

(1975) 05 KAR CK 0001
In the Karnataka High Court
Case No : First Appeal No. 61 of 1971

Narasimhiah and Others

APPELLANT

Vs

Y.H. Venkataramanappa and Others

RESPONDENT

Date of Decision : 27-05-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92, 96

Citation : AIR 1976 Kar 43 : (1975) 2 KarLJ 446

Hon'ble Judges : K. Bhimlah, J;B. Venkataswami, J

Bench : Division Bench

Advocate : T. Krishna Rao, for K.R. Karanth, S.G. Doddakale Gowda and S. Shivram, for the Appellant; S.G. Sundaraswamy, for Mahd. Taxis Ali, S.K.V. Chalapathy, H.M. Laxminarayana and S.N. Gowda, for the Respondent

Judgement

Venkataswaar, J.—This Regular First Appeal u/s 96, Civil P. C., arises out of a suit filed u/s 92, Civil P. C. Being aggrieved by the decree of dismissal of suit made by the District Judge, Bangalore, in O. S. 54/65, the plaintiffs have preferred this appeal.

2. The material allegations in the pleadings, briefly stated, are as follows:-

There is a shrine with some land surrounding it dedicated to the deity Voni Anjaneya Swami in Bangalore, belonging to the Devanga (weavers) Community of the said city, having been constructed by the members of the said community. All the parties to the suit belong to the said community. The deity was and is being worshipped by the members of the said section of the public. In these circumstances, the property of the temple constituted a public religious and charitable trust constituted by the Devanga community and no individual of that community had any private rights over it. The surrounding open spaces have been granted by the Corporation of the City of Bangalore on long term leases for the purpose of the said temple on nominal rents, and they also, therefore, formed part of the trust in question. The said grants were secured by the 1st defendant (1st respondent) styling himself as the president of the said temple in

or about the year 1961. The said open spaces have been built upon and the said structures are being used as a "Kalyana Mantapa" and shops ever since, producing an income of over Rs. 25,000/- per annum.

3. The aforesaid trust has been in existence for over 100 years, its origin being unknown, and was being enjoyed by all the members of the Devanga community during all those years.

4. In the year 1936, the then Municipality of Bangalore acquired a portion of the temple land and offered to pay compensation to the trustees, whoever they were, and had named some of them including the 1st defendant (Y. H. Venkataramanappa) who was at the time a municipal councillor. The 1st defendant claimed and received the compensation payable, amounting to Rupees 2,017-9-0, specifically as one of the trustees of the temple.

5. Thereafter, the 1st defendant utilised the said amount to renovate and rebuild the temple, and according to him, an expense of about Rs. 15,000/- was incurred, the excess expenditure having been met by his own funds.

6. On 28-11-1952, the 1st defendant along with defendants 2 to 8 in the suit brought into existence a trust deed (Ex. P-15), with the object of constituting a trust with himself and the said defendants along with some others, who have since deceased, as trustees for managing the aforesaid properties and the temple belonging to the Devanga community. This act was clearly unauthorised, as they were all at the time in the position of trustees-de-son-tort. The recitals in the said deed would clearly indicate that the 1st defendant had held himself out as an hereditary managing trustee, and that before him his ancestors were acting in a similar capacity on behalf of all the members of the Devanga community. By this deed, he has also provided inter alia for management in perpetuity of his descendants with the help of other trustees who were to be co-opted by the committee as and when found necessary in accordance with the terms thereof. In order to create further confusion a second trust deed was executed by the 1st defendant on 24-3-1954, creating a Trust called "Yajaman Hanumanthappa Venkatalakshamma Trust", and purporting to make some provision for the temple in point, among other matters. It is also averred by the plaintiffs that the deity had been endowed with valuable jewellery and the same was in the custody of the 1st defendant.

7. The 1st defendant who was in charge of all these properties ever since 1936, when the compensation amount was received by him from the Municipality, by holding forth that he was one of the trustees, had not at all rendered accounts to the Devanga community. He has further named the "Kalyana Mantap" after his own name as "Y. H. Venkataramanappa's Kalyana Mantap" and has decorated the same with portraits of himself and other members of his family, making it appear to the world at large that the said buildings were his own. In view of all these acts of mismanagement and waste, the plaintiffs and others had submitted a memorandum on 21-7-1965 to the Mayor of Bangalore requesting for suitable

action. The 1st defendant also got published a memorandum on 15-8-1965, purporting to counteract and meet the allegations of the plaintiffs made in the said memorandum. It is in these circumstances, that the plaintiffs have approached the court u/s 92, Civil P. C., after obtaining the necessary sanction from the Advocate General, for relief.

8. The reliefs claimed in the plaint are that (1) the trust deed of 28-11-1952 be declared as void and ineffective; (2) the defendants in possession as trustees be removed; (3) a scheme be settled for the proper management of the Trust and vest the properties with the committee to be constituted thereunder; (4) the defendants do render accounts regarding the management from the date of assumption of office.

9. The suit was resisted on behalf of the defendants by filing several written statements, and it is sufficient in this connection to briefly summarise the stand of the 1st defendant, who incidentally, is no more, and is represented by his sons, perhaps mainly on account of the terms of the trust deed of 1952, already adverted to.

10. The case of the 1st defendant was that the temple in question had been from the inception a private family temple of himself and his ancestors and that before the execution of the trust deed of 1952 the wishes of the members of the Devanga community had been ascertained. The suit as brought did not fall within the scope of Section 92, Civil Procedure Code. The relief of declaration regarding the deed of 1952 was barred by the provisions of the Limitation Act. The plaintiffs formed a negligible minority among the Devangas and, therefore, they could not lay claim to any representative character while purporting to sue on behalf of the community. The suit was conceived to harass the 1st defendant and the members of his family, by some of the plaintiffs owing to ill feelings aroused on account of a previous litigation between them. It was also reiterated that the Voni Anjaneya Swamy Temple was "only the private family temple of the 1st defendant and his ancestors", and the 1st defendant was the "sole trustee".

11. While admitting the award of compensation of Rs. 2,017-9-0 for the acquisition of the temple, it was stated that the then temple was an old one with only mud walls and stone roof supported by stone pillars. The same was rebuilt on a portion of the land slightly to the west of the old site in 1937 by this defendant utilising the said amount as also his own funds. Thereafter, in 1954 he built a hall apparently not of a permanent and enduring nature, at his own expense for the purpose of enabling the holding of religious discourses and such other religious functions. In view of the ever increasing attendance on such occasions, it was found necessary to erect a suitable permanent structure. Accordingly, he secured two plots of land adjoining the temple on either side on long leases from the Municipality on 28-8-1961 and completed the erection of these structures by 26-4-1963. The new building, having been intended also to serve the needs of the public of Bangalore in regard to celebration of marriages, was equipped with carpets, vessels and furniture at the cost of the 1st defendant

himself. Hence the 1st defendant and the members of his family had incurred an expenditure exceeding Rs. 1,80,000/- on the whole.

12. The reason for his constituting Trust in the year 1952, although the temple was in the sole trusteeship of the 1st defendant, had been that on account of his increased responsibilities and a desire to declare that the temple thenceforth belonged to Devanga community.

13. The temple had no valuable jewellery as averred for the plaintiffs. The defendants had at no time acted adversely to the interests of the Trust. The allegations of mismanagement were untrue and denied. The statement of income from the properties had been exaggerated. There had been no income at all till about the year 1952. Between the years 1952 and 1962 the income was only Rs. 60/- per month derived from leases of a portion of the temple building. As regards "Kalyana Mantapa" the income was Rs. 60/- per day exclusive of water, light and cleaning charges.

14. In regard to the allegation that the 1st defendant had taken permission to utilise the income as he pleased for a period of 13 years, it has been submitted that the 1st defendant had undertaken the expenditure of Rs. 1,80,000/- in the manner aforesaid only on the understanding that a sum of Rupees 50,000/- out of it should be treated as his donation and the balance remaining reimbursed to him free of interest. It was thought then that a period of 13 Years would have been sufficient for the 1st defendant to reimburse himself. But after a period of two years and as a result of experience gained it was found that it might not be possible for him to recover the entire amount, as a result whereof the period was modified enabling the 1st defendant to reimburse himself out of the income till his entire dues were satisfied. In these circumstances, it might not be just or proper to, infer that the 1st defendant had done anything which could be termed as waste or mismanagement.

15. The amount still due to the 1st defendant, on the basis of the aforesaid under standing, as on 31-3-66, is Rs. 1,03,451-63 P. Hence the charge of non-accounting or mismanagement could not be laid at the door of the 1st defendant.

16. The trial court after framing the necessary issues and on a brief consideration of the prolix and repetitive oral evidence and the documents produced recorded its conclusions, the more material of which are as follows:-

- (1) the plaint schedule properties belonged to the Public Charitable and Religious Trust of Devanga Community of Bangalore;
- (2) the said properties did not belong to the joint family of the 1st defendant or his ancestors
- (3) the suit as brought was maintainable;
- (4) the consent of the Advocate General was not vitiated;
- (5) the suit was not barred by limitation;

(6) the trust deed of 28-11-1952 could not be set aside even if the trust was a public charitable one;

(7) the plaintiffs had not proved the case of mismanagement requiring displacement of the existing trustees or framing of any other scheme of management.

17. On the basis of the above conclusions, the suit came to be dismissed.

18. Before advertng to the respective contentions urged on behalf of the parties, it is necessary to observe that the conclusions reached by the learned District Judge regarding : (1) the schedule properties belonging to a public religious and charitable trust of the Devanga community of Bangalore, (2) maintainability of the suit, (3) bar of limitation and (4) validity of consent by Advocate General, were not canvassed before us on behalf of either of the parties. Similarly, no attempt was made to challenge the conclusion that the properties did not constitute the private trust of the family or the ancestors of the 1st defendant. We do not, therefore, Propose to examine the correctness of these conclusions. They therefore stand affirmed.

19. Further, it is relevant to observe at this stage, the other conclusion relative to the validity and the legal effect of the deed of 28-11-1952 is, as can be seen from the judgment in appeal, based almost entirely on a finding that the 1st defendant had become the founder of the trust, or might be treated as one such, in view of his act of renovating and rebuilding the temple in the year 1937 and as such was entitled to create the trust as per the aforesaid deed. It seems to us that it is upon this view, that the learned trial Judge has proceeded to examine whether such trustees appointed under the deed of 1952 (Ex. P-15), were entitled to be removed at the instance of the plaintiffs and on proof of mismanagement or breach of trust.

20. The attack on behalf of the appellants, therefore, was primarily concentrated on the question whether the 1st defendant could at all be considered as a founder of a trust in the eye of law so that he could create a trust and provide for its management in accordance with Ex. P-15, the trust deed of the year 1952. If the answer to this question is in the negative, the other conclusions would necessarily have to be set aside, and if it is further shown that the 1st defendant and others had at no time been appointed as trustees of the Devanga community and, therefore, were in a position of trustees de-son-tort. Even otherwise, it seems to us that if it were shown that the 1st defendant had been guilty of acts of breach of trust, he would be liable to be removed as in the case of a duly constituted trustee.

21. On behalf of the appellants the contentions urged were that: (1) in law the acts attributed to the 1st defendant, which are undisputed, such as claiming compensation for acquisition and renovating or rebuilding the temple at a further cost incurred on his own, would not have the effect of clothing him with the character of a founder of the trust; (2) the creation of the deed of 1952 apart

from other circumstances amounted to a breach of trust; (3) the accounts produced from 1961 onwards up to date of suit as per Ex. D-49 were wholly unreliable; and (4) there was no evidence of the 1st defendant having spent anything far in excess of the amount received as compensation for acquisition, in order to support a claim to the status of a founder of the trust.

22. On behalf of the respondents, several contentions were urged in opposition, and they will be referred to in their appropriate context. But before proceeding to consider the above contentions, it may be relevant to briefly make mention of some material features in the evidence of the 1st defendant only, as we do not - think there is much worth mentioning in the oral evidence of the other witnesses examined for the parties, for the purpose of the disposal of the issues before us.

22-A. He has admitted in his evidence that: (1) there were no accounts of expenditure incurred on the temple between the years 1936 and 1952; (2) Exhibits D-8, 9 and 10 evidence payments towards expenses incurred for the renovation of the temple; (3) a sum of Rs. 1,86,000/- had been spent by him for "Kalyana Mantap" and the purchase of equipment; (4) the amount in excess of Rs. 50,000/- given as donation, from out of the said Rs. 1,86,000/- was due to him free of interest; (5) there were no documents to show that the suit temple was a private temple; (6) there was no trust in existence in which he had been a trustee, in the year 1936; (7) there was no scheme of management of the temple up to 1952; (8) for the period between 1938 and 1952, there were no accounts; (9) six trustees of the temple were there (1936) but there was no appointment of any kind; (10) the vacant lands were granted on lease for maintaining a garden for visitors to the temple and not for building a "Kalyana Mantapa"; (11) no bank account had been maintained regarding the income from "Kalyana Mantapa"; (12) Rs. 52,000/- or so still remains to be paid towards the amounts due to him as at the end of March 1970.

23. Before proceeding further, it is convenient to refer to some of the relevant principles bearing on the questions on hand, with reference to the authorities cited before us.

24. In Lewin on Trusts, 16th Edition, at page 173, the position in regard to a trustee de son tort has been stated thus:

"If a person by mistake or otherwise assumes the character of trustee when it does not really belong to him, he becomes a trustee de son tort and he may be called to account by the beneficiaries for the money he received under the colour of the trust." (Underlining ours)

25. In AIR 1931 121 (Privy Council) on a complaint made by the appellant (trustee) that the suit ought not to have been launched at all against a trustee (i.e. appellant) without whose exertions, undertaken in the first instance at his own risk and expense, there would have been no trust property left to be administered by any one, their Lordships of the Privy Council have observed thus:

"..... Upon this, their Lordships must observe that while the appellant's undoubted services to the trust at an earlier stage might well have justified him in asking that proceedings against him should be prosecuted with discretion rather than with zeal, those services cannot be allowed to justify subsequent conduct, on his part, amounting to misappropriation of trust funds and conversion of trust property to his own use."

Again as to the standard of conduct expected of such a trustee, it is observed :

"..... It is, of course, that a trustee who is responsible for such conduct shall be removed from his trust; the standard of rectitude and accuracy expected from every trustee of charitable funds is of the highest, and that standard must in all circumstances be maintained by the Courts if the safety of property held upon such trusts is not to be imperilled throughout the whole of British India."

26. In AIR 1946 34 (Privy Council) dealing with the duty of a Court in matters falling u/s 92, Civil P. C., the Privy Council has stated the position thus :

"..... It has to be remembered that in these cases the Court has a duty, once it finds that it is a trust for public purposes, to consider what is best in the interests of the public. That is made abundantly clear by the judgment of this Board, delivered by Mr. Ameer Ali, in 43 Ind App 127 : AIR 1916 PC 132." (Underlining ours)

27. In the case of AIR 1948 203 (Oudh) a Division Bench of the Court has, in the context of a suit falling u/s 92, Civil P. C., enunciated thus:-

"Secondly, it must be remembered that not only is it necessary that a trust should be properly administered but it is equally necessary that it should be administered by a person entitled to administer. If a person having no title as trustee takes possession of the trust property, he does so in contravention of the provisions of the deed of trust and commits a breach of it. It is as much a breach of trust for a person not entitled to act as trustee to meddle with trust property as it is for a properly appointed trustee not to manage the property. Were this not so, any one who had somehow obtained possession of the trust property and was managing it efficiently could always continue in possession in spite of the specific provisions of the deed of trust." (Underlining ours)

28. In Hindu Law of Religious and Charitable. Trusts by B. K. Mukherjea, Third Edition, at pages 165 and 166, in the context of the right of a founder of a trust to lay down the line of devolution of shebaitship and the status and powers of those who made additional endowments to the trust created in favour of a deity, it is observed thus:

"It would be clear from what has been said above, that it is only the founder who can appoint Shebait, and lay down the line of devolution of shebaitship, and once he has made the appointment, he cannot alter or revoke the same, in the absence of a reservation of power to that effect in the deed of dedication. A fortiori a Shebait as such, cannot alter the line of succession to the office of a

Shebait as laid down by the founder....."

and

"Additional endowments in favour of the family deity are frequently made by the descendants of the original owner, who may be Shebait themselves and obviously such grants are beneficial to the deity, It is settled law that the persons who subsequent to the foundation furnish additional contributions do not thereby become joint founders, and their benefaction is regarded as nothing but an accretion to an existing endowment. No difficulty arises if such additional gifts are made by a donor without any condition attached to it. The gift would become the property of the idol and whoever the donor might be, the existing Shebait of the idol would have the powers to manage the property on behalf of the idol." (Underlining ours).

29. It is relevant, nay necessary, to refer to an enunciation of the Supreme Court in the context of the second of the above propositions. It is to be found in *KT. N. RM. Thenappa Chettiar and Others Vs. N.S. KR. Karuppan Chettiar and Others*, and reads :

"It is not a correct proposition of law to state that every donor contributing at the time of foundation of a trust becomes a founder of the trust. It may be that in a particular case all the contributors of a trust fund become the founders of the trust itself, but the question when a contributor would become in law a joint founder of the trust would depend not merely upon the fact of his contribution but also upon the surrounding circumstances proved in the particular case and the subsequent conduct of the parties. In the matter of the Endowed Schools Act, 1869 - and in the Matter of the St, Leonard, Shoreditch, Parochial Schools, it was held by the House of Lords that where a charity is established by subscriptions the original subscribers alone are the founders, and the latter benefactions are on the footing of the original foundation." (underlining ours)

30. On the Point as to when a person who intermeddles with a trust, subsequent to its foundation, could be said to acquire the status of a founder, the Madras High Court *Annasami Pillai v. Ramakrishna, Mudaliar*, reported in *ILR (1901) Mad 219* has this to say :

".... ...We are, however, unable to agree with the suggestion that Mudukrishna was the founder. If a temple gets into ruins and a person, as a matter of mere benefaction, erects fresh buildings and dedicates them to the same sort of worship as had been carried on in the old temple, such person may properly be treated as the founder of the new temple, even though in constructing it, he used materials of the former temple or other property belonging thereto. The circumstances of the present case are however, very different." (Underlining ours)

31. In support of the conclusion of the Court below that the 1st defendant, in the facts and circumstances of the case, ought to be regarded as a founder and, therefore, entitled to make provision for its management as per the deed of

trust, Ex. P-15, reliance was placed on behalf of the respondents (defendants) on two decisions of the Madras High Court. We consider it convenient to consider them at this stage, before an examination of the question whether the 1st defendant had in fact become a founder in the light of the principles earlier referred to.

32. The first case is *Settikara Venkatarama Chettiar and Others Vs. O.P. Damodaram Chettiar and Others*, The enunciation relied on is at page 1152 and reads:

"..... Where a person collects subscriptions from various persons and builds a choultry or a temple he has a right to direct in what manner the institution should be managed and what right the trustees should have in the management of that institution. This is recognised by the Hindu Law. There is nothing illegal or improper in a person who builds a temple whether out of his own funds or out of the funds collected by subscriptions or getting donations from people to create a trust and endow it, directing by the deed of endowment, in what manner and by whom it should be managed ". (Underlining ours)

33. It seems to us clear from the above passage that it has reference to the founding of a trust initially. The circumstances present in the case on hand are different in that there was already a trust in existence and the 1st defendant chose to adopt it as his own, as we shall presently show, and attempted to create a trust for its management by himself and the members of his family, along with some others, professing at the same time that he was declaring it as a trust belonging to Devanga community for the first time. Hence this decision in our view cannot be of any assistance to the respondents.

34. The position is more or less the same even as regards the other decision in *Aromalla Gurunathan Yogi and Another Vs. Arimanda Raghavayya and Others*, It is relevant to reproduce the following passage therein :

"..... The inam service register Ex. A is dated 24th August, 1860. The statement of the then archaka is Ex. B. It is dated 1859 and shows that even in 1859 the archakas were in possession. There was no trustee of the temple and the lands were given for the performance of the puja and observing the daily offerings of food and light and other rites which have been going on in the same way and also for Sivarathri, Navarathri, and Sankaranthi festivals. There is nothing to show that the puja has not been performed by the archakas or that any reason exists for a scheme being framed for the purpose of taking the land out of the possession of the archakas and vesting it in trustees. No malversation is proved and the record does not show that the archakas set up any title in themselves to deal with the property as their private property (page402)

(Underlining ours)

35. The ratio, if any, of this case has, in our view, to be confined to the facts of that case. Even otherwise, the case is clearly distinguishable on facts. It is seen

from the facts of that case, as noticed in the above reproduced passage, that the Archakas had been in fact entrusted with the property, presumably by some one who was competent at the time to do so, for the due performance of the pujas and no acts of mismanagement or breach of trust, had been proved against them. It is further to be seen from the judgment that the learned Judges have given liberty to file a suit u/s 92, Civil P. C. in case such acts were committed in future by the said archakas. All these circumstances would show that the Court had thought that the said Archakas were duly appointed trustees, albeit for the limited purpose of offering worship. The facts in the instant case are in many respects wholly different. Hence not much reliance can be placed by the respondents on this case also.

36. In the light of the above reproduced principles, we shall now proceed to consider the facts present in the case on hand for the purpose of determining whether the 1st defendant could be equated to a founder, entitling him to create the trust deed of 1952 (Ex. P-15) and provide for its future management thereunder :

37. It would be seen from a narration of the pleadings and summary of evidence of the 1st defendant, that there were no trustees to the temple as such and that even he had not been appointed as one such. It is further to be seen that the temple as in the year 1936, when the 1st defendant took over, was an active temple and had at no time fallen into desuetude or ruins requiring rehabilitation or rebuilding. In the year 1936, the amount received as compensation for acquisition, could not, be said to be either negligible or insufficient to renovate or rebuild the then existing temple. The claim of the 1st defendant that he had spent nearly Rupees 15,000/- on that account is not at all supported by any credible evidence. The only evidence produced in this behalf is represented by documents Exs. D-8 to D-10. The aggregate of the sums mentioned therein would rather show that the amount expended for such renovation could only have been that which had been received as compensation. He has not maintained accounts in support of his claim of having spent a sum of Rs. 15,000/- for the said purpose. In view of all these circumstances, he could not lay claim to the status of a founder and, therefore, would not have been entitled to create a trust for the first time in 1952 through Ex. P-15.

38. Even from the plain tenor of Ex. P-15, of which 1st defendant was the author, he could not be said ever to have asserted his right as a founder. On the other hand, there is a clear admission that the temple was being exclusively managed by him on behalf of the Devanga community (original in Kannad omitted-Ed.). Even reading his evidence as a whole it would be implicit that he was nothing but a self appointed trustee.

39. The trial court has, no doubt, in this context, concluded that the trust deed of 1952 (Ex. P-15) had the approval of the community. We find great difficulty in agreeing with such a conclusion. First, it is nowhere apparent from Ex. P-15 that the said deed was being executed pursuant to any such desire on the part of the

community or that a meeting had ever been held prior to its execution. On the other hand, the clear indication from the statement and evidence before court of 1st defendant, is that he had been declaring the trust as belonging to the community and the need for the deed had arisen owing to increased responsibilities. Furthermore, it is stated in explicit terms that he had the sole and exclusive right of management, which was nothing but an assertion and not supported by any evidence on record. Moreover, the document had been executed by the 1st defendant exclusively, and the right of future management had been reserved to himself and his family members. It is rather difficult to believe that anybody of responsible members of the Devanga community would have acquiesced in any such arrangement.

40. For all these reasons, we are unable to hold that Ex. P-15 had merely given expression to the will of the Devanga community.

41. We are therefore, unable to uphold the conclusion of the trial court that the 1st defendant was a founder.

42. In this connection it is convenient to dispose of a contention urged by the respondents that the scheme of management envisaged therein (i.e. Ex. P-15) could well be adopted in any scheme that may eventually be framed by the court, in case such was found necessary, in view of the evidence generally showing that the persons mentioned therein were all respectable persons and the 1st defendant himself was one of the respected leaders of the Devanga community. We think that for the purpose of this appeal it is unnecessary to say anything on this aspect of the matter, as it is a matter which may perhaps be taken into account by the court below if and when it is called upon to frame a scheme, in the light of all the circumstances and after hearing the view points of all concerned. We are, however, clear in our minds that the provision for hereditary right of management would be offensive to a trust of the present nature and not in the best interests of the institution. Therefore, there is no question of adopting the scheme propounded in Ex. P-15 in toto, even if the court were to consider this proposal of the respondents.

43. We may also refer at this stage to one other conclusion of the learned trial Judge. He has held that it would be unnecessary to grant the relief of declaration to the effect that the deed of 1952 (Ex. P-15) was void and ineffective as he was of the view that it would not operate as an impediment in the way of granting the main relief sought u/s 92, Civil P. C. We are in agreement with this conclusion and we see no need to grant any such relief even by way of an ancillary matter.

44. The next question for consideration is whether the 1st defendant had been guilty of any acts of breach of trust, on the assumption, though we are clear in our minds that the facts did not warrant it, that he was a founder or at any rate a duly constituted managing trustee. The trial court has answered the same in favour of the defendants. On a careful consideration of all the circumstances present in the case, we are unable to agree with this conclusion of the court

below.

45. The record would disclose that he was not a duly appointed trustee. Our conclusion earlier has been that he was not a founder either. He had merely entered upon the trust holding himself out as one of the trustees, in the year 1936, although, as admitted by him, there was no such body of trustees at any time. He has by means of Ex. P-15 endeavored to create a trust with right of exclusive management in himself and the other members of his family. This conduct on his part clearly amounts to acting adversely to the interests of the trust. More over, at various stages since 1936, he had even asserted his right of ownership over the trust property, thus denying the beneficial interest possessed by the Devanga community. Even in this suit this assertion had not been given up in spite of the fact that the terms of Ex. P4 -5, of which he was the executant, would show that he was holding the same on behalf of the community. It is also seen that he had a personal interest in the income of the trust in that he was claiming a reimbursement of a large sum of Rupees 1,30,000/- and odd due to him towards expenses incurred with the concurrence of the other trustees appointed by him under Ex. P-15. For all these reasons, we are clearly of the view that the 1st defendant was, technically at least, guilty of an act of breach of trust and, therefore, had rendered himself unfit to be continued as a trustee. We make it clear that this conclusion is not necessary for the purpose of granting the main relief sought for in the suit, as we are clearly of the view that the 1st defendant was only a self appointed trustee and such a situation could not be perpetuated by a court, as pleaded on behalf of the respondents. It also follows that the other trustees in possession of the properties, along with the 1st defendant, were equally to blame and have to face similar consequences as the 1st defendant.

46. It was next urged for the appellants that Ex. D-49 accounts which have been accepted by the court below, on the face of them, could not be said to have been maintained in the regular course of business. The reasons advanced are that the entries therein were not at all specific and no particulars had been furnished in regard to the items specific. The more important point according to them was that the accounts purport to refer to "Y. H. Venkataramanappa Kalyana Mandira", for the period between 6-6-1961 and 1-7-1965. The positive evidence is that the said Mandira was named as such only much later than 6-6-1961, and the inference therefore is that they must have been written up much later and not regularly. It was also generally urged that the other accounts produced were also similarly defective and did not inspire confidence. We think it unnecessary to say anything specifically in this regard, as a matter of law, the 1st defendant would be bound to render accounts in the event of a direction by the court or the framing of a scheme of management of the trust in point. But taking all the circumstances into consideration, and the time, labour and money expended by the 1st defendant stretching over a period of nearly 30 years without, as it would seem, much assistance or co-operation by the majority and the members of the community, we think it not only sufficient but also just and proper to direct the

lot defendant to furnish such accounts only from 1-4-1966, the date on which a mm of nearly Rs. 1,03,000/- had been stated to be still due to him by way of reimbursement

47. It is necessary to notice one other circumstance relative to the contributions made by the 1st defendant in excess of the sum of Rs. 50,000/- agreed to be treated as a donation, and, therefore, not repayable. On this point, some resolution have been produced by him on behalf of himself and the other trustees nominated by him which are to the effect that he could reimburse himself to the extent of such excess expenditure free of interest. It is perhaps possible to connected that once it was held that his trusteeship of the temple was unauthorized, any sums spent by him, albeit with mental reservations, would nevertheless form an accretion to the trust. The fact that the trustees nominated by him had agreed to it might not make any difference to such a consequence. But, in our opinion, such an untoward consequence ought not to be visited on the 1st defendant and others in the circumstances of the case. Not only no argument was urged on this score on behalf of the appellant's plaintiffs, but the totality of the evidence adduced would clearly show that the good faith of the 1st defendant in undertaking the responsibility for the administration and improvement of the trust, had not at any stage been seriously questioned. There was also no formulation of any proposition bearing on this question at any stage of the proceedings before us or in the court below. Nor was any attempt made to show that the version of the 1st defendant that he had spent the amounts mentioned by him towards the Kalyana Mantap ought not to be accepted at its face value. On the other hand, the evidence could show that he was an yejaman of the community and had been acclaimed and honored for this charitable action of his by the members of the Devanga community as well as the other members of the public. In this view of the matter, we think it proper to direct that his statement of accounts, inclusive of the claim for reimbursement as on 31-3-1966, might be accepted as correctly reflecting the financial position of the trust, including his right to reimbursement to the sums mentioned. We hold therefore that the 1st defendant is entitled to the reimbursement of the sum specified as still due to him as on 31-3-1966.

48. Before concluding, it is necessary to refer to one other contention urged on behalf of the respondents. We have already adverted to three other contentions of theirs, namely: (1) the scheme envisaged in Ex. P-15 might be adopted; (2) the 1st defendant had acquired the status of the founder of a trust; and (3) the arrangement envisaged in Ex. P-15 had the approval of the community at a meeting called for the purpose.

49. It was urged that the trust deed Ex. P-15 would become operative at least as regards the "Kalyana Mantap". This contention clearly overlooks the fact that the lands on which it had been built was part of the trust property and, therefore, the "Mantapa" would partake the character of an accretion, such as referred to in some of the enunciations earlier reproduced. Hence this contention is devoid of

merit.

50. As a result of the foregoing discussion, we are clearly of the view that the judgment and decree of the court below cannot be upheld. It seems to us, however, that taking all the circumstances into consideration, it would be just and proper to issue certain directions, to be borne in mind by the court below, while settling a scheme for management of the Trust, pursuant to this judgment. We, therefore, issue the following directions:-

the name of the "Kalyana Mantap" as "Y .H. Venkataramanappa Kalyana Mandira" shall be retained;

the portraits of the 1st defendant and his family members shall continue to adorn the said Kalyana Mantap, as far as possible;

the defendants 1 to 8 shall be liable to render accounts of management of the trust only as from 1-4-1966.

if the amounts specified as due to the 1st defendant as on 31-3-1966, by way of reimbursement, as per his own accounts and statement before court, had not already been satisfied as on the date of rendition of accounts pursuant to this decree, the balance found due may be arranged to be paid over to his legal representatives on record collectively;

pending settlement of the scheme, the court below shall appoint two Receivers, to function jointly, one of whom shall be one of the legal representatives of the 1st defendant or their nominee, the other being one of the plaintiffs or a nominee of theirs, for the management of the trust with all its movable and immovable properties, and if this arrangement is unacceptable to any of the parties, the court shall proceed to appoint such other two Receivers as it thinks fit, after giving an opportunity of a hearing to the parties; and

in any scheme to be framed, provision be made for representation of the members of the family of the 1st defendant and his brother Y. H. Kempanna, on the committee of trustees, their number being approximately equal to one third of the total number prescribed therein, if available and willing to serve on such committee.

51. The result is that this appeal succeeds and is accordingly allowed. The judgment and decree in O. S. No 54/1965 made by the III Additional District Judge, Bangalore, are hereby set aside.

52. Consequently, subject to the directions hereinbefore mentioned, and except for the relief of declaration regarding the trust deed Ex. P-15 dated 28-11-1952, the suit is decreed as prayed for.

53. Appeal allowed.