

**(1916) 01 MAD CK 0038**  
**In the Madras High Court**

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|--------------------------------------|------------|
| Ponnambala Pillai (Died) and Another | APPELLANT  |
| Vs                                   |            |
| Muthu Chettiar and Others            | RESPONDENT |

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**Date of Decision :** 27-01-1916

**Acts Referred:**

**Citation :** 33 Ind. Cas. 52 : (1916) 30 MLJ 619

**Hon'ble Judges :** John Wallis, C.J;Phillips, J

**Bench :** Division Bench

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## **Judgement**

1. This is a suit brought by two out of five trustees of a temple to recover rent for three faslis, 1316, 1317 and 1318, and the first question is as to whether the suit was properly instituted as the Subordinate Judge has held. As to that, it is objected, in the first place, that the 1st plaintiff had been dismissed by the Kumbakonam Temple Committee from his office of trustee before the institution of the suit. It does not appear from the exhibits in the case that he has ever been finally dismissed by the Committee (See Exhibit I of the 11th February 1912 and Exhibit C of the 5th January 1913, from which it appears that the question of his dismissal was still to be settled in circulation). Apart from this, it is not suggested that he had ever been called upon to answer the charges in respect of which it was proposed to dismiss him, and, therefore, even if they had so purported to dismiss him, such an abuse of the rules Of natural justice, it is well settled, would invalidate the dismissal in the case of an office of this kind. It appears that the managing member of the Temple Committee sent proposals to the other members of the Committee to dismiss the 1st plaintiff, which is a very extraordinary method of conducting temple business of this importance; and before he had received answers from all the members took upon himself to inform the plaintiff that he had been dismissed. The chairman had, in our opinion, no right to proceed in this way, and one of the members who replied, was fully justified in requiring that the matter should be further considered. We hold that the 1st plaintiff was not properly dismissed and that the first objection fails.

2. The next objection is that at the time the suit was brought the 7th and 8th defendants had been appointed trustees of this Devasthanam by the Temple Committee. That is contested on the other side, but we assume for the purposes of this case that they had been duly appointed. It is then said it was not competent to the 1st and 2nd plaintiffs to institute the suit by themselves without consulting the other trustees whom they have impleaded as the 6th, 7th and 8th defendants. At one time there was a considerable body of authority in this Court in favour of that view, namely, *Parameswaran v. Shangaran* 14 M.k 489; *Puramathan Somayajipad v. Sankara Menon* 23 M.k 82; *Savitri Antarjanam v. Raman Nambudri* 24 M.k 296. But in *Mariyil Raman Nair v. Narayanan Nambudripad* 26 M.s 461 doubts were expressed as to the soundness of that view, and the question was referred to a Full Bench in *Karattole Edamana v. Unni Kannan* 26 M.s 649. The Full Bench did not find it necessary to decide the general question but based their decision on the terms of the Transfer of Property Act applicable to the suit, which was a suit for redemption. However, since that time a view adverse to the view taken in the earlier cases had been expressed in a long series of cases beginning with *Peria Karuppan v. Velelyuthan Chetti* 29 M.s 302 which followed the decision of the Calcutta Full Bench in *Pyari Mohun Bose v. Kedarnath Roy* 3 C.W N. 271 and this was followed by one of us sitting on the Original Side in *Rasu Mudaliar v. Veerasami Pillai* 4 M.L.T. 194 and subsequently the same view was taken by Benches of this Court in *Kunhan v. Moorthi* 7 Ind. Cas. 422 : 8 M.L.T. 208; *Malappurath Paramadhathil v. Channazhi Krishnan* (1911) 2 M.W.N. 537 and quite recently in *Narayanan Chettiar v. Lakshmanan Chettiar* 29 Ind. Cas. 1. In these circumstances having regard to the fact that all the later cases are practically agreed on this point, we must hold that this objection also must be overruled. I may mention that the same view has been taken in *Bin Singh v. Nawal Singh* (1898) A.W.N. 31.

3. The next question is whether the alleged payment to defendants Nos. 6, 7 and 8 and settlement with them was valid and binding on the trust. We are quite prepared to accept the law as recently laid down in *Ullattil Kalathil Nethiri Menon v. Mullapulli Gopalan Nair* 30 Ind. Cas. 713, that even one out of many trustees can receive and give a good discharge for rent and similar payments of income, if he has or is held out by his co-trustees as having authority to do so. There is no question in this case either of defendants Nos. 6, 7 and 8 having had, authority from the other trustees, the plaintiffs, or having been held out as having authority. The evidence is that there had been disputes between the plaintiffs and the 6th defendant in consequence, it is alleged, of his conduct while he was in management of the trust, and in consequence of those disputes the 1st and 2nd plaintiffs had actually sent the notice Exhibit N1 on the 13th September 1908 to the 2nd defendant, giving notice not to pay to the 6th defendant but to pay to them. This was before the alleged appointment of the defendants Nos. 7 and 8 as trustees. This clearly amounted to a revocation of any authority which the 6th defendant previously had to receive the rent on behalf of the general body of trustees. Subsequent to this the defendants Nos. 6, 7 and 8 without any

authority from the plaintiffs and without consulting with them sent 2nd defendant Exhibit IT calling upon him to pay the arrears of rent due, telling him not to pay to the minority, that is to say, the plaintiffs. In our opinion, assuming that the 7th and 8th defendants were trustees, these three trustees had no power in this way to usurp the duties of the trust and to say that payment should be made to them. In the circumstances we do not think that the 6th, 7th and 8th defendants had any authority to receive the rent, still less to enter into the settlement which is relied upon for the defendants. It is not necessary to consider in this case whether at a properly convened meeting a majority of the trustees might decide that payment should be made to them alone to the exclusion of the other trustees, because in the present case it is not alleged that any such meeting had been held or any such proposal submitted to the other trustees. But it has been unnecessary to consider whether the defendants Nos. 7 and 8 were really appointed trustees, or whether the payment was in fact made by the 2nd defendant to these defendants, a fact which is disputed by the plaintiffs.

4. In the result, the appeal fails and must be dismissed with costs. At the request of the appellants we direct the decree to be varied by inserting that the payment is to be made to the 1st plaintiff and the 6th defendant on behalf of the Devasthanam.