

Present : De Sampayo A.C.J. and Schneider J.

SATHASIVAM v. VYTIANATHAN CHETTY.

451—D. C. Colombo, 2,002.

*Charitable trust—Hindu temple—Action to remove trustees—Who are persons interested?—Is proof of specific acts of misconduct necessary?—Duly appointed trustees appointing other persons, agents, and attorneys to manage temple—Abandonment of trust.*

In an action for the removal of trustees (in respect of a charitable trust), it is not necessary to prove specific acts of misconduct on the part of the trustees; it would be sufficient if they are shown to have neglected their duties as trustees, and the Court is satisfied that they are persons who, under the circumstances, are unfit to continue to act in that capacity.

Where trustees appointed by Court appointed by deed other persons as the attorneys and agents to manage and transact all matters relating to or concerning the execution of a charitable trust, &c., the Court held that it amounted to an abandonment of the trust.

THE facts are set out in the judgment.

*Elliott, K.C.* (with him *Hayley* and *Nadarajah*), for appellant.

*H. J. C. Pereira, K.C.* (with him *Keuneman* and *Rajaratnam*), for the respondents.

May 29, 1923. DE SAMPAYO A.C.J.—

This is an action for the removal of the defendants from the office of trustees of the Hindu temple, known as Selva Winayaga Moortie, situated at Captain's Garden, Colombo, and for the appointment of new trustees in their stead. The action is brought in pursuance of the provisions of section 102 (1) of the Trusts Ordinance, 1917, which enables any five persons interested in any place of worship or in the performance of the worship or service thereof to institute an action such as this. Sub-section 2 defines the expression "person interested," so as to include a person who is connected with the trust by family or hereditary interests, or who for a period of not less than twelve months has been in the habit of attending at the performance of the worship or services of the place. The original founder of the temple was one Joewen Poodappen. The first and

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second plaintiffs were married to two direct descendants of Joewen Poodappen, and the third, fourth, and fifth plaintiffs are themselves direct descendants of that man. It has also been proved that the plaintiffs have been worshippers at this temple for much over the required number of years. In these circumstances, I think, the District Judge has rightly decided that the plaintiffs are "persons interested" within the meaning of the Ordinance, and are qualified to institute this action.

The main question is whether sufficient reasons have been shown for removing the defendants and appointing new trustees. I think that for the purposes of the Ordinance it is not necessary to prove specific acts of misconduct on the part of the trustees, but that it would be sufficient if they are shown to have neglected their duties as trustees, and the Court is satisfied that they are persons who, under the circumstances, are unfit to continue to act in that capacity. In my opinion both specific acts and grossly negligent conduct have been proved in this case.

In 1913 the first defendant and one Mutiah Pulle, together with three others, were appointed as trustees of whom the first defendant is the sole survivor. In December, 1918, the first defendant purported by deed to appoint the other defendants to act jointly with him as trustees. With regard to the first defendant the evidence has shown many acts amounting to misconduct, but I need not specify them here, because it was conceded at the argument that much could not be urged against the judgment of the District Judge so far as he was concerned. The appeal was however pressed as regards the second, third, fourth, and fifth defendants. It will be observed that these defendants were not appointed by Court after considering their qualifications, but that they were the creatures of the first defendant, and must practically stand or fall with him. But apart from that consideration the proceedings disclose many things which directly affect them. The general excuse on their behalf is that there was considerable litigation over this temple, and that the trustees were obstructed in the performance of their duties by two men named Ramayah and Sabaratnam, who claimed to be trustees, and by the officiating priest of the temple. Ramayah and Sabaratnam were not mere interlopers. The affairs of the temple were in such a bad condition on account of the trustees' negligence and misconduct, that a great meeting of the congregation and others interested presided over by the late Mr. C. Namasiwamy, J.P., was held, and those two men were appointed trustees. It is not to be wondered at that thereafter the priest recognized them as trustees, and not the defendants. There is no doubt, however, that there was much litigation over the temple. By August, 1921, all the troubles were over, but the evidence shows that even thereafter the temple and the trust property except that some trifling repairs, such as whitewashing were effected, were

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mismanaged. The District Judge also visited the place on March 20, 1922, has noted these facts in his judgment. Moreover, the chief duty of the trustees was to apply the income to the maintenance of the religious services, but nothing was done in this respect from 1918 to August, 1921. It is said that the priest locked the side door which is the main door of the temple and went away to Jaffna. But it appears that there is another entrance through the adjoining Sivan Kovil, and that people could come and did come by that entrance to worship at the temple. I do not see that there was any great difficulty to provide for religious services if the defendants wished to do so.

The defendants made two attempts to introduce strangers as trustees or managers of the temple. Once they applied to Court that as they themselves had no money, two Natucotta Chetties, whom they named, be given charge of the temple and its property. The Court refused that application. Next, in April, 1920, they gave a deed to certain Tinnevelly Chetties, whereby in consideration of these Chetties having paid the Municipal taxes due on the premises and amounting to Rs. 5,500, the defendants appointed the Chetties as their attorneys and agents to manage and transact all matters relating to or concerning the execution of the trusts of the temple, to recover all rents and income of the property of the temple, and to take and receive all offerings to the said temple, and generally to do and perform all such acts and things as shall advance the objects of the said trust or shall be deemed necessary or expedient on the defendant's part to be done in or about the execution of the said trust. It was further agreed that if the powers thereby conferred be revoked by an act or order of the Court, the property and money held by the Chetties should remain their property and not that of the temple. This agreement with the Tinnevelly Chetties amounts to an abandonment of the trust and surrender of the property of the temple by the defendants to the Tinnevelly Chetties and to my mind constitutes a clear breach of trust.

The property of the temple consists of a large number of small tenements, which, according to the bill collector, yield an income of Rs. 200 or more a month. As a matter of fact the account books show that for the three years 1919-21, which covers the period of the disputes with Ramayah and Sabaratnam and the priest, the income of the temple amounted to very nearly Rs. 9,000, and yet the expenditure is shown to have exceeded the income. This result can be easily understood when we learn that it was the Kanakapulle who spent moneys according to his pleasure. The Kanakapulle admits that no repairs were effected from 1918 to the end of 1921, and yet the accounts in this case put down Rs. 1,518·16 as having been spent on repairs during that period and Rs. 879·62 for " temple expenses." The other items of expenditure

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are Rs. 2,644·35 for salaries, Rs. 6,074·79 for legal expenses, and Rs. 1,227·01 for sundry expenses. It is difficult to call these accounts to be true in any sense. Moreover, the account books mix up the expenditure on this temple and the expenditure on a temple at Gintupitiya street, of which it is said the defendants are also trustees, and it is impossible to disentangle the one from the other.

It appears to me that the defendants, including the second to fifth defendants, were either dishonest or grossly incompetent, and that in the interest of the temple there should be a change of trustees. I think, therefore, that the judgment appealed from is quite justified and should be affirmed, with costs.

SCHNEIDER J.—I agree.

*Appeal dismissed.*