
(1964) 01 KL CK 0003
In the High Court Of Kerala
Case No : S.A. No. 403 of 1960

Vittal Prabhu

APPELLANT

Vs

Madhava Rao and Others

RESPONDENT

Date of Decision : 17-01-1964

Acts Referred:

Hindu Religious Endowments Act — Section 102

Citation : (1964) KLJ 286

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : T.N. Subramonia Iyer, for the Appellant; V. Rama Shenoj, for the Respondent

Final Decision : Dismissed

Judgement

Mathew, J.—The defendant is the appellant. The suit was to recover possession of the plaint schedule property with arrears of rent. The property belonged to a temple known by the name Srimath Anantheshwar Temple, Manjeshwar. On 9-7-"53 the defendant took the property on lease stipulating to pay a rent of Rs. 15/- per mensem. The main contention of the defendant was that the persons who had instituted the suit had no locus standi to sue on behalf of the temple as they were not the de jure trustees appointed by competent authority. The courts below found that the persons who have instituted the suit on behalf of the temple were not the de jure trustees appointed by the proper authority but that they were acting as trustees of the temple for a long time and therefore they were de facto trustees and were competent to maintain the suit, and on that ground decreed the suit.

2. The only question argued before me by counsel for the appellant was that the view of the courts below that de facto trustees could maintain the suit on behalf of the temple is not correct, and therefore the suit was incompetent. The temple is represented by three trustees in this action and the question for consideration is whether these persons were entitled to maintain the suit. Ext. B 1 is a copy of

the scheme framed in respect of the management of the temple in O. S. 4/1928 on the file of the District Court of South Kanara, Mangalore, and the temple was being managed under that scheme for some time. But in 1931 the temple was notified by the authorities under the Hindu Religious Endowment Act to be a temple coming within the purview of that Act. To set aside this notification a suit was filed by one of the worshippers in the temple as O.S. 61/1947 in the Sub Court of South Kanara. The notification was set aside by the Court. There was an appeal to the High Court of Madras, and an application to stay the further proceedings in consequence of the decree passed by the Sub Court was filed in the High Court. The High Court granted an interim stay in the first instance. But subsequently that stay order was vacated by Ext. A7. By Ext. A7 it was ordered as follows:

If the notification under which the Executive Officer has been appointed is quashed, the scheme is revived. There are three trustees who have been appointed by the Commissioner and they are incharge of the institution. I do not see any harm in their being in possession of the temple properties and managing the same. It is not alleged that these trustees have ever been guilty of mismanagement or are unfit persons. The trustees appointed by the Commissioner allowed to continue.

On the strength of this order it was argued that the scheme became revived and therefore only the persons competent to act as trustees under the scheme could maintain the suit. But from Ext. A 7 it is clear that what was contemplated was that the existing trustees would continue to function as trustees, and that the revival of the scheme would not affect their capacity to act as trustees, Ext. A 7 order was passed by the High Court on 31-3-1954. The present suit was filed on the 9th March, 1957. In between these dates one of the persons who was permitted to function as trustee resigned, and in his place Sri K.P. Madhava Rao was appointed as a trustee by the Commissioner functioning under the Act, by Ext. A 5 in 1956; and the appointment of Sri K.P. Madhava Rao was in consonance with the provisions in the scheme Ext. B 1. It may be observed at this stage that it was the Commissioner who appointed the trustees after the notification under the Act, and the validity of their appointment was dependent upon the validity of the notification. When the notification was set aside by the Court in O. S. 61/1947, the situation was that these persons ceased to be lawful trustees. But I think the effect of Ext. A 7 order was that they were allowed to continue to function as trustees during the pendency of the appeal notwithstanding the revival of the scheme. I therefore think that these persons were competent to function as trustees during the pendency of the appeal, The appeal was disposed of only on 8-6-1959. If that be so, two of the trustees were functioning under Ext. A 7 order as trustees when the present suit was instituted. Mr. K.P. Madhava Rao, the other trustee, was appointed under Ext. A 5 order on 24-9-1956 by the Commissioner on the resignation of one of the trustees who was allowed to continue under Ext. A7 order. The appointment of Mr. Madhava Rao as one of the trustees is not open to attack because that appointment was in

conformity with the provision in the scheme, Ext. B I. The provision in Ext. B 1 was that the trustees for the temple must be appointed by the Board constituted under the Act of 1926. At the time when Mr. Madhava Rao was appointed, that Act had been repealed and Act XIX of 1951 was passed, and under that Act the Commissioner took the place of the Board. In view of Section 102 of that Act, I think it was open to the Commissioner to appoint Mr. K.P. Madhava Rao as trustee under Ext. B 1. Therefore I think that all the three persons who instituted the suit were functioning as trustees lawfully at the time when the present suit was instituted.

3. Even if it be assumed that there was some defect or irregularity in their appointments, it is clear that they were functioning on behalf of the temple as de facto trustees. If that be so, on the strength of the rulings reported in *Achayi v Chittanjoorkava Devaswom* (1959 K. L. J. 524), *Srimad Anantheshwar Temple v Ananda Baliga* (1959 K. L. J. 671), *Subramonia v Srinivasa Rao* (A. I. R. 1940 Mad 617), and *Sankaranarayanan v S. P. Temple* (A. I. R. 1949 Mad 721). I think they were competent to maintain the suit. These rulings hold that persons who function as de facto trustees on behalf of a temple are competent to maintain a suit for the recovery of the property of the temple. In this case, there is no case that besides the plaintiffs, there are other de jure trustees entitled to function as trustees for the temple. In the circumstances, I think that the plaintiffs as de facto trustees could maintain a suit on behalf of the trust for recovery of possession of the property.. It is also clear that the defendant himself has recognised the capacity of these persons to "act as trustees, and Ext. B 3, the proceedings of the Board of trustees constituted by these three persons would indicate it. In these circumstance I think the suit was competent. I therefore dismiss the appeal, but considering all the circumstances, I think that it is not a fit case for ordering costs.