

1908.  
November 14.

Present : Mr. Justice Wendt and Mr. Justice Grønier.

KURUKAL v. KURUKAL et al.

*D. C., Jaffna, 4,484.*

*Hindu temple—Position of a manager—Rights of heirs of owner of land dedicated to a temple.*

By the law of inheritance under the Thesawalama the plaintiff and the two defendants became entitled each to a one-third share of the land on which a temple stood. But one Parupathe Amma exercised for several years the office of manager of this temple,—

*Held*, that in the absence of any rule of positive law on the subject of the rights of management of Hindu temples and their temporalities, and also in the absence of any regular deed of appointment in favour of Parupathe Amma by the members of congregation of the temple in question, it was difficult to assign to Parupathe Amma the distinct legal character of a trustee as the term is understood in our law. Her true and only position was that of *de facto* manager during her lifetime, and she acquired no prescriptive rights. And on her death, by the law of inheritance under the Thesawalamai, the plaintiff and the two defendants each became entitled to a one-third share of the land on which the temple stood, and also to one-third share of the income and produce of the temple and its temporalities.

**A** PPEAL from a judgment of the District Judge. The facts fully appear in the judgments.

*Van Langenberg*, for the plaintiff, appellant.

*The Hon. Mr. Kanagasabai*, for the defendants, respondents.

*Cur. adv. vult.*

November 14, 1908. GREENIER J.—

1908.  
November 14.

The facts material to this appeal are briefly these. The plaintiff claimed to be the sole manager and trustee of the temple called Muttuvinayakapillaia Kovil, and alleged that the defendants, whom he had appointed co-trustees and managers with himself by deed No. 6,664, dated December 18, 1902, and whose appointment he had cancelled by deed No. 823, dated June 2, 1903, continued to be in possession of the temple and premises, and had unlawfully taken and appropriated to themselves the income and produce thereof, which the plaintiff estimated at Rs. 10 per mensem. The defendants pleaded, amongst other matters, that their appointment by the deed of 1902 was irrevocable, and they claimed to be entitled to two-thirds share of the trusteeship and management of the temple and premises, conceding to the plaintiff the remaining one-third share. There have been two trials in this case. At the first trial the issues agreed upon were :—

- (1) Had the plaintiff the right to revoke the deed of 1902 ?
- (2) Was the deed of revocation valid ?
- (3) Was there consideration for the deed of 1902 ?
- (4) Is it irrevocable whether there was consideration or not ?

The District Judge held that the deed of 1902 was not revocable, and without calling on the defendants dismissed the action. He did not deal with the 3rd and 4th issues. This Court sent the case back for trial on the 3rd and 4th issues and on the further issue : “ Was the deed of 1894 wholly or partially invalid as against the defendants, and are the defendants entitled to share in the management of the temple and property as heirs of Suppiah Muttuswamy Aiyer ? ”

The facts are fully stated in the judgment of the Chief Justice, and it is needless for me therefore to repeat them, except so far as they are relevant to the present appeal. It would appear that the temple in question was founded by Suppiah Muttuswamy Aiyer and his wife Parupathe Amma between the years 1860 and 1867. The temple now stands on property partly belonging to two persons, Samugam Aiyer Ananda Chuppaiyer and his wife Sirapayi Amma, who executed a transfer for the same “ in the name of the Pilliyai Temple ” on June 1, 1870. The whole of the land on which the temple stands is in extent  $7\frac{1}{2}$  lachams. The deed of June 1, 1870, covers an extent of  $3\frac{1}{2}$  lachams. The rest of the land, as found by the District Judge and as the evidence shows, belonged to Muttuswamy Aiyer and his two brothers Sanmugam Kurukal, father of the plaintiff and defendants, and Irakunathar Aiyer Muttuswamy, and Irakunathar died issueless, and plaintiff and defendants are their only heirs. We have, therefore, this fact established, apart from the question of the right to the management of the temple, that the land on which the temple stands was the

1908. property of three brothers, who are now represented by the plaintiff  
November 14. and the two defendants.

GRENIER J. According to the ordinary rules of succession which obtain in the Northern Province, the plaintiff and the defendants would be entitled each to a one-third share of the land. The chief difficulty which presents itself in this case is in connection with the presence of Parupathe Amma, who undoubtedly exercised for several years the office of manager of this temple. It was an extraordinary rôle for her to assume, because, as we all know, females seldom or never take an active part in the management of temples; but Parupathe Amma was apparently a strong-minded lady, who devoted herself to the task of managing this temple for several years. It is impossible to say under what circumstances she assumed the managership, whether she was moved by intense piety, or a desire to carry out the wishes of her husband; but the fact remains that after her husband's death, which took place in 1881, she assumed the sole management of this temple. It is reasonable to suppose that during her husband's lifetime she occupied a subordinate position, and although she might have helped her husband in the management, she never pretended to be manager to his exclusion. We are, therefore, concerned with what she did after her husband's death in 1881 and up to her death about six or seven years ago, say in 1899. We find that on August 31, 1894, Parupathe Amma appointed the plaintiff co-manager and co-trustee with her during her lifetime, and sole manager and trustee after her death. Now, it cannot be denied that she had the right to make the former appointment, because she was *de facto* manager at the time, and there was nothing to prevent her appointing the plaintiff to act with her, there being no opposition from any quarter. Her husband had died in 1881, and she had been manager for nearly thirteen years on the date that she executed the deed dated August 31, 1894, so, looking at the right of management as a right that may be acquired by long use and possession, there can be little doubt that in 1894 Parupathe Amma was entitled to appoint plaintiff as co-trustee. It was argued for the respondents that Parupathe Amma had no right or interest at all in the management of the temple, and that she being a childless widow had no life interest either in any property belonging to her husband. I do not agree with this contention, no express authorities having been cited to us in support of it; and, in my opinion, Parupathe Amma having been *de facto* the manageress from the date of her husband's death was well within her rights in appointing plaintiff co-manager. We find that Parupathe Amma and plaintiff acted together until the death of the former in June, 1899, and thereafter the plaintiff continued as sole manager and trustee of the temple and its property.

At this time the defendants had apparently not advanced any claim either to the management of the temple or to share in the

income and produce of the temporalities belonging to it, because on December 18, 1902, we find that the plaintiff by deed No. 6,664 appointed the defendants as co-managers and trustees with himself, and as such the defendants entered upon the said office and possession of the said temple and property. On June 2, 1903, the plaintiff by deed No. 823 cancelled the appointment of the defendants, and required the defendants to quit the said temple and premises, which they refused to do. On the first appeal it was pointed out by the Court in the judgment of the Chief Justice that the appointment made by the deed of 1902 was not valid under the deed of 1894, because the power given by the latter is only to appoint new trustees in the place of the plaintiff, whereas by the deed of 1902 the plaintiff purported to appoint the defendants to act with him. In the course of his judgment the Chief Justice said: "I think that as this is a case of a trust on which other persons not before the Court, namely, other beneficiaries, are interested, we are bound to take note of this objection to the defendant's title, and that, although this is not a ground which the plaintiff himself put forward, we must hold that the deed of 1902 was not a valid exercise of the power given by that of 1894." In fact no beneficiaries have come forward, and the case must be decided on between the parties on the record. The Chief Justice also said that the defendants had set up another defence, besides that of the irrevocability of the deed of 1902, and that in substance they claimed two-thirds share in the management as heirs of Muttuswamy Aiyer. The evidence shows that the deed of 1902 was executed for valuable consideration, and was, besides, an admission on the part of the plaintiff that the defendants were entitled to the same share as the management, as otherwise I fail to see why the plaintiff should have selected the two defendants to act as co-managers with him. Even assuming that the deed of 1902 was invalid on the ground that the plaintiff had gone beyond the power given him by Parupathe Amma by the deed of 1894, there was valuable consideration for the same, and it was irrevocable, at least during the lifetime of the plaintiff, looking at the matter from a purely acquitable point of view. It seems to me, however, that it is all important to ascertain Parupathe Amma's true position in regard to her management of the temple before the questions involved in this case can be decided.

In the absence of any rule of positive law on the subjects of the rights of management of Hindu temples and their temporalities, and also in the absence of any regular deed of appointment in favour of Parupathe Amma by the members of the congregation of the temple in question, it is very difficult to assign to Parupathe Amma the distinct legal character of a trustee as the term is understood in our law. That she was *de facto* manager there can be no doubt, as I have already said. Presumably, the land or the greater portion of it on which the temple stands was *moditiam*, or hereditary

1908.

November 14.

GREENIER J.

1908. property, belonging originally to the ancestors of Parupathe Amma's  
 November 14. husband and his two brothers, Irakunathar and Sanmugam Kuru-  
 GRENIER J. kal. Her piety might have moved her to build a temple on the  
 land in conjunction with her husband; they both appear to have  
 paid for a portion of the land (deed P 2 A); and they both managed  
 the affairs of the temple during their lifetime. Can it be said that  
 Parupathe Amma was ignorant of the fact that the property belonged  
 to her husband and his two brothers, and that it was simply the  
 accident of her husband building and dedicating and managing this  
 temple which placed her in the position of sole manager after his  
 death? And when she executed the deed of 1894, did she forget  
 that the land belonged to her husband and his two brothers, and  
 that one of them, Sanmugam Kurukal, had left as his heirs the  
 plaintiff and the two defendants? It is probable, I might almost  
 say it is certain, that Parupathe Amma looked upon plaintiff as  
 her own son, and gave him the preference in the management of  
 the temple over the two defendants. She could not have been  
 unaware of the existence of the two defendants, and whatever  
 reason she may have had for overlooking them, it is clear that she  
 had the power, if she was so inclined, to give the right of manage-  
 ment to the plaintiff and the two defendants jointly. But that  
 power was undoubtedly subject to the interests which all three of  
 them had acquired by right of inheritance from Sanmugam Kurukal,  
 Muttuswamy Aiyer, and Irakunathar, and which were not displaced  
 by Parupathe Amma continuing to be manager after her husband's  
 death. I apprehend, therefore, that Parupathe Amma's true and  
 only position was that of *de facto* manager during her lifetime;  
 that she had acquired no prescriptive rights; and that on her death  
 the ordinary law of inheritance under the Thesawalamai came into  
 operation, and the plaintiff and the two defendants each became  
 entitled to a one-third share of the land on which the temple stands,  
 as also to a one-third share of the income and produce of the temple  
 and its temporalities.

The right of management must consequently be shared by the  
 parties equally. Perhaps at some future time it may be thought  
 advisable to introduce legislation regulating the management of  
 Hindu temples and their temporalities; but in the present state of  
 the law, or rather in the absence of any law on the subject, we can  
 only deal with the case so as to do substantial justice to both the  
 plaintiff and the defendants.

I have accordingly endeavoured to apply the principles of natural  
 justice and equity; and I think a declaration to the effect that the  
 plaintiff is entitled to a one-third share in the management of  
 the temple and its property and the defendants to two-thirds  
 share between themselves would also be strictly in conformity  
 with the law of inheritance which governs the Tamils of the  
 North.

I find that the defendants in their answer relied strongly on the deed of 1902 as giving them a two-thirds share in the management of the temple and its property. I think that the plaintiff would have been well advised if he had conceded to the defendants a two-thirds share at an early stage of these proceedings, considering that he had himself given the defendants that share by his deed of 1902. The ground upon which the plaintiff cancelled the appointments of the defendants, namely, that they had unlawfully taken and appropriated to themselves the income and produce, has not been made good by any evidence that I can find in the record.

1908.  
November 14.  
GRENIER J.

For the reasons I have given I would vary the judgment of the Court below by declaring the plaintiff entitled to a one-third share of the right of management of the temple in question and of the income and produce of the temple and its property, and each of the defendants to a one-third share thereof. Each party will bear his own costs both in this Court and in the Court below.

WENDT J.—I agree.

*Judgment varied.*

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