

(1893) 12 MAD CK 0003
In the Madras High Court

Sheik Davud Saiba and Others

APPELLANT

Vs

Hussein Saiba and Others

RESPONDENT

Date of Decision : 21-12-1893

Acts Referred:

Trusts Act, 1882 — Section 49

Citation : (1894) ILR (Mad) 212 : (1894) 4 MLJ 48

Judgement

1. It is urged on appellants" behalf that the committee constituted under Act XX of 1863 acted ultra vires in appointing six additional trustees to the

plaint mosque without any necessity for so doing.

2. It is certainly competent to the committee when there is no hereditary trustee to add to the number of the existing trustees and it has the same

powers which the Board of Revenue had under Regulation VII of 1817. Section 13 of that Regulation authorizes the Board of Revenue to make

provision for the administration of religious and charitable endowments. It was also held by this Court in Regular Appeal No. 31 of 1888 that the

committee might validly appoint new trustees where the right of management is not hereditary. It is then contended that the power conferred on the

committee, it is bound to exercise reasonably, and in good faith, in furtherance of beneficial administration, and this contention is entitled to weight.

The power conferred on the committee is no doubt discretionary but the principle embodied in 8. 49 of the Indian Trusts Act, vie., that when such

discretionary power is not exercised reasonably and in good faith, such power may be controlled by a Civil Court of Original Jurisdiction, is

equally applicable to public trusts. There is nothing in Act XX of 1863 or in Regulation VII of 1817 to support respondent"s suggestion that the

power is absolute.

3. The second issue raised the question and the District-Munsif held that the committee exercised the power otherwise than reasonably and in

good faith. But the judge has expressed no opinion. Before disposing of this second appeal we shall ask the judge to return a finding as to whether

the appointment of additional trustees was a reasonable, bona fide, exercise of their power, conducive to beneficial management. Additional

evidence may be admitted.

[In compliance with the above order, the District Judge returned a finding that the power had not been exercised unreasonably]. On receipt of this

finding the court (Muthusami Aiyar and Best, JJ) dismissed this appeal with costs.