

Present: Bertram C.J. and Ennis J.

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THE BAPTIST MISSIONARY SOCIETY CORPORATION

v. JAYAWARDENE *et al.*

90—D. C. Chilaw, 5,502.

English Companies' Act, 1862, s. 21 — Prohibition against religious corporation holding more than 2 acres — Trust — Interpretation of deed — Prescription.

Section 21 of the English Companies' Act, 1862, which prohibits a religious corporation from holding more than 2 acres of land without the sanction of the Board of Trade, does not prevent a corporation registered under the Act from holding more than 2 acres in Ceylon.

Gunasekera "assigned or set over" unto the Rev. Pigott, of the Baptist Society, "or his successor or successors in office," a certain lot of land, "so that they may possess the same and deal with it as they may desire."

In the deed it was stated that the donor had assigned the land "unto Rev. Pigott, of the Baptist Society of Colombo, to build a chapel for the purpose of preaching the gospel to the inhabitants of the place."

Held, that the deed did not create a trust in favour of the local congregation. If there was a trust at all, there was a trust in favour of the society.

THE plaintiff corporation brought this action against the members of the Baptist church congregation at Madampe for a declaration that the plaintiff corporation was entitled to the Baptist church, manse, school buildings, and premises at Madampe, and for the ejectment of the defendants.

¹ (1878) 39 L. T. (N. S.) 253.

² (1831) 7 Bing. 237.

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The defendants filed answer denying that the plaintiff corporation was entitled to the said buildings and premises, or that the plaintiff corporation was entitled to eject the defendants from the said premises and buildings.

The case went to trial on the following issues:—

- (1) Have plaintiffs a cause of action against the defendants?
- (2) Who were the previous holders of the premises in dispute?
- (3) Did the congregation of the Baptist church at Madampe occupy the premises as tenants under such previous holders?
- (4) Did the said congregation pay the annual rent of Re. 1 to plaintiffs for the said premises?
- (5) Are the plaintiffs entitled to give notice to the said congregation to quit and restore possession of the said premises?
- (6) If so, did plaintiffs give notice on February 27, 1916, to the said congregation to quit the said premises on April 1, 1916?
- (7) Did the said plaintiffs become entitled to the said premises as detailed in paragraphs 6 and 7 of the plaint?
- (8) Does the deed No. 73 of September 20, 1903, and deed No. 186 of November 5, 1903, convey the said premises to the plaintiffs?
- (9) What is the real value of th said premises?
- (10) Can the document dated September 20, 1871, referred to in the abstract of title attached to the plaint, be admitted in evidence to prove plaintiffs' title?
- (11) If so, does it convey title to the plaintiffs to the said premises?
- (12) Have the said congregation been in wrongful possession of the said premises since April 1, 1916?
- (13) Prescription on either side.
- (14) Damages.

The learned District Judge gave judgment for the plaintiff corporation as prayed for. The defendants appealed.

Bawa, K. C. (with him *A. St. V. Jayawardene*, and *Canakaratne*), for the appellants.—The plaintiff corporation cannot maintain this action, as they do not have the capacity to hold more than 2 acres of land without the permission of the Board of Trade. See section 21 of Companies' Act, 1862 (English). This section is applicable not only to lands held in England, but to all lands which the corporation may wish to acquire in any part of the Empire. The sections 18 and 21 must be read together. The incorporation of a company does not give it all the rights of a private individual. The rights of a corporation are those which are defined in the Act and in the memorandum of incorporation.

Counsel cited *Halsbury*, vol. 5, pp. 285, 725; *Ashbury Railway Carriage and Iron Co. v. Riche*;¹ *Wenlock v. River Dee Co.*; ² *Halsbury*, vol. 27, p. 162.

¹ (1875) *L. R. 7 House of Lords* 653.

² (1883) 36 *Ch. D.* 685.

Pigott was a trustee for the congregation. He had no right to alienate the land to the plaintiff corporation. A bequest to the poor of the Burgher community was held to have created a trust in favour of the poor of that community.

In 1899 the plaintiff society gave autonomy to the congregation, and the management of the church was handed over to the congregation, and the trust was at an end. The defendants did not pay any rent. The rent paid by the pastor out of his money does not bind the defendants. The defendants did not acknowledge the title of the society after they began to manage their affairs.

The plaintiff corporation may, perhaps, ask the Court that proper trustees be appointed, but they cannot bring an action for declaration of title against the congregation.

The trustee cannot set up a claim adverse to the beneficiaries.

The absence of formal and specific words constituting a trust does not preclude the Court from giving effect to a charitable trust if it can be gathered from the deed.

Counsel referred to Ordinance No. 9 of 1917, section 107; *Lewin on Trust* 618; 85 *Law Journal* 114 (1916) A. C. 566.

E. W. Jayawardene (with him *Samarawickreme* and *Cooray*), for the respondents (not called upon).

September 4, 1918. BERTRAM C.J.—

This is a very exceptional and deplorable case, and I presume we may take it that the extreme action which has been taken in this case would not have been taken unless it was thought that things had come to a pass where no friendly settlement was possible. It is not for us to express any opinion on the rights or wrongs of a controversy of which we know nothing, and the only thing we can do is to decide the points of law brought before us. The points reduce themselves in effect to two. The first is a question of the capacity of the plaintiff corporation, and the second is a question of title to the property which is the subject of the dispute.

The plaintiff corporation is a British religious corporation constituted for the purpose of taking over throughout the world the various properties which were held in trust for the Baptist Missionary Society by its local agents. It is expressly provided in the memorandum of association of this corporation that one of its objects is to hold lands, not only in the United Kingdom, but also in the Colonies. The corporation is created in pursuance of the company legislation in force in the United Kingdom. It is not a company formed for the purpose of gain, and the various special provisions of the Companies' Acts which apply to corporations of that description, of course, apply to it.

It is contended by the appellants that the provisions of the Companies' Acts are such that they impose upon this corporation a certain fundamental limitation of its capacity essential to its

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constitution, and that by virtue of that limitation this corporation is precluded from holding land in any part of the world more than 2 acres in extent without the license of the Board of Trade. Two acres in extent there referred to does not mean the extent of any particular holding, but the total holding of the corporation.

The position of this corporation in this Colony is the same as that of a foreign corporation. It originates in a system of law not our own. The position of foreign companies in English law is that their existence is recognized by international comity. Similarly, the position of English companies in this Colony would appear to be that they are recognized by Imperial comity.

Now, it is argued by Mr. Bawa that, whatever limitations are imposed upon the corporation by the English law, in so far as they are part of its constitution, must apply here, and he urges that the limitation to which I have referred is part of the essential constitution of the company. The principles applying to the matter appear to be quite plain, and I will refer to two statements of them: one in *Dicey's Conflict of Laws*, and the other in *Lindley on Companies*. The statement of the law given in Dicey is in rule 129: "The capacity of a corporation to enter into any legal transaction is governed both by its constitution and by the law of the country where the transaction occurs." In illustrating that principle, Dicey says: "A corporation, for example, which is prohibited by its constitution from the purchase of land, has no power to effect a valid purchase of land in any country; for the corporation exists as such only by virtue of its constitution, and any acts done in contravention of its constitution by its directors or others are *ultra vires*, and in strictness not the acts of the corporation. Secondly, its capacity is limited by the law of the country where a given transaction takes place. It cannot do any act forbidden by the law of such country. Thus, a foreign corporation authorized by its constitution to acquire and hold land cannot hold land in England in contravention of the Mortmain Acts."

A similar statement of the law is given by Lord Lindley in his work, volume 2, page 1226, where he says: "Again, although a corporation duly created in one State is recognized as a corporation by other States, the transactions of that corporation are governed, not by the law of the State creating it, but by the law of the place where those transactions occur, and by the constitution of the corporation. This last is important; for the capacity of the corporation to acquire rights and incur obligations is limited by the objects to attain which it is created, and these limits must be regarded whenever and wherever the extent of the corporate powers has to be judicially decided."

Now, these being the legal principles, what are the enactments to which they are to be applied? The first is section 18 of the Companies' Act, 1862. It is there declared that "upon the registration of the

memorandum of association, and of the articles of association in cases where articles of association are required by this Act, the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable of exercising all the functions of an incorporated company, and having perpetual succession and a common seal with power to hold lands. ”

Now, observe, this is, what I may call, the incorporating clause, that is to say, the clause which determines the fundamental nature of the bodies created by the statute, and, observe, there is no reference in those words to any other special provision of the Act. It does not say “ subject to the special provisions of this Act, ” or “ subject to the provisions hereinafter contained. ” The words are obviously intended to be words of the most general character. This is all the more noteworthy, because there is one point in which there is a reference to the terms of the Act. The section goes on “ but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned. ” That is the only point on which the terms of the section are qualified by a reference to the other provisions of the Act.

The second enactment is section 21, which says “ no company formed for the purpose of promoting art, science, religion, charity or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than 2 acres of land. ”

Now, the question for us to determine is this: Is section 21 to be read as a qualification to section 18, and as indicating a limitation essential to the nature of the company, or is it a special enactment of the English law intended to impose a special and subsidiary limitation upon certain classes of companies with a view to legal principles in force in England?

Mr. Bawa maintains very strenuously that the two enactments must be construed as one, and that we must regard it as the intention of the Legislature that religious corporations coming into existence under the Act should come into existence with a limitation of their powers of holding land all over the world, and that the intention of the Legislature was that the supervision of the holding of land by such religious corporations all over the world should be committed to the Board of Trade.

The alternative explanation is that section 21 is enacted with a view to giving effect in Great Britain to the principles of the Mortmain Act. It has always been the policy of the English law for many centuries past to restrain the tying up of land in the possession of religious corporations. By the latest Mortmain Act no land can be conveyed to a corporation in mortmain without the royal license.

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It seems to me perfectly plain that this special enactment in the Companies' Act was intended to give effect to the principles of the Mortmain Act. In my view the Imperial Legislature enacted this section for the protection of lands in Great Britain, but intended to leave to other countries and to other parts of the British Empire the power of protecting their lands from the dangers, against which the statutes of mortmain were framed, to such extent as they thought proper.

We know perfectly well that it has never been thought necessary to introduce these principles of the English law into this Colony. This Colony having taken no steps in that direction, in my opinion, the capacity to hold land, which is vested in this corporation by section 18, is in this Colony entirely unfettered. Section 21 I take to be a municipal enactment. If this is the case, there is no necessity to inquire as to the extent of the holdings of the Baptist Missionary Society either in this Colony or in the world at large, and the appeal, in so far as it rests upon the contention I have explained, must fail.

The second question is a question of title. The question is, Has the Baptist Missionary Corporation title to the land of which it now seeks to recover possession? There is no question as to the general policy of this corporation. Rightly or wrongly it thinks it necessary, for the purpose of its work in the world, to hold a legal title to all the religious places in which services in which it is interested are carried out, and in their appurtenant buildings, in the nature of manses, schools, or otherwise. Its policy is to have an absolute title unfettered by a trust. Whether or not there is any particular trust in any particular case must be a question of fact in regard to that case.

Now, its title to the property now in dispute rests mainly upon a deed in the year 1872. By that deed Don Davith Dabera Wijesundera Gunasekera assigned and set over unto Rev. Henry Robert Pigott, of the Baptist Society, or his successor or successors in office, a certain lot of land known as Bilingahawatta, "so that they may possess the same and deal with it as they may desire." That deed contains two references to the circumstances out of which it originated. The first says that the donor has "hereby assigned and set over" the said land "unto the said Rev. Henry Robert Pigott, of the Baptist Society of Colombo, to built a chapel for the purpose of preaching the Christian gospel to the inhabitants of the place." The second states that "a place of worship is being constructed on the aforesaid land at the expense of the public."

The first question is, What is the nature of these two historical references? Is either of them an operative clause, or are they merely recitals? In my opinion, formed after a careful perusal of the deed, these are both recitals. They merely explain how Don Davith Wijesundera Gunasekera came to make the grant. The grant is a grant of the most unfettered possible description. Apart

from certain words, to which I will call attention in a moment, it does not purport to create any trust. By a trust, I mean a trust relating to the occupation and control of the premises. There is, no doubt, an implied trust that the premises should be used "for the purpose of preaching the Christian Gospel to the inhabitants of the place," but that is another matter. The deed gives the land to the Rev. Henry Robert Pigott and his successors, "so that they may possess the same and deal with it as they desire." If this pious donor had intended to convey this land so that it might be held by the Rev. Henry Robert Pigott, in accordance with the general policy of the Baptist Missionary Society, he could hardly have used more appropriate words for the purpose. The only words which raise a question as to whether or not a trust may be intended are the words "or his successor or successors in office." These words are not words ordinarily used in conveyancing. A man cannot vest lands on a series of persons, except in accordance with the law relating to *fidei commissa*. Apart, therefore, from any question of trust, and apart from special legislation, the words would be inoperative, and the grant would vest an absolute title in Rev. Henry Robert Pigott. But it is provided by a recent Ordinance, the Trusts Ordinance, No. 9 of 1917, section 113: "That where, before or after the commencement of this Ordinance, it is declared or intended in any instrument of trust that the trustee of the trust shall be a person for the time being holding or acting in any public office, or holding or acting in any office or discharging any duty in any public or private institution, body, corporation, association, or community, the title to the trust property shall devolve from time to time upon the person for the time being holding or acting in any such office," &c.

If, therefore, this was a trust, the title to this property so devolved on the person for the time being holding the same office in the Baptist Missionary Society as the Rev. Henry Robert Pigott. But the question is, Is there a trust at all? I can see no indication of any trust committing the occupation and control of the premises to the local congregation. If there was such a trust, this Court would certainly give effect to it. But the absolute words at the conclusion of the document prevent such an inference being drawn from the references to the history of the matter in the early part of the deed. Even if there is such a trust, therefore, there is certainly no trust in favour of the congregation.

The next question is, Is there a trust in favour of the Baptist Missionary Society, of which Mr. Pigott appears to have been the local officer? The law in regard to the creation of a trust is now declared in section 6 of the Trusts Ordinance, and it is there declared that a trust is created, when the author of the trust indicates with reasonable certainty, amongst other things, the beneficiary. The question is, Is the beneficiary indicated with reasonable certainty

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in this deed? I have very grave doubt as to whether there is any such reasonably certain indication. One might conclude that the intention of the deed was to vest the property in the Rev. Henry Robert Pigott in trust for the society of which he is an officer. But the words are somewhat slender for that purpose. Certainly, that is the only trust that can be gathered from the document, if there is a trust at all. But it is not really necessary to decide that point, because, if there was a trust in favour of the society, then Mr. Pigott, in the year 1902, joined in a deed conveying his title to the Baptist Missionary Corporation, who are the successors of the Baptist Missionary Society, and by that conveyance—being a conveyance from a trustee to the beneficiary—he put an end to the trust and vested an absolute title in the beneficiary. On the other hand, if it is considered that the words are so uncertain that no trust can be deemed to be constituted, then the title which passed to Mr. Pigott was an absolute title, and by that same deed he has conveyed that absolute title to the Baptist Missionary Society. In one way or the other, therefore, the Baptist Missionary Corporation is vested with absolute legal title to Bilingahawatta, subject, no doubt, to an obligation to use the premises “for the purpose of preaching the Christian Gospel to the inhabitants of the place.”

Now comes the question of the effect of that upon the general premises on which these buildings in dispute are situated, and their appurtenant lands. There are in evidence three documents in the nature of surveys. The first is a survey dated July, 1870, which relates to Coangahawatta, and the area of Coangahawatta is therein described as 16 65/100 square perches. The second is a survey dated February, 1872, which relates to Bilingahawatta, the area of which is described as 2 roods 4 square perches. It appears from these two surveys that these two lands are contiguous. The third document is a survey of what is obviously the whole property. It is dated August 9, 1877, and it purports to refer to certain lands belonging to the Baptist Missionary Society, and if the plaint is examined, it will be found that it comprises the property mentioned in the two earlier surveys, together with a certain additional strip, and the buildings appear to be on the land known as Bilingahawatta.

Now, it is plain that, in the year 1877, the Baptist Missionary Society was in possession of the whole of that property. They held the property through Mr. Pigott as regards Bilingahawatta. But with regard to the remaining portion, it appears that no conveyance was ever executed either in favour of Mr. Pigott or in favour of any other officer nominated by the society. The title to these portions remained in the name of a Mr. C. E. Corea. But it is plain that as early as 1871 the Baptist Missionary Society was possessing the whole land, and that these three portions of land were then treated as one. It appears that they have also been treated as a single property ever since; and in the absence of any evidence to the

contrary, it should be taken that the Baptist Missionary Society, through their agents, continued in possession of the property. Now, at a certain point in the history of the society, it appears that they decided to confer local autonomy upon their various congregations. One of the privileges of this local autonomy was that the congregations should support their own minister; another was that they should have certain powers of church government. But it appears to have been the intention of the Central Society to maintain a certain measure of control over the local congregation by means of its title to the properties on which they worshipped, and, therefore, they did not vest the properties in the congregations, but went through the form of leasing them to the congregations for an annual sum. The whole of this property, comprising these three lands, was so put in possession of the local congregation by the local officer of the Baptist Missionary Society, subject to this annual rent. The congregation, therefore, entered into possession of this whole property, both Bilingahawatta and the two adjoining lots, as lessees or licensees of the society. As a matter of fact, in one way or the other, as it fell due, this annual rent was collected up to the year 1915. But these defendants are not a corporation, and the payment of the rent would only be binding upon those who made the payment, or who acquiesced in it. But the significance of the payment of the rent is not that it is binding upon the defendants. Its significance is that the Baptist Missionary Society, from the time of the inception of this arrangement, continued to assert title and to exercise acts of ownership over the property which was committed to the local congregation. They have never abandoned it, and, inasmuch as the local congregation entered into the occupation of the property as licensees, they must be held to have continued to possess it in that capacity. There was, therefore, no abandonment of the property of the society, and there could, in the nature of the case, be no prescription against the society by the floating members of a congregation which had come into possession as licensees. That being so, the title of the persons who were in possession of the whole of Bilingahawatta having been vested in the corporation, the corporation can sue for the recovery of this property by virtue of its title. With regard to the adjoining lands, which were also put into possession of the congregation as licensees at the same time by the corporation, it must be taken that the Baptist Missionary Corporation was put in possession of those lots by the person who conveyed to them the property of Bilingahawatta, which he was holding in connection with it. On these grounds, therefore, I think that the Baptist Missionary Corporation are entitled to the recovery of the whole premises.

The order of the District Court gives the plaintiffs a remedy which it was not asked for in the plaint, and which appears to be unnecessary. The learned District Judge orders the ejection of

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the defendants. It does not appear to me that those words should remain in the order. All that is necessary is a declaration of title in favour of the plaintiffs, and an order that they recover possession. As I understand, at present the property is held by the public authorities for those who may ultimately appear entitled thereto, and no doubt possession will be given to the plaintiffs. We need not, therefore, consider any question of ejection.

For the reasons I have explained, I am of opinion that this appeal must be dismissed, with costs.

ENNIS J.—

I am also of opinion that section 21 of the Companies' Act is municipal in its effect, and there is nothing to prevent the plaintiff corporation from holding more than 2 acres of land in Ceylon. Ordinance No. 22 of 1866, after saying that questions relating to corporations are to be decided by the law in England, contains the express proviso that this enactment shall not be taken to introduce into the Colony any part of the English law relating to the tenure, or conveyance, or assurance of, or succession to, any land, or any estate, right, or interest therein.

I also agree that P 29 conveys an absolute title to the Rev. Henry Robert Pigott, and that the operative clause in that document is the last one. The title so conveyed has been passed by Pigott to the plaintiff corporation.

I am also of opinion on the evidence that the possession of this land was given to the plaintiff corporation, together with the two adjoining lands, Ambagahawatta and Coangahawatta, at the same time. All three lands appear in one survey, P 30, dated August 9, 1877, as being the property of the Baptist Missionary Society, the predecessor in title of the plaintiff corporation. The two lands not covered by the document P 29 have been acquired by prescription. I am unable to see how the defendants have shown that they have acquired any rights in the land independently of the plaintiff corporation and its predecessor, the Baptist Missionary Society.

For these reasons I agree with the order proposed by my Lord the Chief Justice.

Appeal dismissed.