(1927) 07 MAD CK 0003

In the Madras High Court

The Board of Control Sri Thyagaraja Swami Devasthanam, Tiruvalur — APPELLANT

Vs

Balajee Ammal and Others — RESPONDENT

Date of Decision : 29-07-1927

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 47

Citation : 107 Ind. Cas. 136

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

Bench : Division Bench

Judgement

Ramesam, J.—This is an appeal against the order of the Sub Court of Tiruvalur passed on a petition by the President of the Board of

Control of Sri Thyagaraja Swami Devasthanam of Tiruvalur. The Board of Control was appointed in pursuance of the scheme framed by this

Court in A.S. No. 136 of 1920, on appeal from Order Section No. 52 of 1913, Temporary Sub Court, Tanjore.

2. A preliminary objection has been taken by the respondents that no appeal lies The scheme framed by the High Court contains a clause

(Clause27) that, any of the parties or the Board of Control as a body or the Advocate-General are at liberty to apply to the Court for any

modification of the scheme. But the present application is not an application for any modification of the scheme and does not come under this

Clause In the present application the President of the Board of Control complains that some of the Kattalaidars would not send complete budgets

of their receipts and expenditure nor would deliver the cash in their hands to the treasurer as provided by cls. 8 and 13 of the scheme and the

President applies to the Court for getting the clause enforced, by attachment of the properties or by detention of the recalcitrant defendants. The

Subordinate Judge has not given the relief sought by the petitioner. Hence this appeal.

3. The respondents in support of their preliminary objection rely on the following cases; AIR 1925 155 (Privy Council) , Runganatha Thathachariar

v. Krishnaswami Thathachariar 75 Ind. Cas. 189 : 47 M. 139 : (1923) M.W.N. 664 : AIR 1924 Mad. 369, (Bava C.) Vythelinga Mudaliar and

Others Vs. R. Mahadeva Iyer and Others, , Sivan Pillai and Another Vs. T.S. Venkateswara Ayyar, , Abdul Hakim Baig and Others Vs.

Mahomed Burrammudin and Others, and Ryali Brahmayya and Another Vs. Dronamraju Venkatasuryanarayanamurthy, . Most of the decisions of

the High Court rely on the first of the above decisions which is a decision of the Privy Council. Mr. Varadachariar who appears for the appellant

while conceding that most of these other decisions are correctly decided attacked the correctness of the reasoning in the judgment, especially the

inference sought to be drawn from the Privy Council decision. It becomes, therefore, necessary, to examine what was exactly decided by the Privy

Council and how far the decision supports the inference sought to be drawn from it by Judges of this Court. In that case there was a scheme

framed by the Privy Council. The scheme provided for the appointment of a temple committee and empowered the committee to make rules.

There is also a provision for the rules being sanctioned or modified by the District Court. There is another clause for the alteration of the scheme by

the High Court of Bombay. The committee made the rules and the rules were submitted to the District Court for sanction and the District Judge

modified the rules. There was an appeal to the High Court u/s 47, Civil Procedure Code, again at the order of the District Judge; There was also

an independent application to the High Court for the alteration of the scheme. But no orders were passed on this application. The High Court, on

appeal from the District Court, modified the order of the District Judge. But the Privy Council held that no appeal lay to the High Court u/s 47,

Civil Procedure Code, and it should have been rejected. They pointed out that the High Court might have exercised the power conferred on it by

the clause which enabled it to modify the scheme. The Privy Council did not say that if the High Court exercised such power that would not have been in execution and no appeal lay against it. They expressed no opinion on the matter. All that they decided was that the order of the District

Judge modifying the rules made by the Committee was not an order in execution. S0 far as the alteration of the rules is concerned it cannot be said

that anything was sought to be enforced by one party as judgment-creditor against another parr, as judgment debtor who is under some obligation

and it cannot be said that there was any question in execution between the two parties, Under the scheme of the Privy Council the rules must be

placed before the District Court for its sanction and the District Court has power suo moto to sanction or alter the rules. It is, therefore, doubtful

whether the decision of the Privy Council applies to a case where one party who is conferred a certain right by the scheme seeks to enforce the

right against some other who is under a corresponding obligation and for this purpose goes to Court It cannot be said that the Privy Council

decided that such a matter is not a matter in execution between the parties.

4. The next case in the order of the date is Ruanganatha Thathachariar v. Krishna, smami Thathachariar 75 Ind. Cas. 189 : 47 M. 139 I8 L.W.

237 : (1923) M.W.N. 664 : AIR 1924 Mad. 369. The learned Judges who decided that case seem to think that when a scheme Was asked and

the scheme was framed there was nothing more to be done in the suit and nothing to be executed; but it seems to me that, whatever might have

been asked, where the decree gives something more and provides for the carrying out of the earlier part of the decree, it may be said to be

executable. It is more a question of the interpretation of the terms of the decree and there cannot be any general rule. It is true that a scheme

decree, in general, by its very nature is a declaratory decree. But it is possible that some particular provisions provide for enforcement of parts of

the scheme. I do not see any reason why such portions of a scheme decree may not be regarded as executable. The decision in Daimodarbhat v.

Bhogilal 24 B. 45 : 1 Bom. L.R. 509 : 12 Ind. Dec. 567 is such a case. The grounds on which that decision was to be distinguished by Old field,

J., seem tome untenable. In that case there was a prayer to take past accounts, but in the final decree there was a direction to keep accounts for

the future, that is from the date of the decree and to submit them annually to the District Court and it was this provision that was sought to be enforced in Court. The High Court held that an appeal lay and that it was a question in execution. Old field, J., observed that as the taking of

accounts was a relief asked for specially in the suit and granted independently of the framing of the scheme, that decision may be distinguished on

this ground; but the taking of accounts prayed for in the plaint related to past, accounts whereas the decree related to the keeping of future

accounts--accounts after the date of the decree. Again 0ld field, J., seems to think that if there was a provision in, the scheme for the enforcement

of its other provisions, then it may be enforced in execution. It is not always that decrees of Courts, even where executable actually, provide for

their being enforced in execution. Where a decree directs the defendant to pay some money to the plaintiff, it is executable from its very nature and

one does not expect a provision in the decree that it shall be enforced in execution. That may be so in a plain ''case, and it may be that in

ambiguous oases a provision of the kind removes the ambiguity and solves the difficulty. When there is no such provision it is a difficult matter to

decide whether a particular clause in a scheme is executable or not. Anyhow it is not clear to me that the decision in Damodarbhat v. Bhogilal 24

B. 45 : 1 Bom. L.R. 509 : 12 Ind. Dec. 567, is wrongly decided, nor does it seem to me that the consideration that the decree will have to be kept

up in perpetuity for the purpose of execution has much bearing on the matter. A decree awarding maintenance to widow annually may be

executable for nearly 100 years. A decree giving an injunction in respect of a lease for 999 years may be executable for a very long period. The

other alternative remedy which is suggested in most of the decisions is that a party seeking relief must seek his relief by way of a suit. Some cases

say that it is a suit u/s 92, Civil Procedure Code. But where a suit u/s 92 has already been filed and a scheme framed and the only object is to

carry out the provisions of the scheme, it does not seem to me that this new suit should be a suit u/s 92 unless it is said that the new suit must

always be for the removal of a trustee for disobedience and cannot seek for the enforcement of the provisions of the scheme in any way. I do not

understand the defendants to contend for this. The inconvenience of driving a party like the Board of Control in this case to a suit for every breach

on the part of the trustees is obvious. But the whole matter is not free from difficulty. Probably, if the question of principle is once decided further trouble on the part of the Kattalaidars need not be apprehended.

5. The next case is (Bava C.) Vythelinga Mudaliar and Others Vs. R. Mahadeva Iyer and Others, . This was in connection with the same temple.

The petition there was to cancel the appointment of a superintendent by, the trustees and for the appointment of a new person by the Court. In that

ease there was nothing to execute. In fact it was found by the High Court that the scheme did not authorise the action of the Subordinate Judge and

no appeal lay to this Court. The High Court set aside the order of the Subordinate Judge exercising their power of revision. There was a contention

in that case that an appeal lay. The learned Judges relied on Runganatha Thathachariar v. Krishnaswami Thatkachariar 75 Ind. Cas. 189 : 47 M.

139 18 L.W. 237 : (1923) M.W.N. 664 : AIR 1924 Mad. 369 it seems to me that that was a case in which there was nothing in execution and I

agree with the decision that no appeal lay. it was unnecessary to rely on Runganatha Thathachariar v. Krishnaswami Thathachariar 75 Ind. Cas.

189 : 47 M. 139 18 L.W. 237 : (1923) M.W.N. 664 : AIR 1924 Mad. 369.

6. The next case is Sivan Pillai and Another Vs. T.S. Venkateswara Ayyar, . In that case the remedy sought was the removal of a trustee. it may

be that so far as the removal of a trustee is concerned, the only remedy is a regular suit and cannot be done under the scheme. Anyhow, certainly it

is not a matter for execution because it cannot be said that any provision of the scheme was being executed. I entirely agree with the decision that

no appeal lay, but I'' am not able to agree with the remark at page 798 page of 22 L.W.--[Ed,] of Spencer, J:

In the light of the recent Privy Council decision in AIR 1925 155 (Privy Council) and the Decisions of this High Court in Loka Sikhamani Mudaliar

v. Thiagaraya Chettiar 95 Ind. Cas. 5 : (1926) M.W.N. 283 : AIR 1926 Mad. 655. and Runganatha Thathachariar v. Krishnaswami

Thathachariar 75 Ind. Cas. 189 : 47 M. 139 18 L.W. 237 : (1923) M.W.N. 664 : AIR 1924 Mad. 369. I am of opinion that an appeal will'' not

lie against the order made by a Court exercising a power given to it by a provision in the scheme and that such an order is not an order made in

execution.

7. As I have already observed there is no general decision by the Privy Council that an order made under the scheme is not an order in execution.

It is unnecessary in that case to rely on the decision of the Privy Council or Runganatha Thathachariar v. Krishnaswami Thathachariar 75 Ind. Cas.

189 : 47 M. 139 18 L.W. 237 : (1923) M.W.N. 664 : AIR 1924 Mad. 369.

8. The next decision is Majeti Antayya v. Lingambhotla Venkataramayya 38 Ind. Cas. 415 : 5 L.W. 596 (1917) in that case there was an

application by the Archakas to get their salaries and also a sum of money. Neither the judgment nor the printed papers show what the exact terms

of the scheme were. We agree with the observation in the case that a scheme suit generally may be regarded as declaratory. But it does not follow

that there may not be some particular provisions in the decree framing the scheme which are capable of execution. That case certainly is rightly

decided, but I do not see how it helps us. An Archaka is entitled to his salary by reason of his position as Archaka and a suit for his salary is like

any other suit where some money is due from one person to another and it cannot be said that such a suit is for carrying out of provisions of the

scheme. That suit was not obviously for the carrying out of any provision in the scheme and, therefore, there was no appeal and the order of the

lower Court was set aside in revision. In Ryali Brahmayya and Another Vs. Dronamraju Venkatasuryanarayanamurthy, also the suit was for the

salaries of the Archakas. I entirely agree with the decision. But I cannot agree with the remark in the judgment that a general clause in the scheme

providing for application to the Court with regard to the scheme is ultra vires. A different view was taken by Old field, and Venkatasubba Rao, JJ.,

in Runganatha Thathachariar v. Krishnaswami Thathaehariar 75 Ind. Cas. 189 : 47 M. 139 18 L.W. 237 : (1923) M.W.N. 664 : AIR 1924 Mad.

369 already mentioned. If the relief sought for is the removal of a trustee it may be ultra vires but if it is for the carrying out of the details of the

scheme, it cannot be opposed to Section 92 and I do not see any reason why such a thing should not be enforced in execution. The case itself is,

of course correctly decided, but I doubt if the remark that there can be no provision in the scheme providing for execution of some clause is

correct.

9. The next decision is Abdul Hakim Baig and Others Vs. Mahomed Burrammudin and Others, . This also relates to the removal of a trustee and it

may be, that the caluse in the scheme providing for the removal of a trustee by way of execution is ultra vires it is unnecessary to discuss this case

any further.

10. The result of the above discussion is that, while I think that all the cases have been correctly decided on the actual facts, I am unable to agree

with some of the observations made in them. I do not see any reason why there may not be some clause in the scheme which amounts to a

direction to the defendants to perform some duty, such as the payment of money either at a point of time or periodically, and why such a direction

should not be executable. Whether it is executable or not depends on the intention of the decree. While generally a scheme decree may be

declaratory specific parts thereof may contemplate execution. It is unnecessary to expressly provide for the enforcement of such a clause by

execution. Though where there is an express provision to that effect it makes matters clear, and such a provision except as to the removal of a

trustee is not ultra vires. In the case of the removal of a trustee it may be that the only remedy is by a suit u/s 92. In the present case it may be said

that the presentation of a proper budget and payment of the monies to the treasurer are matters intended to be enforced in execution. I do not see

how the payment of monies to the treasurer is different from a maintenance decree.

11. But assuming that there is some doubt as to the intention of the scheme and that a suit is the proper remedy, it is clear that the suit is not a suit

u/s 92 and does not require any sanction, The second clause of Section 47, Civil Procedure Code, provides that the Court can convert a petition

into a suit and a suit into a petition subject to any question of jurisdiction or limitation. In this case there is no question of jurisdiction or limitation.

The policy of the Legislature in enacting that clause was to avoid all technicalities and to enable Courts to get at the root of the matter in dispute

between the parties. In none of the cases cited was reliance placed on this Section 47. Nor could it be on the facts of these cases. In the present

case I think that the petition of the President of the Board of Control may be converted into a suit under the said clause and as the matter is

incapable of valuation the petitioner will pay a Court-fee of Rs. 100 in the Court below and in the appeal before us. If the petition is regarded as a

suit there is no objection to the appeal before us. I, therefore, proceed to consider the merits of the case.

12. On the merits the respondents contend that all that was intended by the scheme as to the Kattalaidars was that their budget should deal only

with such portions of their duties as related to the temple proper or what is called pagoda service, and that as to the other duties they need not

submit the budget to the Board of Control, nor need they pay the monies relating to such other duties to the treasurer. I have not the smallest

hesitation in rejecting this contention. The judgment in the main appeal is now reported as Manicka Vachaka Desika Gyana Sambanda Pandara

Sannadhi v. Vaithilinga Mudaliar 74 Ind. Cas. 115 : 18 L.W. 247 : AIR 1924 Mad. 168. While in the judgment, Spencer, J., and myself were

anxious to support the independence of the Kattalaidars and not destroy their individuality as the Subordinate Judge did, we were also anxious to

point out that all the duties of the Kattalaidars were duties either directly or indirectly connected with the temple for instance in the case of

Annadanam Kattalai though the 5th duty namely pagoda service relates to the temple and others such as sheltering the travellers, distribution of

food and keeping of water pandals, lights, etc., do not directly relate to the temple, in theory all these duties are also indirectly connected with the

temple. The person who endowed the property to the Kattalai was thinking of providing for the charities to be carried on in the name of

Thiagarajaswami so that the particular idol may be glorified. The recipients of the shelter for travellers and the supply of food and water extol the

charity as one of Thiagarajaswami and in that way they are all charities of Thiagarajaswami. It is true that we said that the income of the Kattalais

did not belong to the idol. But in their expenditure the idol was interested and in that way they are all endowments connected with the temple and in

that sense all the incomes of all of the Kattalais are funds of the Devasthnam, and this was all that was meant by the use of the words ''funds of the

Devasthanam'' in the other clauses of the scheme, such as for example Clause 16. That this is our intention is clear from para. 13 which provides

that the trustees of the respective Kattalais shall hand over all the cash proceeds to the Treasurer. Similarly, budgets that relate to the expenditure

and income of Kattalais must show details of all the expenditure whether directly connected with the temple or not but in theory redounding to the glory of the Swami. I am, therefore, of opinion that the order of the Subordinate Judge is incorrect and that the respondents should submit

complete budgets relating to all the expenses and pay all the monies to the Treasurer and get back the amounts form the Treasurer as expenses are

being incurred. It is said that in the case of the Palayee Kattalai which related to the feeding of Brahmins every day it is inconvenient to get money

every day. We never said that the money should be taken every day. Money may be drawn from the Treasurer once a fortnight or a month or in

some other way as the Board of Control and the Kattalaidar may agree. There is nothing in the scheme precluding such an arrangement between

the parties, but it is clear that all the income must be handed over to the Treasurer and afterwards taken back as occasions arise. The contention

raised on behalf of the Ardhajama Kattalai that subject to certain duties in connection with the temple the endowments are to be treated as the

property of the Kattalaidar comes too late. The whole suit proceeded on the footing that all the Kattalais are appendages to the temple, They are

independent only in the sense that the individuality of the trustees should be kept up and each Kattalaidar is a separate trustee, but there is no

question of private Ownership. It was never argued in the main case and the Subordinate Judge who tried the suit decided against the Ardhajama

Kattalaidar. It is too late to repeat it now.

13. We allow the appeal and reversing the order of the Subordinate Judge direct that the respondents should submit complete budgets of their

receipts and expenditure and also deliver all the income to the Treasurer. The respondents will pay the costs of the appellant both here and in the

Court below including the Court-fees now directed to be paid by the appellant.

14. The appellant will pay the Court-fees within a fortnight.

Cornish, J.

15. I agree, and will add a few words only on the point whether the decree is executable.

16. It appears to me that the question whether a decree framing a scheme for a charitable trust is executable or not must depend on the language

and on the scope of the decree or of that particular part of the decree in respect of which the question arises. From the nature of the case such a

decree may in part be declaratory and in part directory, It may provide a specific procedure for carrying out particular provisions of the scheme,

and yet leave other provisions of the scheme enforceable by execution. See Damodarbhat v. Bhogilal 24 B. 45 : 1 Bom. L.R. 509 : 12 Ind. Dec.

567. The view expressed in Runganatha Thathachariar v. Krishnaswami Thathachariar 75 Ind. Cas. 189 : 47 M. 139 18 L.W. 237 : (1923)

M.W.N. 664 : AIR 1924 Mad. 369 that when once the Court has passed a decree framing a scheme the decree becomes non-executable must, I

think, be taken as intended to refer to the particular question which arose out of the scheme which the Court had to consider in that case. There

certainly appears to be no justification for accepting that view as a rule of general application. In the case which is now before us the question is

whether Clause 8 and 13 of the scheme decree are executable. I think it clear as a matter of construction that these clauses are not merely

declaratory. They are directory. They direct particular acts to be done by the Kattailaidar and these directions, obviously involve the consequential

right on the part of the Board of Control to have the performance of the particular acts enforced. Then, does the scheme, either in terms or by

implication exclude the right of the Board of Control to enforce these directions by execution of the decree. The only provision in the scheme which

bears on this question is Clause 27 which enables any of the parties or the Board of Control to apply to the Court for modification of the scheme.

But Clause 27 has no application to the particular question before us. A modification of the scheme which means an alteration of the rules or

directions would certainly not be an appropriate or an effective remedy for the non-compliance with the directions in Clause 8 and 13. It appears

to me that execution of the scheme decree is the proper remedy. Authority for this conclusion is to be found in Damodarbhat v. Bhogilal 24 B. 45 :

1 Bom. L.R. 509 : 12 Ind. Dec.567 and Prayag Dass Ji Varu v. Tirumala Sriranga Charlaveru 28 M. 319 : 15 M.L.J. 133.

17. But then it has been said that since the Privy Council decision in the AIR 1925 155 (Privy Council) the rulings in Damodarbhat v. Bhogilal 24

B. 45 : 1 Bom. L.R. 509 : 12 Ind. Dec. 567 and Prayag Das Ji Varuv. Tirumala Srirangacharlavaru 28 M. 319 : 15 M.L.J. 133, can no longer be

considered as good law [See Sivan Pillai and Another Vs. T.S. Venkateswara Ayyar, , Ryali Brahmayya and Another Vs. Dronamraju

Venkatasuryanarayanamurthy, and Majeti Antayya v. Lingambhotla Venkataramayya 38 Ind. Cas. 415 : (1917) M.W.N. 420. I am unable to find

in the Privy Council judgment any ground for that conclusion. The. Privy Council as I read the judgment decided. no more than the question which

was before 28 M. 319 : 15 M.L.J. 133, it, namely, that, Clause 20 of the particular scheme having denned the procedure for modifying or altering

the scheme the Court had no jurisdiction to modify or alter the scheme except by the prescribed procedure. Their Lordships confined themselves

to that question and nowhere in the judgment is there any discussion of the proposition that directions in a scheme decree are in no circumstances

executable.

18. It is not however, necessary to dispose of the case on this ground. I think that having regard to the contention that has been, raised by the

Kattalaidars on the constructions of the scheme, a more satisfactory way is to proceed u/s 47(1) of the Civil Procedure Code. I agree with the

order proposed by my brother.

