

(1920) 10 MAD CK 0037
In the Madras High Court

Govindaraja Mudaliar and Swaminatha Mudaliar and Others	APPELLANT
Vs	
Sabapathi Mudaliar and Others	RESPONDENT

Date of Decision : 04-10-1920

Acts Referred:

Citation : AIR 1921 Mad 114 : 61 Ind. Cas. 783 : (1921) 13 LW 153

Hon'ble Judges : John Wallis, C.J.;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

John Wallis, C.J.—These are appeals from the decree of the Subordinate Judge's Court of Chingleput declaring the appointment of the first defendant as the temporary trustee of Ekambaranathaswami Temple was invalid, and that, if it were valid, the first defendant had rendered himself liable to be removed and should be ramval, and also setting a scheme for the future management of the temple.

2. Now as regards the first point, a question has been argued before us whether a Temple Committee has power to appoint a trustee temporarily. As no body desires that the temporary appointment of the present first defendant should be continued it is unnecessary for us to express any final opinion upon that question. Speaking for myself, I am disposed to think that the cases to which we have been referred are eases where trustees have been appointed by a Temple Committee without any reservations and the offices had been held to be free-bold offices. The powers which had been given to the beard of a Revenue by Section 13 of the Regulation VII of 1817 and which were conferred upon the was Temple Committee by Act XX of 1863 are 11 exceedingly wide and enable them to appoint a persons nominated to them or to make such other provision for the trust, management or superintendents, as may to them it seem right and fit, with reference to the nature and conditions of the endowments." Having regard to the general character of the language used, I find it very difficult to ray that the Committee has no power to appoint a trustee temporarily. However, it is unnecessary to finally decide this question.

3. As regards the charges which have been brought against the first defendant, we think it due to him to say that, in our opinion, they have not been made out. Charges 1, 3 and 4 we find not proved. As regards the second charge that no proper account of the income and expenditure was kept, Mr. Narasimha Chari has, I think, any adequately met the criticisms which were based upon the first defendant's conduct by the learned. Subordinate Judge and no attempt has been made to meet his points. It may be that the system of accounts was not as good as it might have been, but there was a system of accounts and no ground for removal on this point is really made out. Then, at a later stage, three further charges were added. As regards the removal of the silver plate, it turns out to be that this plate had to be given for repairs to a Silversmith who misappropriated it. The fact that the first defendant did not take security, which does not appear to be a usual thing, is no ground for declaring him unfit to be a trustee. The only other charge which has at all been pressed relates to a contract with the Public Works Department for the repair of the Temple tank bund and the evidence is that the first defendant at first was anxious that the Temple should do the work instead of its being given to an independent contractor. He wanted that the Temple itself should be the contractor and he accordingly applied Rs. 1,480 of the Temple funds, which he has since refunded, to the purposes of the contract. The Public Works Department who were in charge of the work, however, objected to employ the Temple as their contractor and induced the first defendant himself to enter into the contract, And the next thing was that the point came before the Subordinate Judge in connection with the Receivership in this suit and he then sanctioned the arrangement that the first defendant should be the contractor and not the Temple. That certainly furnishes no ground for declaring the first defendant to be unfit for the post of trustee. The money taken by the first defendant from the Temple funds and employed in the contract was duly replaced when it became available; and we, therefore, hold that this charge furnished no sufficient reason for removing the first defendant. The case for removing him, therefore, fails.

4. No objection has been made by any one to the preliminary decree for settling a scheme except as regards what is sailed a bar put upon the power of the Committee to appoint the first defendant as one of the trustees. It follows from what I have already said, that no sufficient reason has been shown for declaring the first defendant to be incapable of filling the office of a trustee of this temple if the Committee should think fit to appoint him.

5. As regards costs, we have come to the conclusion that the proper order is that each party do bear his own costs throughout.

6. In the memorandum of objections no order is necessary.

Sadasiva Aiyar, J.

7. I entirely agree. As regards the question of the Committee's powers to make temporary appointments, Sir Subramania Aiyar, J., in *Ganapathi Ayyar v. Sri*

Vedavyasa Alasinga Bhattar 29 M. 534 , says: "It is manifest that to lay down that the Committee has an unqualified power of making temporary appointments would give them a power liable to grave abuse." That very learned Judge was thus not against the Committee's possessing a qualified and limited power to make such temporary appointments. I think that temporary appointments may be advisable in certain emergencies or in certain exceptional cases. Subject to this qualification that temporary appointments should only be made in emergencies and for definite periods or as long as a definite state of circumstances exists or (say) till the Committee have had a reasonable time to fix upon a suitable person to fill up the vacancy permanently with a freehold right, I think that the making of temporary appointments is not within the legal powers of the Committee members. The observations in some of the decisions that temporary appointments are in all cases void probably proceed too far.

8. As regards the provision that a Brahmin of the Saivite faith should be one of the trustees, I think that the phrase "Brahmin of the Saivite faith "is liable to be misunderstood. It is only tantric Gurukkals who perform puja in Siva temples who ought to be called Brahmins of the Saivite faith, I would, therefore, substitute "a Smartha Brahmin" for the phrase.

9. In other respects, I agree with the order proposed by my Lord.