

(1925) 11 MAD CK 0062
In the Madras High Court

Settikara Venkatarama Chettiar and Others

APPELLANT

Vs

O.P. Damodaram Chettiar and Others

RESPONDENT

Date of Decision : 26-11-1925

Acts Referred:

Citation : AIR 1926 Mad 1150 : (1926) 51 MLJ 457

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The plaintiffs have brought this suit u/s 92, Civil Procedure Code, for framing a scheme for the management of Ramalingam and Choudeswari Amman temple in Andichetty Street, Cogai, Salem. The 1st defendant is a managing trustee of the temple and defendants 2 to 10 are trustees of the temple who aided and instigated the 1st defendant in his various misdeeds and breaches of trust. In the plaint the plaintiff alleged various acts of mismanagement against the 1st defendant who denied all of them and opposed the framing of the scheme. When the case came on for trial the plaintiffs and the defendants did not press for the trial of all the issues raised in the case." They agreed to the Court framing a suitable scheme for the proper management of the institution. The plaintiffs did not press for the removal of the defendants from office and the defendants did not press for the trial of the case on the merits and waived their objection to the validity of the sanction obtained by the plaintiffs from the Collector for the institution of the suit. The Subordinate Judge of Salem framed a scheme and provided for a Hoard of nine trustees of whom three should be ejected by the Chettithanakars from among their number and four by all the beneficiaries including the Chettithanakars and one to be elected by those who pay or have paid one thousand rupees or more towards the temple at a time, and one should be nominated by the eldest member of the family of Nungavalli Venkatarama Chettiar, the founder of the temple. The defendants 2, 3, 4, 7 and the legal representative of the 10th defendant appealed to the District judge, Salem, who dismissed their appeal. They have preferred this second appeal.

2. Two points are raised in this appeal : one is, that the 19 Chettithanakars are hereditary trustees and (2) that they should not have been removed without finding that they were guilty of misconduct and not fit to be trustees. The District judge, on a consideration of the evidence in the case, has come to the conclusion that the 19 Chettithanakars among whom some are plaintiffs and some defendants, are not hereditary trustees. Ex. A is the deed of trust dated 9th January, 1925 executed by Venkatarama Chetti in favour of 19 persons. In that he stated that he alone was unable to make and set up idols of Ramalingam and Choudeswari Amman in the Chou-deswari Amman Temple Devasthanam built by him and that the 19 persons agreed to raise a fund and to put up the idol in the temple and according to the agreement that they set up the idols of Ramalingam and Choudeswari Amman and that they agreed to purchase property for endowing the temple and the document goes on to state "that the 19 persons should manage the temple from generation to generation. The contention of the learned Advocate-General is that the document does not confer hereditary right upon the 19 persons mentioned in Ex. A. It is clear from the documents that funds were collected by Venkatarama Chetti and by the 19 persons mentioned in it; that they built the temple, installed the idols in it and that they collected funds for the upkeep of the temple and managed the temple under Ex. A. The recital as regards the devolution of the management is to manage the same from generation to generation performing the daily pooja, aradhanai, festivals and other things regularly and live happily as long as the Sun and Moon last."

3. There is a further recital to the same effect after mentioning the properties of the temple "the properties are delivered to you as being fit to be managed, held, and enjoyed from generation to generation by setting up the idols of Ramalingam and Choudeswari Amman and others as stated above". From the document it is clear that Venkatarama Chetti and the 19 persons intended that the management should be in their families. Considering the Hindu sentiment as regards the hereditary management of trust institutions it cannot be successfully urged that the parties to Ex. A did not intend that the right to trusteeship should be in their families.

4. The next contention of the learned Advocate-General is that the persons mentioned in Ex. A collected subscriptions from various persons and they could not be said to be the founders of the temple and therefore they had no right to confer hereditary right of management upon themselves or others. 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. The case in *Ananda Chandra Chuckerbutly v. Braja Lal Singh* ILR (1922) C. 292 does not help the respondent. Justice Mookerjee observes at

page 301:

If a number of persons provide the original endowment, they may apparently together constitute the founder: *Re St. Leonard* (1884) 10 A.C. 304. As stated by Lord Mansfield in *St. John's College v. Todington* (1757) 1 Burr. 158 a charitable foundation, in so far as it is charitable, is the creature of the founder, and on this view Lord Hardwicke ruled in *Green v. Rutherford* (1750) 1 Ves. Sen. 462 that the founder may provide for the government and administration of his creature.

5. In the matter of the Endowed Schools Act, 1869, and In the matter of the *St. Leonard, Shoreditch, Parochial Schools and the Endowments relating thereto* (1884) 10 A.C. 304 it was held that it was open to a number of persons to collect subscriptions and endow an institution and provide for its management and that the persons who collected the subscriptions and endowed the institution were the founders and they had the right to provide for its management and for its devolution. If persons invite subscriptions on a representation that they would devote the subscriptions so collected to a particular purpose and they divert the subscriptions to some other purpose the subscribers have to object to the funds being diverted to other purposes than those for which they were collected. But so long as the subscribers do not object to the person or persons collecting subscriptions for building or endowing any particular institution, the person or persons so building or and endowing it have the right to provide for its management for all time to come. There is nothing in the evidence to show that the persons who gave subscriptions gave them on the understanding that the founders should not have the hereditary right of management. All that appears from *Ex. A* is, that subscriptions were collected, funds were raised, a temple was built and idols were installed, and the management was in the hands of Venkatarama Chetti and others and all of them. Venkatarama Chetti and 11 persons agreed that the temple should be a trust and should exist for all time to come and the management should be hereditary in their families.

6. In *Attorney-General v. Clapham* (1855) 43 E.R. 638 :591 G.M. & G. 593 Lord Cranworth, Lord Chancellor observes at page 652:

Where a fund is raised for a charitable purpose like that of founding a chapel and the contributors are so numerous as to preclude the possibility of their all concurring in any instrument declaring the trusts, but such a declaration is made by the persons in whom the property is vested, at or about the time when the sums have been raised, that declaration may reasonably be taken *prima facie* as a true exposition of the minds of the contributors. The presumption is, that the trusts declared were those which the contributors intended. It would be open to them, if the trusts were not so framed as to effect the object they had in view, to take steps for getting any errors corrected. If no such steps are taken, it must be assumed that the instrument declaring the trusts fairly embodies the intentions of the contributors.

7. I therefore hold that the 1st defendant, the other defendants and the Chettithanakars have a hereditary right to manage the temple affairs.

8. The next question is, whether the order removing the trustees is legal in the absence of a finding that they were guilty of breach of trust. The Subordinate Judge has not actually removed the trustees from management. What he has done is, finding that the management By 19 persons would not be possible he has given them the right to elect 3 of their own number as trustees, and 4 others are eligible for election by all the beneficiaries including the Chettithanakars. The Chettithanakars are the head men of the community. Each group of families has one man to manage its communal affairs and that man is called a Chettithanakar. There were at the time of Ex. A, 19 Chettithanakars. It is now represented that there are about 30 of them.

9. Granting for argument's sake that the defendants have been removed from the trusteeship it cannot be said that the order of the Subordinate Judge is illegal. Section 92, Civil Procedure Code, gives power to the Court to frame a scheme of management "where the Court finds that for the proper administration of a trust, charitable or public, that a trustee should be removed, it has power to do so without finding that the trustee is guilty of mismanagement". Section 92 was specially enacted in the interests of public, charitable and religious trusts. The Court should primarily look to the interests of the institution rather than the right of individuals. Where the interests of the institution do require that certain trustees should be removed the Court can do so without actually finding that they are guilty of mismanagement provided their remaining as trustees is incompatible with the proper management of the institution or that the number of trustees is so large that it will not be possible for any scheme to work with all of them as trustees. No doubt in framing a scheme the Court should not lightly exclude the interests of hereditary trustees and others. But where the Court finds that their continuance could not be for the welfare of the institution and is not conducive to the proper working of the scheme it should not hesitate to remove them. But where they can be retained without any detriment to the institution the Court may do so. This principle was followed by the learned Chief Justice and Phillips, J. in *Muthiah Chetti. v. Periannan Chetti* (1916) 4 L.W. 228:

Though the past user of the institution, is not binding on us in framing a scheme under the section yet it may well be taken into account and departed from only as far as may be necessary.

10. It is unnecessary to discuss this point further as I hold that the trustees were not removed from the trusteeship under the scheme. The contention of Mr. T.R. Ramachandra -Aiyar for the appellant is that all the ten persons should be trustees. It will not be possible to have 19 persons as trustees and from their past conduct it is clear that all the affairs were managed by the 1st defendant on behalf of all the trustees and this has been so not only during the lifetime of Venkatarama Chetti but also during the time of the Ist defendant. When for the last 30 years only one man has been managing the temple with hardly any

restraint from the other trustees they have no reason to complain if the scheme provides for at least three of them being on the committee. As observed by their Lordships of the Privy Council in *Muhammad Ismail Ariff v. Adhmed Moola Dawood* ILR (1916) C. 1085 :

In giving effect to the provisions of the section and in appointing new trustees and settling a scheme, the Court is entitled to take into consideration not merely the wishes of the founder, so far as they can be ascertained, but also the past history of the institution, and the way in which the management has been carried on heretofore, in conjunction with other existing conditions that may have grown up since its foundation. It has also the power of giving any directions and laying down any rules which might facilitate the work of management, and, if necessary, the appointment of trustees in the future.

11. It is frankly conceded by Mr. Ramachandra Aiyar that the Court has power u/s 92 to appoint additional trustees to manage charitable or religious trusts along with hereditary trustees. This point was settled so long ago as 1905 in *Prayag Doss Ji Varu, Mahant Vs. Srirangacharluvaru and Another*, . If additional trustees can be appointed to manage trusts along with hereditary trustees it is difficult to see how the appellants could complain when a few trustees are appointed under the scheme to manage the property along with three of the so-called hereditary trustees. In case of this kind as already observed it is not the interest of private individuals that should be considered paramount. The interest of the institution is of paramount importance and the Court should have that in view in framing a scheme. In this case the interests of the defendants is safeguarded by three at least of the members being on the board of management. In this view it cannot be said that the rights of the Chettithanakars have been overlooked by the Subordinate Judge in framing a scheme.

12. I think the scheme as framed is a proper one and the appellants have no reason to complain that their rights have been overlooked. In the result the appeal fails and is dismissed with costs.