

(1959) 03 KL CK 0009
In the High Court Of Kerala
Case No : C.M.A. No. 265 of 1958

Achayi and Others

APPELLANT

Vs

Chittanjoorkavu Devaswom and Another

RESPONDENT

Date of Decision : 25-03-1959

Acts Referred:

Citation : (1959) KLJ 524

Hon'ble Judges : M.S. Menon, J;G. Kumara Pillai, J

Bench : Division Bench

Advocate : T.P. Poullose, Y.P. Yohannan and C.C. Jacob, for the Appellant; T. Chandrasekhara Menon, for the Respondent

Final Decision : Dismissed

Judgement

G. Kumara Pillai, J.—This civil miscellaneous appeal arises out of a suit brought on behalf of a Devaswom, the Chittanjoorkavu Devaswom, for cancellation of an alienation of some of its properties and recovery of possession of the alienated properties with past and future mesne profits. The alienation sought to be cancelled is Ext. I dated 30-7-1117 (M.E.). This document was executed by one Neelakantan Nambudiri of Kodakkat Illom, his wife and two of his children. Neelakantan Nambudiri had other children also, but all his children except the two who had joined in the execution of Ext. I were minors on the date of that document, and Neelakantan Nambudiri had executed the document both in his own right and in his capacity as guardian of those minor children. The Chittanjoorkavu Devaswom was described in Ext. I as belonging to the Illom of the executants thereof, and the properties dealt with therein were described as belonging to the said Devaswom. Some time after the execution of Ext. I, the Cochin Devaswom Board assumed management of the Chittanjoorkavu Devaswom and appointed the plaintiff as the trustee thereof under the provisions of the Hindu Religious Institutions Act, XV of 1950. The suit was brought on behalf of the Devaswom by the plaintiff as its trustee appointed by the Cochin Devaswom Board on the allegation that the alienation was not supported by

consideration and necessity binding on the Devaswom. The alienee, defendant 1, contended that the Chittanjoorkavu Devaswom was not a public Devaswom but a private Devaswom and the Devaswom Board had, therefore, no right to appoint a trustee for it, that the suit brought by the trustee appointed by the Devaswom Board was not maintainable inasmuch as he was not de jure trustee of the Devaswom, and that as Ext. I was executed for necessity and consideration binding on the Devaswom as well as the Illom of the alienors it was not liable to be set aside. The trial court dismissed the suit upholding all these contentions of the alienee. Without deciding whether the Chittanjoorkavu Devaswom was a public Devaswom or private Devaswom and whether the appointment of the trustee by the Devaswom Board was valid in law or not, the lower appellate court held that even if the Devaswom was a private Devaswom and the plaintiff had not been validly appointed trustee, he was entitled to maintain the suit inasmuch as he was a de facto trustee and that Ext. I was supported by consideration and necessity binding on the Devaswom only to the extent of Rs. 275 and was not supported by consideration and necessity so far as the balance sale price mentioned in it was concerned. Consequently, that court set aside Ext. I and passed a preliminary decree allowing the plaintiff to recover possession of the alienated properties on behalf of the Devaswom after payment of Rs. 275 to the alienee and value of the improvements and remanded the case to the trial court for passing a final decree after settling and deciding the issues regarding value of improvements and mesne profits. Against this order of remand the legal representatives of the alienee, defendants 3 to 7, have brought this civil miscellaneous appeal.

2. It was vehemently contended before us by the appellants, counsel that the Devaswom in question is only a private Devaswom and not a public Devaswom and so the appointment of the plaintiff as trustee by the Cochin Devaswom Board was invalid, and equally vehemently it was contended by the respondent's counsel that the Devaswom is a Public Devaswom and the appointment of the trustee by the Board is valid. It is true that the lower appellate court has not decided this question, but so far as the present suit is concerned nothing material turns on its decision. The question was raised by the defendant only for the purpose of denying the plaintiff's right to maintain the suit on behalf of the Devaswom. His contention was that the plaintiff had no right to sue on behalf of the Devaswom, as he was not its de jure trustee. As the plaintiff relied upon his appointment as trustee by the Cochin Devaswom Board in support of his right to maintain the suit on behalf of the Devaswom, the defendant contended that the Devaswom was a private Devaswom and so the Devaswom Board had no right to assume its management and appoint a trustee for it and that consequently the plaintiff was not the de jure trustee and had no right to maintain the suit on its behalf. In our opinion, the plaintiff's right to maintain the present suit on behalf of the Devaswom is indisputable even if it is assumed that the assumption of the management of the Devaswom by the Devaswom Board and the appointment of the plaintiff as trustee by the Board are invalid and plaintiff is not therefore the

de jure trustee. Both sides admit that consequent on his appointment as trustee by the Devaswom Board plaintiff is now in possession and management of the Devaswom and its properties and that he is also looking after the Devaswom affairs. The members of the Illom which, according to the appellants is the real owner of the Devaswom and its properties, do not dispute the validity of its assumption by the Devaswom Board and the appointment of the plaintiff as trustee. In these circumstances, there can be no doubt that the plaintiff is at least the de facto trustee of the Devaswom if not the de jure trustee. Regarding the right of a de facto trustee to maintain a suit on behalf of the trust, Mukherjea says at pages 271 and 272 of his book on the Law of Hindu Religious and Charitable Trust, 1952 Edition:

...as the deity is a juristic person and various persons other than the shebait can institute suits on behalf of the deity, there could be nothing wrong in allowing a de facto shebait to file suits not for his own benefit but for the benefit of the endowment. The Privy Council in Mahadeo Prasad v. Karia (62 I.A. 47) laid down, following an earlier pronouncement of theirs in Ram Chandra v. Nawrangi (60 I.A. 124) that a person in actual possession of a Math is entitled to maintain a suit to recover property appertaining to it not for his own benefit but for the benefit of the Math. These were cases which related to a Math and not to a debutter, but the same reasoning, it seems, would apply to a debutter endowment as well and it has been so held in several decided cases. The Allahabad High Court held in Gopal Dutt v. Baburam (1936 A.L.J.R. 515) that a suit can be brought in the name of the idol by a person who is the de facto manager of a temple and the same view was taken by the Chief Court of Oudh in Sri Radha Krishna v. Maharaj Kumar (12 Luck. 331) and quite recently by a Full Bench of the Madras High Court in Sankaranarayanan v. Shri Poovananatha (A.I.R. 1949 Mad. 721).

Following the cases mentioned in the passage from Mukherjea extracted above we would hold that the plaintiff is entitled at least as de facto trustee to maintain the suit. In this view, the lower appellate court has acted quite properly in leaving open the question whether the Devaswom is a private Devaswom or public Devaswom and whether its assumption by the Cochin Devaswom Board and the appointment of the plaintiff as trustee are valid. So long as the alleged owners of the Devaswom do not dispute the plaintiff's rights as trustee, it is unnecessary to decide that question for the purpose of the present suit.

3. The appellants' counsel also contended before us that if the Devaswom is a private Devaswom, the trust in respect of it should be deemed to have been put to an end by Ext. I as that document was executed by all the members of the Illom to which the Devaswom belonged, and that in that view Ext. I should be taken to be a mere alienation of Illom properties by the members of the Illom and should be upheld as it is supported by consideration and necessity binding at least on the Illom. We are unable to accept this contention. Ext. IX, the partition deed under which the persons who executed Ext. I are said to have obtained the

Devaswom, shows that the Devaswom belonged not only to their branch but also to another branch which got separated from them by that partition deed and that the Devaswom and its properties were given to them for the express purpose of continuing the trust. They were not, therefore, competent to put an end to the trust by themselves. Further, the question, when a temple has been founded by a tarwad for the benefit of the family, whether the members for the time being can put an end to the trust so as to affect those who may be subsequently born in the family is itself open to doubt. (See *Seshadri Iyengar v. Ranga Pattar* (21 M.L.J. 580). In view of the express terms of Ext. IX we do not consider it necessary to decide in this case the question whether the trust in respect of a private temple founded by a family can be put to an end by all the members of the family existing at a particular time. The finding of the lower appellate court that Ext. I is supported by consideration and necessity so far as the temple is concerned only to the extent of Rs. 275 was not questioned before us. It follows that the decree of the lower appellate court has to be confirmed and this civil miscellaneous appeal dismissed with costs. Ordered accordingly.