

(1974) 04 MAD CK 0008

In the Madras High Court

Case No : Appeal No. 861 of 1967

The Commissioner for Hindu Religious and Charitable
Endowments

APPELLANT

Vs

P.R. Jagannatha Rao and Others

RESPONDENT

Date of Decision : 04-04-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 84, 84(1), 9
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63, 63(1)
Trusts Act, 1882 — Section 1

Citation : (1974) ILR (Mad) 597

Hon'ble Judges : Ramaprasada Rao, J;Natarajan, J

Bench : Division Bench

**Advocate : Manivannan, Additional Government Pleader, for the Appellant; R.
Gopalaswamy Ayyangar, for the Respondent**

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—The first Defendant, namely, the Commissioner for Hindu Religious and Charitable Endowments, Madras, in

Original Suit No. 203 of 1964 on the file of the Court of the Subordinate Judge, Tiruchirappalli, is the Appellant. The Plaintiff filed the suit to set

aside the order of the the Commissioner for Hindu Religious and Charitable Endowments Board, dated 4th July 1964 in which it was held that the

temple known as Sri Hanumantharaya Swami Temple, Andankovil, Karur Taluk, Tiruchirappalli District, - was a public temple within the meaning

of the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1959, hereinafter referred to as the Act. The material allegations

on which the Plaintiff approached the Deputy Commissioner, Hindu Religious and

Charitable Endowment, u/s 63(1) of the Act are as follows. The Plaintiff's great grandfather Putti Jayatheerathachar installed the idol of their family deity Hanwnantha Raya on a site bearing S.F. No. 1347 in Andankovil, Karur Taluk, some years ago. Originally the idol was housed in a thatched shed. Later the Plaintiff's grandfather Putti Rangannachar improved the same by putting up a brick and masonry construction in the place of a thatched shed. At no time this construction had the normal indicia of a temple in that it had no Gopuram or Dwajasthambam or Praharam. The Plaintiff's further case was that the public have no right to participate in the worship in the temple and there was and there is no right in the Hindu community or my section thereof to use this institution as a place of public religious worship nor has it been recognised as such for several decades in the past. As a matter of fact, on Madhwa Navami day, Madhwa Brahmins are invited to attend pooja in the temple. There is no hundial in it. The family idol instead of being kept in a residential premises belonging to one or the other of the family members, was installed and worshipped in a separate place by them and their invitees. Expenses for worship are met solely and exclusively from and out of the family funds of the Plaintiff. It was either the father of the Plaintiff or his grandfather who endowed certain immovable properties to the temple, as it is popularly called, and the income thereof is being utilised for the upkeep and performance of daily pooja in the temple. Any deficiency in the funds is met by the Plaintiff from his private funds. The pooja in the temple is not in conformity with the agamic standards of pooja in a public temple. The public do not contribute anything for the upkeep of the temple and they do not make any offerings or permitted to make any offering to the temple and there is no hundial in the temple either. The keys of the temple have always been in the family of the Plaintiff and his predecessors, thus indicating that the Plaintiff and his ancestors reserved for themselves the right to exclude and restrict admission to the temple.

2. On 29th November 1870 the Plaintiff's grandfather Putti Rangammachar secured the right to conduct and carry on the worship of the daily in the temple under a partition deed, dated 28th November 1970, and he also took out the endowments attached to the temple. It is also stated that Putti Rangamachar also endowed certain prepared by gift deeds, dated 21st

January 1911, the recitals in which also establish that the temple is a private temple. Putti Rangammachar died in 1922 leaving his live sons Putti Venkata-subba Rao and Putti Raghasundra Rao. His other elder son Vathiraja Rao was given away in adoption and we are not therefore concerned with his lineage. Putti Venkata-subba Rao died in 1942. Putti Raghavendra Rao died in the year 1950. Both Putti Venkatasubba Rao and Putti Raghavendra Rao during their lifetime were the trustees of the temple. On the death of Putti Raghavendra Rao the Plaintiff and Defendants 2 to 7, who are his heirs, became trustees of the private temple. According to the Plaintiff, the Hindu Religious and Charitable Endowment Board did not exercise any act of control or management in respect of the temple and his case is that he never gave any contribution to the Board towards supervision charges, etc. On 28th February 1959 the Assistant Commissioner of the Board at Tiruchirappalli demanded contribution and attempted to appoint further trustees to the temple. When the Plaintiff who was actually in management of the temple on behalf of his other heirs objected, he was asked to get a declaration u/s 57(a) of the 1951 Act corresponding to Section 63(a) of the present 1959 Act. It was in that context that the Plaintiff filed an application before the Deputy Commissioner, but it was dismissed. An appeal against the same to the Commissioner was unsuccessful. Defendants 2 to 6 remained ex parte. The seventh Defendant sided with the Plaintiff. The main contention of the 1st Defendant was that in Original Application No. 28 of 1928, which was an application filed by Putti Raghavendra Rao, a decision was rendered that the temple was a public temple managed by hereditary trustees and that it was excepted on that basis and that that decision would bind the Plaintiff since no action was taken in accordance with law to set aside the said order. In the main the 1st Defendant's case was that the present suit is barred by res judicata and there can be no further enquiry into the character of the temple as it has already been decided that it was a public temple. The circumstance that the Plaintiff's father (Putti Raghavendra Rao) was giving contribution and audit fees to the Endowments Board would estop the Plaintiff and other interested Defendants from contesting the enforceability, legality and validity of the order passed in Original Application No. 28 of 1928. On the above pleadings the following issues

were framed for trial:

1. Whether the suit temple is a private temple not coming within the jurisdiction of the Hindu Religious and Charitable Endowments Act of 1959 as

contended for by the Plaintiff?

2. Whether the order in O.A. No. 28 of 1928 bars Plaintiff that the suit temple or for any of the reasons set out in the plaint; is a private temple?

3. Whether the order, dated 4th July 1964 in Appeal No. 31 of 1962 is liable to be set aside for all or for any of the reasons set out in the Plaintiff?

4. To what relief, if any, is the Plaintiff entitled ?

3. A commissioner was appointed by the trial Court to find out the features of the so called temple. On a fair reading of the said evidence, the

essential features of temple, as it is popularly understood, are not to be found in the instant temple. Defendants 2 to 7 who were added as such, are

the surviving members of the ancient family who are entitled to be joint trustees of the suit temple. The trial Judge after due consideration of the

evidence came to the conclusion that the suit temple, having regard to its features and its working, was never a public temple. Evidence on which

this finding was reordered by the learned Subordinate Judge is so overwhelming and abundant. But the trial Court relying upon a Division Bench

decision of this Court reported in The Commissioner for Hindu Religious and Charitable Endowments Vs. A.P.S. Sethurama Pillai and Others,

was of the view that the order passed by the Board of Commissioners, Hindu Religious and Charitable Endowments, in O.A. No. 28 of 1928

would not bind the other trustees as the said proceeding was conducted only by Putli Raghavendra Rao without impleading the other trustees who

were also entitled to be in management of the affairs of the temple. In that view he held that the order of the Board in O.A. No. 28 of 1928 could

not be a valid order in the eye of law and would not operate as res judicata. Thus, on merits and in the view he held that the order in O.A. No. 28

of 1928 could not be a valid in the eye of law, he decreed the suit and set aside the order passed by the first Defendant on 4th July 1964 in the

appeal filed before him against the order of the Deputy Commissioner, Hindu Religious and Charitable Endowment, in which the Plaintiff

challenged the right of the Board to demand contribution on the basis that the temple is a public temple. It is as against this the present appeal has

been filed.

4. Learned Government Pleader was unable to dislodge the finding of fact that the temple in question does not have all the features of a public

temple. In fact, the evidence discloses the sites in question as a private property, the temple is not being used as a place of public religious worship,

there is no dedication of the temple to and for the benefit of the Hindu Community or any section thereof, nor it is being used by the generally of the

Hindu community as of right as a place of public religious worship. There is no hundial and no collections are made from the and no member of the

public for the performance of any festival connected with the temple public has come forward to say that he has contributed the temple or for its

maintenance, or any of the related poojas to the deity. There is ample authority of our Court and that of the Supreme Court to hold the view that

unless the indicia as aforesaid is present in a temple so called, it would not be a public temple.

5. In Commissioner, Hindu Religious and Charitable Endowments v. Shama Rao (1955) I M.L.J. 510, it is said the burden is very heavy on the

person who sets up a case that a temple is a public temple. In our view, this burden has not been satisfactorily established by the Appellant. The

report of one of the Officers of the Department gives a lie direct to the view sought to be contended by the Appellant. Exhibit B-2 which is

analytical, read as a whole does not give the impression that the public or any section of the public has a right to worship the deity and make

offerings to it. We have already referred to the absence of Dwajasthambam, Gopuram, etc., which are generally the prominent features of a public

temple. According to exhibit B-2, even at the time when the deity is taken out on Madhwa Navami day, public offerings are refused and are not

accepted. But the inspector who gave the report exhibit B-2 ultimately came to the conclusion that in view of the earlier decision of the Board in

O.A. No. 28 of 1928 the temple ought to be included as a public temple. We shall however advert to this matter as to how far the earlier decision

would operate as res judicata. The reasonable inference that has to be drawn on the merits of this case is that from the nature of the institution, the

nature of its user, the way in which it has been administered and the absence of contribution by the public all put together give the irresistible

impression that the beneficiaries of this temple are not the general public or as action thereof, but the family of the ancestors of the Respondent.

The various authorities referred to by the learned trial judge including Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and

Others, Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others, , V. Mahadeva Gurukkal Vs. The Commissioner for the Board

of Hindu Religious Endowments, , Sadavarthi v. Commissioner, H.R.C.E. AIR 1967 S.C. 510, do support our view that in the facts and

circumstances of this case Sri Hanumantharaya Swami Temple, Andankovil, Karur taluk, Tiruchirappalli district, is not a public temple within the

meaning of the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1959.

6. The more formidable argument of the learned Government Pleader, however, is that the decision rendered by the quondam statutory Board

functioning under the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1956, in and by which the suit temple was declared

to be a public temple but an excepted one, binds the Respondent and by invoking the doctrine of res-judicata the contention is that the decision of

the Board u/s 84(1) of the 1927 Act would not permit the Respondent to re-open a closed question by seeking for a contrary declaration in an

application filed u/s 57(a) of Act XXIX of 1951 which was heard and disposed of by the appropriate authority as an application u/s 63(a) of

Madras Act XXII of 1959. Exhibit A-21 is the order of the Board in O.A. No. 28 of 1928 and is, dated 17th January 1928. The Deputy

Commissioner's attention was drawn to the specific fact that Putti Ragha-vendra Rao was not the only trustee who was competent enough to act

not only for himself but also for the other trustee or about the time when the above application was disposed of and on that footing it was urged

that the decision rendered by the Board in the presence of one amongst other trustees would not be a valid decision and cannot bind the other

members who constituted the body of trustees. The Deputy Commissioner was of the view that as the present Applicant is the son of Putti

Raghavendra Rao who was the only trustee who was heard by the Board when it passed the challenged order cannot re-open that question

and that he is bound by the decision of the Board as reflected in exhibit A-21. Though the Deputy Commissioner attempted to traverse the merits

and render a decision that the suit temple is a public one, yet it appears to us that his main conclusion was based on the principle that exhibit A-21

governed the situation and it cannot be reopened.

7. What the learned Government Pleader contends is that if a person is actually in management and administration of a temple and he is a de facto

trustee, then a decision rendered after hearing him will not only bind him but also the other trustees who are not eo nomine parties to the litigation

provided there has been an effective representation by a person actually in charge of the affairs of the temple. Our Court has been taking

consistently the view that a body of trustees is a body corporate and it has to act in unison but not disjunctively and for a greater reason in

proceeding arising under the Hindu Religious and Charitable Endowments Act, if one amongst such a body of persons alone is given notice and

proceedings initiated, determined and concluded only in his presence, then it would not bind the entire body of trustees. At any rate, three Division

Bench decisions of our Court, which we shall presently advert to, have taken this view. In one of such cases one of us was a party too. But in all

these cases a Full Bench decision of our High Court, was not noticed. That decision effectively recognised the principle of representation of a

temple by a de facto trustee or by a trustee actually in charge of the affairs of the temple, and expressed the view that so long as there is no dispute

or there can be no dispute about the capacity of the de facto trustee to act, plead and represent on behalf of the temple in a proceeding then a

decision in it would bind the temple as such and also the other body of trustees.

8. It is by now well established that even though the deity is a juristic entity by itself, yet as it has to function both legalistically, spiritually and

otherwise, it has to act through some human agency. Undoubtedly the worshippers of the deity are the ultimate beneficiaries of all the grace, etc.,

which the deity would spread on them in the course of the administration of the temple by the body of trustees. Thus the deity which is an entity by

itself is the cynosure in a religious institution to which is attached all the properties owned by the temple. The shebait, trustee or administrator are all

looked upon as a human agency who administer and look after the affairs of such a deity, and the worshippers who belong to the community at

large are the ultimate beneficiaries of that trust- Vide Bishwanath and Another

Vs. Shri Thakur Radhaballabhji and Others, The Supreme Court, in the above case, while characterising a suit filed by an idol for declaration of its title and possession of property from a person who is in possession thereof under a void alienation said that it is outside the purview of Section 92 of the CPC and held that even a worshipper can file the suit, the reason being that the idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. Thus the three tier characteristics of an idol is now well accepted, (viz) (i) the ascription of a legal personality to the deity supposed to be residing in the image"; (ii) The deity's affairs and properties are administered by the shebait or the trustees; (iii) and ultimately the beneficiary, as is legally understood, in case of said trustees is the worshipper.

9. If the above principle is beyond question, the possession of a de facto trustee a trustee who is actually safeguarding the interests of the institution and incharge of its affairs, has a peculiar connotation in the case of religious endowments and temples. A de facto trustee is not to be understood in the light of the legal cobwebs of English law, but has to be interpreted, not too astutely, but in a pragmatic way having regard to the well accepted importance of the office of trusteeship vis a vis the deity or the religious endowment. The question whether a de facto trustee, even if he is theoretically functioning along with one or more co-trustees, can represent the idol and its affairs has been the subject-matter of many decisions of our Court. The Division Benches of our Court, as would be seen presently, took the view that a body of trustees co nomine functioning as such for and on behalf of a temple or religious endowments cannot but jointly act as they can function only as a corporate body. These dicta were rendered on the well known modus on which co-trustees as understood in English law could act. It was in that sense that our Court has taken the view that if there are more shebaites or managers or trustees than one, they are deemed to constitute one single body, as it were, in the eye of law and all of them must normally be parties to a suit on behalf or against the deity or the idol. If any of the managers are unwilling to be joined as Plaintiffs or have themselves done acts prejudicial to the trust or otherwise precluded themselves from being Plaintiffs, they should be made Defendants. But

the question is whether in the light of the recognition of the principle of the existence of three tier system of administration of the affairs of a temple

or a deity or a Hindu religious endowment or Hindu religious endowments, the above principle is of universal application and is not capable of any exception or relaxation.

10. We shall now consider the decisions of our Court. In *The Commissioner for Hindu Religious and Charitable Endowments Vs. A.P.S.*

Sethurama Pillai and Others, , Rajagopalan and Ramachandra Iyer JJ., held:

It is well settled that where there are more trustees than one all would be entitled to act jointly, they would be in the position of joint trustees and

form a corporate body. A scheme providing for the management of a private temple by turns amongst the members of a family would be only an

arrangement inter se, but outside the family, the co-trustees would form a corporate entity. The representation of an institution could be valid or

effective only if all the trustees jointly act; a fortiori the institution could be bound by an order of the Board under the Act only if all the trustees are

impleaded to the proceedings before the Board.

This view was held by another Bench decision of this Court in *M. Angappan v. Hindu Religious and Charitable Endowments, Madras (1965) 1*

M.L.J. 151, wherein again the principle was repeated that co-trustees should act jointly and collectively and particularly in matters of appearances

before Courts and public authorities for enforcement of statutory rights or privileges they should all figure as a party or apply for the same. In

Tirumalaisami Naicker Vs. Villagers of Kadambur and Another, another Bench of this Court said that:

Where a religious institution has plurality of trustees the institution cannot be represented unless all the trustees are made parties. If the temple are

to be bound by this judgment, all the trustees are necessary parties.

Following the above there two decisions, *Ismail and Nataraian JJ. in Chennammal v. Hindu Religious and Charitable Endowments, Madras*

(Appeal Suit No. 366 of 1967) said:

...the position is well settled that in order to make an order passed u/s 84 of Madras Act II of 1927 binding on the institution, the entire body of

trustees administering the institution as well as the properties should be made parties and that, in the absence of the other trustees being made

parties, the order cannot be said to be binding on those trustees or on the institution itself.

Axiomatically, therefore, there has been a consistent expression of opinion of our Court that if there are co-trustees or more trustees than one

acting for a religious institution, then any order suffered by one amongst them or any action taken individually by one amongst them would not bind

the body of trustees and even so logically the institution as such. But, with due consideration to the views expressed in the above cases and to the

last of which one of us was a party too, we are of opinion, having regard to the Full Bench decision of our Court in *sankaranarayanan Iyer v. Shri*

Foovananaihaswami Temple, Koilpatti AIR 1949 Mad. 721 (F.B) that the principle enunciated in *The Commissioner for Hindu Religious and*

Charitable Endowments Vs. A.P.S. Sethurama Pillai and Others, and which has been followed in the later decisions is not an inflexible one and

incapable of relaxation and exception under any circumstance. If circumstances do exist in a particular case to establish that the person amongst the

body of co-trustees who represented the institution or against whom an action was taken by third-parties was one in whom the administration of

the temple rested and was one who for all practical purposes represented the institution without a demur by the others, it cannot be said that even

in such circumstances the section initiated or the decision suffered by such a sole trustee can be thrown over-board as a matter of course on the

only principle that co-trustees can only act jointly and as a corporate body. *Viswanatha Sastri J.* in AIR 1933 75 (Privy Council) after tracing the

conspicuous differences between English Law of Trusts and Hindu Law relating to Temples and Religious Endowments and after referring to the

express provisions in Section 1 of the Indian Trusts Act which declares that its provisions do not apply to public or private religious or charitable

endowments, came to the conclusion that a de-facto trustee in that sense and trustee who is in actual administration of the affairs of an endowment

or temple can, on his own, maintain actions on behalf of the trust and represent the trust in actions brought against it. The learned Judge, in the

course of his judgment, after referring to AIR 1933 75 (Privy Council) and AIR 1935 44 (Privy Council) reiterated the principle laid down therein

by stating:

...de facto Mahant or head of the mutt, in actual possession of the mutt though without title, was entitled to maintain a suit to recover property,

appertaining to the mutt, not for his own benefit, but for the benefit of the mutt, from a person claiming it adversely to the mutt.

He was categorically of the view that the decisions of this Court always upheld the right of a de facto trustee to sue in respect of the trust and be

sued thereon. After referring to Section 9 Clause (13) of Madras Act II of 1927, which defines trustee as including any person by whatever

designation known, in whom the administration of a religious endowment is vested including a person who would be liable as a trustee, i.e., a de

facto trustee, the learned Judge said:

The de facto trustee so long as he is functioning as such, has, from the necessities of the situation, the right to bring suits on behalf of and in the interests of the trust.

and we respectfully add can also be represented in such actions. Discussing the material question on hand, whether one amongst the co-trustees

could bring an action and to represented in an action, the learned Judge observed:

As regards co-trustees strictly so-called, they stand on a different footing from joint managers or shebait, for, the property is vested in all

of them; there is unity of title and possession and their interests are joint and indivisible. But having regard to the position and status of shebait and

managers of Hindu Religious Endowments and their relation to the endowed property the legal title in which vests, not in the managers but only in

the deity or the idol, the rule requiring all co-shebait or managers to join in an action on behalf of the deity or idol is not so inexorable or incapable

of exception or relaxation as in the case of co-trustees strictly so-called.

He quoted with approval the decision of Biswas J., in *Sri Sri Iswar Sridhar Jieu Thakur* represented by his shebait *Jyoti Prosad Bandopadhyaya Vs.*

Jahor Lal Mukhopadhyaya and Others, which is to the effect:

As is, however, recognised in many of these cases and is in fact implied in the statement of the rule, it cannot be maintained as an absolute rule of

law that all the co-shebait must join in representing the deity. The rule is subject to exceptions, and circumstances may exist in which the deity may

be validly represented by one only of the shebait, and even by a person who is

not a shebait. Where a suit is a suit by the diety represented by some of its shebait, the question whether or not the other shebait should be joined as parties is often, in the last analysis, a mere question of procedure and expediency; the test is, whether or not, having regard to all the circumstances of the case, the interests of the diety may be said to be sufficiently represented.

Natesan, J., in *Alagumalai Thevar v. Raju alias Karuppa Thevar* (1967) 1 M.L.J. 301, after referring to *The Commissioner for Hindu Religious*

and *The Commissioner for Hindu Religious and Charitable Endowments Vs. A.P.S. Sethurama Pillai and Others*, , and other decisions, said:

None of the above decisions have, in my view, any relevancy in the context of the present claim as this case falls directly under the Full Bench

decision of this Court in *Sankaranarayanan v. Poovananthaswami Temple* AIR 1949 Mad. 721 (FB).

The learned Judge observed:

...Where it is found that the corporate body as such is not functioning and one of the persons constituting the corporate body alone is in

management, his management can only be as a de facto trustee. Such a person bona fide and in good faith in management i-an sue on behalf of the

institution for recovery of the property held adversely to the trust by strangers, without impleading the other recalcitrant trustees.

Thus, in our view, the principle is now well settled thus: Ordinarily co-trustees should function in union and they should initiate actions and be sued

conjointly. But if in the facts and circumstances of a case it is established that one amongst such co-trustees or shebait or managers is in actual

charge of the administration of the temple without the others taking any interest therein or without having expressed any desire to participate in such

administration and control, then any action taken by that individual is a single trustee amongst the body of trustees is maintainable as long as the

action taken by him and the action taken against him by a third party was in connection with the affairs of the temple, its administration and well

being. The rule that if there is such a de facto trustee in management of a religious endowment or temple, but if he is clubbed along with one or

more trustees, he cannot under any circumstance initiate action or be represented in an action is not an axiomatic rule of procedure as expediency

would declare that in certain circumstances where he is the individual and was in fact representing the institution solely and administering the same,

he can act bona fide and bring any action solely in his name for the benefit of the institution and reciprocally therefore actions may be brought

against him if he is the person a claimed and accredited as the person in charge of the Hindu religious institution.

11. Factually, therefore, it has to be considered whether in the instant case Putti Raghavendra Rao was the de facto trustee in the manner explained

by the Full Bench in *Sankaranarayanan Iyer v. Shri Poovananathaswami Temple, Koilpatti* AIR 1949 Mad. 721 (F.B.). From the records it is

seen that the Plaintiff's great grandfather Putti Jayatheerthachar installed the idol and the grandfather Putti Rangannachar put up a masonry

construction and thereafter the administration of the temple was in the hands of the two sons of Putti Rangannachar, Putti Venkatasubba Rao and

Putti Raghavendra Rao. Thereafter another son of Putti Rangannachar called Vathi Raja Rao was given away in adoption. After the death of Putti

Venkatasubba Rao in 1942, Putti Raghavendra Rao was in sole management of the trust. No doubt during their lifetime both Putti Venkatasubba

Rao and Putti Raghavendra Rao were in management The petition Original Appeal No. 28 of 1928 on the file of the Board of Commissioners,

Hindu Religious and Charitable Endowments, was filed against Putti Raghavendra Rao only and it does not appear anywhere that Putti

Venkatasibba Rao was in any way in actual management of the trust properties or the temple even then. In fact, it was Putti Raghavendra Rao who

was recognised as trustee of this temple by the Temple Committee and service was effected against Putti Raghavendra Rao only through the

Temple Committee. Putti Raghavendra Rao made his own representatives acted in the circumstances as the de facto trustee, and there is no

acceptable evidence forthcoming for us to reasonably infer that there was a person other than Putti Raghavendra Rao in the family who was

interested in the administration of the temple and its affairs. The seventh Defendant claimed that her father-in-law Putti Venkatasubba Rao was also

a joint trustee; but besides stating it in the pleadings, no evidence has been let in to substantiate that contention. As a matter of fact, it is common

ground that Putti Raghavendra Rao did pay the contribution in accordance with the decision of the Board of Commissioners in the proceedings of

1928. Exhibit A-23, which is the annexure to the Board's order made on 13th February 1928, does not give us the impression that the

proceedings which took place in 1928 were without the proper parties being brought on record and heard. A mere assertion by the present

Plaintiff, as the son of Putti Raghavendra Rao that all the other joint trustees were not parties to the proceedings is not sufficient. Mere presence of

other members of the family who would be entitled to be such trustees would not make any difference. There should be positive proof that more

than one trustee was actually in management of the temple during the relevant period and that the order passed in Original Appeal No. 28 of 1928

on the file of the Board of Commissioners was irregular in the sense that all necessary and proper parties were not before it. As we said, the

records perused by us do not lend support to the self serving statement of the Plaintiff that there were joint trustees of the temple in question at the

time when the Board decide in 1928 and they were for no reason brought on record at the time when the challenged decision was rendered by the

Board. We are therefore of the view that Putti Raghavendra Rao as de facto trustee and is one who was actually in charge of the affairs of the

temple and who could validly represent it was made on party to the proceedings of 1928 and in that light the resultant decision of the Board in such

proceedings would bind the successors of Putti Raghavendra Rao and or his co-trustees even if they were nominally functioning at that time. In any

event, the Plaintiff is necessarily bound by it Following the ruling of the Full Bench we are unable to agree with the learned Subordinate Judge that

the order of the board thought to be set aside by the Plaintiff in this action is an invalid one and has to be ignored for all purposes. We have already

expressed the view that Commissioner for Hindu Religious and Charitable Endowments Board, Madras v. Sethurama Pillai (1960) I M.L.J. 157,

has to yield to the view of the Full Bench referred to above. On a consideration of the facts as well as we are of the view that the order of the

Board rendered in Original Appeal No. 28 of 1928 hat stand.

12. Once a binding order has been passed under the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1927, that

decision is final subject to the result of the suit contemplated in the Act -Vide Sri Bhavanarayanaswamivari Temple v. Vedapalli Venkata

Bhavanarayanaswamivari (1971) 1 M.L.J. 49 (S.C.). As the suit has failed the Plaintiff is not entitled to relief. The appeal is allowed There will be no order as to costs.