
(1928) 01 MAD CK 0003
In the Madras High Court

Chinnan Chettiar	Vs	APPELLANT
V. Sundaresa Ayyar and Others		RESPONDENT

Date of Decision : 30-01-1928

Acts Referred:

Citation : AIR 1929 Mad 322

Hon'ble Judges : Srinivasa Ayyangar, J;Srinivasa Aiyanger, J

Bench : Division Bench

Judgement

Srinivasa Ayyangar, J.—This civil revision petition has been preferred by one Chinnan Chettiar who was removed from his office as one of

the Dharmakarthis of Sri Ananteswaraswami temple at Chidambaram by the Subordinate Judge of Cuddalore on application made for that

purpose by some of the worshippers at that temple. It is unnecessary to state or discuss the grounds on which such removal was sought. The

application for such removal was apparently made under the powers reserved in a scheme framed for the management of the temple in O.S. No.

14 of 22 on the file of the same Court. One curious feature, however, of the matter is that the said Chinnan Chettiar who had, even previously to

the scheme suit, been a trustee was virtually removed from office under the decree in the scheme suit but was again appointed as one of the

trustees under the scheme newly framed.

2. It is not necessary here and now to refer to or criticize such a procedure. The matter has been argued before me as a pure question of law. The

point taken by the learned vakil who appeared for the petitioner was that, having regard to the provisions of Section 92, Civil P.C. the relief by

way of removal of a trustee duly appointed could be obtained only in a suit filed

under that section and it was therefore incompetent to any of the worshippers to come in by way of a petition and seek to remove him. It is in this view that it has recently been held in more than one case that any provision in any scheme framed by the Court to the effect that on an application to the Court under the scheme framed a trustee can be removed is ultra vires of the provisions of Section 92 Civil P.C. Indeed this position was really conceded by Mr. Patanjali Sastri, the learned vakil for the respondents.

3. For the purpose of the present discussion it is not open to any one to get behind the decree and canvass its provisions so far as the re-appointment as trustee is concerned of the petitioner

4. The only point that finally emerged on the argument for the respondents was, however, that it was provided u/s 75, Madras Religious

Endowments Act, 11 of 1927, that where the administration of a religious endowment is governed by any scheme settled u/s 92, Civil P.C. such

scheme shall, notwithstanding any provisions of this Act which may be inconsistent with the provisions of such scheme, be deemed to be a scheme settled under the Act.

5. It was thereon argued that on the enacting of the said Section 75 of the Act the scheme framed by the Court became the scheme framed under

the Act itself and therefore legal, and that it was therefore competent to the worshippers acting under such scheme to apply to the Sub-Court for

the removal of the trustee. There will be considerable force in the argument if the scheme had been framed after the enactment of the said Section

75. Section 75 however finally became law only at the beginning of 1927 or so. The scheme under consideration was of a much earlier date and in

fact the order of removal under revision was passed on 18th July 1925.

6. It is impossible to accede to the contention that that section should be construed as having a retrospective effect.

7. I am therefore satisfied that the order of the learned Subordinate Judge in the Court below was clearly illegal. The same is set aside, but having

regard, however, to the circumstances of the case and the unsettled nature of the law and taking into consideration that the petitioner was merely

acting under the provisions of a decree passed by the Court and in the interests of a public institution, I make no order as to costs.