
(1915) 10 MAD CK 0058
In the Madras High Court

Krishna Bhatta and Others

APPELLANT

Vs

Udayavar Srinivasa Shambagu and Others

RESPONDENT

Date of Decision : 15-10-1915

Acts Referred:

Citation : 32 Ind. Cas. 97

Hon'ble Judges : William Ayling, J;Phillips, J

Bench : Division Bench

Judgement

1. The objection taken before us is that the plaintiffs were not competent to sue on behalf of the temple under Clauses 16, 21 and 22 of Exhibit I, the award under which they hold the office of trustees of the temple. It is argued that these clauses entitle only a majority of the five trustees to sue. The clause relating to powers to sue is Clause 21, which empowers a suit to be brought even though some of the trustees are opposed to it, on the condition that the trustees unwilling to sue are made a party defendants. But Clause 21 refers to Clause 16 and it is argued that by implication, unless the requirements of Clause 16 are satisfied, a suit cannot be properly instituted. Assuming that this contention is correct, that Clause 16 applies to the institution of suits, we do not consider that its provisions are fatal to the present suit. Clause 16, in our opinion, provides

- (1) that if the trustees are unanimous their acts will bind the temple;
- (2) if the trustees are divided, then if the majority includes one of the senior muktessors the act of the majority will bind the temple;
- (3) if, however, one or more of the trustees who do not form such a majority as is above referred to choose to do any act against the consent of the other trustees, they shall do so at their own risk as to costs.

2. The present suit, therefore, cannot fail merely because it is not instituted by such a majority.

3. The next objection by the appellants is that in no case can a suit be validly

instituted on behalf of the temple to which all the trustees are not parties (if not as plaintiffs then as defendants) and that unless there are five trustees, the temple cannot be properly represented. It is admitted that at the time of the institution of the suit there were only four trustees as parties to the suit. Since the appeal to this Court was filed, another trustee (the 4th respondent) has died and we have now only three trustees before us. We think that it would be most convenient and just in the circumstances of this case to allow the respondents three months' time during which they may take steps to have two more trustees appointed and made parties to this appeal. Should the respondents get such trustees appointed and made parties and should the trustees so appointed and made parties consent to be bound by the proceedings leading up to this second appeal, some of the formal objections taken before us may not be material. We do not express any opinion upon the effect that the addition of the fresh parties may have on the result of the appeal, but take the course to which we have referred in order to meet the appellants' objection that unless there are five trustees to represent the temple they cannot get a valid discharge.

4. This second appeal again coming on for hearing on 11th and 12th of October 1915 after expiry of the time allowed for appointment of new trustees, and having stood over for consideration till this day, the Court delivered the following

JUDGMENT

5. The respondents have not had additional trustees appointed for the suit temple, as provided in this Court's order of 3rd February 1915; and consequently the question of whether the temple is properly represented in this suit has now to be determined on the merits.

6. Appellants raise two contentions (1) that the alleged resignation of the 5th muktessor does not operate so as to discharge him from his duties as trustee, and

(2) that even if the 5th defendant has ceased to be trustee, the temple cannot be represented by the remaining trustees alone.

7. On the first point it is contended that in accordance with the principles of the Trusts Act II of 1882, which admittedly is not applicable in this case, the resignation of the 5th muktessor is invalid, and reference is made to Sections 44, 45 and 71 of that Act. u/s 71(c) a trustee may be discharged by such means as may be prescribed by the instrument of trust; paragraph 14(b) of the award (Exhibit I) clearly provides for vacancies being caused by resignation. We can, therefore, see no reason why the resignation, which has been accepted in Exhibit F, should be invalid and should not operate as a discharge.

8. As regards the second point, it is argued that unless there are five muktessors in existence and impleaded in the suit, the temple cannot be properly represented, because the award or trust-deed prescribes that the number of trustees shall not be less than five. In support of this proposition, we are referred

to *Santhalva v. Manjanna Shetty* 7 Ind. Cas. 764; (1910) M.W.N. 608; 20 M.L.J. 814. That case was decided entirely on the construction of the language of Act XX of 1863, and it was held that the provisions of Sections 7 and 10 of that Act were obligatory and imperative, and that consequently when a Temple Committee consisted of three members, and one died, the remaining two members do not form a Committee, and cannot perform the functions of the Committee. This interpretation of the Act was dissented from in *Raghunandan Ramanuja Das v. Bibhuti Bhushan Mukerjee* 12 Ind. Cas. 147, but we are not concerned with the interpretation of Act XX of 1863 in this case, and the appellants' Counsel relies upon the principles upon which *Santhalva v. Manjanna Shetty* 7 Ind. Cas. 764; 20 M.L.J. 814 was decided and especially upon the dictum of White, C.J.: "The question whether provisions of this sort are obligatory and imperative or are merely directory must be determined with reference to the words of the particular enactment or the particular settlement in which they occur." We are thus thrown back upon the language of Exhibit I and we can find no obligatory and imperative provision as to the minimum number of moktessors required to represent the temple. No doubt five moktessors are appointed under Exhibit I, two first moktessors and three managing muktersors, and the procedure for filling vacancies caused by death or resignation is provided for [paragraph 14(a) and (b)]. No provision is made for the possibility of the family of either of the first moktessors becoming extinct and it is easily conceivable that the election to a vacancy among the managing moktessors might be infractions. In either case the vacancy could not be filled up under the provisions of Exhibit I and, therefore, it is difficult to suppose that the framers of Exhibit I intended that the minimum number of moktessors should always be five and yet omitted to make proper provision for securing that number. No doubt in paragraph 21, there is a provision that a suit must be filed by the five moktessors jointly, and another provision that the five moktessors must join together and defend a suit against the temple. There is no other passage in the award supporting the appellant's proposition that the temple cannot be represented unless there are five moktessors] To read such a provision into the award would be productive of great inconvenience and difficulty and consequently we do not think that the language of paragraph 21 can be considered to be obligatory and imperative, but is merely directory. This being so, the principle of Section 76 of the Trusts Act is applicable, and that lays down that on the discharge of one of several co-trustees the trust survives and the trust property passes to the others, unless the instrument of trust expressly declares otherwise. We, therefore, hold that the temple was properly represented in this suit.

9. A further objection is taken to the award of interest but it is perfectly clear, as found by both the lower Courts, that there was no tender of the mortgage amount and consequently interest is rightly chargeable, The second appeal is dismissed with costs.