

(1956) 02 MAD CK 0067

In the Madras High Court

Case No : Appeal No. 788 of 1951

Balasubramaniaswami Pagoda and another

APPELLANT

Vs

S. Ramaswami Iyer and others

RESPONDENT

Date of Decision : 14-02-1956

Acts Referred:

Citation : AIR 1956 Mad 585

Hon'ble Judges : Rajamannar, C.J;Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : B.V. Viswanatha Aiyar and R. Sitaraman, for the Appellant; E.R. Krishnan and R. Rangachari, for the Respondent

Judgement

Rajamannar, C.J.—In our opinion, the preliminary objection raised by Mr. K. Rajah Aiyar on behalf of the respondents to the maintainability of the appeal should be upheld. This appeal from the decree and Judgment of the learned Subordinate Judge of Tiruchirapalli arises out of a suit filed in his Court by two persons describing themselves as the trustees of Sri Balasubramania Pagoda at Punjaipugalur, viz., Karuppanna Pillai and V. Ramanatha Aiyar.

As these persons ceased to be trustees during the pendency of the suit, an interim trustee appointed by the Board brought himself on record in their place and continued the suit. Subsequently, there was a change of interim trustee and the succeeding interim trustee continued the suit. The suit was eventually dismissed by the learned Subordinate Judge on 20-11-1950. At the time of the decree, the temple was represented by the then interim trustee, one R. Thiruvengadaswami.

It appears that subsequently in the place of this Thiruvengadaswami another person was appointed interim trustee. This appeal was filed by the two persons, who originally filed the suit as trustees and who had ceased to be trustees pending the suit viz., by Karuppanna Pillai and V. Ramanatha Aiyar, The office took objection, at the time when the memorandum of appeal was presented, that

according to the decree of the lower Court, the appellant temple was represented by an interim trustee, but, in the cause title, the names of the original two trustees were given. The order appointing the said two trustees was asked to be produced for verification. Learned counsel for the appellants did not produce any such order, but made the following endorsement:

A communication addressed by the trustees to the Board is filed to show that they are the present trustees. It refers to the present appellants trustees conducting this suit.

This, to say the least, was certainly very ingenious. We have perused the copy of the communication, which was produced before the office along with the above endorsement. That is only a letter addressed by the two persons to the Board stating "inter alia" that- in the interests of the temple, they are willing to spend initially for the expenses of the appeal and that emergent orders may be passed as regards filing the appeal against the decree. One would have expected the reply of the Board permitting the said two persons to file the appeal to have been produced as providing the requisite authority for the said two persons to prosecute the appeal.

2. When the appeal came on for hearing before us an objection was taken that this appeal filed by the said two persons, who were not the trustees of the temple, was not competent. We intimated to the learned counsel for the appellants that they should produce an order of the Board, if any, appointing them as trustees or otherwise permitting them to continue the suit. Today, instead of producing either, an affidavit was relied upon, in which it was stated that the deponent Karuppanna Pillai is the present "de facto", trustee of the temple and therefore he was entitled to continue the appeal.

From the same affidavit it is clear that there is a "de jure" interim trustee appointed by the Board. It must now be taken as established that the said two persons, who filed the appeal, were not, at the time of the filing of the appeal, nor subsequently, ever the "de jure" trustees of the temple. It is also clear that there has been throughout a "de jure" trustee, viz., the interim trustee appointed by the Board.

Reliance was placed by learned counsel for the appellants on the Pull Bench ruling in "Sankaranarayan Iyer v. Poovanathaswami Temple, Koilpatti", AIR 1949 Mad 721 (A) as supporting his position that this appeal is maintainable by the "de facto" trustee. The Full Bench actually decided in that case that in the absence of a "de jure" trustee, a "de facto" trustee of a religious endowment, who is in possession and management of the institution and its properties is entitled to maintain a suit on behalf of the temple.

In the present case, there is a "de jure" trustee. Therefore, the "de facto" trustee cannot be recognised as capable of conducting legal proceedings on behalf of the institution. We therefore uphold the preliminary objection raised on behalf of the respondents and hold that the appeal is not competent. It is

therefore dismissed with costs (one set) payable by the two persons, who purported to file the appeal as trustees.