

(1915) 07 MAD CK 0007
In the Madras High Court

Ullattil Kalathil Nethiri Menon

APPELLANT

Vs

Mullapulli Gopalan Nair and Others

RESPONDENT

Date of Decision : 30-07-1915

Acts Referred:

Citation : 30 Ind. Cas. 713 : (1915) 2 LW 714

Hon'ble Judges : Spencer, J; Coutts-Trotter, J

Bench : Division Bench

Judgement

1. The facts of this case are reasonably clear, and can be shortly stated as follows: Defendants Nos. 9 to 13 are the uralans or trustees of a temple

known as the Tiruvegapura Devaswami, and the lands referred to in the suit are the property of the temple, and at the period material to this suit

the management of the property of the temple was vested in the whole body of uralans. In 1904 the lands in question in this case were mortgaged

to the 1st defendant on behalf of the tavazhi of defendants Nos. 1 to 6 with a corresponding obligation on them to pay certain rents and revenues

while in possession to the uralans (Exhibit A). In this state of things, the 9th defendant, who appears for some reason to have been on bad terms

with his fellow uralans, brought a suit against them, obtained a decree, and attached in execution the moveables of the temple, including the vessels

and jewels necessary for the performance of the daily worship. It thereupon became an urgent matter to free the vessels and jewels, and the

plaintiff came forward with the requisite funds. Meetings of the uralans were held which the 9th defendant though summoned, refused to attend,

and it was agreed that the plaintiff should be reimbursed by making over to him certain of the rents and revenues due under Exhibit A. For this

purpose a karar was drawn up, Exhibit B, and it is on this document that he brings his action. As drawn up, the contracting parties are expressed

to be all the five uralans of the one part and the plaintiff of the other part; but the 9th defendant could not be got to execute it and in fact never did

execute it. Finally it was executed by the remaining four uralans on the 24th April 1909 and handed to the plaintiff, who forthwith paid into Court

the moneys necessary to release the moveable property of the temple. When the plaintiff endeavoured to recoup himself by collecting the moneys

due to him under Exhibit B, he was met by a refusal based upon various grounds and among them the allegation that the moneys had already been

paid to defendants Nos. 9 and 12, and in support of this allegation a receipt was produced dated 27th November 1910 and signed by defendants

Nos. 9, 12 and the anandravan of defendant No. 11's tarwad (Exhibit I). He thereupon instituted the present suit; so far he has failed in both

Courts below, and he now comes in second appeal before this Court. No one conversant with the facts of the case can fail to entertain strong

suspensions that the alleged payment to the 9th and 12th defendants was a fiction, and Exhibit I a sham document concocted to defeat the plaintiff's

just claim and that was part of his case in the Courts below. The manner in which this issue was treated below is most cursory and unsatisfactory;

however both Courts have found that the payment was made; that is a finding of fact in support of which there was no doubt some evidence and

we must accept it here. That being so, two questions only arise for our decision. First, was Exhibit B a valid document or was it vitiated by the fact

that only four of the five contracting trustees executed it and secondly, was the payment evidenced by Exhibit I, a good discharge to the defendants

from the plaintiff's claim? At one time a third point was suggested, viz., that Exhibit B only effected an assignment of an actionable claim but this

was not seriously pressed, and is at once refused by an examination of the documents. As to the first point, the law is well settled and clearly

understood both in this country and in England. The majority of a body of charitable trustees can legally bind the whole body *Wilkinson v. Malin*

(1832) 2 Tyr. 544 *Whiteley, In re, London (Bishop) v. Whiteley* (1910) 1 Ch. D. 600 and *Charavur Teramath v. Urath Lakshmi* 6 M.k 270 but if

a document is drawn up in the name of all, and it is the intention of the parties that all should execute it, it will be incomplete and inoperative till all

have done so. See *Sivasami Chetti v. Sevugan Chetti* 12 M.L.J. 17 *Latch v. Wedlake* 11 A.& E. 959 : 9 L.J.Q.B. 201. It is a question of fact as to what was the intention of the parties. In this case the District Munsif has found as a fact that they intended the document to be executed by all the five trustees, and the District Judge has accepted his finding; if there is evidence to support that finding, we cannot interfere with it in second appeal; if there was no evidence to support it, it is our duty to set it aside. Upon a careful consideration of the facts, we think that not only was there no evidence in support of this finding, but that all the evidence points wholly and conclusively the other way. The document was drawn up certainly as early as the 17th March 1909, as on that day the four trustees sent an urgent notice to the 9th defendant informing him that it was drawn up, that his signature to it was required, and that, if he did not sign it the other four would sign it without him and give it the same effect as if he had also taken part"" (Exhibit C1). Another equally urgent notice in similar terms was sent to the 9th defendant on the 9th April (Exhibit C). As he did not answer these communications, the document was executed by the other four trustees on the 24th April and handed to the plaintiff, who thereupon paid the money in satisfaction of the decree. The Judges below have been misled by an answer in the plaintiff's cross-examination, which appears in the deposition as follows: The intention when Exhibit B was written was that 9th defendant should also execute it."" That is doubtless perfectly true; but the learned Judges have overlooked the fact that more than a month elapsed between the writing of the document and its execution that during that month the 9th defendant had been asked repeatedly to sign, and had failed to do so, and that the remaining uralans had announced their intention of signing themselves and delivering the document to the plaintiff. The intention of the uralans is sufficiently evidenced by their own words in Exhibits C 1 and C 2; that of the plaintiff is equally manifest from the fact that as soon as he got the document signed, he parted with his money. We think that there was no evidence to support this finding of the lower Courts, and we set it aside and declare Exhibit B to be a valid and binding document.

2. There remains the question as to whether the payment to two of the five trustees is a valid payment. There is no doubt that even one out of many

trustees can receive and give a good discharge for rent and similar payments of income, if he has or is held out by his co-trustees as having

authority to do so. Here it is not contended that the two trustees had any such authority actual or by estoppel. But it is said that though the Indian

Trusts Act does not apply to charitable trusts; its provisions should guide us by analogy in matters of this sort; and that was the view adopted in

Rambabu Parbu Mirasi v. Members of the Committee of Management of Savasthan Shri Dev Rameshwar of Achare Antaji Ramchandra

Nadkarni 1 Bom. L.R. 667; and that Section 42 of the Indian Trusts Act, if applied, validates this payment. The Court in that case (Jenkins, C.J.,

and Ranade, J.) applied the provisions of Section 42 of the Act to a case of charitable trust; and proceeded to give an interpretation of the section.

It runs as follows:

Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to

them or him by reason, or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying,

transferring or delivering the same there from, and from seeing to the application thereof, or being accountable for any loss or misapplication

thereof.

3. It will be noticed from the report of the Bombay case 1 Bom. L.R. 667 that the learned Judges quote the section as beginning "any trustee may,

whereas the words are "any trustee or trustees may." They proceed to interpret the section as meaning that any member of a body of trustees may

give an effectual receipt for a payment made to him solely. We do not agree with this decision; and we do not think that the learned Judges would

have decided it as they did, if their attention had been drawn to the sections of the English Statutes upon which the Indian section is modelled.

These Sections are 24 Vict. 149, Section 29; 22 and 23 Vict. c. 35, Section 33; and 44 and 45 Vict, c.41, Section 36. Before the first of those

enactments, a person who paid money over to trustees was responsible to the cestui que trust for seeing to the proper application to the trust of the

moneys so paid. The object of the English sections (their purport is the same, but they apply to different classes of trust) was to put an end to so

great a hardship, and to discharge those who in good faith paid trustees from

any further responsibility as to the disposal of the moneys. Such being the origin of the English sections we think it is clear that on their true construction the words ""any trustee or trustees"" mean the trustee where there is only one, ""the trustees where there are more"" and we see no reason for applying a different construction of the words of the Indian Trusts Act.

Accordingly we hold that the payment to the 9th and 12th defendants, and the receipt, Exhibit T, failed to discharge defendants Nos. 1 to 6, and leaves them no answer to the plaintiff's claim.

4. The appeal is allowed with costs in all Courts, and the plaintiff must have a decree in the terms of his plaint except as regards the rent due for the Malayalam year 1080, which is not now pressed. In default of payment within six months, the properties in suit must be sold.