

**(1947) 03 MAD CK 0017**  
**In the Madras High Court**

|                                     |            |
|-------------------------------------|------------|
| Ramalingam alias Karuppanna Koundar | APPELLANT  |
| Vs                                  |            |
| Peria Kali Goundan and Others       | RESPONDENT |

---

**Date of Decision :** 06-03-1947

**Acts Referred:**

Madras Hindu Religious Endowments Act, 1923 — Section 62

**Citation :** AIR 1948 Mad 173 : (1948) ILR (Mad) 307 : (1947) 60 LW 474 : (1947) 2 MLJ 109

**Hon'ble Judges :** William Gentle, C.J.;Patanjali Sastri, J

**Bench :** Full Bench

---

**Judgement**

Patanjali Sastri, J.—These two connected appeals arise out of a suit brought in the District Court of Salem for setting aside or, in the

alternative, for modifying the scheme framed by the Madras Hindu Religious Endowments Board (hereinafter referred to as the "" Board "" (for the

management of a group of four temples situated in the village of Pudupatti, Rasipuram taluk, Salem District. The temples had all along been

managed as a single religious institution by the ancestors of the plaintiff and the second defendant, and in 1939 they were declared by the Board to

be "" excepted temples "" as defined in the Madras Hindu Religious Endowments Act (hereinafter referred to as ""the Act""). Disputes and quarrels,

however ensued between the plaintiff and the second defendant on whom the right of management had devolved, and the second defendant

applied to the Board u/s 62 of the Act for settling a scheme for the management of the temples in question, alleging various acts of mismanagement

and irregularities against the plaintiff and his own exclusion from management. The Board found on enquiry that:

there had been several proceedings in civil and criminal courts as a result of

quarrels between these two persons (that is the present plaintiff and second defendant) ""and that it was therefore necessary that a scheme should be settled for the proper management of the temples and their properties.

It accordingly settled a scheme on the 1st August, 1942.

2. The scheme vests the administration of the temples in"" the present hereditary trustees and three non-hereditary trustees"" (Clause 2) and

provides, inter alia that the Board shall have power to appoint a managing trustee from among the trustees for a period of one year and to remove

him from the office of managing trustee for valid reasons (Clause 4). The managing trustee is to have power to do certain acts which (except in one

matter to be presently mentioned) can be collectively styled as routine acts of day to day management (Clause 5). He is to convene, a meeting of

the trustees at least once a month for passing accounts and "" for considering any other matter connected with the administration of the

devasthanam."" He is to submit to the Board "" in consultation with the other trustees"" a budget of probable receipts and expenditure for the ensuing

fasli (Clause 7). The Board is to have the power of issuing directions from time to time regulating the internal management of the temples (Clause

8), and, save as provided in the scheme, the provisions of the Act and rules and by-laws framed thereunder are made to apply to the temples and

their endowments (Clause 9). In pursuance of the scheme the Board also appointed one of the non-hereditary trustees as the managing trustee.

3. The plaintiff brought the present suit u/s 63, Sub-section (4) of the Act alleging that the scheme was unnecessary and ultra vires, and objecting

specifically to some of its provisions.

4. The learned District Judge concurred in the conclusion of the Board that it was necessary to settle a scheme for the smooth and proper

management of the temples in future. He was, however, of opinion that certain modifications in the scheme framed by the Board were called for.

Having regard to the fact clearly, established by the evidence in the case that the families of the plaintiff and the second defendant had throughout

been in continuous management "" ever since there was any recorded history of the affairs connected with these temples,"" and in view of the said

persons having composed their differences and agreed to carry on the

administration amicably, the learned Judge thought it would not be fair or proper to deprive them of the office of managing trustee. The accordingly directed that both the plaintiff and the second defendant should function as managing trustees each for a term of two years, the plaintiff taking the first turn. He also directed that the scheme should provide: that if either of them is shown to be obstructive, or negligent of the interests of the trust and fails to convene the monthly meetings of the Board of trustees for a period of three months or if a vote of no confidence is passed against a particular managing trustee by a majority of three out of five trustees on two occasions within a period of six months, he shall be ""removed from the office of managing trustee, and shall forfeit his rights to future management.

In other respects, the learned Judge confirmed the scheme. From this decree the plaintiff and the second defendant have separately appealed in

A.S. No. 445 of 1945 and A.S. No. 274 of 1945 respectively. The Board Which was the first defendant in the suit has not preferred any appeal

of its own, but having been called as a respondent to the appeals, submitted its views through counsel.

5. Both the appeals raise the same questions except that the plaintiff repeated in his appeal his objection to any scheme being settled at all an

objection which was not open to the second defendant who moved the Board to settle a scheme for the proper management of the temples. This

objection, however, can be. disposed of in a few words,. It is true that mismanagement or misconduct on the part of the plaintiff has not been

established : but it is in evidence that even after the second defendant obtained a declaration of his right of joint management and a permanent

injunction restraining the plaintiff from interfering with or preventing the exercise of such right, the quarrels between the parties regarding the leasing

of temple properties and other acts of management continued resulting in proceedings in civil and criminal Courts. In view of that state of affairs it

was clearly necessary in the interests of the proper administration of the temples and their endowments that a scheme should be settled by the

Board in the exercise of its statutory powers u/s 63 of the Act.

6. It was said that Sections 62 and 63 should be read together and that, so read, they empower the Board to settle a scheme, in the absence of

proof of mismanagement only in cases where not less than twenty persons having interest apply stating that a scheme is necessary in the interests of

the trust. This point is concluded against the plaintiff by the decision in Ponnuman Dikshitar and Another Vs. The Board of Commissioners for the

Hindu Religious Endowments and Others, , and nothing more need be said about it.

7. It was next urged that neither the Board in settling a scheme u/s 63(1) nor the Court in dealing with a scheme u/s 63(4) had power to fix turns of

management by trustees, and, indeed, it was suggested, generally, that any system of management in rotation among joint trustees of a public trust

was illegal as it involved a suspension of the other co-trustees during the turn of the managing trustee. Reliance was placed on a recent decision of

Sir Vere Mockett, O.C.J., and Krishnaswami Aiyangar, J., reported in Hindu Religious Endowments Board, Madras v. Palaniandi (1944) 1

M.L.J. 82 : ILR 1944 Mad.534. The decision no doubt appears at first blush to support the contention, but on a closer examination we are

satisfied that the case turned on its peculiar facts and has no application. There were four hereditary trustees and two non-hereditary trustees in that

case, and the scheme settled by the Board provided, inter alia, that

The temples.... and their endowments shall be administered by the hereditary trustee in rotation, each functioning for one fasli, and two non-

hereditary trustees appointed by the Board.

It will be noted that the administration of the temples was not vested, as in the present case, in all the trustees, one of them being appointed as the

Managing Trustee in each fasli. The effect of the clause was held to be "" to suspend three of the hereditary trustees in rotation for a period of three

years."" Taking that view of the clause, the learned Judges proceeded to examine the provisions of the Act

to see whether any power is given to the Board by which they can suspend, because that is what it comes to hereditary trustees in the manner in

which they seek to do in the scheme before us,

and, finding no provision in Section 63 for the suspension or removal of hereditary trustees, they came to the conclusion that the scheme was in

contravention of the Act so far as the hereditary trustees were concerned, observing:

Taking the view, as I do, that the effect of this clause is to remove them "" (that is, the hereditary trustee) "" for a definite period, I consider that the learned Judge quite rightly decided that it was not within the powers of the Board.

8. The present case is clearly distinguishable. Here, the scheme, as already stated, provides that the administration ""shall vest in the present hereditary and three non-hereditary trustees.""; that is to say, the temples shall be administered by all the trustees and not by some only of them in each year. There is thus no suspension or removal of any of the trustees. Each of the hereditary trustees is no doubt to be the managing trustee for two years in rotation as provided for by the District Judge ; but as has been stated, his duties are to be of a merely routine character, and cannot be taken to derogate from the powers and responsibilities of the other trustees in whom, no less than in the managing trustee, the administration is vested. It must follow that the scheme as modified by the Judge is not in contravention of the Act.

9. Is there anything, then, in the general law to render a scheme of management by turns illegal where there are several trustees? There are observations in the case referred to above purporting to be based on certain decisions and suggesting that, in the case of a public charity, such scheme would not be valid. These observations must be regarded as obiter as they were not necessary for the decision of the case which, in the view taken of the effect of the scheme, turned on the powers of the Board under the Act to suspend or remove hereditary trustees. In view, however, of the observations and the contention based thereon, the line of cases has to be examined.

10. In *Ramanathan Chetti v. Murugappa Chetti* I.L.R.(1903) Mad. 192 rejecting the suggestion that, when trust property is managed in rotation by co-trustees, the possession of office by each is exclusive of, or adverse to, the other co-trustees, Bhashyam Aiyangar, J., who delivered the judgment of the Court explained the true position in such cases thus: Though each of the co-trustees may, during his turn in the rotation, be regarded in a sense as the acting or executive trustee for the year (or period). Cf. *Attorney General v. Holland* (1837) 47 R.R. 476 yet he holds the office and discharges the duties thereof on behalf of all the co-

trustees and not on behalf of himself alone. In fact, as a general rule, even during the turn of each co-trustee, all the co-trustees are entitled, and, in fact, are bound to act jointly in matters other than the ordinary routine duties.

11. The learned Judge, however, recognised, envisaging a situation such as arose in *Hindu Religious Endowments Board, Madras v. Palaniandi*

(1944) 1 M.L.J. 82 : I.L.R.1944 Mad.534 that

one of several co-trustees is not entitled to ask a Court to partition the duties of the trust between himself and his co-trustees so as to give him the

exclusive possession and management of the trust property for (say) six months in the year, putting the other trustees entirely aside during his period of management.

12. The *raison d'être* of the usage of management by turns was thus explained

In the case of hereditary offices in this country the number of co-trustees is in the very nature of things liable to increase and the co-trustees may

belong to various branches of the family.... when by reason of the family becoming divided, the eldest member ceases to be the managing member

of the family, it becomes highly inconvenient and also detrimental to the interests of the religious institution if one and all the members (as co-

trustees) are to participate in the joint discharge of the duties of the office.... Except in the few cases in which the hereditary office may be

descendible only to a single heir, the usage and custom generally is that, along with other properties, the office also is divided in the sense that the

office is agreed to be held and the duties thereof discharged in rotation by each member or branch of the family, the duration of their turns being in

proportion to their shares in the family property... Even in cases in which recourse is had to a suit for the partition of the family property, the Courts

give effect to the usage and custom above referred to, by providing in the decree for management of religious and charitable institutions by different

members or branches of the family in rotation on the above principle.

The learned Judge proceeded to point out that the usage and custom is

not restricted to cases in which there are emoluments attached to the office, but extends as well as to cases like the present in which the trustees

have no beneficial interest. The usage is as wholesome in the one case as in the other, for the efficient and smooth discharge of the duties of the

office.

Attorney-General v. Holland (1837) 47 R.R. 476 was referred to as an instance where the author of a trust who appointed several co-trustees

provided that each trustee in rotation should be the acting trustee for a year. The learned Judge finally came to the conclusion that it was

competent for a Court in the exercise of its equitable jurisdiction to settle a scheme for the management of a public religious or charitable trust by

the various co-trustees in rotation if such management would be more beneficial to the interests of the trust than the joint and concurrent

management thereof by a large number of co-trustees.

13. This decision was affirmed by the Privy Council in Ramanathan Chetti v. Murugappa Chetti (1906) 16 M.L.J. 265 : 33 I.A. 139 : ILR 29

Mad. 283 (P.C.) where their Lordships, referring to the usage of management in rotation where there are numerous trustees, remarked as follows:

In such a case, in order to avoid confusion or an unseemly scramble, it is not unusual, and it is certainly not improper, for the parties interested to

arrange among themselves for the due execution of the functions belonging to the office in turn or in some settled order and sequence. There is no

breach of trust in such an arrangement nor any improper delegation of the duties of a trustee.

14. In Sethuramaswamiar v. Meruswamiar (1917) 34 M.L.J. 130 : 45 I.A. 1 : ILR 41 Mad. 296 (P.C.) the Privy Council had to deal with certain

endowments made by the Rajah of Tanjore for religious and charitable purposes in connection with a mutt in which the original grantee, who was

the Raja's guru or spiritual preceptor, was installed as the Matathipathi. The office admittedly descended by the rule of primogeniture. On the

death of one of the Gurus, his younger sons claimed, in a partition suit brought against the elder, that they as members of the family were also

entitled to take part in the management of the properties, and that a scheme should be settled for the purpose of providing for the exercise of their

right. This Court upheld the right and directed a scheme to be framed accordingly. Their Lordships reversed the decision so far as the charitable

endowments were concerned, holding that the

intention of the founder must be deemed to have been that his religious charities should be administered by the man who was head of the mutt, to

which office, the eldest son of the previous holder would naturally succeed.

Thus, the actual decision in the case does not touch the present point. In the course of the judgment, however, their Lordship referred to

Ramanathan Chetti v. Murugappa Chetti (1906) 16 M.L.J. 265 : 33 I.A. 139 : ILR 29 Mad. 283 (P.C.) as laying down the law in regard to:

what are called private charities, such as endowments for the support of the family idol

and remarked that no case was cited applying such law to endowments of"" such a charity as those in question in this suit."" Assuming that the last

words quoted referred to public charities and not to religious charities annexed to an office (the headship of the mutt), the statement that

Ramanathan Chetti v. Murugappa Chetti (1906) 16 M.L.J. 265 : 33 I.A. 139 : ILR 29 Mad. 283 (P.C.) related to a private charity does not

accord with the facts of the latter case where Lord Macnaghten referred to the temple there in question as

dedicated to the public worship of the deity in whose honour it was founded

and Bhashyam Ayyangar, J., stated in his judgment that:

It is admitted that the plaint temple (with its endowments) is a public religious institution.

It appears from the report of the arguments in Sethuramaswamiar v. Meruswamiar (1917) 34 M.L.J. 130 : ILR Mad. 296 : 45 I.A. 1 (P.C.) that

counsel for appellants, in distinguishing Nubkissen Mitter v. Hurrischunder Mitter (1816) 2 Mey.'s D 146 and Ramanathan Chetti v. Murugappa

Chetti (1906) 16 M.L.J. 265 : 33 I.A. 139 : ILR 29 Mad. 283 (P.C.) which were relied on by this Court, pointed out that the first case related to

the endowment of a family idol, and that might possibly have led to a mixing up of the facts of the two cases.

15. The decision in Ramanathan Chetti v. Murugappa Chetti (1906) 16 M.L.J. 265 : 33 I.A. 139 : ILR 29 Mad. 283 (P.C.) was subsequently

considered by this Court in Meenakshi Achi and Another Vs. Somasundaram Pillai, and Wallis, C.J., who delivered the judgment of the Court

pointed out that the observations in Sethuramaswamiar v. Meruswamiar (1917) 34 M.L.J. 130 : ILR Mad. 296 : 45 I.A. 1 (P.C.) regarding the

case in Ramanathan Chetti v. Murugappa Chetti (1906) 16 M.L.J. 265 : 33 I.A. 139 : ILR 29 Mad. 283 (P.C.) were obiter and proceeded on

some misconception, and he applied the latter decision to the case before him which related to a public trust, observing,

This decision of the Judicial Committee has been applied to public trusts in a very large number of cases in this presidency.

It was followed and applied again by Venkataramana Rao, J., in *Alasinga Bhattar v. Venkata Sudarsana Bhattar* (1935) 70 M.L.J. 424 where an arrangement between members of a family whereby the trusteeship of a public temple was to be held in turns by one branch in each year was upheld.

16. In view of these authorities, the observations in *Hindu Religious Endowments Board, Madras v. Palaniandi* (1944) 1 M.L.J. 82 : ILR 1944

Mad.534 suggesting that the law as laid down in *Ramanathan Chetti v. Murugappa Chetti* (1906) 16 M.L.J. 265 : 33 I.A. 139 : ILR 29 Mad. 283

(P.C.) on appeal to Privy Council, is applicable only to private charities and not to public charitable trusts, as the Privy Council in"

*Sethuramaswamiar v. Meruswamiar* (1917) 34 M.L.J. 130 : ILR Mad. 296 : 451 I.A. 1 (P.C.)

expressly relegate the charity in *Ramanathan Chetti v. Murugappa Chetti* (1906) 16 M.L.J. 265 : 33 I.A. 139 : ILR 29 Mad. 283 (P.C.) to the

position of a private charity

cannot be regarded as correctly stating the position. As already pointed out, the temple concerned in *Ramanathan Chetti v. Murugappa Chetti*

(1906) 16 M.L.J. 265 : 33 I.A. 139 : ILR 29 Mad. 283 (P.C.) is public religious institution, and their Lordships' reference to it as a private charity

must have been due to a misconception. It is difficult to see how such reference could "" relegate "" what in fact is a public trust "" to the position of a

private charity."" Nor can one readily appreciate the force of the distinction that in *Attorney-General v. Holland* (1837)47 R.R. 476 the provision

for the trustees acting in rotation was contained in a will. What is relevant is that the charity founded by the testator in that case was clearly a public

charity and no exception appears to have been taken to the validity of the provision. It is important to note that the Privy Council did not say that

the decision in *Ramanathan Chetti v. Murugappa Chetti* (1906) 16 M.L.J. 265 : 33 I.A. 139 : ILR 29 Mad. 283 (P.C.) was inapplicable to public

trusts. All that their Lordships said was that it was "" unnecessary to decide that

point"" as they rested their actual decision on the peculiar nature of the endowment before them. It follows that the provisions made in the scheme under consideration that each hereditary trustee should act as a managing trustee in rotation for two years is valid. Reference may also be made in this connection to a recent case reported in Pallaprolu Krishnamacharlu and Another Vs. Pallaprolu Rangacharlu and Others, . Though no question of management in rotation was involved, it was there held that it was competent to the Board to appoint one of several trustees of a public temple whether hereditary or non-hereditary to be the, managing trustee for a period, if the powers of the general body of trustees were not thereby taken away.

17. The next objection raised relates to the provision made by the Judge, for the removal of the managing trustee. As I have already observed the appellants complain that the provision is far too drastic, and they particularly object to the direction that if a vote of no confidence is passed against a managing trustee by a majority of three of the trustees on two occasions within a period of six months, he should be removed from the office of the managing trustee. This modern democratic device of a vote of no confidence is strangely out of place in a scheme for the administration of a temple and its endowments. The managing trustee does not owe his office to the vote of his co-trustees and his tenure cannot be made to depend on their continued support. Under the scheme he will hold office by virtue of the provision which recognises and gives effect to the long continued usage of the institution, and he can be removed only for proved mismanagement or misconduct, or other valid reasons. I therefore allow this objection and direct the deletion of the provision for removal of the managing trustee.

18. Lastly, it was contended that Clause (8) empowering the Board to issue directions from time to time regarding the internal management of the temples is in contravention of the Act which does not confer upon the Board the power of interfering with the internal administration. The appellants complain that this provision might in practice reduce the trustees to the position of puppets acting at the bidding of the Board. The criticism is in my opinion well-founded. The Board is a statutory corporation (Section 11), and its powers and duties are defined and delimited by

the provisions of the Act. Apart from the powers specifically conferred upon it the Board has general powers of superintendence "" over religious endowments (Section 18), while the trustees are to "" administer"" the affairs of such endowments (Section 40). This broad demarcation of the respective functions of the Board and the trustees must be kept in view in settling schemes funder the Act, and the Board cannot be allowed to usurp the powers which the Act has entrusted to trustees, under colour of settling schemes u/s 63. Clause (8) of the scheme which is apparently designed to authorise interference by the Board in matters of internal administration must be deleted. The Board will, of course, have and exercise the powers conferred by the Act.

19. The power conferred on the managing trustee exceeds in one respect what is permissible under the law. It is the power under Clause 5(e) of the scheme ""to represent the devasthanam in all suits and proceedings."" This the managing trustee cannot do, as the trust can only be represented in such matters by all the trustees. This Sub-clause will also be omitted.

20. The appeals are allowed to the extent indicated above and the scheme will foe modified accordingly. There will be no order as to costs.

William Gentle, C.J.

21. I have had the advantage of reading the judgment of my learned brother. I agree with the conclusions expressed and the reasons given for them, and have nothing to add.