

(1968) 07 KL CK 0046

In the High Court Of Kerala

Case No : A.S. No's. 767 and 827 of 1964

Eswaran Oonnithan Sankaran Oonnithan

APPELLANT

Vs

Bhageerathi Itty Bhargavi Itty and others

RESPONDENT

Date of Decision : 01-07-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1969) KLJ 485

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker, D. Narayana Potti, P.G.P. Panicker, T.A. Narayanan Nair, S. Eswara Iyer, L. Gopalakrishnan Potti and C.S. Rajan, for the Appellant; P.C. Chacko, P. Subrahmaniam Potti, S.A. Nagendran, N. Krishna Pillai, M.M. Cherian and P.A. Mohammed, M. Abraham, K.K.K. Kurup, M. Krishnan Nair, M. Srinivasan Potti and N.N. Divakaran Pillai, for the Respondent

Judgement

M. Madhavan Nair, J.—The appellants in these appeals are the 2nd defendant and defendants 4 and 11, in a suit for removal of the 1st defendant, their karnavan, from management of a temple, said to belong to the family as a private endowment, on account of mismanagement and misconduct on his part, and to frame a scheme for its management. By the preliminary judgment of the Additional Subordinate Judge, Quilon, delivered on January 31, 1959 it has been found:

.... the temple site 33.75 cents in plaint item 1 and the temple buildings therein and also items 2 to 5 and to 13 alone belong to the temple as trust properties and that they are treated as such by the members of Ammachi Veedu.....

First defendant admits in para 18 of his written statement that the income from the temple is also being given to the members of the family..... He states

(The surplus amount used to be given as donation to the members of the family every week). Such a distribution of temple funds cannot be characterised as an act of charity in relation to the temple trust as contended on behalf of the 1st

defendant. Hence I hold that the income of the temple was being utilised by 1st defendant for purposes not appertaining to the temple trust.

.... As trustee the temple income could be utilised only for temple purposes.....

In regard to the management of the temple it is admitted by Pw. 1 that 1st defendant is properly conducting the ceremonies and Poojas in the plaint temple and that 1st defendant has effected considerable improvements in the plaint temple. There is also absolutely no evidence to show that 1st defendant is guilty of misappropriation of temple funds for his own purposes or that he is guilty of any misconduct. But the fact remains that he is not keeping any accounts in regard to the income and disbursement of the temple funds. That the prior karnavans were not keeping accounts is no valid defence for the 1st defendant. It is also an admitted fact that he is distributing the surplus income among the members of the family and not for temple purposes..... The distribution of surplus income among the members of the family is certainly detrimental to the interests of the plaint temple.

Though as stated above 1st defendant is not guilty of any misconduct or dishonest misappropriation of temple funds it is clear that he has not been diligent in the matter of accounting the temple income. It is therefore necessary for the interests of the plaint trust that certain limitations and restrictions have to be imposed upon the 1st defendant in the matter of the collection of the income of the temple and the disbursement of the same. The evidence of the 1st defendant shows that the other members of the family are causing obstruction in the matter of collecting the temple income. It is therefore justifiable that 1st defendant should be relieved of his duties of collection and expenditure of the temple income. Hence I find that subject to the 1st defendant's absolute rights of management of the temple affairs, in so far as they relate to the conduct of the ceremonies in the temple, a scheme has to be formulated for the proper collection of the income and disbursement of the temple funds. I also find that 1st defendant is not liable to be removed from the management of the temple as "Kshethra Kariasthan" for the limited extent indicated above and that he has to account for the items as found in para. 18.

In the result, a preliminary decree is passed as follows:--Subject to the 1st defendant's rights of management as "Kshethra Kariasthan" to the extent they relate to the performance of religious ceremonies and conduct of the Poojas in the plaint temple as claimed by him in para 22 of his written statement, a scheme will be framed in regard to the collection of the temple income and the disbursement thereof for temple purposes. The scheme will provide (a) For nominating an efficient person on a remunerative basis either some one among the members of the family or stranger for the purpose of the collection and disbursement of temple income. (b) For keeping of accounts regarding the income and expenditure of temple funds and also for auditing the same once in a year..... The existing arrangement for the collection and disbursement of the temple income through the Receiver will continue till the final decree is passed in

this case The plaintiffs and contesting defendants will submit draft schemes in the lines indicated above in two weeks time. .

2. Pursuant to the preliminary decree, parties submitted draft schemes. The Additional Subordinate Judge held in his final judgment dated April 1, 1959, thus:

.....It cannot be said that 1st defendant has effected these improvements and made the purchase with the surplus of the temple income alone, as it is seen that the temple income was being distributed among the members of the family. It is not possible therefore to impose any liability on the 1st defendant merely because he is not now in a position to state the specific Item of the temple purpose for which the sum of Rs. 400/- is spent by him. On a consideration of the above facts and circumstances I am inclined to believe the 1st defendant when he swears that he has spent the amount under Ex. P-14 only for temple purposes. Hence I hold that 1st defendant is not liable to the plaint Devaswom for any amount in respect of the Items mentioned in the preliminary decree.

By that judgment the Additional Subordinate Judge framed a scheme for the management of the temple and its properties and directed "the receiver appointed in this case..... will continue to work as manager of the plaint temple hereafter under the above scheme." The plaintiffs took the matter in appeal before the Additional District Judge, Quilon, where they submitted a draft scheme. The Additional District Judge, Quilon, accepted the same by his judgment dated March 4, 1964, with these observations:

.....the appellants want to incorporate an additional provision in the scheme viz., to direct the manager to utilise 25% of the surplus income for the educational advancement of the members of the family and that too to be done with the approval of the court. It was submitted that as the surplus income was accumulating a portion of the amount thus accumulated was divided among the members as per the orders of the execution court. According to the appellants" learned counsel instead of dividing the income among the members without any basis, it would be better to utilise a portion of the surplus income for the educational advancement of the members of the family. This was not opposed by any of the respondents and in my view also it appears to be a reasonable suggestion. Hence I accept it and clause 29 in the draft scheme will also be incorporated to the scheme. Clauses 30, 31 and 32 in the draft scheme are also additional provisions suggested by the appellant. As these proposals were not also opposed by any of the respondents I accept those suggestions. The draft scheme submitted by the appellant was perused by me minutely and some changes also are seen to have been made in the wording of other clauses. As the wording of the clauses in the draft scheme are better than the wording of the existing scheme, I accept the draft scheme in its entirety and it will be substituted in the place of the scheme that was approved by the lower court. The draft scheme submitted by the appellant will form part of the final decree.

It is against this decree that the aforesaid defendants have preferred these

second appeals.

3. The preliminary judgment finds the temple to be a private endowment belonging to a family. But, under the scheme a paid manager is to collect the income of the temple and its properties and disburse it, and Advocate Shri K. P. Vasudevan Pillai, who is a stranger to the family but was receiver of the temple and its properties during the pendency of the suit, was appointed as such manager. It is represented at the bar that when he died in 1965 another Advocate has been appointed manager of the suit temple. This is real ouster of the karnavan from management of the temple. The question here is not whether the person appointed as manager is a commendable person; the question is whether appointment of a stranger to manage the family endowment is justified by the circumstances of this case. Pertinent is the following observation in Mulla's Hindu Law:

Important legal consequences flow from the distinction between private and public endowments and they have a material bearing on the question as to what remedies are open to the parties in cases where there is maladministration of the endowment by the manager or trustee. A private endowment lies outside the purview of the Religious Endowments Act of 1863, and the Charitable and Religious Trust Act of 1920, and what is more, Sec. 92 of the C.P. Code cannot be invoked unless the endowment is of public character. (13th Edn., Page. 458)

It has been held in *Kunhukutty Amma v. Ravunni Menon* (1959 K.L.J. 158) that the right of Ooraima of a tarwad in a public temple is a "personal right" of the Karnavan and that the other members of the tarwad, though may be entitled to succeed him in office, have no right to interfere in his management. Though the instant one is a family endowment, the normal remedy for maladministration of the endowment by a karnavan of the family is his removal and the appointment of the next competent member in his stead--much the same way as in case of maladministration of tarwad affairs--and not the taking over of its management by the Court or by its appointee. The findings (quoted above) show that in this case there was absolutely no maladministration or misconduct on the part of the 1st defendant. No legal ground for the court's interference with its management has therefore been made out in the case. The appointment of a stranger-manager in this case seems only to illustrate the fable "when two cats quarrel, the bread shall be taken by the monkey." When no ground has been made out for interference in the management of a private endowment the Court ought to have withheld its hands from the affair and even if 1st defendant expressed reluctance to continue in management of the temple, the next senior member of the family ought to have been allowed to assume its management. Even though the preliminary decree passed has become final, the introduction of a stranger-manager has no warrant in it. The provision for "nominating an efficient person on a remunerative basis, either some one among the members of the family or stranger, for the purpose of the collection and disbursement of the temple income" can mean only that such manager shall be from the members of the

family, and that when one is not available in the family a stranger may be appointed. The alternatives are not on a par, particularly as the case relates to the management of a private endowment. Even in the case of a public Hindu endowment, it is trite law, the office of the Shebait normally devolves in the line of succession of the founder under the rules of Hindu Law. It must be more strictly so in the case of private endowments. I am afraid, the courts below have misunderstood the scope of judicial interference in the affairs of a private endowment when they appointed strangers, in succession, to manage the suit temple.

4. Even when the 1st defendant died in 1962 and the right to manage the endowment thereby devolved on the next karnavan of the family, the Court below did not consider whether there is reason for his supersession and for continuance of a stranger-manager. No disqualification has been found or even alleged against the 2nd defendant who is the present karnavan entitled to manage the endowment. No reason is given anywhere by the Court below why the 2nd defendant has been superseded. I am afraid that in this case the Courts below have exercised their jurisdiction without advertence to the relevant principles. The distinction made between a "Kshethrakariasthan" and a manager in the scheme appears to be irrelevant as the functions allotted to both under the scheme have to vest in the senior member of the family for the time being and the appointment of a stranger-manager to the suit endowment has to be set aside.

5. Another matter adverted to at the bar is the diversion of the temple funds for the education of the members of the parties' family. The preliminary judgment (quotations above) has found the disbursement of the surplus income of the temple among the members of the family to be "certainly detrimental to the interests of the plaintiff temple" and that "the temple income could be utilised only for temple purposes." If that be so when done by the 1st defendant, it cannot be otherwise when done by another person or the Court. The final judgment, so far as it allows diversion of temple funds for secular "purposes not appertaining to the temple trust", like education of the members of the parties' family, is repugnant to the preliminary judgment in the case and has therefore to be set aside. The clause 29 of the scheme allowing diversion of the temple funds for secular purposes of the family must be deleted from the scheme.

6. Other objectionable provisions, not pertinent to the nature of a family endowment, are also present in the scheme accepted by the Court below:

(i) Clause 5 directs procurement of things necessary for the daily poojas and other ceremonies from contractors by auctioning the right to supply the same every 3 months. This is apt to hamper considerably the regular conduct of the poojas and ceremonies, particularly when there are dissensions in the family. The provision appears to me capable of mischief. Clause 5 has therefore to be deleted.

(ii) Likewise, the provision in clause 9 that the appointment of a poojari to a

vacancy shall only be with the previous sanction of the Court, given after notice to all members of the family, is also unworkable, particularly when there are dissensions in the family.

(iii) The provision in clause 11 for auctioning the right to take the offerings made to the temple is also unwarranted by the nature and circumstances of the endowment.

(iv) As there is not to be a separate "Kshethra Kariasthan" distinct from the manager for the endowment, the provisions for removal of the "Kshethra Kariasthan" by the manager and for settlement of controversies between them are otiose and have to be deleted.

(v) The husbands of lady members of the family have no right to interfere with the management of the temple belonging to the family. The provision in the scheme introducing their participation in the affairs of the family endowment is inconsistent with its nature and has to be deleted.

(vi) The manager is entitled to take reasonable amount consistent with the income of the temple and the primary expenses. There is no need to fix it as a percentage or as a fixed sum. Clauses 7 and 8 have to be deleted.

(vii) The provision in clause 18 for resuming the properties now in the possession of strangers cannot be put in an imperative form, as resumption is now restricted by various progressive laws. So also in clauses 21 and 22 the expression has to be changed from imperative to directory.

(viii) Clause 19 is redundant and misleading and has therefore to be deleted.

(ix) Clause 23 is not consistent with the nature of a family endowment. The Court cannot remove the manager of a family endowment at its fancy, but can do so only for proper and adequate reasons. A provision to that effect is unnecessary. The jurisdiction of the civil Court in such matters is not dependent on concession of panics. Clauses 23, 26, 27 and 28 have to be deleted.

(x) Clause 32 is also unwarranted in a scheme for management of a private endowment. The limitation that the temple funds shall be utilised for temple purposes only, made in the preliminary judgment, governs the case, and nothing more than that is warranted.

7. In the light of the above observations, the scheme framed by the Court below will stand modified as detailed below, namely:

(1) The word

in clauses 1, 2 and 11 is removed and substituted by the word

(2) In clause 1 the expression "5--

is deleted.

(3) The present clause 2 is deleted and in its place the following is substituted:

.

(4) The expression

in clause 6 is substituted by the expression"

(5) All sentences is clause 9 except the first art deleted; that is to say, all the portion of clause 9 following the word

is removed.

(6) In clause 10 the expression

is deleted

(7) Clause 11 is deleted and the following is substituted in its place:

(8) In clause 14 the second sentence, namely, that beginning with the word is deleted.

(9) In clause 17 the expression"

is deleted and the word

is added between the words

and

(10) Clause 21 is deleted and the following is substituted in its place:

(11) In clause 30 the words

are substituted by the word

(12) In clause 31 the clause beginning with

and ending with

is deleted.

(13) Clauses 3, 5, 7, 8, 12, 15, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29 and 32 of the present scheme are deleted. Clauses 4, 6, 9, 10, 11, 13, 14, 16. 17, 21, 25, 30 and 31 are renumbered as clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13. 14 and 15, respectively.

8. As the suit is found to have no merits the plaintiffs will pay the costs of the 2nd defendant here and in the Court below. The District Judge, Quilon, will transmit a copy of this judgment and records to the Subordinate Judge concerned within 3 days of their receipt in his Court and the latter will remove the present manager of the suit endowment within 3 days thereof and entrust the temple and its properties to the management of the 2nd defendant forthwith and report compliance to this Court immediately.

The office will prepare a revised copy of the scheme incorporating the modifications detailed in para 8 above and it will form part of the decree in these second appeals. The Registrar will see that the decree is prepared and the records despatched to the Court below within three weeks of this date along with a forwarding letter calling particular attention, of the Courts below to the directions above in paragraph 10.