

(1912) 04 MAD CK 0026
In the Madras High Court

K.A. Veeraraghava Thatha Chariar and Others	APPELLANT
Vs	
T. Srinivasa Thatha Chariar and Others	RESPONDENT

Date of Decision : 26-04-1912

Acts Referred:

Citation : (1912) 23 MLJ 134

Judgement

1. This is a suit for the settlement of a scheme for the management of the temple of Sri Devarajaswami at Conjeevaram and the shrines attached to

it. The temple is one of the most ancient and famous in Southern India. It has unfortunately been also the source of constant and bitter litigation for

a very long period of time, not less than a century. The suit has been instituted by certain members of a group of families known as the Thathachars

who are all said to be the descendants of one Koti Kanyakadanam Thatha Desikar, a famous scholar who is reputed to have been the priest of Sri

Krishna Devaraya, the Rajah of the Carnatic. The original defendants were also members of the same family. Defendants Nos. 1 to 4 are

admittedly trustees of the temple and the 19th defendant also claims to have been validly appointed as trustee by a mediator who is alleged to have

possessed the power to appoint him. According to the rules of the institution prevailing at the time of the suit, the temple was to be administered by

five trustees. These trustees admittedly were to be ordinarily elected by members of the families of the Thathachars, the mediator, it is stated,

having the right to fill up the vacancy if the Thathachars fail to exercise their right of election. Defendants Nos. 5 to 8 are the sons of the 1st

defendant. Defendants Nos. 10 to 15 are other Thathachars who were subsequently added as parties. According to the plaint, the Dharmakartha

Mirasi right i.e. the hereditary right of Dharmakartcaship, belonged to the family descended from Kotikanyakadanam Thatha Desikar (whom we shall hereafter refer to as Thatha Desikar.) But this contention was given up before us at the hearing of the appeal and nothing more was claimed for the members of the Thathachar families generally than the right to elect trustees and certain rights of interference beyond what ordinary worshippers possessed. The 1st defendant and his sons and certain other families of Thathachars claimed the exclusive right of trusteeship. The plaintiff after referring to the history of the management of the temple, referred to the present condition of affairs which was stated to be extremely unsatisfactory and set out various acts of non-feasance, misfeasance and malfeasance on the part of the trustees and stated that a scheme has been framed by Sir V.C. Desika Chariar, then a leading Vakil in Madras (now one of the Judges of the Presidency Small Cause Court) and assented to by about 100 members of the family. But defendants Nos. 1 and 4 to 8 and 9th defendant expressed their dissent while 18 others expressed neither their assent nor their dissent. The plaintiff then refers to the absolute necessity for a scheme and prays for the settlement of a scheme either by adopting the scheme settled by Sir V.C. Desika Chariar or by framing a new one and for certain other incidental reliefs. Although the necessity for a scheme was not agreed to at first by all the defendants, the District Judge in his judgment says that it was not seriously disputed by any of the defendants that some scheme of management should be settled and that it was admitted in the course of the hearing that the trustees were not doing their work properly. He also observes that the principal objection urged to the scheme framed by Sir V.C. Desika Chariar. was that it proceeded on the basis that the Thathachar family as a whole had the right to the management of the temple and that its provisions were intended to strengthen the position of the family and to see that the trustees obeyed what was dictated by the family as whole or by one nominated by them as middleman or arbitrator. Defendants Nos. 1 and 5 to 8 stoutly opposed this claim and contended that the trusteeship belonged to their own family. The District Judge held that it was beyond the scope of the suit, which was for the framing of a scheme, to go into the question of the exclusive right set up by defendants Nos. 1 and 5 to 8 and he refused to do so. The parties were asked to put in a draft scheme or schemes on the basis of this

decision. The Judge refused to frame any rules for the election of trustees, their supervision and the mode of settling differences of opinion between them. He also refused to appoint any mediators or supervisors to control the work of the trustees, holding that it would not be to the

advantage of the institution to appoint men invested with power to control the action of the trustees. He also considered it unnecessary to frame

any rules for filling up vacancies in the office of trustee and thought it best to leave this to be done by the Thathachar family. He considered it

enough to make provision for the better administration of the funds of the temple and did not consider the question of the constitution of the

trustees and their appointment and the individual rights of the parties. He settled a scheme providing for the periodical stock-taking of the moveable

properties of the temple, for the receipt and custody of the offerings and the incomes of the temple, for the auditing of accounts and certain other

matters. The plaintiffs appeal to this Court and other parties including defendants Nos. 1 and 6 to 7 put in memoranda of objections. The District

Judge's scheme really did not satisfy any of the parties. The affairs of the temple got into serious confusion during the pendency of the appeal and

an application was made to this Court for the appointment of a Receiver pendente lite. It was considered desirable that the hearing of the appeal

should be expedited and that the petition for the appointment of a Receiver should be heard along with the appeal. When the appeal was taken up

for hearing, applications were made by several persons to be added as supplemental respondents. These were men representing the Thengalai

Community of Conjeevaram and Sthalathars of the temple. They had themselves instituted other suits in the District Court of Chingleput for the

settlement of a scheme. They expressed their desire to be made parties to this appeal so that this Court might settle a scheme binding on all parties

and agreed, as a condition to their being admitted as parties to the appeal, to withdraw their own suits pending in the District Court and to proceed

with the litigation from the point at which it stood in this Court without claiming to re-open any proceedings taken hitherto We considered it proper

to accede to their request and directed them to be made supplemental respondents. Respondents Nos. 22 to 25 are representatives of the

Thengalai community and respondents Nos. 26 to 29 are Sthalathars. The object of these groups of respondents was to induce this Court to admit

as trustees of the temple respectively, a Thengalai Vaishnava to protect and safeguard the interests of Thengalais and a Sthala-thar to similarly protect the interests of the Sthalathars.

2. Defendants Nos. 1 and 5 to 8 strongly objected to the course pursued by the Lower Court in framing a scheme without making enquiry regarding the exclusive right of their family to the trusteeship. We were of opinion that their contention should be upheld, as a court in framing a scheme was bound to have regard to the existing rights of individuals to the trusteeship of the temple. The scheme was also regarded as imperfect in not making provision for several matters of importance. The parties were at the same time anxious that the long pending strife and confusion should be settled as speedily as passible and they requested that this Court should itself take the evidence necessary for deciding such questions as would be pertinent to the settlement of a scheme. The parties all expressed themselves as satisfied to have the questions decided on such documentary evidence as they might wish to adduce and to dispense with oral evidence except such as might be tendered to prove or disprove the genuineness of any documents that might be put in. We agreed to this course and passed the following order on the 24th August 1911.

The Lower Court was not right in refusing altogether to take evidence relating to the rights of the parties and the practice prevailing in the institutions with respect to the management of affairs. The parties desire that this Court should admit in evidence such documents as may be produced by any of the parties and agree to dispense with oral evidence. We have resolved to accede to the request that this Court should take the evidence in the case. All parties will produce their documents within two weeks from this date. The printing of the documents might be expedited. The further hearing of the appeal is adjourned for six weeks.

3. All the parties have had full opportunity of adducing their documentary evidence. No witnesses were cited by any of them. The case was argued at great length on behalf of the various parties. The principal points that formed the subject of contention at the first argument were.

(1) Whether the family of defendants Nos. 1 to 5 is entitled to the exclusive right to trusteeship in the temple and

(2) Whether additional trustees should be appointed to put an end to the

constant and recurring quarrels and litigation connected with the temple and to put the administration of its affairs on a satisfactory-footing.

4. It was contended by defendants Nos. 1 and 5 to 8 and by the Thathachars that the court had no right to appoint additional trustees for a temple

managed by hereditary trustees, that we further had no power to do so in this case as the sanction given by the Collector u/s 539 of the old code

of the Civil Procedure for the institution of this suit did not authorise a prayer for the appointment of additional trustees and that, in any event, such

appointment was undesirable and unnecessary. At the conclusion of the arguments we intimated our conclusions on these questions. We held that

the alleged exclusive right of the family of defendants Nos. 1 and 5 to 8, if it ever existed, was extinguished by the statute of limitation, that we had

the power, if we considered it desirable, to appoint additional trustees, but that in the circumstances of the case we considered it both u*necessary

and undesirable to appoint any additional trustees, either from amongst the Thengalais or from amongst the Sthalathars. We also stated that in our

opinion it was necessary to control the management of the affairs of the temple by the trustees and that we would be prepared to consider any

measure that might be proposed for the purpose. As already stated, the vakil for the Thathachars generally admitted that the members for the

family did not claim any right to trusteeship on behalf of all the members of the Thathachar families as a body. We invited all the parties concerned

to put in draft schemes for the consideration of the court. We also invited the co-operation of the Advocate-General for the settlement of a

satisfactory scheme. He was good enough to lend his assistance in the matter and submitted a scheme for the approval of the court. The

contending parties also put in schemes of their own. All these schemes were fully considered at several subsequent hearings, the drafts put in by the

parties and by the Advocate-General were revised and the matters in dispute were settled. The parties were supplied with the minutes of the court

and schemes drawn up by the parties in accordance with these minutes were again considered and the scheme as finally settled by the court has

already been drawn up. We do not propose to make more than a few further observations regarding details of the scheme we have settled. It now

remains to give our reasons for the conclusions arrived at by us on the questions

argued at the preliminary hearing.

5. The early history of the temple is involved in much obscurity. Both the sects of Vaishnavas, the Vadagalais and the Thengalais, certainly

possessed important interests in the temple and these have given rise to persistent and unceasing litigation. Another fruitful source of disputes

related to the rights of various persons holding offices in the temple and the litigation between the trustees who have been Vadagalais and

Thathachars from the year 1842 and the Vadagalai office holders, chiefly the Archakas and the Paricharakas(has been as acrimonious as the

quarrels between the Vadagalais and the Thengalais. The trustees have not been remarkable either for their capacity or for their spirit of co-

operation. The Thathachar families have constantly tried to interfere in the management probably for good reasons. Both the trustees and the

Thathachar families have frequently invited the co-operation of outsiders for the purpose of securing the orderly administration of the temple, but

generally these attempts do not seem to have succeeded. The Tengalais and Sthalathars have pressed us to use the large powers possessed by the

court to introduce a more satisfactory state of affairs and to make comprehensive changes; and, while declining to appoint additional trustees, we

have been anxious to do everything in the power of the court with a view to secure better management, peace and due regard for the interests of

the worshippers and office holders and, for the purpose of doing so, we have fully considered the course of management that has obtained till now

and the cause of the confusion and mismanagement that have generally prevailed till now in the administration.

6. According to the Thathachar plaintiffs, the pagoda of Devarajaswami was renovated by Thatha Desikar, who also procured large endowments

for it. They contend that he and his descendants were the Dharmakartas until the British Government took up the management. There is apparently

no doubt that Thatha Desikar had a great deal to do with the management of the temple in his time and, probably, with the renovation of the

buildings. An image of his is to be found in the pagoda and it would appear that worship is offered to the image at the expense of the temple. But at

the same time there can be no doubt that a Thengalai called Rama Row was at the head of the management towards the end of the eighteenth

century. In 1792, the Government's attention was directed to the serious differences then existing between the Tenglais and Vadagalais of the place and enquiries were then instituted into the question of management. The trustee Rama Row was dismissed by Government and one Srinivasa Raghavachari was appointed Dharmakarta by the Board of Revenue. The appointment was made with the consent of the family of the Thathachars and the appointee apparently admitted that the hereditary trusteeship belonged to the Thathachars. This was not however the conclusion arrived at by the Collector, Mr. Balfour. He had first thought that the Thathachars had been Dharmakartas formerly, but on subsequent inquiries he came to the conclusion that the trusteeship originally belonged to a body of persons called Sthalathars, of whom the Thathachars were only one section, the others being the Archakas, the Paricharakas, the karnams or accountants and the Mudaliars or carriers of the idol inside the temple. Mr. Balfour said that there were no documents to establish the point at issue and his conclusion was apparently based on such investigation as he could then hold. It would appear that, owing to the apprehension of troubles from the Mahomedan rulers of the Carnatic, the idol had been removed from the pagoda and carried off to Udayarpalayam, where it was detained by the Poligar of the country, that a Tenglai of the name of Attan Jeer, who was in favour with the Nabob of Hyderabad, procured aid from him and brought back the idol from Udayarpalayam and obtained endowments for the temple from the Nabob. Exhibit XII is a deed of gift by one Lalla Mulluji of the family of Todur Mall of the right of management of the temple to Ramanuja Rayanigaru, son of Attan Jeer." It states that the right of management was given to the donor by "all the people," who were pleased with the service rendered by him in bringing back the idol from Udayarpalayam. Probably both the executant's family and Attan Jeer were concerned in the restoration of the idol to the temple. Rama Row appears to have been a descendant of the donee, Ramanuja Jeer (See Exhibit L.) The Vadagalais stated in 1842 that Rama Row was a gumastah of their own and denied any independent right of trusteeship in him. Whether he was trustee in his own right or whether he obtained it from the Todur Mall family, which got it from the Sthalathars as is apparently stated in Exhibit XII, or whether he was the gumastah of the Thathachars, he was, as already stated, dismissed from office in 1792 and the position of the

Thathachars as claimants of the office was greatly improved by the appointment of Srinivasa Raghavachari as Dharmakarta. Government, however, dismissed Srinivasa Raghavachari also in 1796 and assumed the direct management of the temple. But the rights of Rama Row's family to certain privileges and emoluments were recognised by the officers of Government. Exhibit XIII series relate to the proceedings taken by Government in 1792. The temple continued to be under the management of Government up to 1842, when, in consequence of the orders of the Court of Directors, it resolved to disconnect itself from the management of religious institutions in the country. Inquiries were then made to find out what persons had a right to the office of the trustee. Claims were put forward by the members of Attan Jeer's family and by the Sthalathars as well as by Thathachars. The last apparently took joint action and a petition on their behalf was put in by Kumara Thathachariar, the grand-father of the present 1st defendant. He stated that Rama Row and Srinivasa Raghava Chari were both gumastahs under his family and claimed that no one else had a right to the Office of Dharmakarta (Exhibit A). The Collector, however, was not in his favour. After pointing out that the Thathachars were not the sole Dharmakartas of the temple at any time and adverting to Rama Row's trusteeship when Government took up the management, he proposed the appointment jointly of the head of the Thathachar family, an Archaka, a Paricharka, Maji Appa Row, a descendant of Rama Row and a member of the Arlappad, as trustees (Exhibit XIV). The Board of Revenue, however, was of opinion that the appointment of a plurality of trustees was impolitic and undesirable. The Board was satisfied that the Thathachar family at least possessed the joint right of hereditary supremacy in the temple in common with others if they were not the sole controllers of pagoda and were of opinion that the welfare of the pagoda would be best advanced by the appointment of a single individual as trustee and they resolved to constitute Kumara Thathachariar, the head of the Thathachar family, the sole Dharmakarta, the dignity to be hereditary (Exhibit B). The Government of Madras confirmed the proceedings of the Board and Kumara Thathachariar, the petitioner on behalf of the Thathachar family, received the following order:--" Petitioner is informed that his claim to the churchwardenship of the Devarajaswami pagoda at Conjeevaram is recognised and the Collector has been furnished with instructions

accordingly." The Collector accordingly informed him thus. "You are appointed Dharmakarta of the above Devastanam. You shall therefore at once take charge of all the properties belonging to the above Devastanam from the Tahsildar of Conjeevaram Taluk and shall properly conduct all the affairs of the above Devastanam according to Mamool." It would appear from these documents that the intention of the Revenue Board and the Government was to appoint Kumara Thathachariar individually as sole Dharmakarta in accordance with the policy of Government to appoint a single individual as trustee. Kumara Thathachariar, however, professed to act on behalf of his family and executed an agreement (Exhibit F-1) dated the 9th February 1843 to all the members of the family. In that document he stated that the Dharmakarta office, which was "Samudayam (common) to all the aforesaid descendants "of Thatha Desikar, had been confirmed by the Board of Revenue to them and that he had been appointed Dharmakarta and that he and the other members of the family had in that agreement made an arrangement in order to prevent future disputes in the family for ever and to save the mirasi office from ruin. It then states that four individuals referred to in the document should conduct the business with him and sign the accounts along with him, that he should sign Thakids and the four other persons should sign the copies of those Thakids in token of their approval, that they should sign the original during his absence from the village along with his son on his behalf, that "all our people "i.e., all the members of the family should settle any disputes of the Parijanams relating to the temple and act in the transaction of any special business. Nine of the Thathachars are named as people who should inspect accounts and one of them was also to sign the accounts. It then proceeds to say "If a substitute is to be appointed for those who work rendering assistance to me, all our people who are then present in the village should join and consider and appoint those of our people who are at the time influential and devoted to the performance of services the deity." In case of difference of opinion the view of the majority was to prevail. This agreement seems to allot a somewhat higher position to Kumara Thathachar in the actual management than to the 4 persons who were to manage the business of the office with him. But no right to succession is secured to his heirs, the appointment being made by the Thathachars from amongst the most pious and influential amongst their body. Besides, it

substantially acknowledged the joint right of trusteeship of the 4 other persons named in the document.

7. The agreement was communicated to the Collector but that officer apparently did not wish expressly to recognise it on behalf of Government as

having any binding force. He therefore replied as follows:--"" Inasmuch as the management of the above Devastanam was given up by Government,

it is needless to say whether I have accepted or not the arrangement referred to in the above agreement."" Kumara Thathachariar died on the 5th

March 1843. Two of the persons named in Exhibit F(1) informed the Collector of the death and stated that an arrangement for the future

management of the Pagoda would be made and communicated to the Collector in a short time. He evidently understood the Government Order as

recognising that the office of Dharmakarta should be hereditary in the family of the Thathachars and asked for the instructions of Government as to

how he was to act with respect to the report made to him. The Board's answer was ""that the heirs to the Dharmakarta lately appointed should be

recognised as successors in the office"" (Exhibit IV). This throws little on the question whether they meant only the heirs of Kumara Thathachari or

intended to include any of the other Thathachars. On the 21st July 1843, Sudarsana Thathachar, the son of Kumara Thathachar and 2 other

persons, Thundri Viraraghava Thathachar and Tiruppakuli Gopalachar, executed the agreement (Exhibit F2) in favour of all the Thathachars. This

document again recites that the office of trustee, was ""Samudayam to all the Thathachars ""and states that the community had agreed that the 3

executants should be Dharmakartas of the Devastanam. They agreed to consult all the Thathachars in case anything special had to be done and

recognised the right of all to fill up vacancies and the document further states that for any loss or gain in respect of the office all should be

responsible. This agreement was also communicated to the Collector, who, in transmitting it to the Board, stated ""I have informed them that the

interference of Government in the affairs of the Pagoda having ceased, I had only to say that the arrangements made by themselves would be

attended to and the Joint Dharmakartas recognised."" The Board approved of the Collector's Proceedings (Exhibits J and Ji). Shortly afterwards,

Appa Row, whose claims to the office of trustee had been set aside by Government, instituted Original Suit 5 of 1844 in the Zillah Court of

Chingleput for the recovery of the office from the 3 trustees named in Exhibit F 2. His suit was dismissed and the judgment of the Zillah Court was confirmed by the Court of Sadr Adalat in Appeal No. 29 of 1849, Exhibit L. In that suit, the Thathachars, including Sudarsana Thathachar, the 1st defendant's father, in their written statement (Exhibit K), said "the Board of Revenue and the Government acknowledged that only the descendants of the family of Koti Kanyakadanam Thatha Desikar are the chief claimants of the Dharmakarta office of the said Devasthanam and appointed the said Rayadrug Kumara Thathachar as Dharmakarta. After his death, these defendants were appointed Dharmakarthas in his place and have been conducting the management of the Devasthanam duly." Sudarsana died in 1856 and he was succeeded by his brother, Krishnaswami Thathachar, the 1st defendant in this suit. On the 24th September 1856, he and Thandri Viraraghava Thathachar and Krishna Thathachar executed the agreement, Exhibit III, in favour of all the Thathachars. This document again recognises the office as common to the whole family and the right of the members of the family to fill up vacancies. In other respects, it is in accordance with the two previous agreements. On the same day, certain rules were laid down by the 3 trustees for the management of the temple (Exhibit F-4). This also recognises the common right of the members of the family. It places all the Dharmakartas on an equal footing and contains the following provision:--"As it is necessary that the documents relating to the disputes which have taken place from the beginning to this day in respect of the Dharmakartitva, etc., Mirasi rights, which are Samubayam to all the members of the family of Sri Thatha Desikar in the said Devasthanam, should be in the safe custody of one, the said documents should be kept safely with V. Parthasarathi Iyengar and should be taken when required and should be returned." It will be noticed that the depositee was not any one of the Dharmakartas but apparently another member of the Thathachar family. Thandri Veeraraghava Thathachar apparently nominated his own successor but this nomination was set aside by the Board of Revenue. The Board's Order (Exhibit M), dated the 5th July 1859, stated that Veeraraghava had no right except what he obtained by election by the family and said, "The Board approve of the Collector's cancelling that nomination and leaving the selection to the family of Kumara Thathachariar. They decline to interfere on petitioner's behalf." On the 16th August

1857, a number of Thathachars executed an Adhikara Pathram or deed of authority to 3 gentlemen of position, authorising them to frame rules

regarding the management of the Devastanam and stated that those who did not acknowledge the authority of the rules so framed were liable to be

excluded from the office. In 1860, again, an agreement, Exhibit F, was entered into by the Thathachars laying down regulations for the

management of the temple. The occasion for the agreement is stated to be that the conditions of the previous agreements, Exhibits FI to F5, were

not properly carried out. It recites that the office of Dharmakarta is common to all the members of the family and provides that if any Thathachar

should set up a special right he should forfeit his own right to the office. It fixes 10 years as the time limit for the tenure of the office by any

individual, Sri Krishna Thathachariar and Krishnaswami Thathachariar, the then Dharmakartas, being alone entitled to hold office for a longer

period. The number of trustees was fixed at 3. Three Vraya Sodhakas or Inspectors of expenditure were appointed and they were entitled to be

appointed as Dharmakartas in case of vacancy. The agreement was signed by a number of Thathachars including the 1st defendant. Fresh

agreements were executed in the years 1872 and 1876 (Exhibits N and O) by the former of these, the number of trustees was raised to 5. It is

unnecessary to refer in detail to the provisions of these agreements, but one clause of Exhibit N, viz., the 4th, should be mentioned. It provided ""Or

the occurrence of a vacancy among the trustees, if there should be no person to be appointed for the place in accordance with the aforesaid

agreement of Subakrithu year (i.e., 1842), a Vraya Sodhaka should be appointed for the vacant place."" The object was apparently to give a

preferential right to the trusteeship to the families out of which the trustees were selected in the year 1843, but this provision was promptly

rescinded by the agreement of 1876 (Exhibit O). Clause 3 of Exhibit O states"that the provision was contrary to the rights of the parties and it

expressly provides that the right to be appointed was equally common to all.

8. The documents above referred to prove beyond all doubt that Kumara Thathachar, Sudarsana Thathachar and the 1st defendant, Krishnaswami

Thathachar, have all deliberately chosen to recognise the right of the members of the Thathachar family to appoint trustees by election and the two

latter have repeatedly admitted that their right to hold the office was derived from their appointment by members of the family. It may possibly be

that the original intention of the Government was to appoint Kumara Thathachariar alone as the sole trustee, although the appointment was made in

response to his application made on behalf of himself and the members of the Thathachar families. But it is impossible to hold that the first

defendant or defendants Nos. 5 to 8 can at this distance of time go beyond the arrangements entered into deliberately by 3 members of the family

in succession. In *Neelakandan v. Padmanabha* ILR (1890) M. 153 this Court held that, where the joint right of one of the parties to the suit in that

case had been admitted for a long time by the other party, the latter could not be permitted to set up rights contrary to the tenor of the admission.

The Privy Council took the same view on appeal ILR 18 Mad. p. 1. Reliance was placed on behalf of the defendants Nos. 5 to 8 on the decision

of this Court in *Subbarayudu v. Kotayya* ILR (1892) M. p 389. In that case it was merely held that the alleged renunciation by the real trustee in

favour of a stranger was a nominal transaction and was not given effect to in practice. Moreover assuming that Kumara Thathachariar obtained the

exclusive right to the office of trustee under the appointment of Government, that right must now be held to be barred by limitation. The office has

been held jointly by 3 trustees or 5 trustees under appointments by the Thathachar family for a period of about 65 years. After the death of

Kumara Thathachar, his son, Sudarsana and the 1st defendant held their office professedly in virtue of their appointment by the Thathachar family.

The character of their possession must determine the right which they are entitled to and any right which the family previously had must be taken to

have been surrendered and barred. It has now been fully established that a right to the office of trustee may be barred by limitation and an

exclusive right to hold it singly may be equally barred. See *Vasudeva Padhi Khadang Garu v. Maguni Devan Bakshi Maha patrulu Gam* ILR

(1901) M. 387. In *Secretary of State for India in Council v. Krishnmoni Gupta* ILR (1902) A. 104 the Judicial Committee of the Privy Council

held that, if a person who is in reality the owner of a certain land, acknowledges the title of another and holds it as the tenant of the latter for the

statutory period, his title to the land would be extinguished. In *Ramanathan Chetty v. Murugappa Chetty* ILR (1903) M. 192 this Court held that,

when a branch of family which was entitled to hold the trusteeship of a temple with another branch by turns, was kept out of possession of the office by the other branch for more than the statutory period, its right to the office would be barred, although the members of the other branch holding, the office adversely might not be the same during the whole period. According to Article 124 of the Limitation Act, the right of a hereditary trustee would be barred when the office has been held adversely for a period of more than 12 years by the defendant. According to his Article, no doubt, 12 years" continuous possession by the defendant would be necessary to bar the right to the trusteeship. If the possession has been in the hands of independent trespassers, it would not be regarded as continuous possession on the part of the defendant. See Banning on Limitation, page 87 and Gossain Das Chunder v. Issur Chunder Nath ILR (1903) M. 192. It is contended that as different persons have been holding the office of trustee along with the 1st defendant, the adverse possession of the other trustees cannot be regarded as continuous. But all of them have been holding under appointments made by the Thathachars: their title has been derived from the same source and this, in our opinion, is sufficient to justify us in holding that the possession has been continuous and that each succeeding trustee derived his right through his predecessor when he was appointed to the vacancy caused by his death. It is also argued that, as Kumara Thathachar, Sudarsana and the 1st defendant have always been in possession of the office and have never been excluded therefrom, their sole title to it cannot be barred as each trustee must be regarded as in possession of the whole office. But the co-trustees have equally been possession of the whole office; their possession was not subordinate to the right of the 1st defendant's family nor was it had permissively under them. They were as much in possession in their own right as the members of the 1st defendant's family themselves. We must therefore hold that neither the 1st defendant nor any of the members of his family can now claim any exclusive right to the office of trustee. We have been asked to provide, in the scheme" to be framed by this Court, for the appointment always of a member of the 1st defendant's family, on the ground that it was on Kumara Thathachariar that the Government really intended to confer the office of trustee; but we are not prepared to accede to this request. The title of the family, if any, has been extinguished. It is

not an ancient title, but one derived, if at all, only under the appointment of the Government in 1842. We are averse to the creation of any

hereditary right to the office of a public trustee, as we do not think that such a course would be in the interests of the institution.

9. The next question for consideration is whether any additional trustees should be appointed. From 1872 there have been 5 trustees appointed by

the members of the Thathachar family. The appointment of a Thengalai as trustee is not likely to promote harmony in the management of the temple.

One or two Thengalai trustees will not be likely to control the actions of the Vadagalai trustees, while it might lead to constant opposition and

quarrels and mutual recrimination. We are also of opinion that it is not desirable to appoint as a trustee any of the Sthalathars, as they are all

servants of the institution. It is argued that the Thathachars also are holders of some of the offices in the temple. But that is no reason why we

should appoint other people whose position with respect to the temple being merely that of servants makes their appointment undesirable. We

have therefore decided not to appoint additional trustees either from amongst Thengalais or the Sthalathars. We shall presently consider the

desirability of appointing one or more persons to control the trustees in the discharge of their duties in order to protect the rights of the Thengalais

and Sthalathars. In the view we take of the case it is not necessary to decide whether we have power to appoint additional trustees; but we may

observe that we are inclined to hold that the Court has the power to do so. The question was really decided in *Prayag Doss Ji Varu Mahant v.*

Tirumala Srirangacharlu Varu ILR (1905) M. 319. The Privy Council, on appeal ILR (1907) M. 138 did not express any dissent from the

conclusion arrived at by this Court. It was contended that Section 539 of the old Code followed the provisions of Lord Romilly's Act in England

and under that Act it was held that the court had no power to appoint additional trustees; but, as pointed out in *Tirupati Case* ILR (1905) M. 319

the procedure under the English Act was by petition and of a summary character. Section 539 of the CPC was enacted after the Trustee Act had

been passed in England and, according to that Act, the court undoubtedly had the power to appoint new trustees and we agree with the learned

Judges who decided the *Tirupati Case* that the Indian Courts possess the same power. Besides, the Court of Chancery had, independent of any

statute the power to appoint new trustees. See Halsbury's Laws of England Vol. IV, page 255. See also Re. Burnham National Schools (1873)

L.R. 17 Eq. 241 and Re. Browne's Hospital Stamford 60 L.T. 288. The Indian Courts have also exercised the same extensive powers in the

matter of charities as the Chancery Court in England. this Court appointed new trustees in Thandapaneni Krishnayya and Others Vs. Peddilibotta

Subbaya and Others, . See also Kaleswara Gurukkal v. Nataraj Tambiran (1909) 19 M.L.J. 772. The Bombay High Court in Annaji v. Narayan

ILR (1896) B. 556 appointed a committee of control to supervise the action of the trustees. Besides, the present suit was tried after the new Act

came into force and Section 92 of the Act, which was enacted in the place of Section 539 of the repealed code, has made a change in the

language of the old statute and makes it clear that the court has power to appoint new trustees. The suit was no doubt instituted while the old Code

was in force but we are of opinion the power of the Court must be regulated by the Code in force at the time when the case was decided. We are

also of opinion that the absence of a specific sanction by the Collector of a prayer for the appointment of new trustees is not fatal to the court's

exercise of the power. The court in settling a scheme has very wide powers (See Tudor's Charitable Trusts page 596) and we should be inclined

to hold that, if we were of opinion that a satisfactory scheme would require the appointment of new trustees, we would have the power to appoint

them. If there were no prayer for the settlement of the scheme, then no doubt the sanction of the Collector would be required by the plaintiffs for

asking the court to appoint new trustees; but we do not think that the absence of specific sanction would restrict the power of the court to direct

the appointment of new trustees as part of the scheme which it thinks should be settled. Neither Syed Hussain Miyan v. Collector of Kaira ILR

(1895) B. 250 nor Srinivasa v. Venkata ILR (1887) M.148 helps the contrary contention. The latter case was one under the Religious

Endowments Act and the former case decided that when sanction was not obtained for a suit for an account, the court could not pass a decree for

an account. Such a decree would not come within the purview of any scheme to be settled by the court. It is, however, unnecessary to decide this

point definitely.

10. We are, however, of opinion that, having regard to the past management of the temple, it is desirable to provide some authorities to supervise

the administration by the trustees. Several members of the Thengalai community hold offices in the temple and the Thengalais, as a body, have

important interests connected with it. It has been decided that the invocation before the recitation of, the, Prabandham or Tiruvaimozhi in the temple

should be addressed to the Thengalai Saint Manavala iVIahamuni. The Tengalais possess the right to the Adhyapakam Office. These rights led to

long litigation between the Thengalai and Vadagalai communitites (See Krishnaswami Tathachar v. KHshnamachar ILR (1882) M. 313. There is a

shrine of Manavalamahamuni withia the precincts of the temple as well as a shrine of Nathamuni, the former of which is admittedly a Thengalai

shrine and the latter is also claimed by the Tbengalais as their shrine. The Thengalais own the right to good proportion of the Thirtham offices.

Many of the namams in the temple are also Thengalai namams. The Thengalais have also the right of Asirvatham and a Thengalai is entitled to the

office of Mulji Dharmakarta. All these have led to constant disputes and litigation between the communities and it is complained with reason that

the fact that all the trustees are Vadagalais has tended to impede the vindication of the rights of the Thengalais and the Thengalai officeholders.

Exhibits XXVII, XXVII-A, XXVIII and XXXIX series relate to the question of namams. See also Krishnaswami Iyengar v. Sainaram

Srirangachariar ILR (1906) M. 158, Exhibits XXII and XXII-A and XXIII relate to the Thirtham; Exhibit XXIV to the right of Asirvatham:

Exhibits XIX and XIX-A to the office of Mulji Dharmakarta. It is also urged that the Thathachar Dharmakartas have repeatedly attempted to

introduce innovations contrary to the interests of the Thengalais. They attempted to introduce an idol of Thathachar but the attempt failed; see

Exhibit XXX series. They refused the honour of Sadagopam to the Thengalai reciters of the Prabandims: See Exhibits XXVI and XXVI-A. The

documents filed in the case clearly show that there is bitter enmity between the members of the Thengalai and Vadagalai communities in the place

and each community has manifested a most reprehensible amount of unwillingness to recognise the just claims of the other commnnity and of office

holders belonging to it. We have therefore considered it desirable in appointing a Board of supervision to provide that one of the members of the

Board should be a Thengalai gentleman not holding any office in the temple. We have not considered it proper to include any Sthalathar in the

Board. This is impossible on account of their position as servants of the temple. The desirability of appointing a Board of supervision is shown by

the past history of the institution. The Thathachar family has itself felt the necessity of appointing outsiders to prevent quarrels amongst the trustees

and to supervise their management. Although we have abstained, with the consent of the parties, from deciding the question whether the various

acts of misconduct with, which the trustees have been charged in this case have been proved, there can be no doubt that the history of the temple

is one of incapacity, indifference and disharmony amongst the trustees. They have exhibited an amount of incompetence to deal with the servants of

the temple, which renders the supervision of outsiders highly desirable. The appointment of middlemen or arbitrators by the Thathachars

themselves from the year 1857 has not been attended with success. We have therefore come to the conclusion that there should be a Board of

supervision consisting of 3 persons to be appointed by the District Court and that one of them should be a Thengalai, one a Vadagalai not

belonging to the families of the Thathachars and one not belonging to either of these sects, namely, a Smartha or a Madhwa. We are also of

opinion that the joint participation by all the trustees in every detail of the administration will, if continued, be a fruitful source of confusion and

mismanagement. We have, therefore, decided that, while all the five trustees to be appointed by the Thathachars should continue to take part in

and be responsible for all important acts of administration, one individual amongst them at a time should be made responsible for the performance

of all routine acts. The scheme that we have framed after full discussion and consideration is appended hereto.

11. The costs of the plaintiff will come out of the temple property both in this Court and in the lower Court, as also the costs of the trustees, one

set. The other parties including the 9th defendant will bear their own costs in this Court. C.M.A. No. 59 of 1911 and C.M.P. No. 1188 of 1911

will stand over till September 1912. The appeal will be posted again in August for the appointment by this Court of the first Board of supervision.

THE SCHEME

1. Definitions

"Court":--The word " Court" in these regulations shall mean the District Court of Chingleput, unless there be a Subordinate Court having

jurisdiction over the temple u/s 92 of the Civil Procedure Code, in which case, it shall mean such court.

"Board":--The word "Board" shall mean the Board of supervision constituted under these regulations.

2. The expression Sri Devarajaswamy Devasthanam (hereinafter referred to as the Devasthanam) shall mean and include the shrine of Sri

Devarajaswamy at Little Conjeevaram and all the subordinate shrines attached thereto.

3. No one shall be eligible to be a trustee of the said Devasthanam:

(a) who is not a lineal male descendant of Conjeevaram Koti Kanyakadanam Sri Thathadesikar,

(b) who is under 25 or over 60 years of age,

(c) who does not permanently reside at Conjeevaram or at any place within fifty miles thereof, or who does not undertake to reside at such place

during the period of his tenure of office as trustee,

(d) who has been convicted of any offence involving moral turpitude, or against whom any order u/s 109 or 110 of the Criminal Procedure Code

has been passed,

(e) who is an uncertificated bankrupt or undischarged insolvent,

(f) who is suffering from unsoundness of mind, total blindness, total deafness, dumbness, advanced leprosy, or paralysis of such a nature as unfits

him for work, or

(g) who is a member of a joint family of which some other member is at the time a trustee.

4. There shall be five trustees for the said Devasthanam.

5. Three of the trustees shall be members of the Eastern Branch and two of the Western Branch of the family of Koti Kanyakadanam Sri

Thathadesikar.

6. All questions regarding the eligibility of any person to be a trustee shall be decided by the Board of Supervision hereinafter referred to.

7. Not more than one member of a joint Hindu family shall stand as a candidate

for the office of trustee at the same time.

8. A trustee shall hold office for five years from the date of his appointment but shall be eligible for re-appointment.

9. The trustees shall be elected by the lineal male descendants of the said Koti Kanyakadanam Sri Thathadesikar who are of over 18 years of age

and in accordance with rules to be framed for the purpose.

10. On the occurrence of a vacancy, it shall be the duty of the lineal male descendants of the said Koti Kanyakadanam Sri Thathadesikar to elect a

trustee to the said vacancy, within three months of the vacancy, in accordance with the rules to be hereunder framed.

In default of the said persons so to elect, the Board of supervision shall appoint to the said vacancy a proper person to be a trustee within one

month thereafter. Failing both, any trustee or member of the Board of supervision or any two worshippers may apply by petition to the court to

appoint a competent person to fill the vacant office.

11. (i) If any trustee should, during the continuance of his trusteeship become at any time disqualified to be a trustee within the meaning of

Regulation 3, he shall cease to be a trustee.

(ii) An executive trustee, who, in the opinion of the Board, has absented himself without lawful excuse from duty continuously for a period of one

month, shall cease to be executive trustee on receiving intimation to that effect from the Board.

(iii) A non-executive trustee, who, in the opinion of the Board, has absented himself from duty for a period of six months, shall cease to be a

trustee on receiving intimation to that effect from the Board.

12. Any trustee intending to resign office shall give notice of such intention to the Board not less than one month previous to the date from which he

intends the resignation to take effect and, on the expiration of such date, he shall cease to be trustee.

The same rule shall apply to the executive trustee intending to resign the office of executive trustee only.

13. Any two worshippers, after obtaining the consent in writing of the Advocate-General of Madras or of the Collector of the District, or two

members of the Board may apply to the court for the removal of any trustee from office and, thereupon, it shall be competent to the said court to

suspend such trustee pending enquiry and, after giving notice to such trustee and to such other persons as it may consider necessary and after making due enquiry, to remove the trustee from office.

The court shall, instead of dismissing him, have also power to suspend from office any trustee for a period not exceeding six months.

14. Except as hereinafter provided, the office of executive trusteeship shall be held for one fasli year by every trustee in rotation in the order of seniority with reference to the date of appointment.

In the case of trustees appointed on the same date, the senior in age shall have precedence for the purposes of this Regulation.

Any trustee appointed as executive trustee during the currency of a fasli shall be entitled to hold the office till the end of the fasli without prejudice to his right to succeed to the office by rotation.

15. No one shall be executive trustee if his appointment is objected to by three of the other trustees and their objection is upheld by the Board.

16. The name of the rotation executive trustee for any particular fasli shall be announced on or before the 31st May preceding; any objection to the appointment of any trustee as executive trustee shall be made and decided before his appointment is announced.

17. The executive trustee shall, subject to the provisions and restrictions herein contained and the rules framed under this scheme, manage the affairs of the said Devastanam on behalf of the trustees.

18. The executive trustee shall make all expenditure according to the budget allotments or as may be sanctioned from time to time as hereinafter provided.

19. The executive trustee shall have the power to sanction and carry out any urgent repairs involving an expenditure of not more than Rs. 100 during the year without the previous sanction of the other trustees.

20. The executive trustee shall have in his chsrge one of the keys of the jewel rooms and of any other rooms, places or boxes in which valuable articles of the Devastanam are, or may be, stored or kept and of the Abhisheka Mantapam and of the shrines of Devarajaswamy and Thayar.

21. The executive trustee shall have the power to suspend any holder of a mirasi office in the Devastanam for a period not exceeding three days.

22. The executive trustee shall be bound to furnish to the other trustees all reasonable information and facilities for inspection of account books, records &c. and property of the Devastanam.

23. Subject to the provisions herein contained and the rules that may be framed from time to time under this scheme, the trustees shall transact all business and determine all questions by resolution to be passed either at the meetings of the trustees or in circulation.

Any subject that is required by two trustees to be considered at a meeting shall not be disposed of in circulation.

24. The decision in any matter shall be according to the majority of the votes of the trustees and, in case of equality of votes, the opinion of the executive trustee, or in the case of a matter decided at a meeting from which he is absent, the opinion of the presiding trustee, shall prevail.

25. The trustees shall on or before the 31st March every year prepare a budget for the following year and submit the same to the Board.

In the preparation of the Budget, the trustees shall have due regard to the custom and usage of the institution.

26. The Board shall have power to modify the budget in such manner as it may think proper.

One copy of the budget as finally settled shall be left in the Devastanam office in the custody of the trustees and another copy shall be sent by the executive trustee for the time being to the court and another to the Board and another copy shall be kept for inspection by the worshippers at the Devastanam office at all reasonable times.

27. The trustees shall have the power to sanction expenditure during any fasli up to a sum of Rs. 1,000 over and above the budget allotments. In

every case in which any amount is so sanctioned beyond the budget allotment, the resolution of the trustees sanctioning the same shall contain the

reasons for such special sanction being made and copies of such resolution shall be communicated by the executive trustee under his signature to

the Board.

The Board shall have power to disallow any such expenditure which may, in its opinion, be improper and in such case the trustees shall refund the amount to the Devastanam Treasurer.

28. The trustees shall have power to grant leases of Immovable property of the

Devastanam on proper terms for a period not exceeding three

years; the trustees may grant a lease for more than 3 years but not exceeding 21 years with the previous sanction of the Board.

29. The trustees shall not sell or mortgage Immovable property of the Devastanam without the previous sanction of the court to be obtained on petition after notice to the Board.

30. The trustees shall, with the approval of the Board, have the power to sell, if necessary, the jewels or other moveable property belonging to the Devastanam.

The treasurer shall be present at any such sales by the trustees.

31. All suits relating to the Devastanam shall be instituted or defended in the name of the trustees, but the executive trustee shall have the conduct of such suits.

32. The trustees shall have power to suspend or dismiss the servant of the Devastanam; but when the holder of any mirasi office in the Devastanam is suspended for a period of over two months or dismissed it shall be subject to the approval of the Board.

33. Any holder of such mirasi office in the Devastanam who is suspended for a period not exceeding two months, shall have a right of appeal in the matter to the Board, provided always that such order of suspension passed against him shall take effect in the meanwhile and the appeal to the Board shall be entertained only in case the appellant has previously obeyed the order of the trustees,

The Board may suspend the order pending the decision of the appeal.

Treasurer

34. There shall be a treasurer for the Devastanam on a monthly salary of not less than Rs. 75-0-0 and not more than Rs. 100-0-0.

35. The treasurer shall be appointed by the court. Any caste Hindu entitled to worship in the temple is eligible to be appointed to the office of the treasurer, provided he is not a lineal male descendant of the family of Sri Thathadesikar or an officeholder in the Devasthanam.

36. The treasurer shall hold office for five years from the date of his appointment but shall be eligible for re-appointment.

37. The treasurer shall, before taking charge of the office, deposit in the court as

security for the due discharge of the duties of his office,

Government promissory notes of the face value of Rs. 2,500.

38. All rents, offerings, presents and other incomes whatsoever of the Devastanam received by or on behalf of the trustees, shall be paid to the treasurer on his receipt.

This rule shall not apply to any offerings or presents which any mirasi officer of the temple is entitled by custom to receive for his own benefit.

39. The treasurer shall also make payments for all proper disbursements.

40. The treasurer shall be in charge, apart from the keys that may be held by the executive trustee or any mirasi office holder, of one of the keys of the jewel rooms and other rooms and places (other than shrines) and boxes in which articles of value belonging to the Devastanam are, or may be, stored or kept.

41. The treasurer shall be responsible for the proper maintenance of accounts in the Devastanam. The treasurer shall be bound to allow inspection of the Devastanam by the trustees or by the members of the Board at all reasonable times.

42. The treasurer shall not keep with him in the temple treasury more than Rs. 2,000 in cash. All amounts over and above the said amount of Rs.

2,000 shall be deposited in the Bank of Madras or in any such other Bank as may be approved of by the court.

43. The treasurer shall not absent himself without previously obtaining leave from the trustees.

44. Whenever the treasurer has to absent himself for a period not longer than one month, he may make arrangement for the due discharge of the duties of his office on his own responsibility.

45. Whenever the treasurer has to absent himself for a period longer than one month, he shall report the same to the court and thereupon the court shall make such arrangements for permitting him to be on leave and for the due discharge of his duties during the period of his absence, as it may think fit.

46. If the treasurer, in a case of sudden emergency, remains absent without making any arrangement for the due discharge of the duties of his office on his own responsibility, the trustees may appoint one of the non-executive

trustees to take charge of the office temporarily, pending the order of the court.

47. Whenever the office of the treasurer falls vacant, any of the trustees or any member of the Board may apply to the court by petition for filling up the vacancy.

If no such application is made for one month after the occurrence of the vacancy, any worshipper shall be entitled to make such application. The

court shall also be entitled to make appointment to the vacancy during his absence on such terms as to security as it might think fit.

48. Any trustee or member of the Board or any two worshippers may apply to the District Court for the removal or suspension of the treasurer and the court in its discretion may fine, suspend or dismiss the treasurer.

Board of Supervision

49. There shall be a Board of supervision for the Devasthanam.

50. The Board shall consist of three members:--one Vadagalai Vaishnava who is not a member of the Thathachari family, one Thengalai

Vaishanava and one Smartha or Madhwa.

51. No office holder of the temple shall be a member of the Board. The holding of Adhyapaka miras office alone shall not of itself be a

disqualification under this clause for being a member of the Board of supervision.

52. The court in making appointment to the Board will be careful in selecting men who by their character, position, education and ability command the confidence of the Hindu community.

The first members of the Board shall be appointed by this Court.

53. The members of the Board shall hold office each for five years, but shall be eligible for re-appointment.

54. The opinion of the Board shall be determined by the majority of its members.

55. The Board, shall before the commencement of every fasli, appoint one of the non-executive trustees concurrent auditor for the following fasli.

It shall be the duty of the person so appointed to carry out the concurrent audit every month during the fasli.

56. The Board shall also, on or before the 31st May of every year, appoint an annual auditor who shall be a qualified accountant, on such

remuneration as it thinks fit to be paid out of the Devasthanam funds, for the purpose of auditing the accounts of the Devasthanam and preparing and submitting an abstract of accounts and a balance sheet of receipts and disbursements for the fasli ending the 30th June following.

57. The report of the auditor, together with balance sheet and the abstract of accounts shall be submitted to the Board on or before the 30th of

September and a copy of the same shall also be forwarded to the court. The accounts of each fasli, together with the report of the auditor and the

abstract of the accounts and the balance sheet, shall be exhibited at the Devasthanam office from the 15th October to 15th November following and

all worshippers of the temple shall be entitled to inspect the same at all reasonable times.

58. The Board shall be entitled to call for any information from the trustees, the executive trustee or the treasurer.

59. The Board of supervision may employ a clerk on a salary of not more than Rs. 20.

60. The members of the Board shall be entitled to first class travelling allowance and batta according to the scale applicable to Government

servants, provided that not more than one first class railway fare to and fro shall be drawn for each journey and provided that the total allowance

to a member shall not exceed Rs. 60 in the year.

61. Any two worshippers, with the sanction of the Advocate-General or the Collector of Chingleput, may apply by petition to the court for the

removal of any member of the Board from office. The court may thereupon after such notice to him and such other persons as it may deem

necessary and after due enquiry, for sufficient reasons, order the removal of such member.

62. Any mirasi holder or servant, between whom and the trustees there is any dispute regarding his right or emoluments, may submit the question to

the decision of the Board on condition that he agrees to be bound by such decision. In such cases the Board shall have power, after notice to the

trustees, to decide the question submitted to them and any decision passed by them, shall be binding on both parties.

63. Any two worshippers, with the sanction of the Advocate-General or the Collector of Chinglepat or the Board or the trustees may apply to the

High Court of Judicature at Madras by petition for application of surplus funds of Devasthanam for founding and maintaining a school for the training

of the archakas or for imparting religious instruction or for the formation of a library or for such other purposes as the High Court may approve.

64. The Court shall, subject to the control of the High Court, make rules, not inconsistent with any provisions herein contained.

(a) for the election of trustees and filling up of vacancies, (6) for the management of the Devasthanam,

(c) for preventing maladministration and misappropriation of temple funds,

(d) for the conduct of business by the trustees and the Board and worship in the temples,

(e) for the framing o