

(1921) 12 MAD CK 0007
In the Madras High Court

Matamulla Manikoth Pattan Chandu

APPELLANT

Vs

Kuttiyil Rayiru and Others

RESPONDENT

Date of Decision : 09-12-1921

Acts Referred:

Citation : AIR 1922 Mad 2 : 66 Ind. Cas. 396 : (1922) 15 LW 264 : (1922) 42 MLJ 280

Judgement

1. We accept the finding. In the light of it the facts we have to deal with are that the 2nd plaintiff has obtained a melcharth from five out of the seven

uralars, of the two remaining uralars one having been and the other, the 2nd defendant, not having been consulted. The 2nd defendant, as now

appears, is the seventh uralar. The only question remaining is whether the melcharth is invalidated by the failure, to consult him.

2. The general rule that uralars are entitled to be consulted before any act is clone in the management of the trust property is well established. It is,

however, argued that this general rule is subject to an exception, when the omission to consult the uralar is attributable to his possession of an

interest which would disqualify him from giving an independent opinion.

3. In the present case the evidence is stated by the lower Appellate Court as being that plaintiff's witness 1 asked the 2nd defendant to take a

renewal of his lease and the 2nd defendant said he would not as he could not pay the arrears of rent already due. It was after this that the suit

melcharth was given to the 2nd plaintiff to enable him to oust the 2nd defendant from possession of the property.

4. Now, it is quite clear that the whole of the difficulty in this case has arisen from the fact that the 2nd defendant had obtained a benefit from his

trust. But with that we are not concerned directly. What we have to settle is whether his having done so justifies us in holding that so far as he was concerned, the rule requiring consultation between the trustees was abrogated. The authority on this point, as already stated, lays down that rule in highly general terms. Thus it was said in *Kunhan v. Moorthi* 20 M.L.J. 951 that the very principle of recognising the validity of the acts of the majority of the trustees of a public trust ""--and that principle is not disputed--"" involves the necessity of the majority being ascertained after mutual discussion among all the members;"" and *Wilkinson v. Malin* (1832) 2 Crompton and Jervis, 636 : 2 Tyrwhit 544 is in the same sense. Mr. Menon on behalf of the plaintiffs has relied on *The Attorney-General v. Shearman* 48 E.R. 1119. But that case was distinguished in *Kunhan v. Moorthi* 20 M.L.J. 951 and we may add that in it there was no question of failure to consult the trustee, who had not joined in the lease under consideration, since that lease had been sent to him for signature before any action had been taken to give effect to it and he could then have put forward his objections. The decision is authority only for this, that a majority of trustees of a public trust can act in the business of the trust. There is then, in our opinion, no reason for treating cases similar to those before us as exceptions to the principle thus established. For it cannot be assumed that a trustee in the position of 2nd defendant would necessarily take advantage of an opportunity to join in the discussion of the matter, in which he was interested, at all or that, if he did so, he would be incapable of giving a disinterested opinion for the advantage of the trust; and again we cannot assume that the other trustees would necessarily consider themselves bound to act on his opinion or would be unable to apply their minds to the question whether it was invalidated by his interest.

5. In these circumstances, we must hold that the 2nd defendant was, notwithstanding his interest in the suit property, entitled to be consulted and that the melcharth given to the 2nd plaintiff without such consultation does not bind the trust and cannot be enforced. The result is that the appeal is allowed and the District Munsifs decision is restored with costs here and in the lower Appellate Court.