

(1939) 07 MAD CK 0007
In the Madras High Court

Lakshmana Pillai and Others

APPELLANT

Vs

Govindam Pillai and Others

RESPONDENT

Date of Decision : 21-07-1939

Acts Referred:

Citation : AIR 1939 Mad 969 : (1939) 50 LW 460 : (1939) 2 MLJ 475

Hon'ble Judges : Burn, J

Bench : Division Bench

Judgement

Burn, J.—This is an application to revise the order passed by the learned Subordinate Judge of Trichinopoly on 5th October, 1938, in O.S.

No. 32 of 1913. The suit was a. scheme suit in which a scheme was framed for the Sri Kailasanathaswami temple at Tirumanur. Under the scheme

the Subordinate Judge of Trichinopoly is entrusted with the duty of appointing trustees to fill vacancies as they arise. The order of the lower Court

shows that three vacancies arose in the office of trustee and the learned Subordinate Judge was moved to fill up the vacancies. The matter was

posted for hearing to the 28th July, 1938, and on that date the learned Subordinate Judge passed an order appointing the present petitioners as &

trustees. The order, however, was not issued from the office. On the 1st August, 1938, an application was made by one Manikkam Pillai who had

been a candidate for the office of trustee to the Subordinate Judge praying that the order of the 28th July appointing the three trustees should be set

aside, that the matter should be reopened and the petition disposed of after hearing all the applicants. It was alleged in the affidavit filed in support

of that application that on the morning of the 28th July Manikkam Pillai and some other applicants came to the Sub-Court, found that a Sessions

case was going on and were informed (by whom it was not stated) that the petition would not be taken up that day. They were informed, he said that the petition had been adjourned and posted to some day in August and therefore Manikkam Pillai and some other applicants left the Court at about 2 P.M. The Subordinate Judge, they learnt, had taken up the matter later in the afternoon about 3-30 P.M. and had appointed the three present petitioners as trustees. On this application the learned Subordinate Judge gave notice to the present petitioners and on the 8th September, the learned Subordinate Judge decided to review his order of the 28th July and to inquire afresh into the matter of filling up the vacancies in the office of trustees. He therefore called for fresh applications and on the 5th October he passed the order against which this revision petition has been brought. In that order the learned Subordinate Judge purports to cancel the appointments of the three petitioners for reasons stated by him and to appoint the three respondents. The petitioners' case is that the learned Subordinate Judge had no jurisdiction to review or cancel the order which he passed on the 28th July appointing them as trustees. They therefore desire that the order of the learned Subordinate Judge should be set aside.

2. Learned Counsel for the respondents maintains that the order of the learned Subordinate Judge was proper. He contends on the one hand that, if the learned Subordinate Judge was acting as a Court, he had inherent power to set aside the order which had been passed on the 28th July at a time when his clients were under a mistake or misapprehension. On the other hand, if the Subordinate Judge was acting only as a *persona designata* and not as a Court, learned Counsel for the respondents contends that his order is not liable to be revised. In support of his contention learned Counsel refers to the case reported in *Moharmani Kuer Vs. Bhankumar Chand and Another*, and another case reported in *Sivarao v. Gangamma* (1934) 68 M.L.J. 66 : ILR 58 Mad. 84. These cases, I think, are not parallel. The first is a case in which, owing to the omission of the Court's establishment, no notice was sent to one party and the latter case is one in which, owing to the act of the Judge himself, one party was not fully heard. In the present case it cannot, I think, be fairly alleged that there was any act of the Court by which the respondents or any other of the

applicants for the office of trustee were misled. They do not say who informed them that the matter had been adjourned and would not be taken up

on the 28th July. It has been stated that their Counsel looked into some rough B diary and saw therein an entry that this matter had been adjourned

to the 23rd August, 1938. It is not proved who made such an entry or under what authority. If that was done by a clerk in the office on his own

responsibility, that is not, in my opinion, sufficient to bring the case within the principle applied in the two cases quoted. With regard to the

contention that the Subordinate Judge was acting as a *persona designata*, learned Counsel for the petitioners points out that in *Ranganatha*

Thathachariar v. Krishnaswami Thathachariar I.L.R.(1923) 47 Mad. 139, it was clearly-held by a Bench of this Court that a Judge or a Court

carrying out the provisions of a scheme decree acts as a Court and not as a *persona designata*.

3. the contention of the petitioners must, I think, be upheld. The learned Subordinate Judge had power to pass the orders of appointment which he

passed on 28th July, 1938, but he had not, I think, power to cancel those orders in the circumstances, of this case. As I have already stated, the

respondents and the other applicants who went away on the 28th July were not misled or put into any disadvantageous position by reason of any

act done by the learned Subordinate Judge or by anything which could be considered to be the act of the Court. When the learned Subordinate

Judge appointed these three petitioners as trustees he conferred upon them, as the learned Counsel for the petitioners contends, the status of

trustees and once they had got that status, they could only be removed by proceedings properly taken in the Court. It is not in my opinion possible

to extend the inherent powers of the Court to cover such a case as this. Learned Counsel for the respondents contends that, since these petitioners

themselves made applications to the learned Subordinate Judge for appointment after he called for such applications on the 8th September, 1938,

they clearly acquiesced in his proceedings and ought not to be heard to object to them now. This, however, overlooks the principle that mere

acquiescence does not confer jurisdiction which is otherwise lacking. This petition is accordingly allowed and the order of the learned Subordinate

Judge dated 5th October, 1938, is set aside. The appointments made by the learned Subordinate Judge on the 28th July, 1938, will therefore take

effect. The petitioners will recover their costs of this petition from the respondents.

4. I am informed that the appointment of treasurer has been filled but there is no dispute with regard to that.