

(1946) 12 MAD CK 0018
In the Madras High Court

Kukati Kothandarama Reddi and Another	APPELLANT
Vs	
Ponnaluru Lakshminarasa Reddi and Another	RESPONDENT

Date of Decision : 18-12-1946

Acts Referred:

Citation : AIR 1948 Mad 152 : (1947) 60 LW 329 : (1947) 2 MLJ 23

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—Appeal No. 109 of 1945: This appeal arises out of O.S. No. 11 of 1942 on the file of the District Court, Nellore, brought

by the hereditary trustee of an excepted temple, dedicated to Sri Kumbeswaraswamivaru, at Komerica, Nellore Taluk to set aside a scheme

framed by the Hindu Religious Endowments Board. Defendant 1 in the suit is the Board and defendants 2 and 3 are the non-hereditary trustees

appointed by the Board under the schema. The appellants here are defendants 2 and 3.

2. The plaintiff was the sole trustee up to 5-1-1939 when the Board as a result of complaints regarding the trustee's administration instituted an

enquiry and passed an order dated 5-1-1939 approving of a scheme for the management of the temple. The hereditary trustee filed a suit, O.S.

No. 4 of 1989 in the Court of the District Judge of Nellore, in which he asked the Court to modify or cancel the scheme. The District Judge held

that the Board had no jurisdiction to frame a scheme in the absence of an application by 20 persons interested except on grounds of

mismanagement or waste of the temple endowments. The learned Judge then went into the grounds on which the Board passed its order

promulgating the scheme. Firstly, he dealt with the insolvency of the trustee which had been annulled. Secondly, he dealt with a charge that the trustee had not been leasing out temple land in open auction. In dealing with that ground the learned Judge refers to a lease granted by the trustee after the framing of the scheme which apparently had been made the subject of cross-examination. His conclusion is that "there is no material to sustain any finding of mismanagement under this head and that the fact that the hereditary trustee leased the temple lands direct and not by open auction is not per se an act of mismanagement." Then the learned Judge goes on to deal with two other allegations which are found to have been insufficient or unsubstantiated. After dealing with the grounds on which the scheme was based, the learned Judge proceeds to discuss some other material not referred to in the order promulgating the scheme. The trustee had been cross-examined with reference to a purchase by his father of 37.42 acres of land for the temple and an allegation that the same land had been purchased by the trustee himself in 1923 for his own benefit from a reversioner who was claiming a title in the land hostile to that of the temple. This matter is dismissed by the learned Judge with the remark that this ancient complication does not appear to have been before the Commissioners when they framed this scheme." The learned Judge then goes on to deal with the failure of the Board to give the hereditary trustee reasonable opportunity to be heard before the scheme was framed. The scheme was set aside on 23-2-1940.

3. On 2-4-1940, a petition was submitted to the Board, Ex. D-1, by 21 worshippers of the temple including the present defendants 2 and 3. In that petition after referring to the proceedings in O.S. No. 4 of 1939 the petitioners go into the details of the transaction relating to the sale of 37 42 acres of the temple lands and the subsequent acquisition of the same property in 1923 by the trustee. They also refer to a mortgage alleged to have been executed by the trustee over temple properties as well as his own private properties and there is a general allegation that he has been cultivating the temple lands and appropriating the income for his own benefit. Then the petitioners proceed to set out the details of the registered lease deed brought into existence by the trustee after the framing of the previous scheme, alleging that this lease was given for an inadequate rental

to a nominee of the trustee himself and that the registered deed was brought into existence during the pendency of the proceedings with ulterior

motives and with a view to obtain a benefit for the trustee. The petition states that these circumstances were not brought to the notice of the Board

when the previous scheme proceedings were going on and prays the Board in the light of this material to start scheme proceedings again. As a

result of this petition the Board held an enquiry and framed the scheme which is now challenged.

4. The learned Judge on the suit of the hereditary trustee attacking this new scheme has set aside the scheme on grounds based on Order 2, Rule 2

and Section 11, Civil P.C. The reasoning of the learned Judge is a little difficult to follow. The learned Judge seems to be of opinion that there was

a decision in the prior suit both in the matter of the lease brought into being after the framing of the earlier scheme and also in the matter of the

alleged breach of trust in connection with the purchase of 37.42 acres by the hereditary trustee. We find it impossible to accept the conclusions of

the learned District Judge on either of these heads. It seems to us that the question of the propriety of the lease executed after the earlier scheme

was framed was quite irrelevant to the previous suit and was never an issue in that suit. It is true that the trial Judge allowed questions to be asked

regarding it and has referred to it in his judgment; but there was not and could not be any decision that the scheme then before the Court was either

good or bad by reason of this particular lease. With reference to the sale of lands it seems to us impossible to contend that there was any

adjudication on this matter by the District Judge, who expressly refused to go into the matter because it was not before the Board at the time when

the scheme was framed. With reference to both these contentions, therefore, it seems to us that the lower Court was clearly wrong in holding that

the decision in the previous suit bars the present suit.

5. The learned District Judge has also assumed that the Board itself was barred from going into these matters on the analogy of Order 2, Rule 2,

Civil P.C. supporting the conclusion by the dictum that ""to hold otherwise would be to justify piecemeal annoyance and harassment of hereditary

trustees indefinitely."" It seems to us that however undesirable it might be for the Board to take up charges against trustees piecemeal, this is purely

a question of administrative expediency. When the Board has investigated one charge against trustee and found it proved and has framed a scheme

in consequence of that finding subsequently when the scheme is set aside, there is no legal bar to prevent the Board from investigating another

charge which might have been but was not gone into at the time when the earlier scheme was framed and making an adverse finding thereon a basis

for framing a fresh scheme. Order 2, Rule 2, Civil P. C, has no application to proceedings before the Hindu Religious Endowments Board.

6. The question has also been raised before us whether, assuming that the decision of the District Judge in the former suit would operate as a bar to

the present suit if the parties were the same, the bar would operate against the present appellants who moved the Board as persons interested in

the temple and who were not represented in the former suit. It is argued that when the Board in defending its own official acts against attack by a

trustee, it is not necessarily representing the general body of persons interested in the temple. In the view that we take on the main question of res

judicata we do not think it necessary to express an opinion on this contention. In this view therefore we allow the appeal and remand the suit for

decision on the merits. Costs in this appeal will abide by the result. Court fee paid on the memorandum of appeal will be refunded.

7. C. M. P No. 6256 of 1946: This is a petition praying for the admission of documents relating to the compromise of the suit arising out of the sale

of the 37-42 acres to which reference has been made in the judgment just pronounced. We do not think it necessary to admit these documents in

appeal; but we leave it open to the hereditary trustee to tender this evidence in the trial of the suit.

8. Appeal No, 509 of 1945: This appeal is connected with App. No. 109 of 1945 in which judgment has just been pronounced. The appellant

applied to the Board for sanction u/s 73, Madras Hindu Religious Endowments Act to file a suit for the removal of the respondent from the sole

hereditary trusteeship of the Sri Kumbeswaraswamivaru temple at Komerica, Nellore taluk. We have not got before us the actual application, nor

have we got the order sanctioning the filing of the suit. From an extract in the lower Court's judgment it appears that sanction was given on 11-9

1939 and that in the order the appellant was described as ""managing trustee of the above temple."" In fact, the appellant ceased to be a trustee of

the temple on 23-2-1910 when the District Judge in O.S. No. 4 of 1939 set aside the scheme under which the appellant had been appointed. The

suit with which we are now concerned was filed on 26-2-1940, that is to say, three days after the judgment in that suit. In the plaint the appellant

does not describe himself as a trustee and, in para. 10 thereof, he recites that he is interested in the worship of the temple and its management that

he has applied to the Board for permission to institute the suit and that the order of the Board granting permission is filed. The written statement

took the objection that the sanction for the filing of the suit was given to the appellant in his capacity as managing trustee under the scheme and that

since the appellant has ceased to be the managing trustee the sanction is no longer operative. This contention however in that particular form is not

dealt with by the learned District Judge who has rejected the suit not on the ground that no sanction was given to the plaintiff in his personal

capacity to institute the suit, but on the ground that the sanction was given to him at a time when he was the managing trustee of the temple and that

the term "'a person having interest'" in Section 78, Hindu Religious Endowments Act excludes a trustee so that the sanction is not valid. No authority

has been quoted by the learned District Judge in support of this view; but he holds that considering the nature of the reliefs mentioned in Section 73

of the Act it is impossible to regard the expression "'a person having interest'" as intended to include the trustee of the temple concerned and that the

idea behind the Section was merely to empower members of the public to file a suit regarding the mismanagement of the endowment.

9. Section 9 of the Act defines the phrase "'person having interest'" in the case of a temple as "'a person who is entitled to attend at the performance

of worship or service in the temple or who is in the habit of attending such performance or of partaking in the benefit of the distribution of gifts

thereat.'" Prima facie, it would appear that the trustee of the temple comes within that definition.

10. The only decision which the respondent has been able to cite which in any way appears to support the view taken by the District Judge is the

decision of Subramania Aiyar and Benson JJ. in *Narayana Aiyar v. Kumaraswami Mudaliar* (1900) 23 Mad. 537 which was the case of a suit by

a trustee and a worshipper for the removal of other trustees and for other reliefs in which the learned Judges seemed to assume that had the suit

been filed by the trustee alone the position would be different with reference to the applicability of Section 539, Civil P.C., corresponding to

Section 92 of the present Code, from the position where the trustee joins along with another worshipper. We have been referred to two decisions

on behalf of the appellant in which Benches of this Court have recognised that a trustee can maintain a suit u/s 92, Civil P.C. for the removal of

another trustee, provided that he is acting in vindication of the rights of the worshippers as a whole and not merely agitating his personal claims:

vide *Balakrishna Odayar v. Jagannadhacbariar* AIR 1923 Mad. 820 and *Subramania Pillai v. Krishnaswami* AIR 1919 Mad. 159. There is also

the case in *Hazarimull Chandukchand V. Vedachala Chettiar* AIR 1932 Mad. 234 where it seems to have been assumed that a suit by one trustee

for the removal of another trustee on grounds of mismanagement would fall within Section 73, Hindu Religious Endowments Act. It seems to us

therefore that the balance of authority is very much against the view which the learned District Judge has taken. There is of course the added

difficulty that the present suit does not purport to have been brought by a trustee as such but is brought by a person who is not a trustee suing as a

person interested in the institution, and there is no apparent reason why he should be disqualified from suing if the sanction has been properly

obtained, merely because he was a trustee at the time when the sanction was obtained. We do not think it desirable to go into the contention that

the sanction of the appellant to file the suit is no longer operative because it purports to have been given to him as trustee and not as a person

interested in the institution. That is a question on which there is no decision by the learned District Judge and the documents bearing on the question

have not yet been exhibited. In this view, we allow the appeal and remand the suit for disposal on the other contentions after taking such evidence

as may be tendered. The costs in the appeal will abide by the result. The court fee paid on the memorandum of appeal will be refunded.