

(1912) 04 MAD CK 0038
In the Madras High Court

Subramania Aiyar alias Pichu Aiyar

APPELLANT

Vs

M. Subba Naidu (dead) and Anantha Krishna Naidu L.R.

RESPONDENT

Date of Decision : 02-04-1912

Acts Referred:

Citation : (1913) 25 MLJ 405

Judgement

1. The suit out of which this 2nd appeal has arisen was brought by one Authappa Chetty as trustee of the Kallalagar temple (subject to the

supervision of the Madura Vishnu Devasthanam Committee) to recover from the defendant (appellant in this Court) the sum of Rs. 3087-8-6. The

plaint alleges that the plaintiff was the lawful trustee of the Devasthanam between March and May 1902 during which period the defendant

unlawfully collected moneys due to the Devasthanam for the recovery of which (with interest) the present suit was brought on 28th March 1903.

2. The defendant filed his written statement on 8th May 1908. His contentions (shortly stated were:

(a) that plaintiff's appointment in 1898 was legally invalid and hence he was not entitled as trustee to bring the present suit in 1903.

(b) that plaintiff had been rightly dismissed in April 1901 from his office as trustee and defendant was validly appointed in October 1901 by the

temple committee and that defendant was therefore the legal trustee between March and May 1902 when he made the collections for recovery of

which the present suit was brought, and

(c) that though defendant had ceased to be trustee in May 1903 when the written statement was filed, he had spent during the period of his

trusteeship (from 15th October 1901 till 30th March 1903) sums on behalf of the

Devasthanam over and above the collections he made between

March and May 1902 and far from his owing anything to the Davasthanam, the Devasthanam would be found to owe him more than Rs. 1400 on

the taking of accounts.

3. During the devious course of this suit, one Subba Naidu (appointed by the committee members as trustee in November 1903) was substituted

by an order of 22nd November 1905 as plaintiff in the place of original plaintiff Authappa Chetty. That order of substitution was confirmed on

appeal by this District Court and became final u/s 591 of the CPC (New Section 105). The defendant has not raised the contention that Subba

Naidu was not legally competent to represent the Devasthanam interest from November 1905, though he may not properly represent Authappa

Chetty's personal right to claim the managership of the Devasthanam.

4. The lower Appellate Court held on the merits the defendant had obtained Rs. 2798-0-4 of the temple moneys into his hands, that he had

properly spent only Rs. 676-5-8 out of it for temple purposes and that he owed on date of suit Rs. 2121-10-8. The defendant's other objections

were overruled and decree was passed for Rs. 2121-10-8 and interest at 12 per cent, from date of suit to date of the first Court's decree (9th

July 1906), the parties to give and receive proportionate costs. (Subba Naidu himself died after the filing of this second appeal and the present

temple trustee Anantha Krishna Naidu is now the respondent in this second appeal.)

5. The gist of the contentions advanced by the Appellant's (defendant's) learned Vakil before us may be shortly stated as follows:

(a) The lower Court should have given a decision on the validity of the original plaintiff's (Authappa Chetty's) appointment in 1898 and of his

dismissal in April 1901.

(b) The substitution of the proper trustee of the temple in 1905 could not lawfully convert this suit brought to enforce the personal right of

Authappa Ghetty to the management of the temple into a suit brought in the interests of the Devasthanam for an account of the sums which came

into the defendant's hands as de jure or de facto trustee. The suit ought to have been dismissed as having abated as soon as Authappa Chetty

withdrew from the suit in 1905. ,

(c) The suit is barred by limitation u/s 22 of the Limitation Act as when the substitution took place in November 1905, more than 3 years had

elapsed from the dates (in March and May 1902) when defendant made collections of Devasthanam funds on behalf of the Devasthanam.

(d) The substitution itself of Subba Naidu was illegal and unauthorised whether the suit is treated as one brought to enforce Authappa Chetty's

personal right or the right of the Devasthanam.

(e) Such substitution of the proper trustee could not validate a suit brought by an unauthorised trustee even if the suit is treated as brought on behalf

of the Devasthanam

(f) On the merits, the defendant is entitled to credit not only for the sums of Rs. 676-5-8 allowed by the Lower Court but also for the following

amounts:

1. Rs. 1608-14-0 expenses incurred in O. Section 44 of 1901 which defendant brought under the committee's directions against Authappa Chetty

(See Ex. IV.) and Rs. 853-4-0 paid by him for costs to Authappa Chetty as defendant lost that suit (See Ex. V.) Total Rs. 2642-2-0. (2) Rs.

776-10-6 on account of the Salary of defendant himself (at Rs. 50 a month) and the manager's establishment.

3. Rs. 2444-3 for printing and contingent charges spent on behalf of the Devasthanam. If defendant is allowed credit for item 1 of Rs. 2462-2-0 in

addition to the Rs. 676-5-8 which the lower court allowed, the plaintiff's claim is fully wiped out.

6. We think that there is no substance in the contentions (b) to (e) set out above. Having had the pleadings read and commented upon by both

sides before us and having regard to the course of this litigation and the prayer for accounts in the plaint, we do not think that this is a suit brought

merely on behalf of Authappa Chetty's personal right of management of the temple properties. The decisions in *Balwant Rao Bishwant Chandra*

Chor v. Purandakal Chambe (1885) 10.I.A. 90, and *Karimshah v. Natta* ILR (1883) M. 417, do not therefore apply. The suit was, in our

opinion, brought on behalf of the Devasthanam to recover moneys from a person who was never a legal trustee though he professed to act as

trustee (according to the plaintiff's case) or from a person who ceased to be a trustee 2 days after the suit was brought (according to the

defendant's own case). The substitution of the right trustee in 1905 cured all defects in the suit even if the suit was originally brought in the name of a trustee who was not entitled to represent the idol. See *Peary Mohan Mukerjee v. Narendra Nath Mukerjee* ILR (1905) C. 582, and also the same case in *Peari Mohun Mukerjee v. Narendra Nath* ILR (1903) C. 229, on appeal to the Privy Council, the ratio deddendi in the above case establishing that when the caste qui trust is substantially on the record of a suit from the beginning, the rectification of the original improper representation by a proper representation cures all the original technical defects with effect from the date of institution of the suit and that the rectification cannot be treated as the addition of a new party so as to attract the penal provisions of Section 22 of the Limitation Act. Though the above case related to the proper representation of a defendant 2nd not of a plaintiff, the principle applies to the latter case also). As regards the question of limitation, the suit having been brought on behalf of the Devasthanam (which at the trial was represented by a proper legal trustee) against a former trustee, whether the former trustee's right to the office was legally valid or otherwise, the provisions of Section 10 of the Limitation Act clearly apply and the defendant cannot rely on the bar of limitation (See *Sethu v. Subramanya* ILR (1887) M. 274, also, *Mosabhai v. Yacoobhai* ILR (1904) B. 267. The validity of the substitution of Subba Nadar for Authappa Chetty to represent the idol cannot be questioned in second appeal as the order passed by the Sub Court for such substitution was appealed against to the District Court and was confirmed in appeal and became final.

7. Coming, then, to the merits, that is, the appellant's contention (f) in paragraph 5 above, we are of opinion after hearing the arguments on plaintiff's side, that the defendant is entitled to credit for the, sums spent by him in thz litigation in O. Section 44 of 1901. if he had been valily appointed as a trustee in October 1901 by the temple committee. A trustee is entitled to be reimbursed the moneys which he spends on litigation which he bona fide believes to be in the interests of the cesti que trust provided "" he has not been guilty of serious laches or misconduct. (See the principle embodied in Section 32 of the Trusts Act. See also *Lewin on Trusts*, page 1267). He is also entitled to take out of the trust funds (or to

be reimbursed from such funds if he had spent in the first instance from his own pocket) whatever he had been obliged to spend in order to defend or establish his right as trustee. "" In the absence of misconduct, therefore, as distinguished from negligence not of a gross character, or mistaken judgment, trustees are, as a general rule, entitled to their costs of action."" Godefroi on Trusts, pages 958 to 960). "" The inclination of the court has been to recognise this right and not to abridge it when adjudicating upon the liability of trustees, lest a stricter rule should deter men from assuming the office."" In *Turner v. Hancock* (1882) 20 Ch. D. 303, "" Jessel M. R. said that it was not the course of the court in modern times to discourage persons from becoming trustees by inflicting costs upon them if they have done their duty or even if they have committed an innocent breach of trust"" (overruling *Re Hoskins* (1887) 6 Ch. D. 281, on this point). If "" they have acted from interested motives, or vexatious or capriciously"" or if their negligence or misconduct in the first instance has caused the suit, "" they are not entitled to get their costs out of the trust funds. Trustees are seldom deprived of their right to take out of the trust estates all costs incurred by them as trustees except in cases "" of gross negligence or misconduct"" (page 962). ""The courts have generally dealt leniently with trustees"" in the matter of costs "" Trustees whose alleged breach of trust has arisen from a bona fide mistake are not made to pay costs.

8. If Authappa Chetty had not been validly appointed a trustee in 1898 or if he had been validly dismissed in April 1901 and if defendant's appointment in October 1901. consequently gave him a legal title to the manager's office, defendant is entitled to claim credit out of the trust funds for all sums spent by him in the institution and conduct of O. Section 44 of 1901 against Authappa Chetty including the costs he was obliged to pay to Authappa Chetty in that unsuccessful litigation unless defendant was guilty of gross negligence or misconduct in instituting or conducting that suit. We do not think that the fact that that suit (which was brought under legal advice and under the immediate supervision of a member, of the committee well versed in litigation) failed ultimately on account of a technical legal defect, could deprive the defendant of his right to be reimbursed the costs incurred in that litigation from the trust funds, provided of course, that the defendant was a validly appointed trustee and legally held the

office of trustee then. The contention of the respondent's vakil that defendant agreed to incur the costs of that litigation ""out of his own private

funds is based upon the fact that defendant deposited Rs. 2,000 as security with a Vakil for defendant's instituting the suit against Authappa Chetty

within a reasonable time. But we are satisfied from the documentary evidence in the case that it was not intended that defendant should make a gift

of Rs. 2000 to the Devasthanam for the expenses of the suit against Authappa Chetty, but only to advance that money for the expenses of such

suit, he being liable to forfeit the money to the Devasthanam only if he does not bring such suit within the time allotted to him by the committee.

(See Ex. 13 where one of the influential committee members speaks to another person intended to be appointed as trustee defraying the expenses

of the contemplated suit against Authappa Chetty from his own friends ""if he gets no money belonging to the Devasthanam."" See also Exs. S. B5.

B6, H, J. and L. The Subordinate Judge disallowed the defendant's claim to indemnity for the costs of the litigation in O. Section 44 of 1901 on

the ground (paragraph 14 of his Judgment) that that litigation was "" undertaken by the defendant to contest his title with Authappa Chetty"" and

could not "" be said to have been undertaken in the interests of the Devasthanam."" We are unable to agree with that view as a suit intended to

prevent the meddling of Authappa Chetty in the temple affairs is clearly a suit brought in the Devasthanam's interest provided of course, that

Authappa Chetty was in unlawful possession of the manager's office when that suit was brought. The District Judge seems to have thought that

defendant's appointment as trustee was "" opposed to public policy and should be discouraged"" (Paragraph 4 of the Appellate Judgment). No

reasons are given by the learned District Judge in support of his conclusion. He probably thought that the Rs. 2000 deposited by defendant was

intended as the offering of a pecuniary consideration by defendant to the Devasthanam to get the manager's office. As we have said already the

Rs. 2000 was intended as the advance required to bring the suit to prevent Authappa Chetty's interference with the management, the committee

members who had dismissed Authappa Chetty from office having no temple funds at their disposal.

9. It was further argued by the defendant's (appellant's) Vakil that even if defendant's appointment as trustee was not legally valid, he is entitled to

be reimbursed the costs incurred by him in O. Section 44 of 1001 if he bona fide believed himself to be the proper trustee and believed that

Authappa Chetty was not the proper trustee. The learned Vakil was, however, not able to quote to us any clear authority to that effect, and we are

not prepared to hold that a person believing himself to be the trustee of a Devasthanam while really not entitled to the office, can claim against the

Devasthanam funds for moneys spent by him in bringing an unsuccessful suit against the real trustee when the court which decided the suit has not

in its decree provided for his costs to come out of the trust funds.

10. Before, therefore, we can finally dispose of this second appeal it is necessary to determine the question of fact whether defendant's

appointment to the office of trustee in October 1901 was a valid appointment.

11. We shall therefore direct the Lower Appellate Court to try the following issues (parties to be at liberty to adduce, additional evidence on these

issues) and return its findings and reasons therefor within 6 weeks of the reopening of the District Court after the midsummer recess.

(1) Was Authappa Chetty the lawful trustee of the plaint Devasthanam when O. Section 44 of 1901 was instituted ? Was he never the validly

appointed trustee of the temple ? If he was at any time the lawful trustee, had he ceased to be such lawful trustee before that suit was instituted ?

(2) Was defendant the lawful trustee of the Devasthanam from that date ?

12. In compliance with the above order the District Judge Mr. J. G. Burn submitted findings to the following effect on the 2nd December 1912.

That Authappa Chetti was the validly appointed trustee of the plaint Devasthanam when O.S. No. 44 of 1901 was instituted; that Authappa Chetti

had ceased to be the lawful trustee before the suit was instituted; that Defendant was the lawful trustee of the Devasthanam on the date of the suit.

13. Upon the receipt of the above finding the case came on for hearing before their Lordships Mr. Justice Miller and Mr. Justice Sadasiva Aiyar

on the 18th September 1913 who accepted the findings of the District Judge and dismissed the suit with costs with a direction that the costs

incurred for the conduct of the suit should be paid out of the Devasthanam funds.