(1954) 04 KL CK 0001

In the High Court Of Kerala

Case No : A.S. No. 503 of 1124 (Tr.)

Travancore Devaswom Board APPELLANT

Vs

S. Neelacantan Moothathu and others RESPONDENT

Date of Decision : 01-04-1954

Acts Referred:

Citation : AIR 1954 Ker 83

Hon'ble Judges : Sankaran, J;Kumara Pillai, J

Bench : Division Bench

Advocate : N.K. Narayana Pillai, for the Appellant; M. Madhavan Nair, for the Respondent

Final Decision : Dismissed

Judgement

Sankaran, J.—The suit out of which this appeal arises was instituted by the former State of Travancore, represented by the Diwan, for recovery of a certain amount alleged to be due to the Subramania Swami Temple at Cheriyanad, the Uraima right of which is stated to have been with the Oomanpilli Mana at Kadalasseri Desom in the former State of Cochin. The management of this Devaswom was assumed by the Travancore State by virtue of the powers conferred by the Hindu Religious Endowments Act (Act III of 1079 of Travancore) and hence the State figured as a plaintiff in this case.

2. According to the plaint allegations the members of the 1st defendant''s Illom were holding the office of ''Kaisthani'' and treasurer for a long time past, and the 1st defendant who was the karnavan of this Illom was the last member to hold this office. Because he was found to be guilty of having misappropriated Devaswom funds and of having committed other acts pre-Judicial to the interests of the Devaswom, he was removed from the office in the year 1111. At the time of such removal, his liability was settled and the amount due from him to the Devaswom was ascertained to be 272 paras 6 9/16 edangalies of paddy and Rs. 506 chs. 9 cash 11. In the Devaswom accounts Exts. A and B, the 1st defendant put his signatures on 28-6-1114 and 29-6-1114 acknowledging his liability for

the aforesaid amounts. It is stated that the 1st defendant''s Illom had no source of income other than the dues from the plaint Devaswom and that the amounts misappropriated from the Devaswom were utilised by him for the benefit of his Illom. On the basis of such an allegation the 1st defendants Illom is also sought to be made liable for the plaint claim, and accordingly the other members of the Illom were impleaded as defendants 2 onwards.

3. Defendants 1 and 2 resisted the suit by filing separate written statements. Both of them have admitted that the 1st defendant had been functioning as the Kaisthani and treasurer of the Devaswom even though they maintained that he was not holding such offices not under the Oommenpilli Mana, but by virtue of the right vested in the 1st defendants Illom itself. According to the 1st defendant, he volunteered to surrender these offices by executing a release deed dated 23-6-1111 in favour of the Oommenpilli Mana represented by the 1st plaintiff in the suit. He has contended that nothing was due to the Devaswom from him at that time and the entries in the Devaswom accounts, Exts. A and B, have been subsequently fabricated. It also denied having utilised any portion of the income of the Devaswom properties for the benefit of his Illom and contended that in any view of the case his Illom cannot be made liable for the plaint claim.

The 2nd defendant also took up the same points and contended that besides the rights which his Illom had in the plaint Devaswom, the Illom has other sources of income from the Chittumala Devaswom at Kallada and also from the Vamanapuram Devaswom and that the Illom affairs are being conducted with such income as also with the income from the properties owned by the Illom. In the replication filed on behalf of the plaintiff the independent right set up by the defendants in respect of the plaint Devaswom was questioned and it was stated that the defendants'' Illom had no hereditary light in this Devaswom. It was also stated that the nature of the rights of the defendants'' Illom in respect of the plaint Devaswom need not be considered in the present suit and at the same time the claim for a decree against the defendants'' Illom was pressed on the ground that the amount in question was spent by the 1st defendant for the Illom affairs.

4. On a consideration of the evidence in the case the lower Court came to the conclusion that the defendant''s Illom cannot be made liable for the plaint claim. Accordingly the Illom was exonerated from liability for the claim and a decree was passed against the 1st defendant alone. He has not preferred any appeal against that decree and hence it has become final, so far as he is concerned. The present appeal was preferred by the 2nd plaintiff and it is directed against the decree exonerating the 1st defendant''s Illom from liability for the plaint claim. The appeal is being continued by the Travancore Devaswom Board in which the management of the plaint Devaswom has since become vested by virtue of Act 15 of 1950.

5. The ground taken up in the appeal is that since the office of Kaisthani and

treasurer in the plaint Devaswom was held by the defendants'' Illom, through its representative, the 1st defendant, the Illom is liable to account for all sums that came into its possession. If the 1st defendant was holding the aforesaid office in the Devaswom by virtue of his position as the karnavan of his own Illom, it could be said that he was performing the duties pertaining to that office as the representative or agent of the Illom. Even then the Illom is bound to answer only for the lawful acts done by such representative in the normal course of the discharge of his duties appertaining to the office. The principal will not normally be liable for the unauthorised criminal acts of the agent or for the other acts done by him in excess of his authority. Such is the nature of the acts attributed to the 1st defendant in the present case as per the plaint allegations against him. It is definitely alleged in the plaint that the amount mentioned in the plaint represents the total of the amounts misappropriated by him out of the income of the Devaswom properties which had come into his hands. The decision in - ''Neelakandan Moothathu v. Parameswaran Namboodiri'', 22 Trav LJ 939 (A) relied on by the Appellant does not lend any support to the position that in such a situation the Illom will be liable for the misappropriations committed by its karnavan who happened to be in management of the Devaswom affairs. The only relevant observations made in the course of the judgment in that case are those contained in para 16 at page 953. Those observations are as follows:

The karnavan of the defendant''s family for the time being succeeds to the management. The right of management therefore rests in the defendant''s family. It is only equitable therefore that the defendant''s family is held liable for what is found due to the Devaswom.

Beyond stating the principle in such general terms, there has been no discussion as to what extent and under what circumstances the defendant''s family could be held to be liable for the loss caused to the Devaswom by the karnavan. The question whether such liability will extend even to amounts misappropriated by him, has not been considered at all.

6. ''Parameswaran Moose v. Mukunda Raja'', 22 Cochin LR 587 (B) is the next case relied on by the appellant. There it was held that when the karnavan of an Illom misappropriates funds of the Devaswom in his management, the Illom will also be liable on the basis that "misappropriation by an agent is tantamount to misappropriation by the principal." With all respect we have to differ from the proposition stated in such wide terms. From the facts discussed in that case it is apparent that the Court had come to the definite conclusion that the amount in question had been utilised for the benefit of the Illom and it was for that reason that the liability was fastened on to the Illom also. In doing so the learned Judges were following the earlier decision reported in - ''Kunjunni Nambudiri v. Pazhuvam Devaswom'', 6 Cochin LR 38 (C).

It is clear from that case that the liability of the Illom for the amounts misappropriated by its karnavan in management of the Devaswom was not fixed on the basis that the Illom as the principal is to answer for the misappropriations by the karnavan as its agent. On the other hand, the principle that was applied was one of following the trust funds in the hands of the karnavan and through him in the custody of the Illom. For fastening liability for such an amount on the Illom, it is obvious that it must be proved that the misappropriated funds were in the custody of the Illom or had gone or had been utilised for the benefit of that Illom. Where the karnavan in management of the Devaswom has misappropriated Devaswom funds for his own benefit unconnected with the Illom affairs, the liability for the same cannot be fastened on the Illom either in law or in equity. The Illom is not answerable for all or any of the acts of its karnavan even when such acts relate to the management of the Illom. It is the undoubted right or the Illom to impeach such acts when they are unauthorised or are in excess of his authority or where they have been prejudicial to the interests of the Illom. Consistent with this view it has to be held that the plaintiff''s claim against the Illom for the Devaswom funds misappropriated by the 1st defendant cannot be sustained, merely on the ground that he was also the karnavan of the Illom at that time.

7. The position taken up in the appeal memorandum that the office of the kaisthani and treasurer was held by the defendant''s Illom through its representative is inconsistent with the case put forward in the plaint. Beyond conceding the fact that the members of his Illom were holding the office by virtue of appointment made by the 1st plaintiff Mana, it was not admitted in the plaint that the 1st defendant''s Illom had any hereditary right to hold this office. Even when defendants 1 and 2 asserted that the Illom had a vested right to hold this office, the position was controverted by the plaintiff in the replication filed by him. In para 1 of the replication it was expressly stated that the defendants had no hereditary right to the office. If the defendants'' Illom had any such rights the office in question should have been held by the successive karnavans of the Illom.

The plaintiff admits that the 1st defendant was removed from the office in 1111. Even if such removal was justified by his conduct, the office should have gone to the next senior member in the Illom if it was really a hereditary office. But it is common ground that when the office of the 1st defendant as Kaisthani was terminated on 28-6-1111, no other member of his Illom was appointed to that office. The powers of appointment and removal asserted by the plaintiff (sic) clear indication that the office question has not been accepted by the plaintiff as one to which the defendant''s Illom had a hereditary right. In fact the several allegations made in the plaint go to show that the Illom is sought to be made liable not on that basis.

On the other hand the definite averments made in the plaint are to the effect that the amounts in question were utilised for the benefit of the Illom which was alleged to have had no other source of income. This allegation was controverted by both defendants 1 and 2. As many as 6 witnesses have been examined on the plaintiff''s side: but the evidence furnished by them does not prove or substantiate the plaint allegation that the amounts in question were utilised for the benefit of the Illom. On the other hand the evidence adduced on behalf of the contesting defendants clearly goes to show that the Illom has other sources of income and that the affairs of the Illom were being conducted with the aid of such independent sources of income.

It has come out from such evidence that the Illom has certain rights in the Vamanapuram Devaswom and also in this Chittumala Devaswom. The documents Exts. V to XVIII show that the Illom holds immovable properties yielding a substantial income. Such being the nature of the evidence in the case, the lower court was right in its conclusion that the amounts stated to have been misappropriated from the Devaswom by the 1st defendant were not utilised for the benefit of the defendant''s Illom. It follows, therefore, that the plaint claim against the Illom cannot be justified even on the basis of an attempt to trace out and reach trust funds as having come into the possession of the Illom. The decree exonerating the defendants'' Illom from the plaint claim does not, therefore, call for any interference.

8. In the result the appeal is dismissed with costs.