
(1911) 11 MAD CK 0069
In the Madras High Court

Ambalam Pakkiya Udayan

APPELLANT

Vs

Right Reverend J.M. Bathe, S.J., D.D. and Others

RESPONDENT

Date of Decision : 28-11-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 30
Evidence Act, 1872 — Section 57

Citation : 13 Ind. Cas. 599

Hon'ble Judges : Sundara Aiyar, J;Ralph Benson, J

Bench : Division Bench

Judgement

1. The suit in this case was instituted by the Bishop of Trichinopoly and the Vicar of the Church of the Kings in the village of Pallithaman in the District of Madura for a declaration that the Church and its properties have been dedicated to and stand impressed with trusts for the worship of God in accordance with the doctrines and discipline of the Roman Catholic Church, that the 2nd plaintiff is the trustee of the Church and its properties subject to the supervision and control of the 1st plaintiff and for possession of the same from the defendants, who, unlawfully, took possession about the year 1902 or 1903. The defendants are Christians of the village who, according to the plaintiff, were formerly Roman Catholics but who seceded from their allegiance to the Roman Church about the year 190 and became members of the Syro-Chaldean Church. The plaintiff alleges that the defendants never had any rights of management over the Church or its properties while they were in communion with the Church of Rome. Leave was obtained to implead the defendants as representing all the Christians of the Pallithamam village. The defendants denied that the Church was ever dedicated to worship according to Roman Catholic doctrines or that the villagers ever were followers of Roman Catholicism or that the Romish Priests ever officiated in the Church. They also denied the plaintiffs right of supervision and management and pleaded that the villagers themselves were the trustees and managers. They admitted that they were using the incomes of certain lands set out in Schedule. 1 of the plaint for the expenses of the Church, but denied that

the lands themselves belonged to it. They contended that the claim for the recovery of certain moveables mentioned in the plaint was barred by limitation. The Subordinate Judge, who tried the suit, found that the Choir of the Church was constructed under the directions of Father Bertrand, a Roman Catholic Priest, about the year 1839 and that it was dedicated for Roman Catholic worship. He held that the Vicar was entitled to manage the Church and its properties under the supervision of his ecclesiastical superiors and passed a decree for possession as prayed for except of the lands which, he held, were not proved to belong to the Church, though the income was utilized for the Church. He came to the conclusion that the defendant's contention that they never were Roman Catholics was absolutely false, and that they seceded from Romish allegiance about the year 1902, The District Judge confirmed the decree of the Subordinate Judge except with regard to the moveables", the claim to which he held to be barred. The 1st defendant preferred the second appeal and the plaintiffs have filed a memorandum of objections with respect to the lands and the moveables. The case has been argued at great length for the appellant, but we have come to the conclusion that the findings of the lower Courts as to the nature of the trusts to which the Church and its properties were dedicated must be upheld. We also accept the finding of the lower Courts that the Christians of Pallithamam were not the only persons entitled to worship in the Church, and that the Christians of other surrounding villages were also entitled to do so. On this finding, it is not contended for the appellant that the defendants would be entitled to have the trusts of the institution altered so as to convert the Church into one for carrying on worship according to the tenets of the Syro-Chaldean faith. The decision in Bishop Mellus v. The Yicar Apostolic of Malabar 2 M.p 295 would admittedly not be applicable to such] a state of things. It is contended that the findings mentioned above are not legally sustainable. The admission of a number of documents put in for the plaintiffs as evidence is impeached as contrary to the rules of evidence. It is urged that Exhibits A and G, which are printed letters of the Jesuit Fathers, were admitted without any sort of legal proof and used as evidence of facts which are not matters of public history. This argument in, in part, well founded. The Subordinate Judge observes that Exhibit A series, consisting of printed letters of the Priests of the Jesuit Mission in the Madura District dated about 75 years ago, are books of reference u/s 57 of the Evidence Act, and that they may be relied on with reference to the matter of the history of Christianity and especially of the Roman Catholic Mission, which is surely a matter of public interest. The rule of law, as stated, may not be open to exception, but, in applying it, he did not restrict himself strictly to their admission to prove facts of "public history." The letters of the Jesuits were regarded in the Ramnad partition case as evidence of the history of the Madura District and of the Ramnad zeminiari, but it would be going too far to hold that they could be relied on to prove where certain particular Missionaries were living or when they died. The Court can dispense with evidence only of what maybe regarded as notorious facts of public history. See Taylor on Evidence, 10th Edition, Volume II, para. 1785, and Wigmore on Evidence, Volume III, Section

1699. With regard to B and C series and some other documents, the principal objection urged is that they should not have been received, as there was no satisfactory explanation for the non-production of their originals, but we are of opinion that this is a matter in which much weight should be attached to the opinion of the Court trying the suit in the first instance, and we should be slow to reject evidence admitted by that Court after satisfying itself that the party adducing secondary evidence was not in a position to produce the originals. There was evidence that the plaintiffs were not aware where the originals of these documents were, if they were in existence at all. There was nothing to show that this statement was incorrect. We must hold that the Subordinate Judge was not wrong in admitting them. Although we are of opinion that the letters A series were used to prove facts which they could not legitimately be used to prove, we do not think we should interfere with the findings of the lower Courts on that account as they were referred to only to prove that certain Missionaries were living at Pallithamam when the Church was being built and interested themselves in its construction. We do not think that the exclusion of these letters would have affected the conclusion arrived at by the lower Courts. It is further contended that evidence does not show that the Church in question came into existence for the first time in 1839, that there is no evidence what ritual was being followed before that year and that, therefore, the use of it for worship according to the Syro-Chaldean form cannot be condemned as contrary to the original trusts of the institution. But when it is found that for a period of more than years before the defendant's secession, the Roman Catholic form of worship prevailed, the onus is undoubtedly on the defendants to establish by satisfactory evidence that the Church was Syro-Chaldean at the inception, and of this there is admittedly not a shred of evidence. We must, therefore, hold that the declaration that the Church was dedicated to the worship of God according to Roman Catholic ritual and that it is subject to the jurisdiction of the Bishop of Trichinopoly was rightly granted.

2. We have now to deal with the question of the right to the management of the Church and its properties. Mr. Rama chandrier Aiyar, for the appellant, strongly contends that the decision of this question must depend upon the proof of the usage with reference to the particular Church and that the lower Courts have not rested their finding on the usage of the institution, but upon the rights of the ecclesiastical authorities according to the Canon laid down. The learned Pleader, in our opinion, is not correct in the position taken up by him that the right of management could not be established except by proof of usage. With regard to a Hindu religious foundation, usage is what determines the right of trusteeship, in the absence of any direct evidence to prove the rules established by the founder, but it must be remembered that the Hindu Law prescribes no special rules with respect to the management of religious institutions.

3. There is no reason for holding that the Canon law cannot be invoked as a guide in deciding questions respecting temporal rights in Roman Catholics Churches. It is, no doubt, the case that in some Churches on the West Coast the

parishioners have more or less control over the management of the properties, but we are not concerned with the question how far the Canon law may be modified by the usage of any particular Church in this country. Our attention has not been drawn to any authority in support of the broad proposition contended for by the appellant. On the evidence, too, the Subordinate Judge found that the plaintiffs were in possession of the Church and its properties till February 1902 and were then dispossessed by the defendants. The keys of the Church building itself were in the custody of an officer styled Koil Pillay and he was appointed by the Vicar. We can find no reason for nor, accepting that finding. The moveable properties of the Church must also be held to have been in the Vicar's possession till February 1932. With respect to the funds of the Church, consisting chiefly of fees and offerings derived from worshippers, the plaintiff's witnesses admitted that they were kept and expended by three of the parishioners, but, said that they did so with the permission and under the control of the Vicar. The Subordinate Judge apparently accepted this statement though he does not expressly say so. The District Judge's finding is not very clear on this point. He considered it unnecessary to decide whether the Vicar was the sole trustee or not, as he was of opinion that the Vicar, who was at least one of the trustees, was entitled to sue for the recovery of the properties of the trust. He considered that the defendants used probably to exercise some sort of control over the Church funds and that they might have some right in the trusteeship. The Judge is mistaken in his view that a single trustee is entitled to recover possession of the properties appertaining to the trust from another trustee by evicting him though he may be entitled to maintain a suit in ejectment against a stranger on behalf of the trust.

4. The position of the defendants is not quite clear. They do not say that they are entitled to elect certain of their members, and if so, how many, to manage the trust along with the Vicar. But we think that the defendants by their conduct have, in any event, disentitled themselves to hold the office of trustee. They have seceded from the Roman Catholic religion and repudiated the trusts of the institution. There can be no doubt that they could have no answer to a suit for their removal; See *Mairam Pillai v. Bishop of Mylapore* 17 M.p 447. Even if they offered to return to their allegiance to the Roman Church, it would not be possible to accept their recantation to the extent of holding them to be fit to hold the responsible office of trustee. It is contended that, as the plaintiffs have not asked in their plaint for the removal of the defendants from the trusteeships, we ought not in this suit to direct their removal. We think we might hold that a complete repudiation by a trustee of the trusts on which he is bound to hold the properties committed to his charge for the benefit of others would work a forfeiture of his office so as to entitle the Court to decree his eviction from the properties in his possession. No authority to the contrary has been cited at the hearing. The plaintiffs are desirous of avoiding further litigation for getting a relief which they are undoubtedly entitled to. We consider it unnecessary to decide definitely whether there is any substance in the technical objection of the

appellant, as we are prepared to direct an amendment of the plaint by the addition of a prayer for the removal of the defendants from the management of the trust property, if necessary.

5. It remains to notice an argument of Mr. Ramachandra Iyer that the defendants on the record refused to defend the suit on behalf of the other Christians of the village of Pallithamam and that the decree is, therefore, not binding on the whole community of Christians in that village. But, u/s 30 of the Code of Civil Procedure, the Court has the power to allow a plaintiff to sue some persons as representing themselves and others having the same interest in the subject-matter of the suit. The consent of the defendants on record is not necessary to enable the Court to do so. In *Andrews v. Salomen* (1888) W.N. 102 Kay, J., made the necessary order though the defendants actually on record objected. If a different view were held, it would be in the power of parties to prevent a plaintiff from availing himself of the benefit of Section 30, Civil Procedure Code.

6. We dismiss the second appeal with costs. We direct the plaint to be amended in the manner mentioned above.

7. The memorandum of objections relates to the claim to the lands described in Schedule II to the plaint and to the moveables. The District Judge, disagreeing with the Subordinate Judge, dismissed the claim for moveables on the ground that it was barred by limitation. We entirely fail to see how the plea of limitation could be upheld when the defendants admitted that the properties belonged to the Church and claimed to hold them as trustees and set up no right of their own to them. The right to the properties of the trust must go with the right to the office of trustees. See *Gnanasambanda Pandora Sannadhi v. Velu Pandaram* 23 M.p 217 : 27 I.A. 69 and *Gossami Sri Girdhariji v. Raman Lala Gosami* 17 C.p 3 : 16 I.A. 137. The claim must, therefore, be allowed and the Subordinate Judge's decree for the moveables restored.

8. With respect to the land, both Courts have held that they do not belong to the Church, but the facts found or admitted are inconsistent with this conclusion. It is admitted that the entire income has always been utilised for the Church, which is very good evidence that the lands belong to it. It is further admitted that the Government Revenue has been paid out of the Church revenues, and that in the accounts kept by the defendants (Exhibit V), the lands are described as belonging to the Church. The 1st defendant in his evidence and one of witnesses admitted that they belonged to the Church. The District Judge was under the impression that the plaintiffs were bound to prove some deed of endowment dedicating them to the Church or their rightful possession of the lands. This is clearly wrong. The fact that the patta is in the name of the 1st defendant who does not claim it as the own, is no evidence of any title in the villagers. The defendants have no evidence to prove their title and the facts admitted necessarily prove both title and legal possession in the Church. The decrees of both Courts must, therefore, be modified by directing that the plaintiffs be put in possession of the lands claimed in the plaint. The plaintiffs are entitled also to

mesne profits from the date of plaint to this date and further mesne profits up to the date of delivery of possession. The Subordinate Judge will hold an inquiry into the question of the amount of mesne profits and pass a decree for the amount he may find the plaintiffs entitled to. The plaintiffs are entitled to the costs of the memorandum of objections also.