

(1938) 09 MAD CK 0045
In the Madras High Court

Nalam Lakshmikantham and Others	Vs	APPELLANT
Nalam Ramalingayya and Others		RESPONDENT

Date of Decision : 20-09-1938

Acts Referred:

Citation : AIR 1939 Mad 170 : (1938) 48 LW 742 : (1938) 2 MLJ 972

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—Some of the plaintiffs in the suit have preferred this appeal against a decree which declined to file an award and embody it in a decree of Court. The parties are descendants of different branches of what may be referred to as the Nalam family which had founded various public charities in the circars. During the period of the first defendant's management, disputes arose between them and as a result, a muchilika referring the disputes to arbitration was executed by the parties on 8th June, 1931. Reference was made in the muchilika itself to the questions which the arbitrator was to decide. We may refer in particular to questions 4 and 5, namely, (4) How is the management of the choultry at Rajahmundry by the first defendant from 1919 up to date? How is the management of the Dharmakarthis of the other charitable institutions for the past 12 years? (5) What is the nature of the scheme to be framed regarding the future administration of the said institutions? The arbitrator passed an award on 10th January, 1932 and stated it as his conclusion that the first defendant's management of the choultry had not been blameworthy. As regards future management, he drew up an elaborate scheme consisting of about 35 clauses. As the parties were not prepared to accept this award, the plaintiffs filed this suit on 4th July, 1932.

2. The defendants raised various objections, out of which it is sufficient for the purpose of this appeal to refer to one, which formed the subject-matter of the 8th issue. Though this issue has not been very clearly worded, the contention was made clear in the course of the argument in the lower Court and it was

understood as raising the question, whether the award was illegal and cannot be made a decree of Court as it related to matters which should be made the subject-matter of a suit u/s 92, Civil Procedure Code. The learned Subordinate Judge upheld this contention and dismissed the suit on this ground. He also found against the plaintiffs on certain other contentions; but in the view that we take on the objection based on Section 92 of the Civil Procedure Code, it is unnecessary to deal with the other objections.

3. Before us, the learned Counsel for the appellants has mainly rested his argument in support of the appeal on the principle laid down by a Full Bench of this Court in Appanna Poricha Vs. Narasinga Poricha and Others, and recently reaffirmed by a Division Bench in Shanmukham Chetty v. Govinda Chetty (1937) 46 L.W. 426. We do not think that the principle of those decisions helps the appellants in the present case. All that was there laid down was that where a person is seeking to assert or vindicate his individual or personal right in respect of the management of a charity, the mere fact that a relief asked for may happen to be one of the kinds specified in Section 92 will not preclude the maintainability of the suit without conforming to the provisions of Section 92 of the Civil Procedure Code. But what the plaintiffs are now attempting to do and what the award has purported to do is really not merely to protect the individual or personal right of a party. The arbitrator was required to investigate the nature of the management of the various charitable trusts by the parties in management thereof and was also asked to lay down a scheme for the future management of the institutions. These cannot reasonably be regarded as matters arising out of the private right of any particular individual. As pointed out in Sundara Ayyar and Others Vs. Morari Varada Ayyar and Others, , the fact that the disputing parties belong to the family or families in which the management of the institution is vested, will not of itself take the case out of the purview of Section 92 of the CPC if the object of the proceedings is to safeguard the interests of the institution or obtain directions for its proper management. See also Ramanuja Krishna Aiyangar and Another Vs. Ramanuja Alwarappa Aiyangar, .

4. The learned Counsel for the appellants next relied upon the decision in Ramanathan Chetti Vs. Murugappa Chetti, , confirmed by the Judicial Committee in 10 CWN 825 (Privy Council) and contended that if as there held it is open to the parties entitled to the management of a public, charitable or religious institution to settle a scheme of management among themselves, there was no reason why such a scheme should not be settled by a reference to arbitration; he insisted that the Court must in both cases give effect to the scheme, when one of the parties sought to disturb it. But as explained in Ramanuja Krishna Aiyangar and Another Vs. Ramanuja Alwarappa Aiyangar, , Ramanathan Chetti Vs. Murugappa Chetti, and 10 CWN 825 (Privy Council) did not deal with the power of the Court to decree a scheme agreed on between the parties or settled by an arbitrator; the Court was only called upon to protect private rights which had accrued to certain parties under a scheme of management which had been accepted and acted upon for a long time. It is true that in 10 CWN 825 (Privy

Council) their Lordships of the Judicial Committee observed that the arrangement which had been agreed to by the parties in that case was one which would have been sanctioned by the Court if its authority had been invoked. It is not clear what kind of sanction their Lordships had in view in making that observation. It cannot be a sanction u/s 92, Civil Procedure Code, because they go on to add that the arrangement was one which the parties interested were competent to make without applying to the Court. All that their Lordships seem to have had in mind was the consideration that the arrangement was not prejudicial to the interests of the institution. The suit itself was one for possession by the member who was entitled to a particular turn of management according to the existing scheme and there was no occasion for any objection u/s 92 of the CPC in that case.

5. Ramlal Hargopal v. Kishanchand (1923) 46 M.L.J. 628 : L.R. 51 IndAp 72 : ILR 51 Cal. 361 (P.C.) to which Mr. Govindarajachari drew our attention does not help him because the Privy Council in that case left open the question: Whether the management of a public religious trust could or could not be referred to arbitration. In Muhammad Ibrahim Khan v. Ahmad Said Khan I.L.R.(1910) All. 503 a Division Bench went the length of holding that a question of disputed succession to the trusteeship of a public religious trust could not be made the subject of a reference to arbitration. It may be a matter for argument whether in Venkatachalam Chettiar v. Ramanathan Chettiar (1921) 15 L.W. 111 this Court has not adopted a different view; it is sufficient to say that the latter decision is much more limited in scope than the point now under consideration. As observed by Napier, J., in p. 117, the disputes in that case was "one between two branches of a family as to their respective trustee to act as trustee". Sadasiva Aiyar, J., who was a party to that decision clearly indicated in Yegnarama Dikshadar v. Gopala Pattar (1918) 47 I.C. 548 that in the case of a public religious institution, a decree settling a scheme as per an award passed on a private reference would be a nullity.

6. It is not necessary for the purpose of this appeal to express any opinion on the wider question, whether and under what conditions questions relating to a public trust can be referred to arbitration (as to the English Practice, see Russell on Award, 13th Edition, p. 3, Tudor on Charities, 5th Edition, p. 349). We restrict ourselves to the question of the effect of Section 92, Civil Procedure Code, on proceedings of the kind now before us. The language of Clause (2) of that section is so wide that it is difficult to hold that the present suit is not precluded by its terms. By embodying the award in a decree of Court, the Court will be practically framing a scheme for the management of the institutions in question and it will be an evasion of the provisions of the section to allow it to be done under the guise of an award when the procedure prescribed by Section 92, Civil Procedure Code, has not been complied with.

7. It was finally contended by the learned Counsel for the appellants that we may omit such portions of the award as relate to reliefs of the kind contemplated by

Section 92 and embody the rest of it in a decree; and he relied on the analogy of cases where plaints which combined other reliefs with those falling u/s 92 had been allowed to be limited to the other reliefs. Here the suit prays for a decree in terms of an award passed on a private reference and there is no suggestion that the award has dealt with matters not covered by the reference; in such a case it is not open to the Court to separate one portion of the award from another and limit the decree to portions thereof.

8. The appeal accordingly fails and must be dismissed with costs.