

**(1900) 11 MAD CK 0008**  
**In the Madras High Court**

Annasami Pillai and Others

APPELLANT

Vs

Ramakrishna Mudaliar and Another

RESPONDENT

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**Date of Decision :** 12-11-1900

**Acts Referred:**

Religious Endowments Act, 1868 — Section 18

**Citation :** (1900) 11 MAD CK 0008

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**Judgement**

1. The main questions to be determined in this appeal are--(1) whether the 1st respondent (defendant) hereinafter referred to as the respondent is

the rightful trustee of the temples of Malleeswara and Kasavaperumal, situated in Black Town; (2) if so, whether the suit, in so far as it relates to

the charge of neglect of duty alleged against him, is unsustainable because no leave was obtained u/s 18 of the Religious Endowments Act, XX of

1868; and (3) whether the respondent has been guilty of neglect of duty calling for notice at the hands of the Court.

2. Now, as regards the first question the facts bearing thereon are beyond dispute. Prior to the year 1777 a temple, dedicated to Malleeswara and

Kasavaperumal, existed at the site on which the old light-house stands. But that site having been taken up by the Government on payment of

compensation, the temple was pulled down. Muddukrishna Mudali (senior), who was at that time the manager of the temple, caused the present

temple to be constructed with the money received by him from the Government as compensation and with funds which he collected by way of

subscriptions. He held the office of trustee of the present temple till his death in 1795. He was succeeded by his son Chinniah Mudali who held the

office till his death in 1816. His son Muddukrishna Mudali (junior) succeeded him, held the management up to the year 1840 and was succeeded

by his younger brother Lakshmana Mudali. who died in 1847. He left a will whereby he appointed his own sister Ammani Ammal and her husband

Ramaswami Mudali as his succeeding trustees and authorized them to appoint their own successors and thus diverted the devolution of the office

from the family of Muddukrishna Mudali (senior) into the hands of persons who had no right thereto. Ramaswami Mudali died shortly afterwards

and Ammani Ammal continued to hold the office of trustee till 1872. By her will she appointed her sister's son Vythilinga Mudali to the trusteeship.

He held the office for 20 years and by his will appointed the respondent, one of Muddukrishna's (senior) great grandson, as his successor.

3. The first contention on behalf of the respondent was that, granting for argument there was a vacancy on Vythilinga's death, as urged for the

appellants (plaintiff 1 and 4 and 6 to 10) the right of management reverted to the heirs of Muddukrishna Mudali (senior) as he was the founder. We

are, however, unable to agree with the suggestion that Muddukrishna was the founder. If a temple gets into ruin and a person as a matter of mere

benefaction erects fresh buildings and dedicates them to the same sort of worship as had been carried on in the old temple, such person may

properly be treated as the founder of the new temple, even though in constructing it he used materials of the former temple or other property

belonging thereto. The circumstances of the present case are, however, very different. When Muddukrishna received the money paid as

compensation by Government he received it as trustee, and in applying that money towards the construction of the present temple he did nothing,

more than what he was called upon to do as trustee. The circumstance that he had taken the trouble to raise subscriptions to supplement the trust

funds in his hands, and that such subscriptions amounted, to much more than the original trust funds would not make either him or the subscribers

founders. The reasonable view would be to treat the amount subscribed as accretions to the existing trust funds and as something contributed for

the better carrying out of the purposes of the original foundation. (Compare the observations of the Earl of Selborne, L.C., in the Privy Council

case, *In the matter of the Endowed Schools Act, 1869*. *In the matter of the St. Leonard, Shoreditch, Parochial Schools*, 10 A.C. 308. As the

very first step in the argument addressed to us with reference to the contention under consideration fails, it is not necessary to discuss the

contention further.

4. It was next urged on behalf of the respondent that his appointment by Vythilinga should be upheld on the ground that it was a transfer of the

office to a person who, being a member of the family of Muddukrishna (senior) and also in the line of heirs, would have been entitled to succeed to

the office of trustee, had the right of the family not been extinguished by lapse of time. No doubt in the absence of a custom entitling a trustee to

transfer his office, he is not at liberty to do so. Having regard, however, to the ground of the decision of the Judicial Committee in *Rajah Vurmah*

*Valia v. Ravi Vurmah Kunhi Kutti* ILR 1 M. 235 it would seem, as urged by Sir V. Bhashyam Iyengar, not unreasonable to hold that where a

person who had no right to the office of a trustee according to the rule of devolution established by the founder acquires a title to the office by

prescription, but restores it to one who, except for the transferor's prescriptive title, could have taken the office according to the rules laid down

by the founder, such transfer should be treated as an exception to the general doctrine that a trusteeship is not assignable, subject, of course, to the

condition that no corrupt inducement has entered into the transaction and the interests of the trusts are not likely to be prejudicially affected. For

such a transfer would put an end to the continuance of a management inconsistent with the founder's intention and once more let in the class of

persons by whom the founder contemplated the management should be carried on. We consider it, however, preferable to rest our decision in

favor of the respondent with reference to this part of the case on the other ground which was suggested on his behalf. That ground is that the

respondent is a rightful trustee having been appointed by one who had acquired a valid title to the trusteeship with power to appoint a successor.

Now the appellants do not dispute that Ammani Ammal acquired a valid title to the trusteeship by prescription. But what sort of trusteeship did she

acquire? It was not, as contended for the appellants, a hereditary trusteeship without power to appoint a successor. On the contrary they took

possession of the office under a will which contained a provision for the appointment of a successor to herself, and acting under that provision, she

appointed Vythilinga giving him at the same time power to appoint his own successor. Vythilinga accordingly appointed a successor in the person

of the respondent. The effect of such acts of Ammani Ammal and Vythilinga on their possession must be held to be that they were claiming not a trusteeship descendible to their heirs, but one with power to appoint a successor. When they exercised their powers of appointment they exercised them as an incident to their office of trustee. And such an estate being well known to and recognized by law, there is no reason for holding that such a trusteeship should not be prescribed for, or that Ammani Ammal and Vythilinga did not prescribe for it. *Padapa Bin Bhujangupu v. Shami* Row Shrinivas 27 I.A. 86 cited for the respondent is a decision somewhat in point. There the Judicial Committee held that a person who acquired a right to a watan by adverse possession, took the property attached thereto subject to the restriction incident to the tenure that an alienation of such property by the watandar had no effect beyond his life. No doubt power to alienate one's property is not exactly of the same nature as the power to appoint a successor to the office, for the former is a component part or incident of ownership. But where in such an estate as that of a trustee the devolution is by appointment, the power to appoint a successor is as much an incident of the trusteeship as the right to alienate is an incident of ownership. An instance more closely analagous to the present case may be easily suggested. Suppose a person holds for the statutory period possession of property under a mortgage purporting to confer on the mortgagee a power to sell, granted by a person who had no title to the property but who, under the law, was competent to make a mortgage with such power. It must be held that such possession confers on the possessor the right of a mortgagee with power to sell, and not minus such power. We hold, therefore, that the respondent succeeded to the office rightfully by virtue of the appointment under Vythilinga's will.

5. We now pass to the consideration of the question whether the absence of leave u/s 18 of the Religious Endowments Act, XX of 1863, precludes the appellants from maintaining so much of the suit as relates to the alleged charges of neglect of duty on the part of the respondent. This court, as the successor to the late Supreme Court, possesses a jurisdiction similar to, and corresponding to, that exercised by the Court of Chancery in England over charities. Within the original jurisdiction of this court, persons interested in charities have all along been allowed, as

relators, to take legal proceedings in reference to the due administration of charities. According to the analogy of the procedure applicable to

similar cases in England, the Advocate-General should be a party to proceedings like the present. But a different practice has long prevailed. See

*Panch Cowrie Mull v. Chumroolall* ILR 3 C 563; *Thackersey Deswraj v. Harbhum Nursey* ILR 8 B. 452; *Srinivasa Chariar v. Raghavachariar*

ILR 23 M. 287. Following the view taken by Garth, C.J., and Markby, J., in *Panch Cowrie Mull v. Chumroolall* already cited, we hold that Act

XX of 1863 was not intended to apply to a suit such as this brought under the ordinary original jurisdiction of: this court inherited from the

Supreme Court. The absence of leave, relied on, is, therefore, immaterial and the portion of the suit which relates to the charges of neglect is

sustainable, notwithstanding that no leave was obtained u/s 18 of the Religious Endowments Act.

6. The third and last question calls for but a few words, We agree with the learned judge that the appellants have failed to make out any serious

neglect of duty on the part of the respondent. In our opinion the evidence very clearly shows that shortly after the respondent's succession in 1892

certain unfounded objections to his right to act as trustee were started by persons unfriendly to him, and that his principal subordinates who had to

attend to the work of collecting the rents due to the temple were induced to act hostilely to him, and to thwart his management by inciting tenants to

withhold their rents. The delay and the paucity in the collection of rents spoken to by the appellant's witnesses, were manifestly due to this

improper opposition on the part of the respondent's subordinates, some of whom are appellants in this very case, nor is there any evidence worth

the name to show that any loss has resulted to the temple by the failure of the respondent to take prompt action in the matter of the collection of

rents.

7. The appeal fails and must be dismissed with costs, subject, however, to two minor modifications in the provisions of the decree: (i) Substitute for

the direction about exhibiting books and accounts for the examination of worshippers the following: The Dharmakartha shall during the month of

August every year allow worshippers of the temple to inspect the temple accounts between the hours of 3 and 5 p.m. every day, and for that

purpose shall cause the books and accounts to be kept in a conspicuous and convenient place in the temple in charge of one of his subordinates.

Among the books to be so kept for the examination by worshippers there shall be a register showing the various immovable properties belonging

to the institution, as also all the valuable movable properties inclusive of jewels. The Dharmakartha should have the register duly revised annually,

(ii) Insert the following direction as to investments of surplus funds: The Dharmakartha should invest the surplus funds of the temple in any of the

modes enumerated in Section 20 of the Indian Trusts Act when such surplus exceeds the sum of Rs. 3,000.

8. Either party may, if necessity arises, apply for further orders as to the manner in which the Dharmakartha should carry out the directions

contained in the decree herein. The memorandum of objections was not pressed, and is dismissed with costs.