of the latter and dismissible at their pleasure. He quoted in support of his argument *Golam*

Hossain Shah v. Altaf Hossain I.L.R.(1933) 61 Cal. 80 and *Shenton v. Smith* (1895) A.C. 229. The latter authority, in my view, is not in point in

any way. *C. Sendilvelu Mudaliar Vs. A. Venkatasubbu Mudaliar and Others*, was a suit concerned with the same temple as the present case, and

a similar attempt was made to raise the same contention which I have just set out. In his judgment at page 480 *Varadachariar, J.*, said that it was

unnecessary for the purpose of the case then under consideration to deal with those contentions and he refrained from expressing any opinion

particularly as a suit (the present suit) was pending in which those questions might arise for decision. So far as the Madras Presidency is

concerned, the position has been made perfectly clear by a series of decisions of this Court. A trustee is not a servant of the Committee and is

dismissible only after due enquiry into the facts of the trustee's conduct; the trustee must be given notice of any charges against him and afforded an

opportunity to meet them; the facts justifying dismissal must amount to misconduct. The Committee do not represent the properties of the temple

and are not entitled to possession of the temple or of its properties. The person who does represent the temple and the properties and in whom

they are vested is the trustee appointed by the Committee. See *Ponnuranga v. Nagappa* ILR (1889) 12 Mad. 366 *Seshadri Aiyangar v. Ndtaraja*

Aiyar I.L.R.(1898) 21 Mad. 179 *Pattikadan Umbaru v. Emperor* (1902) 6 M.L.J. 14 : ILR 26 Mad. 243 (N.) *Sitharama Chetty v. Sir S.*

Subramania Aiyar (1915) 30 M.L.J. 29 : ILR 39 Mad. 700 *A. Ramanathan Chettiar Vs. Swaminatha Aiyar and Others*, , *Ponnambala Pillai*

(Died) and *Another Vs. Muthu Chettiar and Others*, and *Sundararama Sastri v. Anantha Krishna Naidu* (1916) 5 L.W. 672. All these decisions

are pronouncements either of a Division Bench or of a Full Bench of this Court.

9. I propose now to refer to the grounds upon which the Committee purported to find as justifying the second plaintiff's dismissal. These are three,

and as mentioned earlier, are contained in Ex. A-2:

(1) failing to submit a detailed report of the leases of the temple properties, the

amount of the arrears of rent, the sums collected and if any, and

what, of the outstandings are barred by the provisions of the statute of limitations;

(2) preventing the members of the Committee from holding their meetings in the temple premises;

(3) Breaking open the hundi boxes without notice to the Committee and without obtaining the 2nd key.

10. It is to be noticed that the delay by the plaintiff in forwarding to the Committee their observations regarding the accounts for the year ending

12th April, 1933, Ex. B-1, and the plaintiff's observations of the accounts were not relied upon, as a ground for dismissal of the second plaintiff.

11. It is convenient now to deal with the above three grounds seriatim.

(1) On 22nd October, 1934, in their letter Ex. B-13 addressed to the plaintiffs, the Committee recorded a resolution passed at a recent meeting

whereat it was resolved that the trustees be requested to submit a detailed list of immovable properties belonging to the temple and also to furnish

full information about the leases relating to these properties, including oral leases, if any, and to state the arrears of rent, how much rent had been

collected, and if any portion had become barred and the amount thereof. A reply was requested within a fortnight from the date of the receipt of

this letter. In his evidence, the second plaintiff said that the trustees were making collections and had received a larger sum than had been collected

a year previously. He also stated that a reply to Ex. B-13 had been sent. This reply is Ex. A-8 dated 25th January, 1935, a long communication of

about 22 pages in which detailed information regarding the accounts and other matters was sent to the Committee. At page 20 of this letter, the

plaintiffs wrote that a year previously the overseer of the temple had taken away the inventory of the properties and other books and that the

Committee, although it had occasion to have these books, returned them to the overseer and the Committee had been informed that in the absence

of the books the trustees found it difficult to get on with their work and the information concerning the temple leases was contained in those books.

Also an auditor every year took into account a list of all leases, the amounts collected, the amounts in arrear and appended this as a D.C.B.

statement to his report. The trustees would prepare a report at the close of the

Tamil year when they could determine which debts were bad and doubtful and which could be written off and that the work involved was heavy. I have already mentioned that to this letter, which was received nearly four months before the second plaintiff was dismissed, no exception was taken by the Committee nor was it ever alleged that its contents were not accurate. At page 334 of Ex. A-4, the proceedings of the Committee, a record appears that an inventory of the temple properties was sent to a sub-committee. The Committee therefore when they made their request in Ex. A-13 must have known they had a list of the temple properties available. The failure by the plaintiffs to furnish to the Committee the lists and the particulars required does not in any way justify the Committee in relying upon this as a ground for justifying dismissal. From the information before me, I think the failure was through no fault of the trustees. Further, the Committee upon receiving the letter, Ex. A-8, dated 25th January, 1935, never suggested that the trustees had failed to comply with the Committee's earlier request. To justify dismissal, the failure must amount to misconduct and in my view this was not misconduct.

(2) For some years prior to May, 1935, it had been the practice to hold Committee meetings at the houses, offices or business chambers of the members of the Committee. The last occasion when the Committee held its meeting at this temple was about the year 1931 or 1932, at the time when the second plaintiff was not a member of the Committee. In Exs. B-8, B-10, B-11, B-12 and B-15, the Secretary, to the Committee informed the plaintiffs that either a meeting had been arranged to be held at the temple on a specified date or a request was made to arrange for a meeting to be held on any day suggested. In Exs. B-9 and B-16, the plaintiffs pointed out that meetings were usually held at the places I have already indicated, and they raised objection to the temple being used for this purpose particularly since on one or other occasion reference had not been made to themselves beforehand and they had not been previously consulted. In Ex. A-8, at page 21, the plaintiffs referred to this matter and apparently objected to a resolution passed by the Committee that the members of the Committee had a right to hold meetings in the temple. As pointed out earlier, the temple is not vested in the Committee but in the trustees, and strictly they have a right to accede to or refuse the request of

the Committee, when such requests are made. It would seem that since the Committee, without reference to the trustees in the first instance had

fixed a meeting to be held in the temple, the plaintiffs felt that they and their positions had been ignored. Whilst it may have been more convenient

and indeed courteous if the plaintiffs had afforded facilities to the Committee for holding their meetings in the temple, their refusal to place the

temple at the disposal of the Committee, in my view, does not amount to a ground which justifies dismissal of the second plaintiff as trustee.

(3) Each trustee had in his possession one key of the hundi boxes, which could be opened only when both these keys were available. During the

lifetime of Annamalai Mudaliar, the deceased trustee, he had in his possession one of the keys, the first plaintiff having the other. The plaintiffs sent

to the sons of the deceased Annamalai Mudaliar a letter, Ex. A-6 on 23rd May, 1934, requesting that the key in the possession of their late father

should be given to the trustees. This was not done. As it was necessary for the hundi boxes to be opened the plaintiffs advertised in the

Swadeshmitran on 9th March, 1935, Ex. A-47 the intention to open the hundi boxes on a date and at an hour mentioned, and at this time these

hundi boxes were opened in the presence of four or five persons. In my view, the conduct of the plaintiff was perfectly proper in regard to the

hundi boxes, and the Committee cannot in any way suggest that the forcing open of these boxes was improper in any way. At the trial, no attempt

was made to suggest that this was a ground which justified the second plaintiff's dismissal.

12. u/s 13 of the Act, it is the duty of the trustees to keep an account of the receipts and disbursements and it is the duty of the Committee to

require production of such accounts, at least once in a year. There is no suggestion that the second plaintiff had not kept these accounts or had

failed to produce them before the Committee. The second plaintiff as trustee was not a clerk or servant of the Committee. He was removable only

upon good cause being shown and not otherwise. The only grounds upon which the Committee now seek to justify dismissal are these; the failure

to supply the information regarding the temple leases and properties and preventing the holding of Committee meetings in the temple. I have

already dealt with these matters. Further, by Section 14 of the Act, any person interested in a temple is empowered to sue a trustee for

misfeasance, breach of trust or neglect of duty and the Civil Court may direct removal of a trustee. The grounds upon which the Court can remove

him are those stated above. Neglect of duty which justifies removal must be of the same seriousness as misfeasance or breach of trust. Neither of

the grounds relied upon by the Committee can, in the circumstances, amount to misfeasance or breach of trust. Even if these acts had amounted to

neglect of duty, which I do not think they did, the Civil Court could not have directed the second plaintiff's removal, and the Committee cannot

have greater powers than the Court in regard to this. The Committee appears to have endeavoured to exercise some form of disciplinary control

over the trustees and to treat them as holding inferior positions to that which they held. This attitude of the Committee is dealt with in *Seshadri*

Aiyangar v. Nataraja Aiyar I.L.R.(1898) 21 Mad. 179 by Shephard, J., at page 184 who in the course of his judgment said:

The notion that the Committee may exercise disciplinary powers over trustees appears to me alike unsupported by the provisions of the Act, and

inconsistent with the position of a trustee having property vested in him and charged with the gratuitous performance of important public duties. His

position is not that of a servant of the Committee. He has what may be called a freehold in his office, and except for good cause shown he cannot

be removed from it.

13. In my view, there was no justification whatever for the second plaintiff's dismissal from his office as trustee by the Committee.

14. Even if the grounds put forward by the Committee to dismiss had been justified, nevertheless, in my view, the dismissal of the second plaintiff

was invalid. An enquiry must be held into the complaint of charges made against a trustee who should be informed of the charges and called upon

for an explanation and given an opportunity to meet them. See *Seshadri Aiyangar v. Nataraja Aiyar* I.L.R.(1898) 21 Mad. 179 *Ponnambala Pillai*

(Died) and *Another Vs. Muthu Chettiar and Others*, and *Sundarama Sastri v. Anantha Krishna Naidu* (1916) 5 L.W. 672 .

15. Notice of the meeting at which such enquiry is to take place or the conduct of the trustee is being considered should set out that such matter is

one which will come before the Committee. In *Rama Aiyar v. Sivagnanam Pillai* (1927) 54 M.L.J. 140 : ILR 51 Mad. 68 a notice calling a meeting

of a Devasthanam Committee did not state that one subject to be considered at the meeting was that of the appointment of a new trustee or trustees and it was held that since this business was not included in the notice and was not a subject which was to be considered by the Committee at its meeting, the appointment was invalid. It must follow that similar requirements are necessary in regard to a meeting at which a trustee is dismissed. The second plaintiff was not informed that his conduct was to be considered at a meeting of the Committee. No notice was sent to him and no charges or allegations made against him, and he was not afforded an opportunity of meeting those charges. It was not suggested by learned Counsel on behalf of the defendants that the notice of this meeting included any reference to the plaintiff's conduct or that it was to come under review, and it was not one of the matters on the agenda for that meeting. Ex. A-3 is the agenda of the previous meeting of the Committee held on 20th April, 1935. Nothing appears in the agenda of that meeting regarding any charges made against the second plaintiff or that his conduct was to be considered at the meeting. He was dismissed at the meeting held on 6th May, 1935, the agenda of which merely states that the business will be the unfinished subjects of the previous meeting.

16. It was argued on behalf of the defendants that it was not necessary to give the plaintiff any notice of charges or to state that his conduct was to be reviewed or that it was necessary to state in the notice of meeting that this matter was for consideration. Also that there was no necessity that he should be given an opportunity to explain his conduct as this was well known to members of the Committee. In my view, this contention cannot in any way be supported. It is contrary to a long line of decisions of this Court and opposed to natural justice.

17. As these necessary requirements regarding the plaintiff and the meeting at which he was dismissed were not complied with, even if grounds justifying dismissal had existed, his dismissal was irregular and invalid. Although the first plaintiff was concerned equally with the second plaintiff in all the matters to which I have referred, the latter alone was dismissed. I was informed during the course of the hearing that since this suit had been filed, the first plaintiff had also been discharged. It is somewhat strange that the second plaintiff should have been singled out for the Committee's

action.

18. Although, as I mentioned earlier, it was agreed between Counsel that the only matter for decision in this suit was whether the second plaintiff's

dismissal was wrongful and that if it was he was entitled to the relief claimed and if it was not that the suit must be dismissed, learned Counsel on

behalf of the defendants at a later period at the trial raised two further contentions.

(1) Since the second plaintiff was an interim trustee, he could be dismissed peremptorily by the Committee.

(2) Even if the second plaintiff established that his dismissal was unjustified and invalid, since the Committee could dispense with his services and

appoint a permanent trustee from the members of the founder's family at any time the Court could not afford him the relief claimed since the action,

of the Committee could render a decree for relief nugatory.

19. As to (1), I mentioned earlier that it was customary in regard to this temple to appoint a trustee; from members of the family of the founder and

that none was available when the second plaintiff was appointed. Prior to the meeting at which the appointment was made, the overseer had

written to the Committee on 21st April, 1934, suggesting that an appointment of an interim dharmakarta should be made pending the determination

of the Committee of a permanent incumbent. See Ex. A-1. Mr. Nataraja Mudaliar in the earlier part of his evidence said that the second plaintiff

was appointed for such period as the Committee might be pleased that he should act or until he proved recalcitrant. No mention is made of this

term in the record of the minutes of the meeting on 28th April, 1934. Up to the date of this meeting, the second plaintiff had been a member of the

Committee and held its full confidence. I do not accept Mr. Nataraja Mudaliar's evidence in this respect. Later on this witness admitted that the

appointment was made in order to give effect to the overseers' suggestion. This admission was in accordance with the evidence of the second

plaintiff who said he was appointed as an interim trustee until a member of the founder's family was available, and I accept his testimony. The

trustee, as pointed out above, has what may be called a freehold in his possession. See *Seshadri Aiyangar v. Nataraja Aiyar* I.L.R.(1898) 21

Mad. 179 Shephard, J., at page 184, and again the same learned Judge at page

185, says that no provision is made in the Act for the appointment of a temporary manager. Whilst the second plaintiff was, perhaps, not appointed for life, as is usual with trustees of a temple, he was not a temporary manager, he was appointed until there was some member of the founder's family available. Up to the present time, no such person has been appointed and Mr. M. Alagappa Mudaliar who succeeded the second plaintiff has not been functioning ever since May 1935, over three years ago. Although the Act may make no provision for a temporary trustee, the second plaintiff was appointed until the happening of a specified event and he accepted the office on that understanding. Until this event occurred, he was entitled to hold the office of trustee. It may be - and I am not expressing an opinion one way or the other - that since temporary trustees or managers are not contemplated by the Act, and the second plaintiff having been appointed trustee although called an "interim trustee", he may be able to maintain that he cannot be displaced. That is a matter however which is not one for decision by me.

20. As to (2) the Committee cannot displace the second plaintiff, certainly before a member of the founder's family is available. There was no evidence, indeed there was no suggestion, that such a person is now, or has been, or is likely to be, available. *Maharaj Narain Sheopuri v. Shashi Shekhareshwar Roy* ILR (1915) 37 All. 313 was quoted in support of this contention. In that case, it was held that the Civil Court ought not to entertain a suit for a declaration that a person who has been illegally deprived of an office in a society in as much as a decree in his favour might be rendered nugatory by the action of the society. The plaintiff in that case held an honorary position and the rules of the society permitted it to discontinue his services at any time. In my view, that decision is not in point.

21. Although the minutes of the Committee meeting held on 6th May, 1935, regarding the appointment of the twelfth defendant as interim trustee, do not state that he was to act in the place of the second plaintiff, it is obvious he was so appointed. As I am satisfied that the second plaintiff's dismissal was irregular and invalid, it must follow that the Committee has no power to appoint any person in his place. Whilst the Act does not limit the number of trustees to be appointed in respect of any temple, as far as the information before me goes, there never has been more than two

trustees for this temple. Further, the twelfth defendant was appointed by the same meeting as that which dismissed the second plaintiff. No notice was given that a subject of that meeting was the appointment of a new trustee, nor was this a subject upon the agenda of the meeting. For the reasons I have given and following the Bench decision in *Rama Aiyar v. Sivagnanam Pillai* (1927) 54 M.L.J. 140 : ILR 51 Mad. 68 the appointment of the twelfth defendant as trustee was invalid. When the suspension of a trustee of a temple was illegal, a declaration to that effect was granted in *A.T. Venkata Narayana Pillai Vs. V. Ponnusami Nadar and Others*, . The power of suspension by a Committee is the same as the power of dismissal. See *Seshadri Aiyangar v. Nataraja Aiyar* I.L.R.(1898) 21 Mad. 179 Collins, C.J., at page 221. The second plaintiff having been illegally dismissed, he is entitled to relief in the suit.

22. There will be a declaration:

- (a) that the dismissal of the second plaintiff as trustee of this temple was irregular and illegal and that he is entitled to continue in his office;
- (b) that the appointment of the twelfth defendant in the place of the second plaintiff as trustee was illegal and invalid;
- (c) that the meeting and resolutions of the Committee held on 6th May, 1935, at which the second plaintiff was dismissed and the twelfth defendant was appointed an interim trustee were illegal and invalid.

23. There will be an injunction restraining the defendants except defendants 2, 5 and 6 from interfering with the plaintiff's duties as a trustee of the temple and his possession and management of the temple and its properties as such trustee.

24. There will be an order for the second plaintiff's costs against all the defendants except defendants 2, 5 and 6, which costs will carry interest at the rate of 6 per cent, per annum until payment.

25. The first plaintiff is not entitled to and has obtained no relief in this suit. His presence as a party was unnecessary and as against him this suit is dismissed. His inclusion as a plaintiff in the suit has occasioned no increase in the amount of the costs and therefore I make no order against him for payment of any costs.