

(1964) 04 MAD CK 0046

In the Madras High Court

Case No : Writ App. No. 243 of 1963

M. Angappan and another

APPELLANT

Vs

The Deputy Commissioner, Hindu Religious and Charitable
Endowments, Madras and another

RESPONDENT

Date of Decision : 29-04-1964

Acts Referred:

Citation : (1964) 04 MAD CK 0046

Hon'ble Judges : Ramachandra Iyer, C.J; Venkatadri, J

Bench : Division Bench

Advocate : R. Sundaralingam, for the Appellant; R. Desikachari, Joseph Ignatius and S. Krishna Rao, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Iyer, C.J.—This appeal is against the Judgment of Srinivasan J., and it involves the construction of S. 101 of the Hindu Religious and Charitable Endowments Act, 1959. For the Sri Mariamman and Sri Angalamman Temples at Andipatti Village, Salem Taluk, the Area Committee appointed the second respondent to this appeal and four others as non-hereditary trustees. The five trustees appear to have met on 17th January 1961, and elected the second respondent as the Chairman of the Board of Trustees. The second respondent applied then before the Deputy Commissioner, Hindu Religious and Charitable Endowments, for a certificate under S. 101 of the Act to enable him to take possession of the properties from the appellants who claim to be the hereditary trustees of the institution. We are not here concerned with the question whether they are the hereditary trustees or not. The only point taken in this appeal is whether it would be competent for the second respondent alone to apply to the Deputy Commissioner under S. 101 of the Act for a certificate, or whether it would be necessary that the entire body of trustees should so apply. Srinivasan J., has held that the second respondent could sustain the application by himself. The same view appears to have been taken by Jagadisan J., in W.P. No. 272 of

1959. In a later case, however, Srinivasan J., after discussing the matter more fully, came to the conclusion that an application for the issue of a certificate by one only of the trustees, where there are more than one, even if he happens to be the managing trustee, would be incompetent. This view, in our opinion, accords with the provisions of the section itself. S. 101 provides that where a person has been appointed as a trustee and he is resisted in obtaining possession of the religious institution or its properties or its records by any one of the persons referred to in that section, he would be entitled to obtain an order from a Magistrate having jurisdiction over the area for being put in possession of the properties. To entitle him to do so he will have to produce a certificate by the Commissioner in the prescribed form setting forth that the properties in question belonged to the religious institution. The proviso to that section says that before issuing any such certificate, the Commissioner shall give notice to the person complained against, of his intention to issue the certificate. The application for certificate is therefore itself a statutory proceeding. A careful reading of the section shows that the only person entitled to obtain the certificate would be the person who has been appointed as a trustee or executive officer as the case may be. It is a well-known rule of interpretation that where a statute employs a singular, it will include the plural, unless it is otherwise indicated. When, therefore, a single trustee is appointed, he would undoubtedly have the right to apply for the certificate and then armed with the certificate apply again to the appropriate Magistrate for being put in possession of the property. But, where, as in the present case, more than one trustee has been appointed, all of them should apply together. This is the plain reading of the statute. This view is in accord with the principle as well.

2. It is well settled that in the case of co-trustees, the office is a joint one, all of them forming, as it were, one collective body. They should therefore execute the duties of their office in their joint capacity. It will undoubtedly be open to them in matters of a routine nature to divide their duties. But, so far as their application to Courts and to public authorities or enforcement of statutory right or privileges are concerned, they should all figure as a party or apply for the same. This principle has been recognised by this Court in *Ramalingam alias Karuppanna Koundar Vs. Peria Kali Goundan and Others*, . In that case a scheme provided that the managing trustee could represent the devastanam in all suits and proceedings. Notwithstanding that provision it was held that all the trustees should figure as parties in suits and proceedings, the principle being that it is only the entire body of trustees that can represent the institution.

3. The question was more elaborately considered in *The Commissioner for Hindu Religious and Charitable Endowments Vs. A.P.S. Sethurama Pillai and Others*, to which one of us was a party. It was observed :

It is well settled that where there are more trustees than one, all would be entitled to act jointly; they would be in the position of joint trustees and form a corporate body. A scheme providing for the management of a private temple by

turns amongst the members of the family would be only an arrangement *inter se*, but outside the family, the co-trustee would form a corporate entity. The representation of an institution could be valid or effective only if all the trustees jointly act; a fortiori the institution could be bound by an order of the Board under the Act only if all the trustees are impleaded to the proceedings before the Board.

It is however suggested by the learned Additional Government Pleader that whatever may be the position in regard to representing religious institution generally an application under S. 101 of the Act, must be held to be competent even if any one among several trustees were alone to make the application. Support for the argument is sought from the terms of the Section which says : "Where a person has been appointed as trustee", which is sought to be interpreted to mean "any one person appointed as a trustee". There is no warrant for that view. A trustee means all the trustees where there is more than one appointed. We have earlier referred to the fact that in the case of appointment of joint trustees, the singular word "a person" will include all the trustees.

4. The learned Additional Government Pleader has placed considerable reliance upon the following passage in Mukerjea's Hindu Law of Religious and Charitable Trusts, 2nd Edn., page 232 :

It is not uncommon to hear one of several trustees spoken of as the acting trustee but the Court knows no such distinction; all who accept the office are in the eyes of the law acting trustees. If any one refuse or be incapable to join, it is not competent for the others to proceed without him, but the administration of the trust must in that case devolve upon the Court. However, the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both. But such sanction or approval must be strictly proved.

Relying on the above statement of the law it has been argued that inasmuch as the Chairman of the Board of Trustees in the instant case has been authorised to institute proceedings under S. 101 of the Act, the filing of the petition by him must be regarded as having been made by all.

5. We are, however, unable to accept that argument. The particular passage referred, refers to the validation of acts done by one of the trustees with the sanction of others, they must be of a routine kind. That has no application to the case of representation in suits, particularly so, in a matter of fulfilling the terms of a statute which contemplates the application by the entire body of trustees. In *Kulandayar Poosari v. Arunachala Pandaram* 77 L.W. 109, Srinivasan, J., observed that in order to obtain an effective determination of the question under S. 101, it would be necessary that the institution should be represented in the proper legal form, and, that could be achieved when the entire body of trustees were brought on record. In the judgment now under appeal the learned Judge has no doubt made a distinction between a case of an application for a certificate

and the proceedings following the issue of a certificate, viz., those instituted before the Magistrate. On the terms of the statute it is not possible to sustain any such distinction. In respect of both of them, S. 101 enables the trustees appointed, to apply. We have earlier said that the word "trustee" will mean "trustees" where more than one have been appointed. It would therefore follow that for both the purpose of applying and obtaining a certificate from the Commissioner as well as for instituting the proceedings under S. 101 of the Act, in pursuance of such certificate before a Magistrate, all the trustees appointed should join together. The certificate now granted, being in favour of one among five trustees, cannot be accepted as a valid one. The appeal will have therefore to be allowed. There will be no order as to costs.