

(1927) 07 MAD CK 0023
In the Madras High Court

Sivakasi Viswanathaswami Devasthanam and Others

APPELLANT

Vs

Koodalinga Nadan and Others

RESPONDENT

Date of Decision : 19-07-1927

Acts Referred:

Citation : AIR 1928 Mad 246 : 108 Ind. Cas. 401

Hon'ble Judges : Srinivasa Aiyangar, J;Reilly, J

Bench : Full Bench

Judgement

Srinivasa Aiyangar, J.—Some unusual and difficult points have been raised and urged in the course of the argument in these second appeals. The present appellants, it must in limine be observed, were not parties personally to the litigation or decree in the lower appellate Court and they have sought to file this appeal as the present trustees or dharmakarthas of Kasi Viswanatha Swami temple, Sivakasi. Their case is that there were two former trustees or dharmakarthas of this temple, that both of them tendered their resignation on or about the 8th July 1922, that one of the trustees died in January 1923, leaving the other alone surviving, that the resignation of the surviving trustee was accepted by the temple committee on or about the 5th August 1923, that the present appellants were appointed by the committee as the two trustees for the devasthanam and that they took over charge on the 13th January 1924. In the meantime after the death of one of the trustees and also after the acceptance by the committee of the resignation of the trusteeship by the surviving trustee on or about the 24th November 1923 the appeal in the lower appellate Court was heard after argument by the vakil appointed by the old trustees and decided against the devasthanam. The present trustees have not made themselves parties or brought themselves on the record in the lower appellate Court. The first question, therefore, that arises for determination is whether, having regard to the very contentions of the appellants that they became trustees not after the decree of the lower appellate Court but before the judgment in the appeal, and they not having brought themselves on the record in the lower appellate Court, it is competent to them to sustain this appeal—It seems to me that in the view I

have taken of the contentions on behalf of the appellants with regard to the other points in this appeal it is not necessary for me to express any final opinion on this point. It is no doubt difficult and I must confess that the matter has not been fully or sufficiently argued before us so as to enable us to express any decisive opinion thereon. It is sufficient for me to observe that such a question is really fraught with a great deal of difficulty having regard to the provisions of the CPC and the practice of the Courts. Assuming therefore for the purposes of this discussion that the appeal is competent, that the appellants are entitled to come to this Court and complain about the decree having been passed, the only objection taken on behalf of the appellants to the decree is not on the merits but merely on the ground that the appeal was heard at a time when even the surviving trustees of the devasthanam had ceased in law to be a trustee by reason of his resignation having been accepted in August previous and by reason also of a valid appointment to the trusteeship having been made by the committee. It is unfortunate that the affidavits filed on behalf of the appellants in this case have not even been noticed in the grounds of appeal and no intimation given to the respondents that the appellants were proposing to rely upon the averments in these affidavits for the purpose of their argument. I may observe that with reference to the practice in these "Courts it is very desirable when parties propose to rely upon affidavits express reference] should be made to the affidavits if not in the grounds of appeal at any rate sufficiently otherwise.

2. It is also regrettable that these affidavits have not been got translated and printed for the purpose of easy reference in Court. But we have had the affidavits read to us and I am constrained to observe that the affidavits are phenomenally vague and indefinite. As regards the most important point in the case the new trustees (appellants) taking over charge of the office of trusteeship the passive voice is used in the affidavit and there is no information furnished as regards the person from whom the new trustees took over charge. In these circumstances I must assume as in the ordinary course that the new trustees took over charge on the 13th January 1924 from the old surviving trustee, because in the absence of any other information he would be the only person to hand over charge to the new trustee. If so, it follows that till he handed over charge on the 13th January 1924, even though he had resigned and even though such resignation had been accepted and new trustees had been appointed, the new trustees did not take over charge but he continued de facto as trustee. The question then is whether the mere fact of the appointment of two new trustees by the temple committee even though the two trustees did not take over charge of the office of trusteeship renders a nullity the decree and judgment passed by the Court of competent jurisdiction. The argument by the learned vakil for the appellants was put thus. The idol no doubt is a juristic person but there must be other persons who must sue or be sued in respect of the rights vested in the idol and if a trustee sues as a person entitled to do so on behalf of an idol he ceases to be a person competent to represent the idol the moment he ceased to be a trustee and he ceases to be trustee at any rate when his resignation was finally accepted.

3. There is no doubt some force in an argument so advanced but it has often been held that judgments in respect of temples and idols obtained by or against de facto trustees thereof are binding if otherwise unassailable in the same manner and to the same extent as if they had been obtained by or against trustees de jure. If the true theory is that it is only persons who as the trustees or otherwise competent to enforce the rights of temples or idols that should as parties to the suit sue or be sued, then as the suit or appeal in this case has been properly instituted, there must be some provision of law which makes such a proceeding incompetent before it can be argued that a judgment or decree passed there in is a nullity. There is a provision in the CPC to the effect that on the death of a party a legal representative should be brought on the record within a particular time limited and in default the proceeding abates subject of course to other remedial measures. There is no such provision with regard to trustees. In the absence of any such provision it seems to me that the dismissal or resignation of one trustee and the appointment of another can only be regarded in the light of what is called in the CPC in Rule 10, Order 22, a devolution of any interest. It is significant that the legislature in that rule uses the words "any interest" and a, right to maintain a suit must certainly be regarded as an interest within the meaning of that rule. If, therefore, pending the proceeding there is a devolution of interest, that is, the right or interest by virtue of which the proceeding was originally instituted comes to be transferred to or to be vested in some third party, the CPC allows such a new person to come in and implead himself or to be brought on the record otherwise.

4. But the whole policy of the Code is that if the proceeding originally instituted is proper right and any decision obtained therein is binding on all persons on whom the interest or right may devolve pending the disposal of the proceeding. If that is the true theory of the CPC then it seems to me that there is really no difficulty at all in the present case. It was no doubt open to the new trustees if and when appointed to apply to the Court to be brought on the record and make themselves parties to the appeal. That they did not do, and there being no specific or positive provision by which the appeal or proceeding can be said to have abated on the resignation or dismissal even of a person holding the representative character, it is difficult to agree with the contention put forward on behalf of the appellants, and hold that on the mere resignation by a trustee being accepted the whole proceeding tends to the same position as in the case of the death of a party. If the legislature had intended any such result I am sure it would have provided for it. The learned vakil for the respondent referred us to the case of *Bepin Behari Bose v. Mr. K.S. Banerji* AIR 1921 Cal. 422. That was the case of a receiver with regard to whom a competent Court had passed an order of conditional discharge. No doubt the judgment in that case is rested finally by the learned Judges on the ground that the person who was receiver did not cease to hold office at the relevant point of time but there are, however, certain observations in that judgment by the learned Judge one of whom I may notice was "Justice Woodroffe who has himself written a book on receivers, that

the appointment of an-other receiver is really in the nature of devolution of interest within the meaning of Rule 10, Order 22, Civil P.C.

5. The analogy between the case of receiver in whom also the properties of which he may be the receiver do not really vest in law but who is merely in the position of a manager acting under orders of Court and who has the right to sue only if, and when the Court grants him such a right and the devasthanam of Hindu temple whose status and position in law have been recently defined by their Lordships of the Privy Council, is very close. In this view it seems to me unnecessary to refer in detail to all the cases that have been referred to by either of the learned gentlemen in this case. There was also one other ground on which the learned vakil for the appellant relied. He referred to various cases where decrees and judgments passed by Courts of law in the absence of a representative of deceased parties are referred to as a nullity. The question may no doubt arise, that if in reality such a decree or judgment should be regarded as nullity then what need or necessity is there for an appeal being filed and whether it can be regarded that the provisions of the Civil Procedure Code, enable a party to come to the Court, and have a nullity declared or decreed as such. It seems to me that perhaps the expression " nullity " must have been used in such cases with special reference to the facts of the case, and merely to indicate that so far as the legal representatives are concerned who have not been brought on the record of the deceased person the decree or judgment is not binding, and is a nullity so far as they are concerned and in that sense only. The learned vakil for the respondent has also drawn our attention to the case of Deonandan Prasad Singh v. Janki Singh [1920] 5 Pat. L.J. 314 where there are observations by the learned Judges to the effect that a decree or judgment passed by a Court of competent jurisdiction cannot possibly be regarded as a nullity, at any rate, till it is altered or set aside by a proper proceeding. It seems to me, however, unnecessary in the view I have taken to express any opinion with regard to this contention because if according to that view the temple or institution was properly represented in these proceedings before the Court at the time when the appeal was heard it is unnecessary to determine what the consequences would be, or what further procedure should be whether it is by way of appeal or by way of a fresh regular suit or by way of objections on execution proceedings, the parties who may deem themselves affected by the decree should adopt.

6. Another argument was also put forward by the learned vakil for the respondent, and that was that the vakalath which was granted originally by the two dharmakarthas at the time of filing the appeal or shortly thereafter when granted became itself the constitution of an agency of the vakil for and on behalf of the idol or institution as a juristic person and that as such a power-of-attorney, it does not cease to operate merely by reason of the death of the person granting "the power-of-attorney or vakalath. There are difficulties in the way of entirely accepting any such contention because really these are based on certain notions with regard to idols which must be engrafted merely by way of analogy. If the true theory is that there are rights vested in idols, and religious institutions

which can be enforced only by certain persons defined by law, undoubtedly those are the persons who are recognized in law as persons entitled to enforce those rights and on the death of those persons any agency constituted by them must necessarily cease. However, it is not necessary to discuss this point further, because in the view I have taken it is unnecessary to do so. In the result, I am not satisfied that at the time when the judgment and decree of the lower appellate Court against which this appeal has been filed were passed the institution which the appellants now represent was not properly represented within the meaning of the Civil Procedure Code, and that being the only ground on which the decree of the lower appellate Court has been assailed it follows that the second appeals fail and must be dismissed with costs.

7. Following decision in S. A. No. 1194 of 1924, S. A. Nos. 1195 and 1196 of 1924 are dismissed with costs.

Reilly, J.

8. The appellants before as have put in some obviously defective affidavits; but they have not chosen to supply us with any definite evidence when Muthuswami Mudaliar, the survivor of the two original trustees, handed over the charge of his office, or that he was not in office at the time when the learned Subordinate Judge heard these three appeals. That being so, they have failed to make out that the decrees of the Subordinate Judge are defective. For that reason, which is quite sufficient, I agree that these second appeals should be dismissed. I prefer not to express any opinion on this occasion on the other interesting points which have been argued before us.