
(1940) 04 MAD CK 0027
In the Madras High Court

C. Thiruvengada Mudaliar	Vs	APPELLANT
M. Rajabadar Mudaliar and Others		RESPONDENT

Date of Decision : 02-04-1940

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1940 Mad 823 : (1940) 52 LW 185 : (1940) 2 MLJ 5

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—These appeals are concerned with the affairs of the Sri Thiruvateeswarar Devasthanam in Madras. It is common ground that it has been the usual custom for two trustees or Dharmakartas to be in joint management of those affairs. They are appointed under Act XX of 1863 by the Madras Hindu Devasthanam Committee, and are subject to whatever control is given to the Committee by that Act. Appellant was thus appointed in 1929. In 1934 appellant's colleague died, and his vacancy was finally filled up by the appointment of one M.N. Rajabathar Mudaliar (hereinafter to be referred to as respondent 2) on 18th November, 1935, the appointment being expressly limited to a period of three years. On 27th November, respondent 2 informed appellant that he proposed to take charge of his office at the temple the next morning. Appellant refused however to recognise the validity of respondent 2's appointment on the ground that a trustee could be appointed only for life and. so did not permit respondent 2 to assume joint charge with him. After waiting some days respondent 2 on 4th December, affixed his own lock and seal to the temple office. On 5th December, appellant filed the first of his two suits (1095/1935) in the City Civil Court. In that suit he prayed for a declaration

that respondent 2 was not a lawfully appointed trustee, and an injunction to Restrain him from interfering with appellant management. An interim injunction was granted, but was revoked on 12th December.

2. Meanwhile on 9th December, a notice was sent by the Honorary Joint Secretaries of the Committee to appellant informing him that an urgent meeting of the Committee would be held on the 11th to consider his conduct in disobeying the Committee's orders to give joint charge of the temple management to Respondent 2; and calling upon him to attend that meeting if he wished to show cause against the proposal to remove him from his office. Appellant sent a lawyer's notice protesting against the Committee's actions and procedure, and refused to attend the meeting. The meeting was held, and the five members who attended it (out of a total strength of fourteen) unanimously resolved to dismiss the appellant.

Appellant thereupon filed his second suit 1130 of 1935 in which he prayed for a declaration that his dismissal was illegal, and that he was therefore entitled to continue in office; and for an injunction restraining the Committee and respondent from interfering with his possession and management.

The two suits were tried together by the learned City Civil Judge and were both dismissed. These are appeals against the decrees in the two suits.

3. There are three questions for determination in these appeals; (i) what are the powers of the Committee in the matter of the dismissal of a trustee?

Can it dismiss him at its own pleasure, or must a dismissal, be only for good and sufficient cause?

(ii) If the latter, did such good and sufficient cause exist? and

(iii) Has the Committee power to appoint respondent 2 (or any other trustee) for a limited period?

4. The learned City Civil Judge held that there must be good and sufficient cause; that the conduct of appellant afforded that good and sufficient cause; and that the appointment of respondent 2 for three years was within the Committee's powers.

5. The learned advocate for the respondents attempted to argue that a trustee is a mere servant of the Committee who can be dismissed at the

Committee's will and pleasure, and cited *Golam Hossain Shah v. Altaf Hossain* ILR (1933) Cal. 80, in support of this proposition. It is however

too late in the day for any such argument to be upheld by a judge sitting singly

in Madras. Ever since *Seshadri Ayyangar v. Nataraja Ayyar* I.L.R.

(1898)Mad. 179 , it has been uniformly held by a long series of decisions in this Court that the status of a trustee is not that of a servant, that he

can be dismissed only on good and sufficient grounds and after an enquiry into the facts, and that a dismissal which is not so justified may be set

aside by the Courts of law. I am bound by these decisions and must agree with the learned City Civil Judge in finding for the appellant on this point.

6. The second point now therefore arises. It must be stated at the outset that the sole reason pleaded by the Committee for the dismissal of the

appellant was his disobedience of its orders in the matter of respondent 2's taking over charge and that in the arguments before me on this question

it was very properly conceded by respondent's learned Advocate that the dismissal must stand or fall according to whether that reason is found

sufficient or not. The question has, however, been somewhat complicated by the admission during the trial of evidence on the general conduct of

the appellant as a trustee even though that evidence was confined to the cross-examination of appellant himself and there certainly appear from

appellant's own admissions plausible grounds for the view that he has been inefficient and negligent in his care of the temple property. This

evidence it seems to me, is irrelevant except in so far as it bears upon appellants motive in disobeying the Committee's orders, and it is significant

that the learned City Civil Judge does not specifically accept the contention of the respondents that appellant's purpose was to remain as long as

possible in sole charge of the temple. It is also unfortunate for the appellant that he should have thought fit in the circumstances of the present case

to have exasperated the Committee by action which I can only characterise as misguided. and unnecessary. Appellant had no personal complaint

to make against the Committee's choice, and ex-hypothesi was willing to be associated with respondent 2 in the management of the temple for the

rest of their lives. He was evidently determined to bring the question of the validity of respondent 2's appointment before the Civil Court and it

could not have prejudiced that case for him to have made a dignified protest and accepted respondent 2 as his colleague for the time being. But

when all this has been said I am unable to hold that mere disobedience in the circumstances of this case will justify dismissal. does not, I think, fall

within the grounds set out in Section 14 of the Act. A careful perusal of the correspondence in this case will show that appellant's principal motive was to make a formal protest against the terms of respondent 2's appointment and he may well have thought that the interest of logic and consistency required the extension of that protest to the refusal to permit respondent 2 to assume charge. Nor do I think he acted from any unworthy motive to continue for his own private ends as sole trustee unhampered and unchecked by the surveillance of any colleague. Appellant filed his suit with commendable promptitude, and by asking for a temporary injunction made it certain that the Court itself would provide an urgent solution for the immediate deadlock. In these circumstances, whether appellant's objection to the terms of second respondent's appointment be one which the law will uphold or not, I hold that his action was not mala fide, and that it does not afford good and sufficient cause for his dismissal. Appeal No. 55 will therefore be in part allowed, and appellant given a declaration that his dismissal was wrongful and that he is entitled to continue in office. He cannot, however, have any injunction restraining the respondents in general terms from "interference" with his possession and management.

7. There now remains the third question which is the subject-matter of Appeal No. 54. In support of his contention that an appointment of any trustee for only three years in the case of this temple is invalid, appellant's learned advocate is unable to point to any provision in the Act itself but he argues that that proposition must necessarily follow from a study of some of the decided cases. In this, as I shall show, I am unable to agree with him. *Seshadri Ayyattpar v. Nataraja Ayyar* ILR (1898)Mad. 179 is a case which is concerned with the validity of an order of suspension. It was no doubt necessary in that case to consider what powers of dismissal a Committee possessed and under what restrictions they should be exercised, but it was not necessary to consider its powers of appointment. The learned Chief Justice certainly does say on page 220 that a trustee holds his office "permanently" but that word must, I think, be read in its context and be contrasted not with a definite limited period, but with a period which can be arbitrarily terminated by dismissal. The next case is *Ganapathi Ayyar v. Vedqvyasa Alasinga Bhattar* (1906) 16 M.L.J. 453 :

ILR 29 Mad. 534 which deals with the appointment of two temporary additional trustees to the Srirangam temple. That appointment was held

invalid on two grounds (i) because it radically altered a scheme settled by the Board of Revenue for the temple in 1842, and (ii) because it was

"altogether temporary" and to permit such appointments would give the committee a control over the management inconsistent with the policy of

the Act. The first ground does not apply to the present case. There is here no concrete scheme, and as the learned City Civil Judge has pointed

out, no sufficient proof of a custom so rigid that it compels the appointment of a trustee for the rest of his life. Neither appellant nor respondent 2

had any vested right (such as existed in Srirangam in members of certain families) to be appointed at all, and unless the Act lays it down that an

appointment must be for life I cannot see that either of them can object to a limited term. It is not without significance in this case that respondent 2

does not so object. The second ground is more to the point, but it must be remembered that the appointments in Srirangam were interim and

provisional rather than for a definite term, and the distinction between the two kinds of appointment is an important one. *Seetharama Chetty v. Sir*

Section Subramania Aiyar (1915) 30 M.L.J. 29 : Mad. 700 the next case, continues the history of the Srirangam temple. It was there held that

though the Committee had no power to modify the 1842 scheme, the Court had such power u/s 92, CPC and it is interesting to observe that in

framing the new scheme the Court provided for the appointment of additional trustees to hold office for five years only. Finally, of the Madras

authorities, comes *Govindaraja Mudaliar v. Sabapathi Mudaliar* (1920) 13 L.W. 153. There the validity of the appointment of temple trustees

came up for consideration, though a final adjudication on that question was not necessary. Sir John Wallis, C.J., held that such appointments were

legally permissible and *Sadasiya Aiyar* agreed to the extent that committees might make temporary appointments in certain emergencies or

exceptional cases.

8. This analysis of the Madras cases shows (i) that no case is precisely in point and (ii) that the latest pronouncement is that a "temporary"

appointment (if that word can be held to apply to the present case) cannot be held to be void in all circumstances.

9. I do not consider therefore that the Madras authorities compel me to hold that the appointment of second respondent was invalid. On the other hand Golam Hossain Shah v. Altaf Hoosain ILR (1933)Cal. 80, is a direct authority on this point to the contrary. Appeal No. 54 accordingly fails and is dismissed.

10. There will be no order for costs throughout in either appeal.