

1957            *Present: Basnayake, C.J., and Sinnetamby, J.*

VELAUTHAM and others, Appellants, and VELAUTHER and another,  
Respondents

*S. C. 157—D. C. Jaffna, TR. 1*

*Religious Trust—Suit by persons interested in it—Requirement of Government Agent's certificate—Form of such certificate—Trusts Ordinance, s. 102 (3).*

An action under section 102 (3) of the Trusts Ordinance will not be entertained unless it appears from the certificate issued by the Government Agent that a copy of the plaint had been presented to him along with the petition.

**A**PPEAL from a judgment of the District Court, Jaffna.

*P. Somatilakam, with P. Naguleswaram, for Plaintiffs-Appellants.*

*G. Renganathan, with M. Shanmugalingam, for 1st Defendant-Respondent.*

March 11, 1957. BASNAYAKE, C.J.—

The only question that arises for decision in this appeal is whether this action has been entertained in contravention of section 102 (3) of the Trusts Ordinance. That provision reads :

“ No action shall be entertained under this section unless the plaintiffs shall have previously presented a petition to the Government Agent or Assistant Government Agent of the Province or district in which such place or establishment is situate praying for the appointment of

<sup>1</sup> (1953) 55 N. L. R. 92.

<sup>2</sup> (1953) 55 N. L. R. 135.

<sup>3</sup> (1942) 44 N. L. R. 73.

a commissioner or commissioners to inquire into the subject-matter of the plaint, and unless the Government Agent or the Assistant Government Agent shall have certified that an inquiry has been held in pursuance of the said petition, and that the commissioner or commissioners (or a majority of them) has reported—

- (a) that the subject-matter of the plaint is one that calls for the consideration of the court; and
- (b) either that it has not proved possible to bring about an amicable settlement of the questions involved, or that the assistance of the court is required for the purpose of giving effect to any amicable settlement that has been arrived at. ”

In the instant case the certificate issued by the Government Agent is to the following effect:—

“ I do hereby certify under sub-section (3) of Section 102 of the Trusts Ordinance (Cap. 72) that in pursuance of a petition presented to me by Mr. S. Velautham and nine others of Analaitivu regarding the management of the Sangaramoorthy Murugamoorthy Temple, Analaitivu, in the Divisional Revenue Officer's division of Islands, I appointed Messrs. A. Thiruneelakandan, Karampan, Kayts, A. Saravanamuthu, J. P., Pungudutivu, and V. Kandiah, Chairman, V. C., Nainativu, by an act of appointment dated 3rd January, 1955 commission to enquire into the subject matter of the said petition and

“ 2. That the enquiry had been held in pursuance of the said petition and that the said commissioners have reported :

- (a) That the subject-matter of the said petition is one that calls for consideration of the Court ;
- (b) That it has not been proved possible to bring about an amicable settlement of the questions involved. ”

Objection was taken at the trial to the form of the certificate and also to the fact that it appears from the certificate that no plaint has been presented along with the petition to the Government Agent. The learned trial Judge after hearing counsel held that in his view the Government Agent's certificate should be that the commissioners have “ reported (a) that the *subject matter of the plaint* is one that calls for consideration of the Court,” and that a copy of the plaint should have been presented along with the petition to the Government Agent. We are in entire agreement with that view. The Government Agent's certificate is not in the form required by section 102 (3) of the Trusts Ordinance.

The action is therefore one that cannot be entertained as section 102 (3) declares that no action shall be entertained unless the Government Agent shall have certified that the commissioners have reported that the subject matter of the plaint is one that calls for the consideration of the Court. Clearly the commissioners cannot make such a report unless the plaint

is annexed to the petition presented to the Government Agent and he cannot certify that they have so reported unless the commissioners have done so. Our decision is in accord with the view taken by this Court in the case of *Sivaguru v. Alagaratnam*<sup>1</sup>.

The appeal is therefore dismissed with costs.

SINNETAMBY, J.—I agree.

*Appeal dismissed.*

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