

(1917) 05 MAD CK 0014
In the Madras High Court

Yegnarama Dikshitar and Others

APPELLANT

Vs

Gopala Pattar and Others

RESPONDENT

Date of Decision : 01-05-1917

Acts Referred:

Citation : AIR 1918 Mad 733 : 41 Ind. Cas. 738

Hon'ble Judges : Napier, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Abdur Rahim, J.—The inhabitants of the village of Koduvayur, who form a grama janam, own in common certain temples and moveable and Immovable properties in connection with those temples. The villagers, sometime in 1898 wanting to have the disputes which then arose, with regard to the management of these properties, settled by arbitrators, submitted to them the questions at issue. The arbitrators made an award in April 1898 and the award was filed and made a decree of Court in October 1898. By that award, it was laid down that there should be two managers to be selected, each of them from particular streets in the village, by the majority of the villagers residing in these streets. This was provided for by the decision of the arbitrators on the 6th issue. Under the 9th issue the award provided under what circumstances the managers were liable to be dismissed. It appears that in 1910 a number of villagers were dissatisfied with the management of the managers for the time being, and they issued a notice for a meeting to which all the villagers were invited to be present to consider the conduct of Rama Vadhyar, one of the managers, inasmuch as it was apprehended that if he were allowed to continue in the management, harm and loss would result to the devaswom, and "for the purpose of making arrangements to conduct the affairs of the devaswom in future properly without neglect, and in a manner conducive to the well being of the devaswom?" The meeting was held accordingly on the appointed date and. it was resolved among other things that the future management of the village devaswom should be entrusted to a committee of five villagers. The plaintiffs in the suit, who are some of the villagers interested in the communal properties, want to have it declared that the

proceedings in question were not valid and binding, and the principal ground on which the contention is sought to be upheld in second appeal is that since the award, Exhibit B, which was embodied in a decree, did not provide for any change as regards the number of managers, the community had no power except by the consent of all the members for the time being to change the method of management by increasing the number of managers from two to five. It appears that the total number of villagers at the date of the proceedings in question amounted to 164, of whom about 110 were present at the meeting and supported the resolution in question. Only 19 men opposed, they came to the meeting, but having made a formal objection, left, and the remaining members passed the resolution which is sought to be impeached in this suit. So far as this point is concerned, Mr. Rozario, the learned Vakil for the appellants, argued that the villagers were the owners of the communal properties and they were not in the position of trustees and, therefore, unless all of them consented to alter the mode of management as laid down in the award, there being no provision in the award itself for effecting any change in this respect, the majority had no power to bind the minority in such a matter by any resolution. Mr. Ananthakrishna Aiyar on behalf of the respondents on the other hand contended first of all that the villagers in this case were in fact trustees and, therefore, the Rule regarding the conduct of business by trustees applied. It is difficult in this case to hold that this contention of Mr. Ananthakrishna Aiyar is sound, because side by side with the word "urrallars" which is freely used in the pleadings as well as in the documentary evidence in the case, the parties describe themselves as "owners". Apparently none of the parties were inclined to admit that the temples were public temples and the properties belonging to those temples were public and charitable trusts. The question before us has to be decided, therefore, on the basis that the parties, namely, the villagers, are co-owners of the temples and their properties.

2. Mr. Rozario strongly relied on the case of *Harrington v. Sendall* (1903) 1 Oh. 921 : 51 W. R. 463. in which it was held by Joyce, J., that where the rule's of a club did not provide for increasing the subscription payable by the members, a general meeting of the club had no power to increase the subscription so far as to bind the members who had joined the club before the date of such meeting and objected to the subscription being raised, In my opinion, this class of cases has no application to the present case. The membership of a club is constituted by contract by which a member obtains a right to the enjoyment of certain privileges in consideration of his paying a certain subscription and, therefore, he may have a right to insist that no essential change shall be made in his rights unless it is warranted by the rules and regulations which existed at the time when he became member. In the present case, there is no question of any Contractual rights of the plaintiffs being affected. The dispute is as regards the mode of management of certain properties which are owned in common by an indefinite body of persons. Some of them may not have contributed at all to the acquisition of the properties but derived their interest by inheritance. It could

not be said that any villager has a contractual right to the enjoyment of any particular benefit or privilege with respect to the communal properties. The case is more analogous to the case of a corporation which owns properties, and the principle which governs is that laid down in the cases of *Rex v. Bellringer* (1792) 4 T. R. 810. and *Cooper v. Gordon* (1869) 8 Eq. 24: 20 L. T. 732 : 17 W. R. 908. In the former case, the Rule enunciated by Lord Mansfield was followed, namely, "that where a corporation consists of an indefinite number, a major part of those who are existing at the time is competent to do the act but where the body is definite, there must be a major part of the whole number." And as observed by Lord Kenyon, "it is in the nature of all corporations to do corporate acts; and where the power of doing them is not specially delegated to a particular number, the general mode is for the members to meet on the charter days, and the major part who are present to do the act (page 1322)." In *Cooper v Gordon* (3) it is generally laid down that " in such bodies (meaning congregations) the decision of the majority of the trustees binds the minority. Indeed unless the law were so settled nothing could follow but confusion and defeat of the very purposes for which these congregations are formed. The submission of the minority is the principle on which civil society is founded It is a principle essential for that reasonable harmony which is necessary for the coherence of all societies, great "or small, civil or religious" (page 258). This principle has been adopted by this Court in a very recent case---a decision of *Ayling and Seshagiri Aiyar, JJ. Hasan Raza Sahib v. Hasan Ali Sahib* (1917) 1 M. W. N. 869.

3. It was observed by Chief Justice Jenkins in *Secretary of Slate v. Haibatrao Han* 6 Bom. L. R. 43. "The law of the country recognized fluctuating communities as legal person capable of owning property; as for instance, the caste, and the village, and in cur opinion the hukdars here were communities composed of the religious elements their names indicate." There are many instances of castes and villages owning properties in this Presidency. If such an indefinite and fluctuating body had not the inherent power to provide for the management of their property by means of resolutions which had the approval of the majority and passed at a meeting properly and regularly convened, the business of such communities could not be conducted at all. It is justly observed by Justice Farran in *Lalji Shamji v. Walji Wardhman* 10 Ind. Dec. 389. that "It is clear upon the authorities that in matters relating to management of caste property and the administration of its affairs the majority of tie caste has authority to control the minority," and then after referring to a number of decided cases, the learned Judge further remarks: "But in the absence of a written or proved customary constitution I know not how the affairs of a caste could be administered if the decision of the majority duly arrived at and notified were not held binding upon the minority." He relies upon *Cooper v. Gordon* (3) which has already been noticed.

4. It was next argued that since the award was made a decree of the Court, it could not be modified by the majority of members without the consent of the Court. The answer to my mind is best furnished in the words of Markby, J., in

Bunwaree Chand Thakoor v. Mudden Mohun Chutturaj 21 W. R. 41. "Joint owners of a property may make any arrangement they please as to the mode in which their property should be enjoyed by themselves,...but as far as I am aware, they cannot make an arrangement of this kind binding for ever upon all the successors. Therefore, we must put a reasonable construction upon that decree, and we think, upon the whole, that it was intended only as a present arrangement for the management of the property, and not one binding on persons who were not parties to the decree." So far as the construction of the award in this case is concerned, I am inclined to hold that the mode of management laid down therein was not intended to be incapable of being altered afterwards by the villagers themselves. For the purpose of questions like the present, a decree passed on an award cannot be treated as standing on a different footing from a contract, just as it has been ruled with reference to the question of relieving against forfeiture [see Nagappa v. Venkat Rao 24 M.A 265.; Bheema Vwkataramana v. Bommini Gurappa 28 Ind. Cas. 970.

5. In fact Mr. Rozario himself conceded that all the villagers for the time being if agreed could change the mode of management in spite of the decree. Thus we revert to the original question, whether the majority could exercise such powers in the absence of any express prohibition in the decree made upon the award and I have already pointed out that the answer to that must be in the affirmative.

6. The second point argued before us was that the notice calling the meeting, that is, Exhibit II, did not sufficiently indicate that the proposal to increase the number of managers would be considered. This objection is not taken in the grounds of the second appeal, for it cannot be said that it is covered by grounds 7 and 8. It appears even doubtful if the objection was urged before the District Judge or before the Trial Court and it is too late now to take an objection of this character for the first time. But I may say that, as I read Exhibit II, I think the question of increasing the number of managers is covered by the words for the purpose of making arrangements to conduct the affairs of the devaswom in future properly without neglect and in a manner conducive to the well being of the devaswom." As for the objection that the requisite number of members did not sign the notice, this was also taken for the first time at the hearing of the second appeal and cannot be entertained.

7. It was also pointed out that there were six strangers (that is, men who did not belong to the village community) who were present at the meeting and signed the resolution. But that cannot make any difference as to the validity and binding character of the resolution, for even eliminating these six men, the others who signed it formed a decided majority. The decree of the lower Court will be confirmed and the second appeal dismissed with costs.

Napier, J.

8. This second appeal arises out of a representative suit by eight persons, inhabitants of the village of Keralapuram, against 19 other inhabitants, to declare

that a resolution passed by a majority of the villagers at a meeting held in the village on the 25th September 1910 is not valid and binding. It appears that the householders of the village constitute a grama janam and as such own a devaswom and certain properties to be utilised for its support. There had been disputes in connection with the management of these properties, which terminated in a reference to arbitration and an award by the arbitrators. This award provided that there should be two managers, one selected from the party residing in two specified streets and the other selected by the party residing in two other streets. Provision was made for the dismissal of the managers on a requisition signed by more than half of the householders, and other provisions in the award laid down a scheme for the management of the property. This award was issued on the 5th April 1908 and was made a decree of Court under the provisions of the CPC on the 15th October 1908. The resolution, the subject of this suit, passed nearly two years later, dismissed one of the managers, appointed five instead of two, and made other alterations in the system of management.

9. Mr. Rozario for the appellants attacks the validity of the resolution in two ways. He urges, first, that the notice calling the meeting was bad, in that, first, it was not signed by a majority as required by the award, and secondly, that it did not give notice of the matters which were dealt with at the meeting. His other objection goes more to the root of the matter, for he contends that the award was final and had been made a decree of Court: and as it contained no provision for alteration, there was no power in a majority to compel a minority to agree to any alteration. The first objection can be dismissed very shortly. The point of non-signature by a majority was never raised in the plaint nor has it been discussed in either of the judgments, nor is to be found in the grounds of appeal. The second objection to the notice does appear to have been considered in the course of the judgments, but I can find no direct issue on the point. The attack on the validity of the proceedings all through the trial of the suit turned on the question whether there had been proper publication of the notice and whether the meeting was held at the advertised time and at the advertised place, but nothing was said about the contents of the notice. Even if the point had been taken, I think the language in Exhibit II is wide enough to cover the matters dealt with in the resolution, bearing in mind that the notice is not a statutory requirement.

10. There remains the really important question in the case. Mr. Rozario contends that these villagers, 164 in number, are co-owners of the devaswom, and its properties and as such co-owners, in the absence of any agreement between themselves, have equal rights over the whole of the properties and no one co-owner can be bound by the action or wishes of any other or others. He contends that it makes no difference whether there are 164 co-owners or three, that as 164 as they are joint owners, the majority cannot bind the minority. He relies on the award as being the joint agreement of the co-owners and binding on them all and as the award contains no provision for alteration it is still binding

on all the owners. I have come to the conclusion, for reasons which I will state later, that this award having been converted into a decree is for the present binding on the parties, but as I am in entire accord with the view taken by my learned brother as to the power of a majority to bind a minority, I will state my reasons on those points. Mr. Rozario asks uh to apply the analogy of club Jaw as laid down in the case of *Harrington v. Sendall* (1) the well known leading case on the subject. The proposition there stated is that a club governed by rules which did not contain any provision for amendment or alteration, cannot, by a resolution passed by a majority of the members, raise the amount of the subscription provided in the rules, so as to bind existing members. The question we have to decide is whether the conditions of associations of the nature of this grama janam differentiate them from ordinary joint owners or members of a club.

11. There is certainly this difference between a body like this and voluntary associations, such as members' clubs, corps of volunteers, etc., that membership arises not from agreement but from status. In this respect this grama janam has more analogy with caste and it has certainly been decided in a case reported as *Lalji Shamji v. Walji Wardhman* (6) that in matters relating to the management of caste property and the administration of its affairs a majority of the caste has authority to control the minority. This is the decision of a single Judge but the case was elaborately argued before him and he relies on certain unreported and reported cases of the High Court of Bombay. The same view seems to have been taken in this Court in *Krishnasami Chetti v. Virasatni Chetti* 3 Ind. Dec. 1843. The plaintiff in that case had been expelled from the caste by a resolution of the majority. He took several objections to the resolution, but it was not urged that if the matter was properly considered and a decision arrived at bona fide by a majority, it would not be in their power to expel. It is hardly necessary to say that there can be no existing agreement laying down rules for the management of castes. A very instructive case is one reported as *Jagannath Churn v. Akali Dassia* 10 Ind. Dec. 938. The plaintiffs were members of a villagers' fraternity and in their suit they claimed a right to enter the prayer hall and perform their prayers and other rights therein. The defendants were the majority of the whole body of the community and they had excluded the plaintiffs from the exercise of the rights claimed on the ground of their misconduct. The plaintiffs' suit was for an injunction to restrain the defendants from interfering with their rights. The Court held that it had power to go behind the resolution where the matter was one of expulsion and that English cases which decided that rules-authorising a majority to expel were conclusive of the question, did not necessarily apply to cases of sects and castes where expulsion had serious results, and it further held that where an existing Rule was contrary to natural justice or the decision had not been come to bona fide the Court could interfere with it. The importance of this case lies in the view taken by the Judges that associations in this country of which membership arises out of status must be viewed differently to associations in England founded on agreement, though the actual questions decided in the case do, not arise here. In England it has been

decided in *Rex v. Varlo* (1775) 1 Cowp. 248. and *Rex v. Bellringer* (2) that where a corporation consists of a varying number of persons, the decision of a majority on the question of administration binds the minority; and in the case of congregation of a church it was decided in *Cooper v. Gordon* (3), following *Perry v. Ship-way* (1859) 4 De G. & J. 353 that so far as the administration of the affairs of a church was concerned, the appointment of a minister by the majority bound the minority. It is true that the congregation were not the owners of the church property and, therefore, they differed in that respect from this grama janam. But as the question before us is not as to the right to dispose of any property of the grama janam, I think we can properly apply the same principle, I do not say that if a majority sought to dispose of the property jointly owned by them the decision of the majority would be binding. I reserve my opinion on that point. But the question in this case being only the formation of a scheme and the appointment of managers, in my opinion, the opinion of the majority must be held to bind the minority.

12. A further difficulty, however, arises from the fact that the award of the arbitrators, which formulated the scheme sought to be varied by the resolution, has been made a decree of Court. On the one hand, it may be urged that it is idle to make a scheme a decree of Court if there is power in the majority to pet it at r ought the next day. On the other hand it is difficult to see how an arrangement which has been made a decree of Court and has subsequently been found to be unworkable can ever be altered if a majority have not that power. This question came up for decision before the High Court of Calcutta in a case reported as *Bunwaree Chand Thakoor v. Mudden Mohun Chutturaj* (7). There a decree was passed between persons through one of whom the plaintiff was claiming with regard to the use of property dedicated to an idol. Under that decree the property was to be placed in possession of a gumastah appointed by the persons interested, who were to be entitled to the surplus proceeds after the necessary expenses of worship had been provided for. That decree had been passed in 1829, In 18V0 a new arrangement was made to which the defendants obviously took objection, under which the "plaintiff in that suit was to be given possession. The Court held that the decree only gave effect to an arrangement made among the parties themselves for their convenience and was not binding upon any persons except the actual parties to the decree. There is no doubt that the award in this case falls within this language and that it was an arrangement made among the parties themselves for their own convenience. The learned Judges in that case held that the decree could not bind in perpetuity all the successive owners of the property as to the mode in which the" property should be managed, that joint owners could not bind their successors in the case of private property, but that successors were entitled to make any arrangement they pleased as to the mode in which their property should be enjoyed among themselves. Although, as I have held, a majority can bind the minority by resolution, I do not think that a majority the members of which have been parties to the decree can go behind it. It is only two years since this decree was

passed. The plaintiffs in this case were parties to the award and decree and seek to have its provisions enforced. It seems to me that the defendants must bring themselves within the Rule laid down in *Bunwaree Chand Thakoor v. Mudden Mohun Chutturaj* (7) and show that that decree is not binding on them. No attempt has been made to do this and considering that, as I have already said, the decree was only passed "two years ago, it is obvious that by far a greater majority of the present owners of the grama janam must have been parties to it. I am, therefore, of opinion that it was not open to the defendants at that time to ignore the decree and that for this reason the plaintiffs are entitled to succeed. I would, therefore, allow this appeal with costs throughout. As my learned brother takes a different view, the appeal will be dismissed with costs.