
(1911) 02 MAD CK 0020
In the Madras High Court

Venkatachala Pillai and Another

APPELLANT

Vs

The Taluq Board, Saidapet

RESPONDENT

Date of Decision : 09-02-1911

Acts Referred:

Citation : (1911) ILR (Mad) 375

Hon'ble Judges : Sundara Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. In this case the Taluq Board of Saidapet sues for recovery of possession from the defendants of three items of property, alleging that they are trust properties, the first item being a Chattram, and items Nos. 2 and 3 being two houses endowed for the use of the Chattram. One Kanagammal by her will, dated the 5th February 1885, directed that twelve Brahmins should be fed on every Dwadasi day in the Chattram building, item No. 1, by means of the proceeds of the properties, items Nos. 2 and 3, She also directed that a sum of one rupee should be spent on every Friday for performing Archana to the Goddess in a temple, The balance after deducting the expenses of feeding was to be devoted under the provisions of the will to defray the expenses of giving Neermoru or buttermilk, Tambulam or betel and nut, fans and sugar to people attending the festival of Moluvaddee Servai in Tiruvettiyur. She appointed three executors to her will, but directed that Paupiah Chetti, who was the first defendant in the suit and with whom she was living either as wife or as a concubine, should conduct the charities, the other executors being given a right of interference in case Paupiah should be guilty of mismanagement. The second and third defendants in the suit are persons to whom Paupiah

alienated by mortgage and sale the two houses, items Nos. 2 and 3, in August and June 1889. The plaint alleges that Paupiah, although he accepted the trust under the will and "discharged it faithfully for some years," afterwards grossly abused his trust and alienated, the properties as mentioned above, and that he was prosecuted for criminal breach of trust and convicted of that offence, In August 1899 he executed a power of attorney in favour of the second defendant. Although in the power of attorney he treated item No. 1, choultry, as his own property, he directed the second defendant to conduct the charity therein. Complaints of misappropriation having been made by some members of the public in 1900 to the Collector of Chingleput, an inquiry was held and it resulted in the Board of Revenue resolving to take proceedings for the proper management of the trust. The plaint alleges: (paragraph No. 12) that "the Board of Revenue, with the written "consent of the Governor in Council, transferred to the Taluq "Board the management of item No. 1 together with its endowments with power to file suits against the alienees of the trust properties and recover possession of the same," Paupiah, the first defendant, died after the institution of the suit and the fourth and fifth defendants were brought on the record in the suit as his legal representatives. They did not however put in an appearance and the suit was tried *ex parte* as against them. The second and third defendants resisted the suit and raised various pleas. They contended that there was no real trust at all, and that the properties really belonged to Paupiah and not to Kanagamtnal, and that they were purchased in her name in order to screen them from Paupiah's creditors. They also contended that they were bona fide purchasers for valuable consideration from Paupiah without notice of the trust, and that the alienations could not therefore be disputed by the plaintiff. They denied that the Board of Revenue had any right to make over the management of the charity to the Taluq Board. And they contended further that the charities, if any, were of a private character and not public, It is unnecessary to refer to other pleas raised by them as we have not got to deal with them in this appeal.

2. The first issue framed in the case was: "Whether the plaintiff has any locus standi to maintain the suit?" The District Judge decided it in the affirmative. On the merits the District Judge held that Kanagammal was the owner of the properties and negatived the contention that the properties

were purchased in her name to screen them from the creditors of Paupiah. Although the point was raised again before us at the hearing of the appeal we have no hesitation in agreeing with the lower Court in its finding that the properties belonged to Kanagammal and that the trust was a genuine and valid one. No serious attempt was made to refute the arguments urged by the lower Court in its elaborate judgment on this point. The finding of the Judge that neither the second nor the third defendant was a bond, fide purchaser for valuable consideration was not controverted at the hearing and it is clearly correct.

3. The main question argued at the hearing was that raised by the first issue, whether the Revenue Board's order making over; the management of the choultry to the plaintiff was legal and valid. Mr. Venkatrama Sastri contended that the trust must be regarded mainly as a religious one, and that the Board had therefore no jurisdiction over it. He urged that the distribution of Neermoru, etc, to people attending the festival at Tiruvettiur should be regarded as a religious charity. We are clearly of opinion that this contention is not correct, The distribution no doubt is to be amongst those who attend the festival in the temple, but it is not to be an offering to the deity and it is not any ceremony which is part of the temple festival itself. The learned vakil did not contend that the small provisions for making Archana every Friday to the Goddess would make the trust a religious one. We therefore confirm the finding of the lower Court that the trust is not religious in its character.

4. The next ground of objection is that, as the endowment in this case was not one made before the coming into operation of Regulation VII of 1817, its provisions are not applicable and the Board of Revenue had no jurisdiction over the endowment. Reliance is placed mainly on the preamble to the Regulation and Sections 2, 3 and i. The preamble sets out the reasons for the enactment of the Regulation and states that considerable endowments have been granted both by the past and present Governments of the country and by individuals for the support of mosques, temples, etc., that there are grounds to believe that the produce of such endowments is in many instances being misappropriated, and that it is the duty of the Government to prevent such misappropriation. It is contended that the use of the expressions ""have been"" and ""such

endowments"" shows that the Regulation was intended to be applicable only to endowments already existing. We do not think so. No reason has been suggested for restricting the Regulation to existing endowments. It is admitted that the mischief intended to be rectified would equally apply to future endowments. The preamble merely states the reasons which induced the Legislature to enact the Regulation. No inference can be drawn therefrom that it intended to confine the enactment, without any apparent reason, to existing endowments. Moreover we are of opinion that the enacting portion of the statute is sufficiently clear to cover future endowments. Section 2 vests the general superintendence of all endowments in land or money granted, for the support of mosques, etc., in the Board of Revenue. We can see nothing in the use of the word ""granted"" to justify the interpretation of it as applicable only to what had already been granted before the passing of the Regulation. Section 3 directs the Board of Revenue to take measures ""to ensure that all endowments made ""are duly appropriated to the purpose for which they were destined by Government or the individuals by whom such endowments were made."" The use of the past tense ""were"" is much relied on by the appellant's vakil as well as the reference in the section to ""public edifices which have been erected."" We are of opinion that these words were used as applicable at the time when the Board of Revenue would be called upon to take action. Happier language might perhaps have been used to denote the intended meaning regarding which we entertain no doubt, but we have to construe an old statute, and it is clear to us that it would not be reasonable to place on it the restricted interpretation suggested for the appellant. Our opinion is in accordance with the view expressed by Subrahmania Ayyar, J., in *Sivayya v. Rami Reddi* ILR (1899) Mad. 223 with reference to the construction of Act XX of 1863, although the point was not decided in that case, It is admitted that in several reported cases it was assumed that Regulation VII of 1817 and Act XX of 1863 are applicable to endowments made after the Regulation as well as prior endowments. We overrule this contention.

5. The next point urged was that, assuming that the trust is not a religious one and that the Regulation is applicable to prior endowments, the Board of Revenue had still no jurisdiction to make over the management to the Taluq Board on two other grounds. It was first urged that under

Regulation VII of 1817 the Revenue Board possesses only a right of superintendence and that it has no right of management itself and could not therefore make over the right of management to the Taluq Board. It was further argued that the trusteeship would descend to the heirs of the deceased first defendant, and that, if it would not, the heirs of the founder Kanagammal would be entitled to appoint a fresh trustee. We do not think that these latter contentions are well founded, but we do not think it necessary to decide these questions as we have come to the conclusion that the appellant is entitled to succeed on another ground, viz., because the Board of Revenue had no power to transfer the management of "the trust without first dismissing the trustee then in office.

6. It is admitted in the plaint (paragraph No. 4) that the "first" defendant accepted the trust and discharged it faithfully for "some years" and exhibit J., the power of attorney executed by him to the second defendant in 1899, enjoined him to conduct the charity in the Chattram. It is true that the second and third defendants have contended in the suit that there was no real trust, but the first defendant having accepted the trust would remain in our opinion trustee until he was dismissed by a competent authority. The Board's order was passed u/s 51 of the Madras Local Boards Act V of 1884. That section empowers the Board of Revenue "with the written consent of the" Governor in Council and of the Local Board concerned to make over to such Local Board the, management and superintendence of any such endowment and thereupon all powers and duties that attach to the Board of Revenue in respect thereof shall attach to such Local Board as if such Board had been specifically named "in the said Regulation, i.e., under Regulation VII of 1817. The Board of Revenue under the provisions of Regulation VII of 1817 undoubtedly had power to appoint trustees for charitable endowments in certain oases. Section 13 of the Regulation invests the Board with power to make the appointment in the cases referred to in Sections 11 and 12. Section 11 provides that the local agents appointed under the Regulation shall report to the Board all vacancies and casualties which may occur, and are required to furnish the Board with the information necessary to enable it to determine the rule of succession applicable to each case. Section 12 provides that in cases in which the nomination has usually rested with the Government or with a

public officer or in which no private person may be competent and entitled to make sufficient provision for the succession to the trust and

management, the local agents are to propose proper persons for the office of trustee, manager, or superintendent for the approval and confirmation

of the Board, and the Board, according to Section 13, is then entitled either to appoint the person or persons nominated for their approval or to

make such other"" provision for the trust, management or superintendence as ""may seem to them right and fit with reference to the nature and

conditions of the endowment, etc. It, however, seems to us clear that the Board has no power to ignore the rights of a person lawfully in office as

trustee and to appoint another person in his place without dismissing him. In Venkatesa Nayudn v. Shrivani Shatagopa Shri Shatagopa Swami

(1872) 7 M.H.C.R. 77, it was no doubt recognised that ""section 13 gives the Board of Revenue the largest power ""of making any arrangement

which the Board may consider best"" adapted to secure the purposes which the Regulation had in view in ""cases of vacancy."" In Ganapathi Ayyar

v. Sri Vedavyasa Alasinga Bhattar ILR (1906) Mad. 534, Subrahmaniam. Ayyar and Benson, JJ., held that the Board of Revenue had power to

appoint a hereditary trustee where such appointment would not interfere with the rights of any existing trustee but had no power to subsequently

appoint additional trustees so as to affect his rights of management without good and sufficient grounds for so doing. In Sheikh Davud Saiba v.

Hussain Saiba ILR (1894) Mad. 212, referred to in the above case, it was laid down that a committee appointed under Act XX of 1863 whose

powers of superintendence are similar to those of the Board of Revenue under Regulation VII of 1817, cannot appoint additional trustees where

there is a hereditary trustee. These cases recognise the principle that the Board cannot ignore the rights of existing trustees, and in this respect we

think there is no difference between a hereditary and a non-hereditary trustee who is equally entitled to a freehold office. It appears therefore to be

clear that the power of the Board of Revenue to appoint trustees cannot be exercised to the prejudice of one who is in possession of the office

under the instrument creating the trust. It is unnecessary to consider the argument urged by the learned vakils for the appellant that the Board had no

power to manage the charities itself, for it is clear that, even if that were so, it is entitled u/s 51 of Act V of 1884 to make over to a local body not

only its power of superintendence but also the management of any endowment. This power of making over the management to a local board would

only be an exercise of the Board's right of superintendence, and the section apparently empowers the Board to make over to a local board both

the management, in virtue of its right of superintendence, and its own right of superintendence. This was expressly decided in *The Chairman,*

Municipal Council, Rajahmundry, v. Susurla Ven-kateswarulu ILR (1908) Mad. 111 by Miller and Munro, JJ., with reference to a similar

provision in the District Municipalities Act IV of 1884, Section 26, and by *BENSON and Krishnasami Ayyar, JJ., in Nilayathakshi Ammal Vs.*

The Taluq Board, , where the question arose with respect to Section 51 of Act V of 1884. The order of the Board of Revenue in this case would

clearly have been valid if the first defendant, Paupiah, had been dismissed by the Board. They had the power to dismiss him and there can be no

doubt that Paupiah's misconduct would have fully justified his dismissal. But, as stated above, we are unable to hold that it had the right to pass

orders transferring the management u/s 51 of Act V of 1884 while the first defendant was still trustee and there was no vacancy with respect to the

office. The first defendant, the trustee, having died since the institution of the suit and his representatives, the fourth and fifth defendants, having no

right under the will to succeed to his right of management, it will no doubt now be open to the Board of Revenue to transfer the management to the

Local Board u/s 51 of the Act.

7. But for the reasons we have given above we are constrained to hold that the Taluq Board obtained no valid rights under exhibit O series which

would entitle it to sue for the recovery of the properties, and we must reverse the judgment of the lower Court and dismiss the suit but without

costs in the circumstances of the case.