

(1936) 10 MAD CK 0043
In the Madras High Court

M. Shanmuga Mudaliar and Another	APPELLANT
Vs	
P.K.A.C.T. Veerappa Chettiar and Others	RESPONDENT

Date of Decision : 20-10-1936

Acts Referred:

Citation : AIR 1937 Mad 594 : (1937) 45 LW 653

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This appeal arises out of a suit brought for some modification in the scheme framed by this Court in 1920 in respect of the management of Sri Arunachalaswaraswamy Devasthanam at Tiruvannamalai. The only question raised by the appellants relates to one of the points dealt with by the learned Judge in para. 12 of his judgment. The persons who are said to have raised that question before the learned Judge do not appear before us. We have examined the pleadings in the lower Court and they do not give any indication that the point dealt with in that paragraph was intended to be raised. It is however represented that towards the end of the argument before the learned District Judge suggestions of the kind referred to in para. 12 were made by certain persons. While as regards two of these suggestions the learned Judge contented himself with leaving the matter to the discretion of the Board, he went further as regards the third suggestion, namely that no member of the Reddiar community should be appointed a trustee of the temple. Some of the observations made by the learned Judge on the point last referred to are open to criticism, especially the way in which the learned Judge disposes of the fact that endowments for the suit temple have been made by the members of the Reddiar community.

2. The documents tendered in evidence in this appeal and which have been admitted by us so far as they are public documents also show that on more than one occasion in the past, the members of that community have been appointed trustees of the suit temple by the authorities who then had the appointing power. In these circumstances we think it best to say that the observations made by the

learned Judge in para. 12 of his judgment as regards the Reddiar community had better be treated as not made. As the Court interpreting below has not incorporated any specific disqualification about that community in the scheme as finally settled by him, we do not think it necessary to say more than this, that in respect of applicants from that community, the Board will exercise the same discretion as it is expected to exercise in respect of applications from the members of the other communities for a seat on the trust Board and deal with each application on its own merits in the light of the usage and the past history of the temple. To this extent the appeal is allowed; but in this view there need not be any order as to the costs of the appeal.

3. A memorandum of objections has been preferred by the Endowments Board and three points were raised by the learned counsel appearing for the Board. The main objection related to Clause 4 of the scheme so far as it recognizes defendant 1 as a life trustee unless removed for good cause. It has been argued that if this is the creation of a life trusteeship in his favour for the first time, it is not in the interests of the institution to create such a life tenure, but that, if on the other hand, it is to be regarded as a recognition of a pre-existing life tenure, it is opposed to the provisions of Section 51, Religious Endowments Act, because Clause 4 of that section enacts that all the non-hereditary trustees lawfully holding office on the date of the commencement of that Act shall be entitled to hold office only for one year from that date. We do not understand the learned Judge as intending to create a life tenure in defendant 1 by his scheme. He seems to proceed on the footing that defendant 1 was already entitled to the office for life. Mr. Subba Rao, the learned counsel appearing for the Endowments Board, has questioned the correctness of that view.

4. Admittedly the present defendant 1 was one of the trustees in office at the time that the High Court framed the scheme in 1920. Clause 3 of the scheme as then framed provided that the then trustees should continue in office until removed by the committee for good cause. Mr. Subba Rao is of course right in suggesting that that clause by itself would not create a life interestship in defendant 1. But it would appear that the trustees then in office had been appointed under the pre-existing law presumably for their lives. It is significant in this connexion that in the memorandum of cross objections filed before the High Court at the time the former scheme was framed, a point was specifically raised that the tenure of the then trustee should not be for life but only for five years. Reading Clause 3 of the former scheme in the light of that objection and of the fact that the then trustees had been appointed under the previous law, we think that the natural interpretation of Clause 3 of the original scheme is that the then trustees were entitled, to be in office for life subject to removal for good cause. Mr. Subba Rao next contended that, even on this assumption, defendant 1's tenure of office must be deemed to have come to an end under Clause 4, Section 51. But this argument does not give full effect to the provision in Section 75 of the Act that schemes framed in suits u/s 92. Civil P.C., prior to the coming into force of Act 2 of 1927 shall, notwithstanding any provisions of this Act which

may be inconsistent with the provisions of such scheme, be deemed to be a scheme settled under this Act. Beading Sections 51 and 75 together, we think that the right secured to defendant 1 by Clause 3 of the original scheme cannot be held to have been taken away by Section 51, Clause 4.

5. Two other objections were raised before us, one relating to Clause 11 and the other to Clause 15 of the scheme as now framed by the learned Judge. Clause 11 provides that the auditor's fee shall be fixed by the Board and paid by the Board. Mr. Subba Rao invited our attention to the provision in the Act that in the case of non-excepted temples the auditor's fee should be paid by the committee and not by the Board. It is explained on the other side that the provision was put in, in this form by the lower Court because at the time the scheme was there framed, the local committee was not functioning. We recognize that the continuance of this provision may be somewhat anomalous in view of the provisions of Section 48. But as the committee is not before us we do not feel justified in making a modification which will have the effect of throwing the burden of the auditor's fee on the committee. We expect that there will be no difficulty in the Board and the committee coming to the proper understanding in respect of the matter. If no such arrangement is found feasible, a friendly suit for necessary modification may be necessary.

6. As regards the provisions in Clause 15 about the appointment of a manager, Mr. Subba Rao desires that the power of appointment should be vested in the Board and not in the trustees. We do not think that this will conduce to smooth administration. The interests of the institution seem to us sufficiently protected by the provision in Clause 16 giving the Board power to remove the managar for proper reasons. The memorandum of objections must there. fore be dismissed with costs of defendant 1.