

(1966) 08 MAD CK 0019

In the Madras High Court

Case No : Second Appeal No. 1672 of 1962

Alagumalai Thevar and Others

APPELLANT

Vs

Raju alias Karuppa Thevar

RESPONDENT

Date of Decision : 31-08-1966

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 84(1), 84(2)

Citation : (1968) ILR (Mad) 258

Hon'ble Judges : Natesan, J

Bench : Single Bench

Advocate : T.R. Mani, for the Appellant; M.V. Ganapati, for the Respondent

Final Decision : Dismissed

Judgement

Natesan, J.—The Defendants in a suit in ejectment instituted on behalf of a Hindu temple who have failed in the Courts below in their attempts to retain possession of the properties of the temple they have trespassed upon, are the Appellants in this second appeal. The only live issue agitated in the lower appellate Court and now in second appeal is as to the frame of the suit. It is contended that the temple has four trustees and as suit has been instituted by only one of them, it must be dismissed in limine.

2. The suit properties were endowed by one Mayandi Thevar under a registered, settlement deed on 7th July 1940 in favour of Sri Sundaramurthi Vinayakar Koil, Vikramangalam village, Tirumangalam taluk, built by him. The settlor made himself the trustee of the endowment for life and nominated four persons as trustees to manage the affairs of the endowment. After him the trusteeship was to be hereditary in the families of the trustees devolving on the senior most heirs. From the records, it is seen, that Mayandi Thevar died in or about 1942 and thereafter the temple and its affairs were in charge of Mayandi Thevar's widow and Raju alias Karuppa Thevar, one of the trustees who has instituted the suit out of which this second appeal arises. After the death of the settlor's widow

in or about 1956, this Karuppa Thevar continued in sole charge of the institution. The cause of action for the suit is trespass by the Defendants upon the suit properties in January 1957. Several defences inclusive of denial of an effective dedication were raised at the trial. They were all found against and the trial Court, on the evidence, concluded, that the aforesaid Karuppa Thevar has been managing the suit temple as the trustee and is in possession of its properties. The contention that Karuppa Thevar who was one only of the trustees cannot by himself institute the suit without at least having in the array of Defendants the other trustees who were admittedly alive was over-ruled with the finding that Karuppa Thevar was the de facto trustee and as such competent to maintain the suit on behalf of the temple. There was ample and substantial evidence of Karuppa Thevar's management of the suit temple and its affairs for this finding. An attempt was made in defence that the Hindu Religious and Charitable Endowment Board had appointed the fourth Defendant in the suit as a trustee. But this was not established and the finding is that the Defendants are trespassers without any title to be in possession of the suit properties and were holding the same adverse to the interests of the temple. On these findings, following the Full Bench decision of this Court in Sankaranarayana v. Poovanatha Swami Temple ILR (1950) Mad. 191 (F.B.) a decree in ejectment followed. This has been confirmed in appeal. The learned Subordinate Judge affirmed the finding of the Court of first instance that Karuppa Thevar was in the position of a de facto trustee.

3. The argument of the learned Counsel for the Appellants in the second appeal is two fold: (i) there could be no de facto trustee when there are lawful trustees" alive, and (ii) a refinement of the above, one of the lawful trustees cannot himself be a de facto trustee. As in the Courts below, learned Counsel rested his arguments on the decisions, Vedakannu Nadar and Others Vs. Nanguneri Taluk Singikulam Annadana Chatram through its huktdars Medai Dalavoi Ranganatha Mudaliar and Others, and the Commissioner, H.R. and C.E. v. Sethurama ILR (1960) 1 Mad. 211. Reference is also made to Rajendranath Dutt v. Shaikh Mahomed Lal ILR (1881) Cal. 42 (P.C.). None of the above decisions have, in my view, any relevancy in the context of the present claim as this case falls directly under the Full Bench decision of this Court in Sankaranarayana v. Poovanatha Swami Temple ILR (1950) Mad. 191 (F.B.) which in fact has over-ruled Vedakannu Nadar and Others Vs. Nanguneri Taluk Singikulam Annadana Chatram through its huktdars Medai Dalavoi Ranganatha Mudaliar and Others, . The first thing to be noticed in the present case is that the Plaintiff is the Vinayakar Koil itself and Raju alias Karuppa Thevar one of the persons nominated as a trustee by the founder is only the human agency representing the temple in the proceedings. He has styled himself as the managing trustee of the temple. The manner in which he has styled himself is of little consequence ; what has to be found is his real position in relation to the inference that he is the ministrant of the deity in charge of its secular affairs.

4. Learned Counsel for the Appellants submits that where there are a plurality of

trustees, all the trustees together constitute a corporate entity and if for convenience sake among themselves under some arrangement one of them is actually functioning and in day to day management of the affairs, such a person even though called a managing trustee by himself cannot represent the temple. No one can quarrel with that proposition which is firmly established ; See Commissioner, H.R. and C.E. v. Sethurama ILR (1960) Mad. 211. The scheme of management among trustees would only be an arrangement inter se, but outside the co-trustees would form a corporate entity. The representation of the institution could be valid and effective only if all the trustees Jointly act and an institution or the body of trustees can be bound only if all are impleaded in the proceedings. In the case in Commissioner, H.R. and C.E. v. Sethurama ILR (1960) Mad. 211, the institution and the Board were sought to be bound by an order u/s 84 (1) of the Madras Hindu Religious and Charitable Endowments Act of 1927. Notice had not gone to all the trustees and one of the trustees, who alone had notice of the proceedings and had filed application u/s 84(2) had on some concession then given, withdrawn the application he had filed. It is in this context it was observed by the division Bench at page 219:

A decision in order to bind the institution should be in a dispute between the institution or its accredited representative and another. One of several co-trustees could represent neither the institution nor his co trustees but only himself.

5. It was held that in the absence of notice to the several trustees that were functioning it could not be held that there was a dispute either with the trustees or with the institution as such for a decision or dispute as contemplated u/s 84(1) of the Act. In Rajendranath Dutt v. Shaikh Mahomed Lal ILR (1881) Cal. 42 (PC) as pointed out in Full Bench case the trustees who had instituted the suit were found acting from motives personal to themselves and they sought to recover the properties for their own use.

6. The contention of the learned Counsel that when persons nominated as trustees by the settlor are alive there can be no de facto trustee on the scene ignores the limited function of the de facto trustee which Courts recognise, as a matter of policy for the protection of the properties of Hindu Religious and Charitable Endowments. These so-called trustees are only managers. Ordinarily even the lawful trustee has only the management vested in him ; the title to the property is in the deity or institution. If the lawful trustees or some of them neglect the institution and the institution is being looked after by the remaining trustee or trustees or even by a stranger, such a person in juridical parlance is generally termed a de facto trustee. Factually he is functioning as trustee and that is all that the expression conveys. There is no magic in the word de facto. It expresses what is happening; that the management is in the hands of a person who is not lawfully entitled to so manage. In the present case under the settlement deed Raju alias Karuppa Thevar through whom the suit has been instituted by the temple is not entitled in law to be solely in management of the

institution. But actually he is in charge of the institution. In my view, the learned Subordinate Judge is correct when he observes:

If one of the lawfully appointed trustees is in solo possession of the properties and the other trustees are not taking any part in the management of the temple affairs, then the management solely by the one trustee will not be attributable to the powers got under the trust deed ; but only to the fact that he has taken on himself the duty of the management of trust affairs.

7. Observations in Commissioner, H.R. and C.E. v. Sethurama ILR (1960) Mad. 211 support the proposition. It is observed therein at page 219 while holding that a dispute with one only of a body of trustees will not be a dispute with a trustee ;

It should follow that the dispute u/s 84 (1) should also be only with the trustee and not any other person as that other person could not apply u/s 84 (2). We have already pointed out that a trustee would mean all the trustees acting jointly in a case where there is more than one trustee.

8. A single trustee out of a body of trustees managing the trust properties will be doing so only in his individual capacity and not in his official status as trustee. Where the requisites for de facto trusteeship, continuity of conduct as trustee and a course of management of the affairs of the institution are present, he may properly be considered to be only a de facto trustee. Now it has been recognised that even a worshipper may file a suit to secure to the deity its property improperly alienated or trespassed upon. If that is so, why not one of the trustees who has assumed the sole management of the affairs of the deity, his co-trustees evincing no interest in the institution ? Here in the present case the temple itself is the Plaintiff. It is a juristic entity entitled to sue and be sued and the person managing its affairs figures as the human agency giving expression to its claims. The property being vested in the temple and the temple figuring as the Plaintiff, the full legal title in the property is represented in the suit. No doubt when there is a body of managers for the institution and the action is by one only of them in law the duly constituted representative is absent from the action. But when law permits suits by a de facto manager, is the institution to be placed at a disadvantage because it has lawful managers though these lawful managers have neglected the institution and are willing to be mute spectators of trespass on its properties ? If the circumstances warrant and the action is bona fide, I fail to see why action in the name of the temple cannot be taken by the de facto manager. Where it is found that the corporate body is not functioning as such and one of the persons constituting the corporate body is alone looking after the affairs of the institution, his acts of management and representation are not under any legal title, the right of management not being vested in him solely. In such circumstances it is properly posited that his sole management of the institution can only be as de facto manager. In Sankaranarayana v. Poovanatha Swami Temple ILR (1950) Mad. 191, 199 (F.B.), Rajamannar C.J., observes:

So long as an action is for the benefit of the real owner, namely, the idol or the mutt, and the person bringing the action is the only person who is in management of the affairs of the idol or the mutt for the time being, there is no reason why such a person should not be allowed to maintain the action on behalf of the idol or the mutt.

9. It is observed by Wadsworth J., in *Subramania Gurukkal Vs. Abhinava Poornapriya A. Srinivasa Rao Sahib*, :

It is the duty of the Court to protect trust property from misappropriation and diversion from the objects to which it was dedicated. When trust property is without a legal guardian, owing to any defects, in the machinery for the appointment of a trustee or owing to the unwillingness of the legal trustee to act, it would be a monstrous thing if any honest person recognised as being in charge of the institution and actively controlling its affairs in the interests of the trust should not be entitled, in the absence of any one with a better title, to take those actions which are necessary to safeguard the objects of the trust.

10. In the present case the legal trustee, the corporate body consisting of four trustees obviously is unwilling to act and the honesty of purpose of the present ministrant of the temple is evident on the findings. Viswanatha Sastri J., in his judgment in the Full Bench remarks at page 223:

But having regard to the position and status of shebait and managers of Hindu Religious Endowments and their relation to the endowed property, the legal title in which vests, not in the managers but only in the deity or the idol, the rule requiring all co-shebait or managers to join in an action on behalf of the deity or idol is not so inexorable or incapable of exception or relaxation as in the case of co-trustees strictly so-called.

11. The learned Judge sets out the following statement of the law as observed by Biswas J., in *Iswar Sridhar Jieu v. Jahor Lal* (1944) 49 C.X.W.N. 37, 47

As is, however, recognised in many of these oases and is in fact implied in the statement of the rule, it cannot be maintained as an absolute rule of law that all the co-shebait must join in representing the deity. The rule is subject to exceptions, and circumstances may exist in which the deity may be validly represented by some only of the shebait, and even by a person who is not a shebait. Where a suit is a suit by the deity represented by some of its shebait, the question whether or not the other shebait should be joined as parties is often, in the last analysis, a mere question of procedure and expediency: the test is, whether or not, having regard to all the circumstances of the case, the interests of the deity may be said to be sufficiently represented.

12. No doubt Courts will not encourage suits by de facto trustees when there are de jure trustees for the institution. Lawful trustees cannot be ousted from their position in violation and fraud of their rights and the seal of approval of the Court sought for such wrongful assumption of management in suits for vindicating the

rights of the deities. Also as it is only in the interest of the deity which cannot act by itself and initiate Court proceedings on its own for safeguarding its properties, that the right of a de facto trustee to sue for recovery of possession of property for the deity is recognised, Courts will be astute that this privilege shown to the de facto trustee is not abused to sponsor his own personal claims.

13. On the facts here the other trustees nominated by the founder have not chosen to take upon themselves the responsibility of managing the affairs of the institution and have allowed P.W. 1 to represent the institution and function as sole trustee. Trespassers are on the property and are asserting their rights. Their blatant defence is that the suit should be thrown out to Imini on the ground of non-joinder of other trustees.

14. Absolutely nothing has been found in the Courts below against the management by P.W. 1. He claims himself to be a managing trustee. Whatever it may mean elsewhere, in the context of this case and on the evidence, he is a de facto trustee bona fide and in good faith in management of the affairs of the institution. The right of such person to sue for recovery of property held adversely to the trust by strangers has been firmly established by the Full Bench decision in Sankaranarayana v. Poovanatha Swami Temple ILR (1950) Mad. 191 (F.B.). Effective relief to the real Plaintiff can be given in this case without the other trustees being on record.

15. In the result, the second appeal fails and is dismissed with costs.

16. No leave.