
(1932) 03 MAD CK 0049
In the Madras High Court

Shanmuga Mudali

APPELLANT

Vs

Arunagiri Mudali and Others

RESPONDENT

Date of Decision : 24-03-1932

Acts Referred:

Citation : AIR 1932 Mad 658 : 140 Ind. Cas. 443 : (1932) 36 LW 669

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—The plaintiff's case shortly is, the plaintiff and the four defendants are the five trustees of the suit temple appointed under a High Court scheme in A.S. No. 273 of 1918 Clause 4 of the scheme runs that:

one of the trustees shall be the executive trustee by consent in writing of the others and he shall not continue as such for a period exceeding two years.

2. Defendant 2 had been the executive trustee under this clause for Fasli 1340. As his time of office had expired, a meeting of trustees was summoned by him for 7th July 1931. Plaintiff and defendants 2 and 4, although served with notice of the meeting, did not choose to attend. At the meeting (see Ex. 3) defendants 1 and 3 were present and defendant 2 sent a letter consenting to the appointment of defendant 1 as executive trustee. The meeting resolved that defendant, should be the executive trustee for Fasli 1341. The plaintiff claims that this appointment of defendant 1 is ultra vires of the scheme, that this is an interference with his right of management and therefore sues to have defendant 1's appointment declared void and that defendant be restrained by injunction from functioning as executive trustee. The trial Court dismissed the suit; the appellate Court decreed it; and defendant 1 appeals.

3. The main question is whether the plaintiff has any cause of action. It appears to me that he has none. The plaintiff, contends that Clause 4 of the scheme means that all the trustees must consent in writing to the appointment of the executive trustee. I do not so interpret the clause. Any body of trustees can by

resolution in the ordinary way appoint any one of their number as the managing or executive trustee, and if the clause was designed not to express but to curtail this right, I should expect it to have been expressed in very different terms such as that no executive trustee shall be appointed except with the express consent in writing of all the trustees. Clause 4 seems to me to be designed merely to indicate to the body of trustees a method by which the executive trustee may be appointed, in particular that he should be appointed with the consent of the other trustees, that is of the body of trustees, and I can see in it no design to deprive that body of their right to appoint by resolution a managing trustee or to interfere with their right to pass such a resolution by a majority vote. The lower Court's citation of *Ramalinga Mudaliar v. Sundra Sastrigal*, AIR 1929 Mad. 526, is irrelevant, since the discussion there was on a quite different point. Here as a matter of fact three out of the five trustees, that is, defendants 1, 2 and 3, were in favour of having an executive trustee and of appointing defendant 1 to that office. It is true that there were not three present at the meeting and that the consent in writing of defendant 1 himself does not seem to have been obtained; but the purpose of Clause 4 has been substantially complied with that being as I read it that for the appointment of executive trustee a majority of the trustees should consent. I cannot follow the lower appellate Court when holding that defendant 1 cannot be considered as one of the trustees entitled to consent as much as any other. So whether defendant 4 was or was not then a trustee, a point upon which the lower appellate Court has spent much time is immaterial. Obviously no trivial deviation from formal compliance with the rules under the scheme will do any real injury to any party, and no injury is done if the rules have been substantially complied with. To hold otherwise would be to constitute the civil Court the actual manager of the temple, a practice which has often been condemned. The plaintiff's remedy if he wanted to defeat the election was to go to the meeting and vote against the proposal and persuade his colleagues to vote against it also. It does not appear to me that he has any cause of action even if there has been a technical breach of the rules.

4. He contends that defendant 1's appointment as executive trustee deprives him of his legal status. That is not so. It does not in any way affect his legal status as trustee, nor is defendant 1 denying his status as such nor has he been deprived of any legal remedy which he had. It is his own fault if he refused to exercise his rights, viz., to go to the meeting and vote against the proposal. He still has the remedy that he always had of endeavouring to get the resolution cancelled by the Board of Trustees. One trustee in a minority has no legal right to sue to set aside a majority vote even when strict obedience to technical rules has not been observed if in substance the rules have been complied with. The net result of the whole proceeding is that the majority of trustees consent to defendant 1 being executive trustee and the plaintiff is merely one of a minority and bound by the majority vote. The appointment of managing trustee does not involve any legal question of the trustees delegating their powers to others and the discussion of the lower Court on this line of argument seems to me

irrelevant. The argument would in fact, if sound mean that Clause 4 itself, on which the plaint is based is ultra vires because itself illegal. Similar considerations apply to the citation of Hasan Raza v. Hasan Ali [1917] 40 Mad. 941. In that case the election of a trustee by an electoral body was held invalid because the majority of those entitled to vote were not at the meeting. The case is not parallel to the present. That was a case of an election to the legal status of trustee, that is conferment of legal status on one who had not previously possessed it by a vote which was not the vote of the majority of the total electoral body. The present case is merely one concerned with a domestic matter, the trustees merely deciding who shall for the time being have the effective management on behalf of the rest. They are merely taking practical measures among themselves for efficient internal conduct of the administration. Clause 4 itself does not say that the consent must be at a meeting at which the majority of trustees are present.

5. It has been contended that the question whether the plaintiff has a cause of action was not put in issue in the case. But it is practically the same question as whether defendant 1 was validly appointed, which has been fully tried in the lower Courts. I must therefore hold that the plaintiff has failed to show that defendant 1 was not validly appointed and therefore that he has a cause of action and the suit therefore must be dismissed. An objection to the plaintiff's suit on the ground of nonjoinder was taken on the footing that in such a case it is necessary that all trustees should be parties, and that at the time of the suit defendant 4 had resigned and another person Rangaswami Reddy had been appointed trustee on 10th July in his place. But this matter has been left rather in the air. It is not certain from the records in the case whether defendant's 4 resignation was accepted. I do not wish to say anything here for or against the validity of Rangaswami Reddy's appointment since it is not necessary for the disposal of this appeal and since he is not a party to the appeal. It is also not necessary to postpone the decision of this appeal in order that he may be brought on the record. I must therefore reverse the decree of the lower appellate Court and restore that of the District Munsif with costs to defendant 1 in all Courts.