

1938

*Present : Maartensz and Hearne JJ.*

SABAPATHIPILLAI *et al.* v. VAITHIALINGAM.

163—D. C. Jaffna, 8,708.

*Trustee—Action brought—Expiration of office during the action—Right to continue action.*

A trustee whose term of office has expired during the pendency of an action brought by him is not entitled to continue the action.

**A** PPEAL from an order of the District Judge of Jaffna.

Hayley, K.C. (with him Kumarasingham), for second defendant, appellant.

N. E. Weerasooria (with him Chelvanayagam), for plaintiffs, respondents.

March 21, 1938. MAARTENSZ J.—

The plaintiffs as trustees of the Nochikadu Pillaiyar Temple (hereafter referred to as "the temple") brought this action to eject the defendants from the temple and to obtain possession of the temple and all the movables and immovables belonging to the temple which were vested in the plaintiffs by an order made on August 2, 1933, in case No. 23,628 of the District Court of Jaffna.

Under the scheme of management approved of by the Court in case No. 23,628 the management of the temple was to be under the control of a Board of five Trustees, one of whom, the present fifth plaintiff, was to hold a hereditary seat on the Board of Trustees of this temple. The other trustees were to be elected by the congregation at a general meeting held as provided for, and were to hold office for a period of three years only.

The first to fourth plaintiffs were elected trustees on or about December 1, 1932. This action was filed on September 24, 1935. The second and third defendants, the appellants, filed answer on January 15, 1936, in which they alleged, among other legal objections, that the term of office during which the plaintiffs were elected to serve on the Board of Trustees expired on December 1, 1935, and that they could not maintain the action.

This objection was tried as a preliminary issue and the second and third defendants appeal from the order of the District Judge in which he held that the plaintiffs are entitled to continue the action as new trustees have not been appointed and the rights of the parties have to be determined as at the date of the action.

This order cannot be supported. Even if the principle that the rights of the parties must be determined at the date of the action is applicable, the trustees who have ceased to hold office cannot get a decree for declaration of title and ejectment—*Elisahamy v. Punchi Banda et al.*<sup>1</sup> In the case of *Appusinnó v. Balasuriya*,<sup>2</sup> it was laid down that the principle that a case must be decided as at the time of the institution of the suit cannot be applied to the case of an action brought by a trustee who had ceased to hold office during the pendency of the action and that the moment he ceased to have that status he could not continue the action to bring it to determination.

There is no provision in the Code under which a trustee who has ceased to hold office can continue the action. Section 404 of the Code only authorizes the continuance of the action by the persons "to whom such interest has come, either in addition to or in substitution for the person from whom it has passed, as the case may require". But for this section the action would have to be dismissed. Section 404 of the Code is in effect substantially the same as Rule 10 of Order XXII. in the Indian Code (*vide* Civil Procedure Code—*Sarkar, vol. II., p. 1569*). It has been held—

(i.) that "a suit brought on behalf of a mutt by a trustee not properly appointed can be continued by a properly appointed successor on whom

<sup>1</sup> (1911) 14 N. L. R. 113.

<sup>2</sup> (1913) 16 N. L. R. 385.

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the representation of the institution has devolved, *Order XXII., Rule 10*, and not *Order XXII., Rule 5* applies to such a case; *Ratnam Pillai v. Annamalai Desikar*;

(ii.) that “where a trustee dies or retires and another is elected in his place, the estate devolves on the new trustee and it is a case of devolution of interest within the meaning of this rule. The new trustee can be added under *Order XXII., Rule 10*; *Thirumalai v. Aruna Chella*”.

The question which we really have to decide is whether the fifth plaintiff could carry on the action alone. I am of opinion that he cannot do so as under the scheme of management and the vesting order, the duties of trustees can only be carried on by the Board of Trustees jointly.

I set aside the order appealed from with costs. This order however, does not, subject to the law with regard to abatement of suits, preclude those persons who claim to have succeeded the plaintiffs as trustees of the temple from applying to the Court for leave to continue the suit against the defendants.

HEARNE J.—I agree.

*Appeal allowed.*

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