

(1929) 09 MAD CK 0040
In the Madras High Court

Thazhekat Manayil Karnavar Narayanan Thirumupu and
Another

APPELLANT

Vs

Poonthuruthi Edavalath Anadil Kizhakkinakath Kamaran
Mootha Poduval and Others

RESPONDENT

Date of Decision : 12-09-1929

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : 122 Ind. Cas. 460

Hon'ble Judges : Ramesam, J; Jackson, J

Bench : Division Bench

Judgement

1. This appeal arises out of Original Suit No. 18 of 1925 on the file of the Sub Court of Tellicherry which was a suit for an account of the management of the Payyanur Devaswom by defendants Nos. 1 to 6 in their capacity as Uralars from 1909, for the recovery of the sum that might be found due as a result of the accounts from the defendants personally and from their family property and for an injunction restraining them from interfering with the management of the Devaswom by the 11th plaintiff who was appointed Samudayi by plaintiffs Nos. 1 to JO. The claim in respect of the 11th plaintiff was dismissed by the Subordinate Judge but the relief in respect of the account was decreed. The 1st defendant filed the appeal. During the pendency of the appeal he died and his successor, the present karnavan of the Thazhekkat mana, has been added as his legal representative, the 2nd appellant.

2. The suit Devaswom is known as "Grama Kshetram" i. e, village temple, and is a famous temple of North Malabar. It was originally managed by the village Council consisting of the karnavans of 16 Nambu-diri manas and 15 Poduval Uralars, 10 of them being Mootha Poduvals and 5 Elaya Poduvale. 10 Poduval families of the village are each entitled to send one Mootha Poduval to the temple Council the nominees being the karnavans thereof. Five of the said families have the further privilege of sending their representatives, the senior Anandravans, to the same Council who would be styled as "Elaya poduvals." The

1st 7 plaintiffs in this suit are Mootha Poduvals. The 11th plaintiff also claimed to be an Elaya Poduval. After the suit was filed the 4th plaintiff died and it was claimed for the plaintiffs that the 11th plaintiff became a Mootha Poduval after having performed the Moopu Thozhal ceremony and his place as Elaya Poduval devolved upon the 11th plaintiff. Defendants Nos. 1 to 6 are karnavans of 6 of the Nambudiri manas and they are admitted to be Uralars. Defendants Nos. 7 to 13 are some of them Mootha Poduvals and some Elaya Poduvals who have not performed the Moopu Thezhal and Elama Thozhal ceremonies. The plaintiffs claimed that defendants Nos. 1 to 6 should render them an account in respect of the management of the Devaswom from 1909. The defendants pleaded that the 1st defendant acquired the hereditary right of Samudayam by prescription. They also pleaded that there were 7 other manas who have curaima right in the temple and the suit is bad on account of their non-joinder. They denied the right of the 11th plaintiff to manage the temple and the liability of the 1st defendant to render an account. As already mentioned, the Subordinate Judge found that the appointment of the 11th plaintiff could not be upheld and dismissed that portion of the suit. In the appeal the appellant urged several objections: (1) that the karnavans of the Thazhekkat mana are perpetual and hereditary Samudayis, that the suit is bad for non-joinder on account of not having impleaded at least two Nambudiris, namely, the karnavans of the Jamnadas Gordhandas Vs. Damodardas Chunilal, that a suit for accounts by one Uralar against a co-Uralar without any allegation of breach of trust or a threatened breach of trust is not maintainable, (4) that the tarwad of the 1st defendant is not liable for the misfeasance of the 1st defendant unless the tarwad is in possession of the assets of the 1st defendant or unless it is shown that the tarwad was directly benefited by getting possession of the funds belonging to the trust, and (5) that, in any event, as the 1st defendant became karnavan only in December, 1922, the relief for an account should not extend beyond the period from December, 1922 to October, 1924 when the 1st defendant died.

3. There have been continuous litigation between the Poduval Karalars on the one hand and the Nambudiri Thirumupus (Uralars) on the other for a number of years in respect of this Devaswom. For a long time the karnavans of Thazhekkat mana were claiming to be the perpetual Samudayis of the Devaswom under a document which has been found not to be genuine and latterly the 1st defendant has been asserting the right by reason of adverse possession. Though some of the Nambudiri manas became extinct, attempts to revive some of the extinct manas by adoption into those manas seem to have been made. One such attempt in respect of the Rayara Mangalath mana seems not to have been questioned and to have been recognised even by the Poduvals. The karnavan of that mana is the 2nd defendant in the present case. In respect of two other manas, the Thavath and Thathiyeri manas, similar adoptions were set up and the persons so affiliated into these manas having married female members of the Thazhekkat family were allowed to take part in the management of the trust. They were joined as parties in Exs. 1, 2 and 3 which were kanom deeds and in Ex. XI,

a kvzhikanom deed, and in fact whenever the document did not stand in the name of the 1st defendant alone but in the name of several Uralars they seem to have been allowed to come in. But the Poduvals never admitted their rights. On one occasion while not admitting their rights, the Poduvals impleaded these two individuals as defendants. That was a suit for defining the ceremonies which a karnavan has to undergo for becoming a Mootha Poduval and for an injunction against the Uralars. The judgments in connection with that litigation are Exs. HH, JJ and KK (AAA being the decree). It came upon second appeal to the High Court; in another litigation the suit was by some of the Uralars impleading the karnavans of the Thavath and Thattiyei manas as defendants. The other defendants pleaded that these two had no uraima right and the District Munsif found against the right (Ex. VII). On appeal by them the Subordinate Judge of North Malabar found that there was a usage according to which their adoption into the Nambudiri's families of Thavath and Thattiyei manas should be recognised as valid and allowed the appeal. (Exhibit VIII). We are now invited to consider the question of the validity of the adoption of these two individuals into their respective manas and if we find them valid, to dismiss the suit on the ground of nonjoinder. It is even suggested that we should first implead them as parties so as to avoid the inconvenience of deciding the question behind their back. We may at once say that we do not see any reason to follow the latter course and as we think that the case can be disposed of on other grounds we do not feel it necessary to decide on the status of those two individuals. They have given evidence as D. Ws. Nos. 4 and 9 showing that they were recognised. Exhibit DD is another judgment in a suit in which they joined as plaintiffs, but nothing was decided. In our opinion this question of non-joinder among other questions in the case need not be disposed of in this suit as we think that the suit can be decided on simpler grounds.

4. It is contended for the appellant that a mere suit for accounts against a trustee by a co-trustee without an allegation of breach of trust or threatened breach of trust is not maintainable. Para. 5 of the plaint alleges that the Uralars "have neither increased funds nor acquired property to the Devaswom....On demand being made of the defendants Nos. 1 to 6 to render accounts and to hand over to the Devaswom the money on hand for the period the Uralars exclusively conducted the management without the junction of the karalars, they have not done so. They have not even sent a reply for the registered notice sent to them." Defendants Nos. 2 to 6 say that for a long time, i. e., from the time when the temple was restored after its destruction during the invasion of Tippu Sultan, the 1st defendant's mana was practically looking after the management and conducting the affairs of the temple and, therefore, they are not liable. The subordinate Judge has found that defendants No. 2 to 6 have never taken part in the management of the Devaswom though they are nominally Uralars. There is a general allegation in para. 5 of the plaint that "as the defendants Nos. 1 to 6 and their predecessors...appropriated the Devaswom funds to their tarwads, the Said defendants Nos. 1 to 6 are liable to the Devaswom even in the capacity of

karna-vans of their manas". This is a very general allegation for the purpose of making not only defendants Nos. 1 to 6 personally liable but also liable in the capacity of karnavavs. It is not an allegation made for the purpose of making out a breach of trust or a threatened breach of trust justifying a suit for an account. The allegation is too general and vague and does not relate to any particular period or particular amount and it is not clear whether any one of the defendants is charged or their predecessors are charged with the appropriation of funds. It is true that it has been held by this Court that a suit by a trustee against a co-trustee does not require the sanction of the Advocate-General or the Collector u/s 92 of the Civil Procedure Code. Vide Appanna Poricha v. Naradnga Poricha 69 Ind. Cas. 304 : 45 M. 113 : 41 M.L.J. 608 : (1921) M.W.N. 833 : 15 L.W. 18 : 30 M.L.T. 1 : AIR 1922 Mad. 17 approving Meenakshi Achi v. Soma-Bundaram Pillai 59 Ind. Cas. 464 : 44 M. 205 : 12 L.W. 232 : (1902) M.W.N. 507 : 39 M.L.J. 403. But it was not decided in those cases that in any suit by a trustee against a co-trustee on any cause of action whatever is maintainable. In the present case the cause of action is said to be the appointment as Samudayi of the 11th plaintiff on the 14th of June, 1924, by a Yogam consisting of the plaintiffs and defendants Nos. 7, 8 and 9 other karalars and the obstruction of the 11th plaintiff. The appointment of the 11th plaintiff was not upheld by the Subordinate Judge. The question arises whether there is any other ground for maintaining a suit by the other plaintiffs against the defendants. In the Full Bench decision in Appanna Poricha v. Narasinga Poricha 69 Ind. Cas. 304 : 45 M. 113 : 41 M.L.J. 608 : (1921) M.W.N. 833 : 15 L.W. 18 : 30 M.L.T. 1 : AIR 1922 Mad. 17 the right of the plaintiff as co-trustee was denied. The plaintiff was in possession of the mutt only; but the defendants got possession of the lands and the plaintiff had to incur expenses in connection with the management of the mutt out of his own pocket. He had, therefore, to sue for a declaration that he was a co-trustee entitled to joint possession of the lands belonging to the mutt, for the reimbursement of the monies spent by him, for a scheme for the future management and incidentally for an account. In Meenakshi Achi v. Somasundaram Pillai 59 Ind. Cas. 464 : 44 M. 205 : 12 L.W. 232 : (1902) M.W.N. 507 : 39 M.L.J. 403 also the suit was for declaration of the plaintiff's right to share in the management and for joint possession of the trust properties, the plaintiff's right being denied by the defendants. In fact there was an alternative claim in that suit that the plaintiff was solely entitled to the management. The respondents also relied on unreported judgments of Wallis, C.J. and Oldfield, J., in Appeals Nos. 323 and 368 of 1919. In Appeal No. 323 the parties were entitled to possession of the trust by turns and the plaintiff sued to recover possession of the properties, because his turn fell in. In Appeal No. 368 also the facts were similar. I do not see how these cases can help the respondents. In the present case there is no allegation of a specific breach of trust or threatened breach of trust on the part of the Uralars so as to justify an apprehension on the part of the plaintiffs that they would also be held liable for the breach on the ground that they did not take proper action against their co-trustees which would be a real ground of liability of a co-trustee who was himself

not guilty of the breach and it, therefore, justifies an action by one co-trustee against another to prevent such a breach. Vide Lewin on Trusts, page S04 and Underhill, 7th Edition, page 397. These authorities relate to private trusts. But apparently the-same principles would apply to public trusts also. In the case of public trust one mode of investigation provided in England into the conduct of one, trustee at the instance of & co-trustee is by applying to the public trustee for an investigation and audit of the condition and accounts of the trust. Vide Article 441, 28 Halsbury's Laws of England, 217. Even in the cases of a public trust it is said that any single trustee, when aware that his co-trustees are about to commit a breach of trust, may apply to the Court to prevent it, Vide Tador on Charities and Mortmain, page 249. Where a breach has been committed, no doubt, he can also sue. Where his own position as co-trustee is denied he can also sue. But a mere suit asking the defendants to render an account of their management without any allegation of breach of trust which has been committed or is about to be committed does not seem to be maintainable and to hold that such a suit is maintainable will be to allow any trustee wantonly to sue his co-trustees for accounts. The moment the litigation in respect of one period is finished another litigation in respect of another period will commence and so on ad infinitum. I do not think the policy of the law is to allow such a state of things. In Jamnadas Gordhandas Vs. Damodardas Chunilal, it was held by the Bombay High Court that a trustee cannot be regarded as accountable to a co-trustee and all that a co trustee can require is that he should have inspection of all the papers, documents and accounts relating to the trust estate in the hands of his co-trustee. We agree with this decision. We think that a suit for a bare account-which is the character of the present suit after the right of the 11th plaintiff was negatived-without any further allegation is not maintainable. On this ground we allow the appeal and dismiss the plaintiff's suit with costs throughout.

Memorandum of Objections.

5. The respondent filed a memorandum of Objections questioning the finding of the Subordinate Judge about the validity of the appointment of the 11th plaintiff. When the appeal was argued, it was argued on the footing that the finding of the Subordinate Judge about 11th plaintiff should stand. No indication was given by the respondents that they proposed to question that finding. Nor was any argument addressed on the memorandum of objections.

6. Apart from this we think the finding is right. The 2nd defendant having succeeded to the Karnavanship of his mana, ipso facto, becomes a Uralar No ceremonies being necessary for the Nambudiris. It is for the Poduvals to give notice to the Uralars and to find out who the Uralars are at their risk. The notice to the predecessors of the 2nd defendant ceases to operate with his death.

7. The memorandum of objection is dismissed with costs.