
(1919) 02 MAD CK 0032

In the Madras High Court

Case No : Appeal No. 159 of 1918

Subramania Pillai and Another

APPELLANT

Vs

Krishnaswamy Somayajiar and Seven Ors.

RESPONDENT

Date of Decision : 04-02-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Religious Endowments Act, 1863 — Section 14

Citation : (1919) 02 MAD CK 0032

Hon'ble Judges : Spencer, J;Abdur Rahim, J

Bench : Division Bench

**Advocate : T. Rangachariyar and E.S. Chidambaram Pillai, for the Appellant;
M.D. Devadoss, for first to sixth and eighth Respondents and T.R. Ramachandra
Ayyar and A. Ramaswami Mudaliyar for seventh Respondent, for the Respondent**

Final Decision : Dismissed

Judgement

Abdur Rahim, J.—I am not disposed to agree with the learned Subordinate Judge that he had no jurisdiction to entertain the suit. The suit is instituted, by two out of three trustees of a temple for a declaration that the appointment of the eighth Defendant, which is practically in the vacancy created by the death of the third trustee, by the Devastanam Committee, is invalid and for an injunction restraining him from interfering with the affairs and the property of the temple. It is alleged in the plaint that this is not a proper appointment inasmuch as there was improper understanding between some of the members of the committee and the eighth Defendant as regards the former obtaining lease of certain buildings belonging to the temple at less than the proper rent. It is further alleged that the eighth Defendant had agreed in consideration of his appointment to grant certain sites to some of the members of the committee in the name of third persons. If those allegations are well-founded in fact, and that is a matter which could only be investigated at the trial, the appointment of the eighth Defendant could not be said to be either reasonable or made in good faith. There are a number of rulings of this Court which lay down the principle that a Civil

Court can question an appointment of a trustee by a Devasthanam Committee, if it is not made reasonably or in good faith, vide *Thiruvengadath Iyengar v. Ponnappiengar* I.L.R.(1915) Mad. 1176, *Thirumalaiyappa Pillai v. Vengu Aiyar* (1915) M.W.N. 280, *Ganapathi Ayyar v. Vedavyasa Alasinga Bhattar* I.L.R.(1906) Mad. 534 *Seshadri Ayyangar v. Nataraja Ayyar* I.L.R.(1898) Mad. 179 and also the general observations of the learned Chief Justice and Seshagiri Ayyar, J., in *Sitharama Chetty v. Sir S. Subramania Ayyar* ILR (1916) Mad. 700. In *Thiruvengadath Iyengar v. Ponnappiengar* I.L.R.(1915) Mad. 1176 the appointment under consideration was that of additional trustees. In *Ganapathi Ayyar v. Vedavyasa Alasinga Bhattar* I.L.R.(1906) Mad. 534 the question was as regards the power of the Board of Revenue altering the scheme of management, and in *Seshadri Ayyangar v. Nataraja Ayyar* I.L.R.(1898) Mad. 179 the question which the Civil Court was asked to decide was the propriety of the suspension of a trustee by the committee. But the principle applied in those cases would apply equally to the case of an improper appointment of a new trustee in the vacancy caused by the death of a trustee.

2. But then the learned pleaders for the Respondents have argued that the suit would not lie because no sanction was obtained u/s 14 of Act XX of 1863 or u/s 92, Code of Civil Procedure. As regards the first I do not think the present suit comes within the scope of that Act. It is not a case of misfeasance, breach of trust or neglect of duty committed by a trustee. But I am of opinion that Section 92, Code of Civil Procedure, does apply. This is a case which may properly be described as one in which the direction of the Court is necessary for the administration of the public trust within the meaning of that section as held in *Neti Rama Jogiah v. Venkatacharlu* I.L.R.(1903) Mad. 450 and in *Kaliswara Gurukkal v. Nataraja Thambiran* (1909) 19 M.L.J. 772. The mere fact that the eighth Defendant had not yet taken charge of his office or taken possession of the properties as a co-trustee of the Plaintiffs cannot make any difference because the object of the suit is to obtain the direction of the Court as to whether the Plaintiffs alone are to act in the matter of the trust or they must so act in conjunction with the eighth Defendant. That view is supported by an observation of the Privy Council in *Bishen Chand Basawat v. Nadir Hossein* I.L.R (1888). Cal. 329 as pointed out in *Kaliswara Gurukkal v. Nataraja Thambiran* (1909) 19 M.L.J. 772.

3. Mr. T. Ranga Achariyar, the learned vakil for the Appellants, however, argued that this is not a case for the removal of any trustee or for any other relief enumerated u/s 92, Code of Civil Procedure; ordinarily removal of a trustee would mean the removal of a trustee from office by reason of some act or omission in connexion with his office of trustee, and here the eighth Defendant has not, as already stated, entered upon the duties of trustee at all. But he has been undoubtedly appointed by the Devasthanam Committee by proceedings held according to the rules. Therefore, the Devasthanam Committee, so far as they are concerned, having the power to appoint a trustee, have done what they could in order to clothe the eighth Defendant with the status and powers of a trustee.

4. At the same time I am rather doubtful whether the prayer in the plaint comes within the words "removing any trustee." Even if they do not, I have no doubt that the relief is one which is contemplated by the residuary relief (h) u/s 92, Sub-section (1) of the Code of Civil Procedure; Clause (h) says "granting such further or other relief as the nature of the case may require." The object of this suit is to have it declared that the eighth Defendant is not a trustee properly appointed and also to prevent him from acting in the capacity of a trustee. I should say that that is a relief cognate to removing a trustee.

5. It was also argued by Mr. Ranga Achariyar that suits by trustees do not come within Section 92, Code of Civil Procedure. But I do not think that that contention is at all sound, and no authority has been cited in support of that proposition. If the terms of Section 92, Code of Civil Procedure, apply to a suit by trustees there is no apparent reason why such a suit should be held to be exempted from its restrictive provision. The Plaintiffs not having obtained any sanction u/s 92 of the Code the suit is not maintainable. In the result the appeal must be dismissed with costs.

Spencer, J.

6. I am of opinion that Section 92, Code of Civil Procedure, is a bar to the maintenance of the present suit. The decisions in *Jeyangarulavaru v. Sri Hati Durma Dossaji* (1868) 4 M.H.C.R. 2 *Ponnambala Mudaliar v. Varaguna Rama Pandia Chennathambiar* (1872) 7 M.H.C.R. 117 and *Singarachariar v. Krishnaswami Iyengar* (1909) 19 M.L.J. 513 which were cited in the arguments, being all prior to the enactment of the CPC of 1908 in which Clause (a) of Sub-section (1) of Section 92 and Sub-section 2 appeared for the first time, must be read in the light of the law as it then was. In effect, this is a suit for the removal of a trustee from the office. No doubt the relief asked for in the plaint is for a declaration that the appointment of the eighth Defendant is invalid and for a permanent injunction restraining him from interfering with the affairs of the temple. But it cannot be denied that the eighth Defendant has been appointed a trustee by a statutory body competent to make the appointment and therefore he is a trustee until he is removed from his office by a competent authority. There was at the time of appointment an existing vacancy, and under Act XX of 1863 the Devasthanam Committee have an inherent right to make appointments of trustees whenever vacancies occur. It is immaterial for the purpose of this suit what motives the members of the committee had for making this particular appointment. They have as much power to appoint a bad man as trustee as to appoint a good man in the exercise of their discretion. This is in fact an appointment of a man who, the Plaintiffs say, ought not to be appointed; and the only means of getting rid of him is to bring a suit for his removal from office. The language of Section 92, Sub-section (2), Code of Civil Procedure, is very clear. It declares that no suit claiming any of the reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is referred to in the section except in conformity with the provisions of Sub-section (1). One of the reliefs is that of

removing a trustee. The only exception to this is the case where a trustee is sought to be removed u/s 14 of Act XX of 1863 for misfeasance or neglect of duty. In either case sanction is required, either the sanction of the Advocate-General or the sanction of the District Court, and as the present suit has been instituted without sanction, it is not sustainable. I therefore agree with my learned brother that the appeal must be dismissed with costs.