
(1929) 09 MAD CK 0006
In the Madras High Court

(Thazhekkat Manayil Karnavar) Narayanan Thirumumpu and
Another

APPELLANT

Vs

Poonthuruthi Edavalath Anadil Kizhakkinakath Kammaran
Mootha Poduval and Others

RESPONDENT

Date of Decision : 12-09-1929

Acts Referred:

Citation : AIR 1930 Mad 295 : (1930) ILR (Mad) 214 : 122 Ind. Cas. 460 :
(1930) 31 LW 24

Judgement

1. This appeal arises out of Original Suit No. 18 of 1925 on the tile of the Sub-Court of Tellichery, which was a suit for an account of the

management of the Payyanur Devaswam by defendants 1 to 6 in their capacity as uralers 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 devaswam by plaintiff 11 who was appointed samudayi by plaintiffs 1 to 10. The claim in respect of plaintiff

11 was dismissed by the Subordinate Judge, but the relief in respect of the account was decreed. Defendant 1 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,

appellant 2.

2. The suit devaswam 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 Nambudri manas and 15 Poduval Karalars, 10 of them being Mootha Poduvals and 5 Elaya

Poduvals. Ten 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 first seven plaintiffs in this suit are Mootha Poduvals and plaintiffs 8 to 10 are Elaya Poduvals.

Plaintiff 11 also claimed to be an Elaya Poduval. After the suit was filed plaintiff 4 became a Mootha Poduval after having performed the Moopu Thozhal ceremony and his place as Elaya Poduval devolved upon plaintiff 12. Defendants 1 to 6 are karnavans of six of the Nambudri manas and they are admitted to be uralers. Defendants 7 to 13, are, some of them, Mootha Poduvals and some Elaya Poduvals have not performed the Moopu Thozal and Elama Thozal ceremonies. The plaintiffs claimed that defendants 1 to 6 should render them an account in respect of the management of the devaswam from 1909. The defendants pleaded that defendant 1 acquired the hereditary right of samudayam by prescription. They also pleaded, that there were, seven other manas who have co-uraima right in the temple and the suit is bad on account of their non-joinder. They denied the right of plaintiff 11 to manage the temple and the liability of defendant 1 to render an account. As already mentioned, the Subordinate Judge found that the appointment of plaintiff 11 could not be upheld and dismissed that portion of the suit. In appeal the appellant urged several objections; (1) that the karnavans of the Tazhekkat mana are perpetual and hereditary samudayis, (2) that the suit is bad for non-joinder on account of not having impleaded at least two Nambudris, namely, the karnavans of Thavath and Thattiyeri manas, (3) that a suit for accounts by a uraler against a co-uraler-without an allegation of breach of trust or a threatened breach of trust is not maintainable, (4) that the tarwad of defendant 1 is not liable, for the misfeasance of defendant 1 unless the tarwad is in possession of the assets of defendant 1 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 defendant 1 became karnavan only in December 1922 the relief for an account should not extend beyond the period from December 1922 to October 1924 when defendant 1 died.

3. There have been continuous litigation between the Poduval karalars on the

one hand and the Nambudri Tirumumpus (uralars) on the other for a number of years in respect of this devaswam. For a long time the karnavans of Thazekkat mana were claiming to be the perpetual samudayis of the devaswam under a document which has been found not to be genuine and latterly defendant 1 has been asserting the right by reason of adverse possession. Though some of the Nambudri manas became extinct, attempts to revive some of the extinct manas by adoptions into those manas seem to have been made. One such attempt in respect of the Tayara Mangalath mana seems not to have been questioned and to have been recognized even by the Poduvals. The karnavan of that mana is defendant 2 in the present case. In respect of two other manas, the Thavath and Thattiyeri 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 deed and in Ex. 11, a kuzhikanom deed, and in fact wherever the document did not stand in the name of defendant 1 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 uralers. The judgments in connexion with that litigation are Exs. HH, JJ and KK (AA.A being the decree). It came up on second appeal to the High Court. In another litigation the suit was by some of the uralers impleading the karnavans of the Thavath" and Thattiyeri manas as defendants. The other defendants pleaded that these two had no uraima right and the District Munsiff found against the right (Ex. 7). On appeal by them the Subordinate Judge of North Malabar found that there was a usage according to which their adoption into the Nambudri families of Thavath and Thattiyeri manas should be recognized as valid and allowed the appeal (Ex. 8). 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 non-joinder. 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 these two individuals. They have given evidence as D. Ws. 4 and 9 showing that they were recognized. Ex. 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 simple 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 uralers:

have neither increased funds nor acquired property to the devaswam.... On demand being made of defendants 1 to 6 to render accounts and to hand over to the devaswam the money on hand for the period the uralers 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.

5. Defendants 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, defendant 1'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 2 to 6 have never taken part in the management of the devaswam though they are nominally

uralers. There is a general allegation in para. 5 of the plaint that:

As defendants 1 to 6 and their predecessors... appropriated the devaswam funds to their tarwads, the said defendants 1 to 6 are liable to the devaswam even in the capacity of karnavans of their manas.

6. This is very general allegation for the purpose of making not only defendants 1 to 6 personally liable but also liable in the capacity of karavans. 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 of the Collector u/s 92, Civil P. C: vide Appanna Poricha v.

Narasing Poricha AIR 1922 Mad. 17, approving Meenakshi Achi v. Somasundaram Pittay AIR 1921 Mad. 388. But it was not decided in those

cases that 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 plaintiff 11 on 14th June 1924, by a Yogam consisting of the plaintiffs and defendants 7, 8 and 9 and other

karalars and the obstruction of the plaintiff 11. The appointment of plaintiff 11 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 Pull Bench decision in "Appan a

Poricha v. Narasing Poricha 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 connexion 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

reimbursement of the moneys spent by him, for a scheme for the future management and incidentally for an account. In Meenakshi Achi v.

Somasundaram Pillay AIR 1921 Mad. 388 also, the suit was for a 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.

7. The respondent also relied on unreported judgments of ""Wallis, C.J., and Old field, J., in Appeals Nos. 323 and 368 of 1919. In Appeal No

323 the parties were entitled to 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 any specific breach of trust or threatened breach of trust on

the part of the uralers so as to justify an apprehension on the part of the plaintiffs that they would also be hold liable for the breach on the ground

that they did not take proper action against their cotrustee 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, p. 304, and Underhill, Edn. 7 397. These authorities relate to private trusts.

But apparently the same principles would apply to public trusts also. In the case of public trusts one mode of investigation provided in England into

the conduct of one trustee at the instance of a co-trustee is by applying to the public trustee for an investigation and audit of the conditions and

accounts of the-trust: vide Article 441, 28 Hals. 217. Even in the case 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 Tudor on Charities and Mortmain, p. 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 plaintiff 11 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.

8. The respondent filed a memorandum of objections questioning the finding of the Subordinate Judge about the validity of the appointment of

plaintiff 11. When the appeal was argued it was argued on the footing that the finding of the Subordinate Judge about plaintiff 11 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

objection. Apart from this we think the finding is right. Defendant 2 having succeeded to the karnavanship of his mana, ipso facto becomes a

uralar, no ceremonies being necessary for the Nambudris. It is for the Poduvals to give notice to the uralers and to find out who the uralers are at

their risk. The notice to the predecessors of defendant 2 ceases to operate with his death. The memorandum of objections is dismissed with costs.