
(1936) 11 MAD CK 0071
In the Madras High Court

C. Sendilvelu Mudaliar

APPELLANT

Vs

A. Venkatasubbu Mudaliar and Others

RESPONDENT

Date of Decision : 23-11-1936

Acts Referred:

Citation : AIR 1937 Mad 327 : 173 Ind. Cas. 381 : (1937) 46 LW 695 : (1937) 2 MLJ 477

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—The suit out of which this appeal chariar, J. arises was instituted by the plaintiff, who was then one of the trustees of Sri Kapaleesvvarar temple, Mylapore, asking for an injunction restraining the first defendant from claiming joint possession and custody of the temple jewels, gold and silver articles and other movables of the temple along with the trustees and from demanding delivery of the keys of the temple safes. The temple is admittedly one falling u/s 3 of the Madras Hindu Religious Endowments Act (XX of 1863), which still remains in force so far as the City of Madras is concerned. The first defendant holds what is known as the office of Overseer in the said temple, having been appointed thereto by the Madras Hindu Devasthanam Committee in 1931.

2. The documentary evidence shows that from time to time there have been difference between the trustees and the overseer as to the relative scope of their functions. Though the plaint does not in terms refer to a resolution passed by the Devasthanam Committee in August, 1933, it is clear from paragraph 6 of the plaint that it is the arrangement brought about by that resolution that led to the institution of the suit. The point for decision practically reduces itself to this: whether the Devasthanam Committee in the exercise of their powers under Act XX of 1863 were justified in defining the duties of the first defendant's office in the terms mentioned in the said resolution. The learned City Civil Judge was of opinion that the Committee were not justified in so declaring the functions of the

first defendant, that in" effect the resolution of the Committee amounts to a limitation of the powers of the trustees or the promotion of the first defendant to the position of a trustee jointly with the existing trustees and that the Committee were wrong in coming to the conclusion that the overseer was entitled to a third key. He accordingly granted an injunction in the terms prayed for. Hence this appeal by the first defendant.

3. We may observe at the outset that instead of restricting the trial to the narrow question as above suggested, the learned City Civil Judge, apparently in view of certain incidental statements in the plaint and in the written statement, raised the first part of the first issue in very wide terms and, in various portions of his judgment, he has dealt with the suit as if he had been called upon to decide whether the first defendant was entitled to joint management of the temple and its properties with the trustees. It would have been better if he had restricted himself to the second part of the" first issue. We prefer to restrict our judgment to that question, because there is no denying the fact that this temple has been under a kind of management not altogether common in this presidency, the institution of an overseer being peculiar to this temple. No useful purpose will be served by attempting to determine the exact status of the first defendant relatively to the trustees or by using language importing any idea of superiority or inferiority.

4. In the Court below, a point was raised by way of an objection to the maintainability of the suit, that as the suit was practically directed against the resolution of the Committee of August, 1933, the Committee should have been impleaded as a party to the suit. Whether the omission is fatal to the maintainability of the suit or not, there can be very little doubt that it would be very unsatisfactory to decide the question raised in the suit in the absence of the Committee from the record. We accordingly directed that the Committee might be impleaded as a party to this appeal and that has been done.

5. Mr. V.V. Srinivasa Aiyangar who appeared before us on behalf of the Committee sought to raise some larger issues with reference to the scope of the powers of the Committee, in view of the terms of Section 12 of Act XX of 1863. In particular, he contended that on the true construction of Section 12 of Act XX of 1863 the members of the Committee themselves should be regarded as managers of the institution and that the Dharma karthas, though they are ordinarily referred to as trustees, are really persons who are to carry out the directions of the

6. Committee. Mr. T.M. Krishnaswami Aiyar who appeared for the respondents insisted that this argument is opposed to a long course of decisions in this Court. We do not think it necessary for the purpose of this case to deal with this aspect of the question either and we prefer to refrain from saying anything on it, particularly for the reason that we have been told that there is a suit pending in which this question may arise for decision.

7. Mr. Krishnaswami Aiyar drew our attention to certain cases which have recognised that the management of temples is prima facie in the dharmakarthas and that the Committee ought not to reduce them to the position of servants or interfere with the management of the internal affairs of the temple. There are also observations in some of the cases to the effect that the Committee are not entitled to exercise their powers arbitrarily. But on the other hand it has also been recognised that it is open to the Committee to take all steps which may seem to them reasonably necessary for the due preservation of the properties of the institution and that in this respect the only limitation to be imposed upon their powers is that they should not unnecessarily interfere with anything that may be described as the existing scheme of management (see *Thiruvengadatha Aiyangar v. Ponnappa Aiyangar* (1914) 28 M.L.J. 209 : ILR 38 Mad. 1176). We will only add that all the decisions of this Court recognise that a Committee constituted under Act XX of 1863 have all the powers which the Revenue Board had under Regulation VII of 1817 and that in general terms their powers can be described as powers of superintendence.

8. [After tracing the history of the management of the temple from the earliest records available and discussing the evidence let in for proving the later practice with regard to the question of joint custody of the temple properties with the overseer their Lordships proceeded.]

9. We are not satisfied that the question of the joint custody of the keys or of the valuable properties belonging to the temple was ever in controversy in the sense that a pronouncement upon it became necessary. Seeing the very clear provisions made in the earlier documents to which we have referred, we are not prepared to assume that there must have been any such controversy and unless there is anything in the later documents definitely negating the continuance of the practice indicated in the earlier documents, we must take it that the provisions of the earlier documents relating to the joint custody had not ceased to be operative. It is noteworthy that when the appointments of trustees and overseer to this temple came before the High Court on the Original Side in a proceeding of 1876, the Court's decree directed the Receiver to hand over custody of the temple properties and monies jointly to the two trustees and to the overseer.

10. The Devasthanam Committee seems to have been constituted by a notification u/s 7 of Act XX of 1863 in the year 1866. Though the proceedings books of the Committee for nearly the whole subsequent period have been filed, our attention has been drawn only to certain proceedings here and there according as the parties thought that they had some bearing upon the question at issue. It is regrettable that different opinions should have obtained at different times as to the scope of the relative functions of the dharmakarthas and the overseer, but it is perhaps not very difficult to account for that divergence. From a statement furnished to us by Mr. Krishnaswami Aiyar, it appears that between the years 1889 and 1921 the officer of overseer was allowed to remain vacant for

a period of nearly 22 years two such periods of interregnum being respectively 10 years and 9 years. It is also a fact of some significance that during the greater part of this period, that is, between the years 1899 and 1924 one of the trustees of this institution was P.W. 1 a well-known citizen of Madras and a person who held a prominent place both in the community and also in the estimation of the public. It is therefore nothing strange that in those circumstances very little attempt was made to interfere with his discretion in the management of the affairs of the temple and on two occasions when new appointees came in to hold the office of overseer, attempts made by them to assert what they conceived to be their rights were regarded with disfavour both by P.W. 1 and by the Committee. P.W. 1 admits that Shanmuga Mudaliar who was appointed overseer in 1909 protested to the Committee against his being precluded from exercising what he conceived to be the rights of the office, but the Committee did not heed and the result was that in 1912 the Committee passed a resolution upon their reading of the previous documents. Similarly when one Umapathy Mudaliar was appointed overseer in 1921 after an interregnum of 9 years, P.W. 1 states that he resisted all attempts of the new overseer to encroach upon what P.W. 1 considered to be his powers. When the first defendant was appointed in 1931, he naturally made the same attempt. It is true that at the time he was appointed, the Committee reproduced the language of the Board's resolution of 1860 which had been communicated to the previous appointees but the 1st defendant insisted upon a fuller examination of the matter and the result was the resolution passed by the Committee in 1933 which had led to this suit.

11. Confining ourselves to the question of the custody of the keys and the joint custody of the temple properties, we wish to point out that even those proceedings of the Committee which have been marked as exhibits in the case refer to the fact that the safe of the temple had three keys, two of which were in the custody of the two trustees and the third was in the custody of the overseer. On two occasions when the old overseer died or resigned, reference is made in the Committee's proceedings to the key in his possession being handed over to the Committee for being given over to the successor. In a resolution dated the 11th March, 1888, there is a specific direction that the room containing treasury, jewels and documents should be locked as usual with three keys and each of them -should remain in the hands of the two dharmakarthas and of the overseer. This resolution of 1888 seems to us of special significance because the practice there stated is said to be the usual practice; and reading the resolution in the light of the directions contained in the High Court's judgment of 1876, it rather suggests that during such time as there was an overseer holding office, nobody thought it improper or contrary to the usage of the institution that one of the keys of the temple treasury and jewel safe should be in charge of the overseer.

12. Mr. Krishnaswami Aiyar suggested that probably about this time the members of the Committee were trying to reduce the dharmakarthas to a position of subordination and relied upon some observations of Sadasiva Aiyar, J.,

in certain cases referring to the same tendency obtaining in some places. But the papers before us do not afford any warrant for the suggestion that this Committee was making any such improper attempt. Mr. Krishnaswami Aiyar placed great reliance upon the evidence of P.W. 1 as to the practice that obtained during his tenure of office between 1899 and 1924. As we have already pointed out, for a considerable portion of that period no overseer had been appointed at all and during occasions when an overseer was in office, P.W. 1 frankly admits that the overseer did attempt to assert his rights but the attempts did not avail. The failure is no doubt a circumstance in favour of the plaintiff's case, but having regard to the other evidence in the case, we do not feel justified in drawing an inference against the existence of the practice merely from the fact that during this particular period the overseer was not able to exercise those powers.

13. A further contention was advanced before us on behalf of the plaintiff that it would be practically compelling a breach of trust by the trustees if the dharmakarthas should be asked to share responsibility for the safe custody of the temple properties with another officer like the first defendant. This contention rests partly upon a misapprehension of the position of a dharmakartha, identifying him for all purposes with a trustee in the English sense. Apart from that, if a statutory body like the Devasthanam Committee acting within their powers under the Statute should give a direction to that effect, we do not think that merely on a general argument based upon the law of trusts and trustees we should hold that the statutory body was not justified in giving these directions; and there can be very little doubt in this case that the direction was one given or conceived to be in the interests of the preservation of the property of the temple. The case in *Salway v. Salway* (1831) 2 Russ. & M. 215: 39 E.R. 376 is not by any means analogous. There, a person who wanted to become a Receiver attempted to find sureties for securing this appointment and for that purpose he agreed with them that he would submit to all monies being invested in the names of himself and the sureties. The Court pointed out that the sureties were not persons who were responsible to the Court for the safe custody of the money and that the Receiver would not be excused from the due discharge of his duties merely because he had no time to get the concurrence of the sureties before drawing the monies from a bank when it was about to fail. Here, the overseer is as much an officer appointed by the Devasthanam Committee under its statutory powers as the trustees and if the proper authority lays down certain functions as the proper functions of each office-holder, we see no legal objection to its so doing. On the other hand, the principle of the decision in *Thiruvengadatha Aiyangar v. Ponnappa Aiyangar* (1914) 28 M.L.J. 209: ILR 3 Mad. 1176 to which we have already referred indicates the contrary because the learned Judges there lay down that it is within the powers of the Committee even to appoint additional trustees, without bringing any charges against the existing trustees.

14. We have already stated what we consider to be the true interpretation of Ex. D. But, even assuming for the sake of argument that Ex. D exhaustively specified

what the Board thought to be the functions of the office, we see no reason to hold that it is not within the competence of the Committee which has succeeded to the powers of the Board to lay down what it considers to be the proper duties of the office, in view of the information gatherable from the records. The learned City Civil Judge has used somewhat strong language in more places than one in dealing with the conduct of the Committee. We do not find anything to warrant such characterisation.

15. The result is that the appeal is allowed and the suit dismissed with costs of the first respondent both here and in the Court below payable by the plaintiff. So far as the Committee are concerned they have been impleaded at our suggestion as parties to the appeal as we thought it proper that they should be before us. We therefore direct that the costs incurred by them in appearing before us will be paid to them out of the temple funds. As regards costs, if any, incurred by the Receivers in connection with this appeal, we prefer not to say anything, because we consider the Receivers to be only pro forma parties and have not heard any separate argument on their behalf; the Court which appointed the Receivers will decide what the proper course will be in relation to the expenses incurred by them in this connection.