
(1920) 03 MAD CK 0011
In the Madras High Court

Angamuthu and Others

APPELLANT

Vs

Ramalinga Pillai alias Rajamani Pillai, minor by his next friend
Amirthalingam Pillai and Others

RESPONDENT

Date of Decision : 04-03-1920

Acts Referred:

Citation : 60 Ind. Cas. 766 : (1920) 39 MLJ 685

Hon'ble Judges : Spencer, J;Sadasiva Aiyar, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—The defendants 5, 6 and 2 are the appellants. The plaintiff and defendants 5 and 6 were minors when this suit was

brought. The plaintiff's adoptive father Srinivasa Pillai and the father of the defendants 5 and 6 Annamalai Pillai were co-trustees of the plaint

choultry charity. The trusteeship seems to have been hereditary. As regards this custom of hereditary trusteeship I quoted in Subramania Aiyar v.

Lakshmana Goundan (1919) 27 M.L.T. 11 a learned writer who recently said "" the error of decadent India has been to lay too much stress on the

Law of Heredity in connection with national organization, to assert loudly with false claims of degenerate pseudo-religion and pseudo-science that

that law is the sole arbiter of pseudo-physical type, and to forget, to ignore and refuse recognition now altogether in theory to the equally important

and equally operative law of the effects of Individual Tapas."" Further on I remarked in that case "" the fondness for introducing the hereditary

principle even in such matters as succession to trusteeships, succession to priestly functions in a temple and even to the function of a cook or

garland weaver in a temple has been due to this perverted and grossly exaggerated worship of the hereditary principle which is the bane of the

modern caste system. "" However having this anomalous principle of law recognizing hereditary trusteeship to work with, it is no wonder that inconveniences arise when the holders of such offices become numerous in the course of hereditary succession or when they are minors as in this case. To get rid of such inconveniences, the Courts had to employ their ingenuity; and they have held that arrangements which according to the strict law regulating trusts may not be treated as sound are not improper when we have to deal with these hereditary trusteeships. It appears from the findings of the lower appellate Court that the two former trustees, namely, the plaintiff's father and the father of the defendants 5 and 6 were for convenience of management agreed each to be sole manager of half a dozen out of the dozen or so shops belonging to the trust. The present suit is for the recovery of possession of two of these half a dozen shops which the plaintiff's father was separately managing. They had been leased in 1898 under Ex. G to the 1st defendant, the rent deed having been executed in favour of both the trustees. The plaintiff, as I understand it, alleged that the plaintiff's father alone had been receiving the rents of those two shops notwithstanding that the document was executed in favour of both trustees just as the father of the defendants 5 and 6 was receiving the rents of other shops separately by arrangement between the two trustees. Till 1909 the 1st defendant was recognizing the plaintiff's father and the plaintiff's guardian was entitled to receive the rents and was paying them the rents. Then he wanted the right to hold the shops in possession thereafter, no longer as a tenant but as usufructuary mortgagee. In the year 1910, therefore under Ex. T, which was executed by the father of the 5th and 6th defendants, (the plaintiff's father Laving then died) he obtained the shops on usufructuary mortgage. That mortgage has been found by the lower Courts to be invalid against the trust. The plaintiff alleges that the 1st defendant thereafter has been withholding the rent and notwithstanding notice given to the defendants to quit, they have not given up possession. The 1st defendant has assigned over his mortgage right (which as I said is worth nothing) to the 2nd defendant and remained ex parte in this litigation. The 2nd defendant did not deny the allegations in the plaintiff's complaint that the 1st defendant was attorning to the plaintiff's father till about 1909 and paying rents for these shops to them, nor the fact that notice to quit was given. He relied upon the authority of this usufructuary mortgage in favour

of the 1st defendant executed by the father of the defendants 5 and 6 and assigned over to the 2nd defendant.

2. The lower appellate Court decided the case on these pleadings and on the facts found by it in favour of the plaintiff. One fact more has to be

stated, namely, that in 1911 a suit was brought by the plaintiff against his father's elder brother, (the father of the defendants 5 and 6) who died

pending that suit and against other persons in respect of some other shops. In that suit, the guardian of the plaintiff and the guardian of the

defendants 5 and 6 with the permission of the Court, entered into a Razinamah in January 1913, Ex. B whereby among other things, it was agreed

that the two guardians of the plaintiff and the defendants 5 and 6 should receive the rents of separate shops just as the fathers of the minors had

been doing previously. Of course, the guardian of the plaintiff was not intended to receive the rent after he ceased to be the guardian of the plaintiff,

that is, after the plaintiff attained majority. As I understand the Razinamah, it was to be in force so long as all the minor parties to it represented by

their respective guardians remained minors. The court evidently thought that such a Razinamah was in the interests of the minors and was not

against the interest of the institution. It was however argued that such a division of management (which of course did not absolve the managers from

joint and several liability to the endowment, for acts of malfeasance or misfeasance by any of the managers) was invalid and could not be

recognized. There seems to be some support afforded to this contention in the observations of their Lordships of the Privy Council in

Sethuramaswamier v. Meruswamier 34 M.L.J. 130 where their Lordships seems to be inclined to confine such a division of management to private

and family trusts, whether religious or charitable. In Raja Ram v. Ram Bhoy Benson and Sundara Iyer, JJ. no doubt held that such a division of

management (even a division of properties for management) was not improper in the case of public charitable trusts also like the present. As I think

that the decree of the Lower Appellate Court, if the other contentions of the appellant are found against, might be modified by giving a decree with

possession to the plaintiff's next friend on behalf of all the trustees including the 5th defendant who has now become a major and the 6th defendant

who is now under the guardianship of the 5th defendant (as co-trustees of the institution) it is unnecessary to express any final opinion on the

question whether *Raja Ram v. Ram Boy* (1912) 24 M.L.J. 75 must be deemed to have been overruled by the observations of their Lordships of

the Privy Council in *Sethuramaswamier v. Meruswamier* 34 M.L.T. 130 already referred to. As to the other objections raised by the 2nd

defendant, he is not entitled to raise it in second appeal as he has not denied the plaintiff allegation of notice to quit. Even assuming that he is entitled

to notice to quit, I think that when the 1st defendant obtained his mortgage, and professing to hold under that mortgage assigned it over to the 2nd

defendant, he repudiated his status as tenant and was not entitled to notice to quit and his assignee the 2nd defendant standing in "his shoes was a

fortiori not also entitled to notice. However even if they were entitled to notice, what has not been denied in the written statement ought to be

treated as admitted.

3. As regards the question whether the notice given by one of the trustees is sufficient, I do not think there is anything improper in one of the

several trustees being appointed as managing trustee for certain purposes by other trustees though so far as acts like the institution of suits, etc., are

concerned, they must all be parties and must act after mutual consultations. As regards the cases in which it has been held that in a matter of

discretion, one trustee cannot act without consulting the others I do not think those cases apply to matters where no question of discretion is

involved. Discretion has to be used as regards the propriety of redeeming a kanom of the trust properties, or renewal of a mortgage and other

similar acts but no such question of discretion arises where in the interests of the trust a trespasser has to be ejected.

4. In the result, I would confirm the decree of the first Court with the modification that instead of plaintiff the words "plaintiff and 5th defendant for

himself and as guardian of the 6th defendant" shall be substituted and that instead of "defendants" it shall be "defendants 1, 2, 3 and 4." Also, after

the words "Plaintiff and 5th defendant on behalf of himself and as guardian of 6th defendant" and "as trustees of the institution." The appellants will

pay the plaintiff's costs in the second appeal.

Spencer, J.

5. I agree to the proposed modification of the decree. I also agree with my learned brother that in other respects the appeal should be dismissed

with costs. It was asserted in the plaint and not denied in the written statements that the 1st defendant was paying rent at Rs. 3 a month till 1909

and that he had not paid it subsequently. It was also found by the District Munsif that the usufructuary mortgage bond executed by the father of

defendants 5 and 6 in favour of the 1st defendant of which the 2nd defendant obtained an assignment was not binding on the plaintiff, and this

finding was not contested in the arguments before the Lower Appellate Court. This is sufficient to dispose of the case of the 1st and 2nd

defendants.

6. Three main objections were raised on behalf of the appellants who are defendants 2, 5 and 6 represented by the same Vakil. They are (1) that

the plaintiff was not competent to determine the tenancy without the concurrence of defendants 5 and 6, who are co-trustees, as trustees are

bound to act together in such matters as recovering properties belonging to the trust; (2) that as regards the razinamah Ex. B the guardian of a

minor trustee cannot enter into an arrangement for the management of a trust estate which involves the exercise of the personal discretion of the

trustees; and (3) that there was no valid notice to quit for the determination of the 1st defendant's tenancy.

7. As regards the 1st objection there is the authority of a case in *Raja Ram v. Ram Boy* (1912) 24 M.L.J. 75 where it was held that there was

nothing illegal in an arrangement among the hereditary trustees of a charity that each should be in exclusive possession of different portions of the

trust properties for the separate management and accounting for the income without any diminution of their joint responsibility for the proper

discharge of their duties as regards the whole charitable institution. This authority has not, so far as I am aware, been shaken by any subsequent

decision. The Privy Council decision in *Ramanathan Chetty v. Murugappa Chetti* (1906) ILR 29 Mad. 283 (P.C.) which gave sanction to an

arrangement for the management of a temple trust by turns is not opposed to *Raja Ram v. Ramboy* (1912) 24 M.L.J. 75. I do not mean for a

moment to suggest that any amount "of consent would justify the sanctioning of a transaction that would be opposed to public policy ; but there is

nothing in the terms of the arrangement in the compromise to suggest that this separate management of a certain number of shops was contrary to

public policy. *Sethuramaswamier v. Meruswamier* 34 M.L.J. 130 was a case of administration of certain religious charities by the head of a mutt.

Their Lordships of the Privy Council in their judgment make a distinction between private charities, that is, endowments for the charities of a family

idol and certain endowments such as those involved in that suit. They observed that Indian Courts had no jurisdiction to settle a scheme the effect

of which would be to take away the sole power of management from the eldest son of the last head of the mutt. I can see no analogy between the

position of the head of a mutt and that of the trustees who are managing the charity concerned in this suit, so that decision has no bearing on the

facts of the case before us. Secondly as regards the *razinamah*, Ex. B. it received the sanction of the Court and was embodied in the decree in

O.S. No. 211 of 1911. Even if the guardian of a minor is not capable of exercising that degree of discretion which is necessary for the purpose of

consenting to a compromise, it has been held that a Court can supply the defect arising out of the minor's incapacity and therefore when the

District Munsif gave his sanction to the *razinamah* decree, the appellants' objection as to the guardian's capacity to act for the minor trustee is no

longer tenable. Lastly on the question of notice, the 1st defendant did not object to the want of notice. In paragraph 14 of the plaint, the plaintiff

asserted that he had given two notices demanding delivery of possession of the shops. There is no denial of this assertion in the written statements.

This objection therefore also fails.