1932 *Present :* **Macdonell C.J. and Dalton J.**

THAMOTHERAMPILLAI *v.* SELLAPAH *et. al.*

59—D. C. Jaffna, 23,628.

Hindu temple—Application to settle a scheme of management—Hereditary manager—Association of other trustees—Trusts Ordinance, No. 9 of 1917, s. 106.

A District Court has power, in settling a scheme for the management of a trust under section 102 of the Trust Ordinance, to direct that other trustees be associated with the hereditary manager in the management of a Hindu temple.

APPEAL from a judgment of the District Judge of Jaffna.

H. V. Perera (with him *Nadarajah*), for defendants-appellants.

N. E. Weerasooria (with him *Choksy*), for plaintiffs-respondents.

August 5, 1932. DALTON J.—

The plaintiffs brought this action under section 102 of the Trusts Ordinance, 1917, after obtaining leave as required by sub-section (3), for a declaration that the Pilliyar temple as described in the plaint be declared a public charitable trust, and that a scheme of management be settled by the Court, proper trustees being appointed by the Court to manage and conduct all the affairs of the temple and its temporalities.

Defendants pleaded that the temple was founded by their ancestors and that it was private family property. There was an alternative plea that in the event of the Court holding the temple to be a public charitable trust, plaintiffs were not entitled in law to have the defendants removed from the managership, the right of managership being in their family, or to have trustees appointed by the Court.

It was subsequently conceded that the temple was a public charitable trust, the only point remaining for consideration being whether the trial Judge was entitled to frame a scheme of management, appointing a board of five trustees to manage the affairs of the temple, on which the first defendant and his successors are to have a hereditary seat.

It has been urged on behalf of the plaintiffs (respondents) that it has not been satisfactorily shown that the defendants' family had any hereditary rights in the temple, but it is clear from the judgment of the lower Court that the learned Judge was satisfied that the managership of the affairs of the temple had been divided between the priest and the first defendant's ancestors. He further recognizes the rights of the family by giving it an "hereditary seat" on the board of trustees. With this conclusion as to the rights of defendants' family in the temple I am not prepared to disagree.

It seems quite clear from the evidence that all the trouble that has arisen at this temple is due to the conduct and actions of the second defendant. The first defendant's father was manager during his lifetime, and the second defendant, his nephew, was his executor. There is no doubt that first defendant succeeded his father as manager, but he is 15 years younger than the second defendant, and he has made it quite plain he took no interest in the affairs of the temple. On the other hand, his cousin, the second defendant, was very anxious to be manager himself, as he admits in his evidence. He actually included the temple and its lands in the inventory of the estate of the first defendant's father, and then to strengthen his position obtained a power of attorney from the first defendant as manager, to manage the temple on his behalf. This and other evidence effectively answer the second defendant's contention that he had rights as manager himself as being a member of the founder's family.

The learned Judge had therefore these circumstances to deal with in the action, a temple admitted to be a public charitable trust; a hereditary manager (the first defendant) who took no part and wished to take no

part in the affairs of the temple ; a hereditary priest who had a hereditary right to perform some of the functions of management ; an attorney (second defendant) of the hereditary manager whose plain object was, if he could, to step into the shoes of the hereditary manager and who, had, in the words of the learned Judge, for 20 years or 30 years made the life of the hereditary priest miserable ; and constant friction between the second defendant and the priest, as a result of which this case was brought by plaintiffs as worshippers at the temple for the purpose of ending the unhappy state of affairs.

It has been strenuously urged on behalf of the appellants that the Court has no power under the Trusts Ordinance to replace an hereditary manager, or even to appoint or associate any trustee, manager, or other person with him in the management of a temple, the right of management of which is hereditary. Under the provisions of section 106 of the Ordinance, in settling any scheme for the management of any trust under section 102 it is provided that the Court shall have regard to the religious law and custom of the community concerned. It is not necessary for the purposes of this case to decide what exactly the words " shall have regard to " mean, for in this particular case it has not been shown, in my opinion, that the learned Judge, in his order associating others with the hereditary manager, has done anything contrary to Hindoo religious law or custom. For that law as it obtains in Jaffna, we have been referred by counsel for appellant to the judgment of Bertram C.J. in *Velupillai Arumugam v. Saravanamuttu Ponnaswamy*.[1] Taking the law on the question of the devolution of the management of temples such as this as laid down in that case, the management appears to be vested in the first defendant for life, and there seems to be no provision for his removal by the family. At any rate, no such power is mentioned in the cases cited in the argument. So far from the descendants of the founder ever acting as a body for any purpose, a system appears to have sprung up of the right of succession to the management passing to the eldest male descendant of the last person who has acted in the office on the fiction that all the other heirs have consented to the appointment. It would seem that in some cases the manager can appoint some descendent of his own to be associated with him in the management until his death. No attempt has been made to show that this case before us in one of such cases mentioned by Bertram C.J. in his judgment, possibly because the first defendant does not wish to have anything to do with the management. In any event second defendant is not a descendant of his and so could not be associated with him.

In this state of the appropriate religious law or custom, where a hereditary manager shows his desire to be disassociated from the management entirely, it seems to me that powers given by section 102 for the Court to step in, in the interests of the worshippers, to frame a scheme for the management of the temple, may most properly be used in the case of a public charitable trust. The fact that first defendant has given a power of attorney to the second defendant, a person as these proceedings show quite unfitted for the position, was merely to save himself any worry or trouble, an attempt to put the responsibility for management on

[1] *27 N. L. R. 173.*

other shoulders, which, as the learned trial Judge pointed out to him, he could not do. It has suggested itself to me whether the scheme might not be restricted in time to the lifetime of the first defendant, but on consideration, especially also in regard to what was done by the second defendant and the worshippers in 1922, I do not think it should be so restricted. I can find, in the authorities cited to us, nothing derogatory of religious law or custom applicable in the Court in such circumstances directing that others be associated with the hereditary manager in the management of the temple, as the learned Judge has ordered. The second defendant had himself consented to such action being taken as long ago as 1922, not by descendents of the founder but by the worshippers at the temple. The evidence shows that in 1922 handbills were issued calling a meeting of the worshippers for the purpose of appointing five trustees of the temple, that second defendant attended the meetings and was elected one of the five trustees. That he approved is quite clear from his signature to the documents. Within a month, however, trouble arose again, and he then issued a notice in the following form.:—

NOTICE

I do hereby inform the public that I was the manager of the Vinayaga temple at Nochiampathy, Koddaikadu, Valighamam West. I transferred my rights to certain persons of the same place on the condition that they would donate Rs. 5,000 to the above themple. Since they have not fulfilled the above conditions, I do hereby bring to the notice of the public that I revoke the rights of management I had transferred to them and that from this day I take over the management of the said temple to myself and others have no rights whatsoever in the management of the above temple.

Araly West, April 11, 1922. A. KANAPATHIPILLAI,

Whatever the ending of this attempt to put the management of the temple on a better basis, it has not been suggested that the action taken in 1922 was in any way contrary to religious law or custom.

For these reasons I am unable to agree with appellants' counsel that the Court has exceeded its powers. It is true that both defendants are appellants, but there is nothing before us to show that first defendant has receded from the position he took up in the lower Court, and one may reasonably conclude that the moving spirit in the appeal, as in the defence in the lower Court, is the second defendant.

The suggestion that difficulties may arise in respect of the election of trustees, as provided by the learned Judge in his order, is not one that commends itself to me. It is possible, of course, that second defendant might unwisely again seek to interfere, but he has had ample warning against dong so, and one can only hope he will have due regard to this warning. In other communities provision is made for election of committees and trustees in similar circumstances, and this is not the first occasion on which this procedure has been adopted in the Northern Province. I do not think we should anticipate any trouble.

I would dismiss this appeal with costs.

MACDONELL C.J.—I agree.

Appeal dismissed.