
(1929) 03 MAD CK 0021
In the Madras High Court

P.K.A.C.T. Veerappa Chettiar

APPELLANT

Vs

Padmanabha Naidu and Others

RESPONDENT

Date of Decision : 12-03-1929

Acts Referred:

Citation : AIR 1929 Mad 625

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—This petition is presented in the following circumstances: The High Court by its decree in Appeal No. 273 of 1918 dated 25th

October 1920, settled a scheme for the administration of the Sri Arunachaleswarar Devasthanam at Tiruvannamalai. Under that scheme the

administration of the Devasthanam was put under a Board of Trustees, subject to the control and supervision of the South Arcot Devasthanam

Committee formed under Act 20 of 1863: see Rules 1 (b) and 2 of the scheme. By Act 2 of 1927, the Madras Hindu Religious Endowments Act,

Section 8, Act. 20 of 1863, so far as it applied to Hindu religious endowments and therefore to this Devasthanam, was repealed, and the South

Arcot Devasthanam Committee formed under the Act (20 of 1863) presumably came to an end. We say "presumably" because there is no

provision, transitory or otherwise in Act 2 of 1927 putting an end to such committees formed under Act 20 of 1863 or devolving their duties on

similar committees formed" under Act 2 of 1927. Thus, after Act 2 of 1927 came into force in January 1927 no body which could answer to the

description of the South Arcot Devasthanam Committee formed under Act 20 of 1863 was in existence. In December 1927 one of the trustees

died.

2. The President of the North Arcot District Temple Committee, a committee formed under Act 2 of 1927 to supervise the administration of

devasthanams in the district of North Arcot within which District Tiruvannamalai now lies, purporting to act as if that committee had taken the place

in the scheme of the South Arcot Devasthanam Committee, appointed respondent 14 as a trustee on 10th November 1928, and that appointment

was confirmed at a meeting of the committee on 18th November 1928. The petitioner, who is a life-trustee of the Devasthanam has put in the

present petition praying this Court to give directions whether the North Arcot District Temple Committee has jurisdiction to make this appointment

and other appointments and for such other directions as the Court may see fit to give in the circumstances. Along with this petition another petition

was joined, namely, C. M. P. 5607 of 1928, praying that pending the disposal of the main petition this Court would by an injunction restrain

respondent 14 from taking charge of his office as Trustee and restrain the members of the Temple Committee from making further appointments of

a similar nature. On that petition, before notice was issued to the other side, an ex parte injunction in the terms prayed for was granted. That

petition now comes on for disposal also after notice. But the discussion of it would be academic and is unnecessary since any order on it only

enures till the main petition is disposed of and we are disposing of the main petition now. In this connexion we would only remark that it is difficult

to see how, under cover of directions to one trustee, other trustees and even the Temple Committee itself could be restrained by an injunction.

3. The main petition is opposed, inter alia by respondent 14, the elected trustee; and on his behalf his learned Counsel has taken several

preliminary objections to the maintainability of the petition. Those which call for discussion here are : (1) that the petition is in effect a petition to

declare the election of respondent 14 invalid, and that such a declaration is a relief which comes within the mischief of Section 92, Civil P.C., and

therefore must on the Full Bench ruling in Veeraraghava Chariar v. Advocate General of Madras AIR 1927 Mad. 1073 be agitated not by petition

but by suit, and (2) that it is incompetent for only one trustee by himself to put in such a petition.

4. In dealing with the first point the exact scope of the Full Bench ruling in *Veeraraghava Chariar v. Advocate General of Madras* AIR 1927 Mad.

1073 which of course is binding on us, must be realized. As we understand that ruling it is this. The reservation in temple schemes framed by

decree of Court which gives liberty to apply is only permissible by law when

the Court is unable, or for good reasons thinks it advisable, not to finally determine any question arising for its decision or to leave such decision for

a future date.

5. In all other cases the application must necessarily relate to a matter already finally decided, and to ask for alteration of a final decision is to ask

for a modification of the scheme, a relief which can only be granted by following the procedure in Section 92, Civil P.C., that is, by way of suit. In

other words, the test whether the point at issue can be raised by petition and not by suit is whether the Court advisedly left it to be determined later

on. This is the law as it stands at present, though we may be permitted to remark that the legal history of this question indicates that the Courts

have been influenced, and, if we may say so with respect rightly influenced, more by considerations of surmounting practical difficulties than by

strict logic. Strict logic would demand that any direction sought for which is not merely an interpretation of the language of the scheme, but involves

an alteration of the scheme, however petty, must be obtained by a suit u/s 92. The Full Bench, realising the practical difficulties of holding that any

and every iota of a scheme once framed is unalterable has laid down that additions or alterations are permissible on points which the Court

deliberately left open for further consideration and decision. The reason is plain. Just as for suits u/s 92 the sanction of the Advocate General is

necessary to ensure that trustees shall not be harassed by frivolous suits, so it is necessary in order to prevent trustees being harassed by frivolous

petitions that the questions which can be raised by such petitions should be questions which the Court itself has by the form of its order allowed to

be raised at a future date. We have the guarantee of the Court which passed the scheme that the question raised is necessary for the effective

administration of the scheme, and therefore its decision thereon is really a part and parcel of the original scheme. Applying this principle, it is not

feasible here to hold that the question of what body, if any, has taken the place

of the defunct South Arcot District Committee formed under Act

20 of 1863, was a question which the Court deliberately left open for further consideration and decision. We think therefore that under the Full

Bench ruling the present petition is not sustainable.

6. The second preliminary objection seems to us no less cogent. Rule 16 of the scheme says that

the Board of Trustees... may by petition apply to the High Court for such further or other directions in the matter as may be necessary.

7. Assuming for the purpose of argument on this point that the present application would be competent if put in by the Board of Trustees, the

question is whether it is competent when put in only by a single trustee. The Board is defined by Rule 3 as to consist of "" three or more trustees the

committee may appoint, the defective grammar being apparently the fault of the draftsman and not of the printer. We think that Rule 16 must be

taken as it stands, namely that the party which can apply for directions is the Board of Trustees and not any member of that Board. The scheme

contemplated the administration of the Devasthanam by the Board of Trustees, and unless the Board as a whole, the administrative body, wants

directions, there is no point in the High Court being approached for guidance. We are clearly of opinion that the High Court did not intend that any

one trustee out of several, who is dissatisfied with the conduct or method of (appointment of a co-trustee, should be able to agitate that matter by

an application for directions, or should be able to ask the High Court to decide, whether the conduct of his co-trustee was proper or the method of

his appointment valid. To allow that is in effect to constitute the Court and not the Board of Trustees the administrative body under the scheme, a

position which the Courts have always been solicitous to avoid.

8. On this point the petitioner's learned Counsel has quoted to us the rulings of this and other High Courts, for instance, *Karattole Edamma v. Unni*

Kannan [1903] 26 Mad. 649 (F.B.) *Kunhan v. Moorthi* [1910] 34 Mad. 406 and *Pyari Mohan Bose v. K. Nabin Chunder Roy* [1899] 26 Cal.

409 which lay down that a suit for recovery of property or for redemption of a mortgage, or for similar reliefs, may be filed by one of a body of

trustees without consulting the rest, and he seeks to deduce therefrom a general principle that the right to apply is inherent in any trustee's position

as such. But we do not think that these rulings are really relevant for the present discussion. The rules of the scheme speak for themselves and lay down without any ambiguity that the party who is to apply is the Board of Trustees, and this might very well have been done with intention, in order to prevent the work of the body of trustees from being hampered by continual petitions by dissatisfied individual trustees. If it had been intended that a single trustee could apply, it was quite easy to say so. To accept the petitioner's interpretation of Rule 16 would be in effect to modify the scheme in a material particular, and that, as already noted, cannot be done by way of petition to apply. Now admittedly, the Board, even excluding respondent 14, consists of the petitioner and another trustee. That trustee was not consulted before the petition was put in, nor has he joined in the petition, nor has he appeared here. Neither in form nor in substance is the present petition a petition by the Board of Trustees. For this reason also we hold that the petition is incompetent and must be dismissed. Petitioner will pay respondent's costs.

9. It is obvious, however, that a very real defect in the scheme has been disclosed in that Rule 1-(b) as it stands has no meaning for the present day conditions. The essence of the present petition is that one trustee wants to know what body, if any, is now functioning in the place of the South Arcot Devasthanam Committee. in the scheme. Clearly the other trustees, if they have the interests of the Devasthanam at heart, must also desire an answer to that question. The answer can only be either (1) that there is no such body now functioning at all, or (2) that such and such a body has taken the place of the defunct committee. Both answers equally involve a material modification of the scheme and such modification can at present be only by way of suit, since so far the legislature has not provided any other solution. Therefore either the body of trustees or the temple committee, or the Hindu Religious Endowment Board itself, must come to the rescue of the scheme and take the proper procedure which appears to fall u/s 57 (4), Act 2 of 1927 for having the necessary modification made in the scheme, and we express a hope that this will be done promptly. Civil Miscellaneous Petitions Nos. 199 of 1928 and 5607 of 1928 are also dismissed.