

(1921) 01 MAD CK 0006
In the Madras High Court

Parasurama Udayan and Another

APPELLANT

Vs

Vedaji Baskar Thirumal Row Sahib by His Next Friend Rao
Sahib J.I. Christmas Pillai and Others

RESPONDENT

Date of Decision : 17-01-1921

Acts Referred:

Citation : (1921) ILR (Mad) 636

Hon'ble Judges : Sadasiva Ayyar, J; Napier, J

Bench : Division Bench

Judgement

Sadasiva Ayyar, J.—These are two connected Second Appeals from a single judgment pronounced by the Subordinate Judge, Vellore, in

the lower Appellate Court. In one of these Second Appeals, the appellant is the fifth defendant, and in the other the appellants are the defendants

Nos. 1 and 2. The facts of the case shortly stated are these. The plaintiff is the hereditary trustee of a temple called the Kasi Viswanathaswami

temple situated in a village included in his Ami Jaghir. The fourth defendant is the hereditary archaka (temple priest) in the said temple and along

with the hereditary office has inherited the right of enjoyment of the emoluments of certain manyam lands attached to the archaka service. In the

year 1894. the elder brother of the fourth defendant, who was the father of the fifth defendant and who was then the hereditary archaka, granted a

permanent lease of the plaint lands in favour of the father of defendants Nos. 1 to 3. The plaintiff executed a power-of-attorney, Exhibit D, in

January 1915 in favour of one K.V. Lakshmana Rao, appointing him as (what the document describes as) the executant's Commissioner and

Agent to do several acts, functions and duties and to exercise several powers. One of such duties and powers which are granted under this deed,

Exhibit D, is described in paragraph 9 as follows:

He ""(i.e., the said Commissioner)"" is authorized to appoint, dismiss, suspend or fine Devastanam servants of my Jaghir and hold inquiries with

regard to Devastanam and Service Inams of my Jaghir and take necessary steps for the proper management of the said Devastanams.

2. Purporting to act under this clause, Mr. Lakshmana Rao inquired into the conduct of the defendants Nos. 4 and 5 (the fifth defendant was a

minor at that time) and dismissed them from their office of archakas on the 80th July 1915. This suit is brought (basing that dismissal as the cause

of action) for the recovery of the lands from all the defendants, and also for a declaration that the lands belong to the suit temple. Defendants Nos.

1 to 3 (whose father obtained the permanent cowle) went so far as to deny that the lands were temple lands and raised several other defences

which it is unnecessary to set out in detail. Defendants Nos. 4 and 5 pleaded that it was only the melwaram of the lands that belonged to the suit

temple and was granted as service manyam and that their dismissal by Mr. Lakshmana Rao was invalid, they being hereditary archakas who were

not guilty of any such misconduct as could justify their dismissal. They seem also to have raised at the time of the framing of issues the contention

that the proceedings of Mr. Lakshmana Rao dismissing them were not legally valid because the delegation of the right of inquiry into the

misconduct of hereditary archakas by the plaintiff to Mr. Lakshmana Rao was legally not justifiable. (Several other pleas were also raised which,

again, it is unnecessary to set out.)

3. The first issue raised in the case was whether the plaintiff can sue on behalf of the plaint mentioned temple. The District Munsif subdivided this

issue into three, viz., whether there was sufficient ground for the dismissal (that is, of the defendants Nos. 4 and 5), (2) whether the defendants

Nos. 4 and 5 could be legally dismissed and (3) whether the Commissioner was competent to dismiss in the place of the Jaghirdar. I think the

question No. (3) should be answered in favour of the contention of the defendants Nos. 4 and 5, because a trustee cannot appoint an agent to do

acts in which judicial discretion was intended to be exercised by himself (the trustee). The power of appointing an agent exists in a trustee only as

regards matters in which expert knowledge is required or in which it is usual,

according to the course of business, (e.g., temple agents in respect of particular acts), or where it is a matter of necessity (using the word "necessity" in a business sense) to do so, and in similar exceptional circumstances. The power of appointment and dismissal of hereditary temple servants, who cannot be dismissed without sufficient cause (such as grave misconduct) being established, is not one of the powers of a trustee which is capable of being delegated to an agent. This principle of law is recognized in *Krishnarnacharlu v. Rangacharlu* I.L.R., (1893) Mad., 73 and I do not think it necessary to quote in support of the above principle the observations in other cases (English and Indian) in which this matter has been considered. Defendants Nos. 4 and 5 were thus not validly dismissed and it follows that the plaintiff's claim to recover possession of the plaint lands must be negatived. Having regard, however, to the facts that defendants Nos. 1 to 3 even denied that the lands belonged to the temple and that defendants Nos. 4 and 5 alleged that only the melwaram belonged to the temple and also to the contention put forward by all the defendants that the permanent lease in favour of defendants Nos. 1 to 3 is binding on the temple, I would grant in favour of the temple the following declaratory reliefs:

- (1) that it be declared that the plaint lands belong to the temple and are held by defendants Nos. 4 and 5 as archakas of the temple, and
- (2) that the permanent lease granted in favour of the father of the defendants Nos. 1 to 3 is not binding on the temple.

4. The parties will bear their respective costs throughout.

Napier, J.

5. I agree.