

Present : Bertram C.J. and Garvin J.

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VELUPILLAI ARUMOGAM *et al.* v. SARAVANAMUTTU
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74—D. C. Jaffna, 14,577.

Hindu Temple—Action by members of congregation—Removal of hereditary manager—Hindu law and custom—Trusts Ordinance, No. 9 of 1917, section 102.

Where the members of the congregation of a Hindu temple sued the hereditary manager of the temple for a declaration that they are entitled to the management of the temple, for the removal of the hereditary manager, and for the settlement of a scheme for the management of the temple and its temporalities.

Held, that the claim for the removal of the hereditary manager could not be sustained. The object of section 102 of the Trusts Ordinance is not to alter the religious law and custom by which Hindu temples are governed, but to give effect to that law and custom.

Held, further, that the plaintiffs were entitled to a declaration that the temple and the lands, with which it was endowed, were subject to a charitable trust within the meaning of the Trusts Ordinance, and also to an order settling a scheme for the management of the temple in accordance with existing religious law and custom, with the defendant as trustee.

ACTION brought by a number of worshippers at a Hindu temple, in pursuance of a certificate of the Government Agent issued under sub-section (4) of section 102 of the Trusts Ordinance, against the hereditary manager of the temple for a declaration that the congregation of the temple should be entitled to manage the affairs of the temple and its temporalities, that the defendant be removed from his office, and that a scheme be settled by the Court for the management of the temple.

It was proved that one Saravanamuttu, a descendant of the original founder and father of the present defendant was the undisputed manager of the temple in 1860. In that year public subscriptions were raised to rebuild the temple, and Saravanamuttu acted as "Conductor of Works."

In 1890, it appeared, that a public meeting of the congregation was convened, and a committee appointed for the purpose of

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managing the temple and performing the daily *poojas*. Saravanamuttu having first purported to accept the managership of the temple from the new committee, reacquired control of the temple within a year, and dispensed with the assistance of the committee.

In 1907 he executed a deed reciting the previous history of the temple, appointing his two sons, Ponnasamy, the present defendant, and Sivamsampoe to be managers of the temple along with him, and after his death with remainder to their male descendants in succession. The learned District Judge dismissed the plaintiffs' action and declared the defendant to be the rightful manager of the Temple, ordering him at the same time to keep a proper account of the money coming to his hands.

Balasingham (with him *Spencer Rajaratnam*), for plaintiffs, appellants.

Arulanandan (with him *James Joseph*), for defendant, respondent.

November 17, 1924. BERTRAM C.J.—

This is an action of a very interesting character. It is instituted by a number of worshippers at a Hindu temple in the Jaffna District on behalf of themselves and other worshippers, against a person who claims to be proprietor and hereditary manager of the temple. It is brought under section 102 of "The Trusts Ordinance, No. 9 of 1917," in pursuance of a certificate of the Government Agent under sub-section (4) of that section. The prayer of the plaintiffs is that "the temple should be declared a charitable trust, and that the congregation of the worshippers of the said temple should be entitled to manage the affairs of the temple and its temporalities, that the defendant be declared not entitled to assert the right to the management of the temple, and that if the Court finds he has any right, that he should be dismissed from his office, and that a scheme be settled by the Court for the management of the temple and its temporalities." The claim is in fact a claim by these worshippers to a scheme for the democratic management of this temple, and for the ousting of a person, who claims to be manager of the temple by hereditary right, independently of any control by its worshippers.

It was proved by the evidence beyond doubt that this temple is one of those foundations which have been established and endowed by pious donors in past generations for the worship of particular deities. In such cases, in the absence of any directions by the

founder, the temple and the lands dedicated in connection with it remain the property of the founder and his heirs, subject to a religious trust for the carrying on at the temple of the worship of the deity to whom it is dedicated. In such cases, if the founder has given no directions for the appointment of trustees, or, as they are generally called, managers, the devolution of the trusteeship and the management of the temple remains in the heirs of the founders. But as in most cases it is not convenient that they should all be managers, a system has grown up under which one person, generally the eldest male descendant of the last person who has acted in the office, with the consent of the other members of the family, acts as manager and trustee. This person, again with the presumed consent of the other heirs, often appoints some descendant of his own to succeed him in the managership, and in some cases to be associated with him in the managership until his death. I think that there can be no question that this is the religious law and custom with regard to such temples in the peninsula of Jaffna, and that the temple now under consideration was a temple of this character.

From time to time it may become necessary to repair, enlarge, or rebuild such a temple. In such circumstances it is natural that subscriptions should be invited from the worshippers and other sympathizers. Such an occasion arose in the history of this temple in the year 1860. Subscriptions were gathered in, and the temple was rebuilt. Saravanamuttu, a descendant of the original founder, and father of the present defendant, who was then the undisputed manager of the temple joined with the subscribers and accepted or assumed the office of "Conductor of Works." In so doing, however, I do not think that it can be contended that he abrogated either for himself or his family the hereditary rights to the management and control of the temple, which they enjoyed under the religious custom above explained, nor do I think that the fact that the worshippers, some of whom are ancestors of the present plaintiffs, contributed to this enterprise gave them in law any right to claim to interfere in the appointment of managers, or in the control of managers when appointed.

In 1890 an interesting development took place. A public meeting of the congregation was called, and an attempt was made to carry through something in the nature of a revolution. I am not satisfied (as the learned Judge appears to have been satisfied) that this was simply the work of a faction. I see no reason to doubt that what took place was in pursuance of the general desire of the congregation. The meeting purported to elect a committee for the purpose of managing the temple and performing the daily and special *poojas*. A Chairman and a Secretary of this Committee were appointed, and rules were framed authorizing the committee to appoint, dismiss,

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and suspend, and substitute managers, kurukkals, and other officers, and to make regulations to be carried out by these officers in the temple, to arrange and pay their wages, to fine them on behalf of the temple for their faults, and generally to possess all the powers and carry out all the duties hitherto possessed and carried out by the autocratic hereditary manager. The committee functioned for some time and purported to appoint a new manager. The existing manager, Saravanamuttu, appears for the time being astutely to have bowed to the storm. In one document of the time it is said that at this meeting he was present, and remarked "the affairs of the temple should receive proper attention. This is satisfactory, satisfactory." And "I should not be included among the signatories." After watching the entire proceedings of the congregation he left, repeating several times "satisfactory, satisfactory, completely satisfactory, completely satisfactory." Mr. Balasingham assured us that there is a certain religious significance about these words, and that Saravanamuttu would have been understood as formally blessing the proceedings. It is also recorded by the maniar, who investigated the position at the request of Saravanamuttu, that "when I made inquiries in connection with the petition of Saravanamuttu Sinnetamby, I inspected this book and found those mentioned therein were reasonable and good. The petitioner also praised the rules of the meeting and admitted the facts remarked by him in the meeting." Elaborate and carefully framed documents were drawn up for the purpose of consecrating and establishing this revolution. But it only lasted for a few months. It commenced in December, 1890, and in April, 1891, it appears that Saravanamuttu having first purported to accept the managership from the new committee, and, so it is alleged, having fraudulently destroyed the record of this acceptance, reacquired control of the temple, and dispensed with the assistance of the committee which now disappeared. In spite of occasional friction with members of the congregation Saravanamuttu appears to have effected a complete restoration of the *status quo ante*. In 1907 he executed a deed reciting the previous history of the temple, D 4, appointing his two sons, Ponnasamy, the present defendant, and Sivasampoe to be managers of the temple along with him, and after his death with remainder to their male descendants in succession. There can be no doubt that in taking this course Saravanamuttu, who had managed the temple, subject to the short revolutionary interval, above described for 32 years, was, in so appointing his sons, acting in accordance with the local religious custom with respect to such foundations. Sivasampoe died, but before dying, purported to transfer his own half share to his nephew, Murugesu, who is now associated with the plaintiffs. The defendant is, I think, right in impugning this deed. Murugesu is not a male descendant of Sivasampoe, but the descendant of Sivasampoe's sister, and I have

no doubt that in limiting the succession to the male descendants of his sons, Saravanamuttu was acting in accordance with established custom.

The present plaintiffs have now renewed the attempt to put the management of the temple on a democratic basis, and they invoke the Court for that purpose under what they understand to be the intention of the Trusts Ordinance. Such a prayer must receive the careful and respectful consideration of the Court, but whatever might be the feelings we might be disposed to entertain towards the prayer of the petitioners, the case is not one in which such a prayer could be granted.

The object of section 102 of the Trusts Ordinance is not to alter the religious law and custom under which Hindu temples are carried on, but to give effect to that law and custom. Mr. Balasingham appealed to us to give effect to what are said to be the desires of the congregation on the ground that unless this were done, the temple would not enjoy the active support of the congregation. Subscriptions would not be contributed for necessary repairs, and the enlargement and development of this religious institution could not be carried out so extensively and prosperously as would be the case if the management were controlled by a representative committee. It is not however the duty of our Courts to take special measures to foster and extend religious institutions of any community. Its duty is to ascertain the legal rights of these institutions and the various persons connected with them and to give effect to those legal rights. The members of the congregation are no doubt entitled to request the Court to draw up a scheme for the regulation of the institution, but any scheme so drawn up must be in accordance with the existing religious law and custom. The learned Judge has indeed in effect drawn up such a scheme, but I think that it would be well that this scheme should be made a little more definite in form and character, and it should be embodied in the decree. Moreover, certain advisory observations of the learned Judge have been, no doubt by an oversight, embodied in the decree, which might possibly cause subsequent disputes. I do not think that the learned Judge intended that these words of advice should be embodied in the decree.

The learned Judge has directed that regular accounts should be kept of all the monies coming into the hands of the manager from different sources, except moneys which are by customs paid direct to the priest. In order to make this direction effective, I think it is necessary that these accounts should be audited, and I certainly think that the congregation have an interest in the auditing of these accounts. It is necessary therefore that the appointment of auditors for this purpose should be provided for. I think that the learned Judge should further consider this point. It may be

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suggested that one auditor should be appointed by the manager, one by a meeting of the congregation presided over by the manager and composed of all persons who have regularly worshipped in the temple during the preceding twelve months, summoned by the manager on not less than fifteen days' notice in or about the month of January in each year. A third auditor should be appointed by these two auditors, or if they fail to agree, on application on the part of either of them by the District Judge or some other appropriate authority. I think it best that the learned Judge should consult the parties on the question of the auditors generally, and make such order as he in his discretion may deem appropriate.

There is a further point which might also receive attention. The properties belonging to the temple do not appear to be numerous, but it would be well that they should be scheduled, including those in charge of the priest, and a vesting order made with respect to them under section 112 of the Trusts Ordinance.

The decree, therefore, should, in my opinion, be to the effect following :—

(1) It should be declared that the said temple and the lands and other property, with which it is endowed are subject to a "Charitable Trust" within the meaning of Trusts Ordinance, No. 9 of 1917.

(2) There should be a declaration that the properties, movable and immovable, ascertained as above directed and enumerated in the decree are properties comprised in the trust.

(3) There should be an order that the said properties, in so far as they are immovable property, shall be vested in the defendant as trustee of the said temple, in pursuance of section 112 of the Trusts Ordinance, and also that the vesting order shall be registered in pursuance of that section.

(4) There should be included in the decree a scheme to the effect following, that is to say—

(a) That the temple and all the properties with which it is endowed are subject to a "Charitable Trust" for the worship of the deity, Pillaiyar, and the other deities to which it is dedicated, and for the maintenance of the religious rites and practices connected therewith.

(b) That the management and trusteeship of the temple is vested by hereditary right in the defendant, Saravanamuttu Ponnasamy, as one of the heirs of the original founders, Olakar Ambalawanar and Sithamparier Visuvar.

(c) That the management and trusteeship of the said temple shall devolve on such person among the heirs of the said founders as the general body of the heirs of the said founder may think most qualified to discharge the trusts of the temple, or in the absence of any selection by the heirs, upon the eldest male descendant of the said Saravanamuttu Ponnasamy, and so on from generation to generation, provided that the said Saravanamuttu Ponnasamy or any person subsequently holding the office of trustee of the said temple, before his death, may, with the consent of the heirs of the founders, associate with himself as trustee of the temple his eldest male descendant, or, with the approval of the Court, any other male descendant. In any such case the deed of appointment shall vest jointly in the said trustee and the person so appointed in association with him for the purpose of the trust, all the properties comprised in the trust with benefit of survivorship.

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(5) That it shall be the duty of the trustee to prepare or cause to be prepared a book containing a list of all the properties, movable and immovable, comprised in the trust, with the names of the persons in whose charge they are. The income and expenses of the said properties shall be therein separately entered. The said book shall be duly kept by the said Saravanamuttu Ponnasamy, and by his successors in office, or by a kanakapulle under his or their directions. The said book shall be kept in the temple, and shall be accessible to the auditors appointed in the manner hereinafter described.

(6) Regular accounts shall be kept by the manager or by a kanakapulle under his directions of all the moneys coming into his hands from different sources, except moneys which are by custom paid direct to the priest.

(7) The moneys spent on the temple, both ordinary and extraordinary, shall be entered in a systematically kept account book.

(8) The trustee shall at the end of each year publish an account showing all the things mentioned above for the information of the congregation, and the said account shall be properly audited.

(9) The said accounts shall be annually audited by three auditors, appointed in the manner following, or in such other manner as the District Judge shall direct, that is to say (subject as aforesaid)—

One auditor appointed by the trustee. A second shall be elected at a meeting of the persons who have been regular worshippers at the temple during the preceding twelve months, summoned by the trustee by an adequate public notice exhibited in the precincts of the temple, the said meeting is to be held in or about the month of January in

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each year. A third auditor shall be appointed by the two auditors thus selected, or, if they fail to agree by the District Judge, or by such other authority as may be determined by the decree to be entered up in the present case.

With regard to costs, I think that there should be no order as to costs in the Court below. It has been declared, contrary to the contention of the defendant, that the temple is subject to a "Charitable Trust" within the meaning of the Trusts Ordinance, and the interests of the congregation have been recognized with regard to the keeping and publication of the accounts. Moreover, it is a great advantage to the defendant and his family to have had the nature of the trust and the succession to the trusteeship fully defined. With regard to the appeal, however, the conclusions of the learned Judge have been substantially upheld, and I think that the plaintiffs should pay the defendant's costs of the appeal.

GARVIN J.—I agree.

Judgment varied.

