

(1938) 08 MAD CK 0047
In the Madras High Court

Aravamudhu Aiyangar and Others

APPELLANT

Vs

Ramanuja Aiyangar and Others

RESPONDENT

Date of Decision : 17-08-1938

Acts Referred:

Citation : AIR 1939 Mad 154 : (1938) 48 LW 770 : (1938) 2 MLJ 982

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—Plaintiffs whose suit has been dismissed by the lower Court on certain preliminary grounds have filed this appeal. They sued for recovery of possession of certain lands and for mesne profits and also sought to set aside a decree which had been obtained against them and their father. They claimed to be entitled to possession of the suit properties on the ground that under Ex. A, their grandfather's will, they had become trustees for the charities to which these properties they said had been dedicated by the said will. They recognised that as per the terms of the will, their father, the first defendant would be the trustee during his lifetime and they would become trustees only after their father's death. They accordingly alleged in paragraphs 5 and 6 of the plaint that the first defendant had altogether ceased to perform the trust, that he had alienated the suit properties as if they were his private properties, that he had in fact gone away to French territories and that he is accordingly no longer entitled to be in management of the trust. On these allegations, they claimed that as descendants of the first defendant, they had become entitled to manage and perform the trust. In paragraph 8 of the plaint, they referred to O.S. No. 17 of 1927 on the file of the Sub-Court, Tiruvarur, brought by a mortgagee from their father impleading therein the plaintiffs also as defendants during their minority. For the reasons alleged in that paragraph and in the next paragraph, they claimed that the decree obtained in that suit and the sale held in pursuance thereof were not binding upon them or on the trust. The first defendant, the father, remained ex parte. The other defendants who are alienees raised various contentions; and numerous issues were framed in the case with reference to

those contentions. Issues 4, 5 and 9 were dealt with by the lower Court as preliminary issues; on these issues, the learned District Judge held that the plaintiffs had no right to maintain this suit and dismissed it accordingly.

2. So far as issue No. 4 is concerned, we agree with the learned Judge that the plaintiffs are not the present trustees and that they are not entitled to maintain this suit in that capacity. Ex. A appoints them as trustees only after their father's death. It might be that the father's misconduct or breach of trust would justify his removal from office and on such removal a question might arise whether the plaintiffs would not become entitled to the office. But we cannot accede to the plaintiffs' contention that merely on the ground of breach of trust or even the total failure to perform the trust or his leaving British India, the first defendant ipso facto ceased to be a trustee and the plaintiffs directly became trustees. The learned Counsel for the appellants relied upon the decisions in 37 CWN 541 (Privy Council) *Mahadeo Prasad Singh v. Karia Bharti* (1934) 68 M.L.J. 499 : L.R. 62 IndAp 47 : ILR 57 All. 159 (P.C.) and *Rangaswami Naidu v. Krishnaswami Aiyar* (1922) 44 M.L.J. 116. Those cases only recognise the right of a de facto trustee to sue for recovery of possession of trust property for the benefit of the trust. It cannot be said on the allegations in the plaint in the present case that the plaintiffs are in de facto management of the trust. The case falls within the principle of the decision in *Ramaswami Goundan v. Singaperumal Kadavul* (1925) 50 M.L.J. 42 referred to by the learned District Judge.

3. It was next contended before us that even if the plaintiffs had not become trustees under the terms of Ex. A, the Court might, on the allegations in the plaint, treat this as a suit for removal of the first defendant from office and for appointment of the plaintiffs as trustees and then give the plaintiffs the appropriate reliefs. If there was no other difficulty in our way, we might have considered the possibility of allowing appropriate amendments to be made in the plaint. But it seems to us that the objection taken by respondents that these reliefs cannot be obtained in the suit even if amendments to the above effect are allowed is well founded. On the footing that the trusts alleged by the plaintiffs are public trusts, they may be either religious or charitable. If they are charitable, a suit for the removal of the trustee will be governed by the provisions of Section 92 of the Code of Civil Procedure; if they are religious, the endowment will fall within the definition of a "religious endowment" under the Madras Religious Endowments Act and any attempt to get the trustee removed from office must be made only in accordance with the provisions of Sections 57 and 73 of the Act. Whatever the position might have been before 1935 as to which see *Vythilinga Pandora Sannadhi v. Ranganatha Mudaliar* (1933) 66 M.L.J. 98 : ILR Mad. 362 the amendment made in these two sections by Act XII of 1935 provide for such reliefs, even in respect of kattalais; and we see no reason for not giving full effect to the absolute terms of Section 73, Clause 3 which precludes any suit in respect of the administration or management of religious endowments except as provided by the Act. It is not known whether the temple in which the kattalais referred to in Ex. A are to be performed is an excepted

temple or a non-excepted temple. If it is an excepted temple, the case will fall u/s 73, Clause (a) and if it is a non-excepted temple, the case will fall u/s 57. We felt some little doubt as to the application of these two provisions to one of the charities mentioned in the will, namely, that which relates to the distribution of food to pilgrims after offering it to the deity. In Section 73(1)(a) as well as in the Explanation added in 1935 to Section 57, reference is made to endowments attached to the temple, whereas in the definition of religious endowments, even properties endowed for the performance of any charity connected with a temple will be included. It is possible to suggest that the word "attached" can refer only to endowments connected with the service in the temple but not to endowments merely for the purpose of feeding pilgrims after the food is offered to the deity. There would have been less difficulty if in the amendments to Sections 57 and 73 the same language as in the definition of "religious endowment" had been adopted; but we feel little doubt that the intention was to make these two provisions coextensive with the definition clause. We must accordingly hold that so far as the suit prays for possession and mesne profits, it was rightly dismissed by the learned Judge.

4. But we do not think that the total dismissal of the suit was justified. So far as the decree in O.S. No. 17 of 1927 on the file of the Tiruvarur Sub-Court was concerned, the plaintiffs were parties thereto and their right to have the decree therein set aside does not depend upon whether they have become trustees or not on the date of this suit. In *Giris Chandra Saw and Another Vs. Upendra Nath Giridas and Others*, a Division Bench of the Calcutta High Court went the length of holding that a prospective trustee may, on the analogy of the Hindu reversioner, file suits for declarations in respect of transactions entered into by the trustee in office. We do not think it necessary for the purposes of this case to go so far. We do not however see any reason why persons who were themselves parties to a suit should not have the right to sue and obtain a declaration that that decree is void. Whether the grounds alleged against that decree justify a setting aside of that decree or not can be determined only after an enquiry into the merits of those allegations. All that we now decide is that the learned Judge's findings on issues 4, 5 and 9 will not justify the dismissal of the suit so far as it related to the decree in O.S. No. 17 of 1927. The issues relating to that decree will have to be dealt with on the merits. To that extent, the decree of dismissal is set aside and the case remanded to the lower Court for disposal on the merits.

5. As regards costs, we may observe that the question raised is not, by any means, free from difficulty and but for the amendments introduced in the Act in 1935 long after the suit had been instituted, it is not impossible that a different view could have been taken. In the circumstances and in view of the fact that the appeal succeeds in part, we direct the parties to bear their respective costs so far incurred in both the Courts. The appellants will pay to the Government the court-fee payable on the memorandum of appeal except to the extent of the reliefs relating to the O.S. No. 17 of 1927. The amount payable by them will be Rs.

82-8-0.