

1966 Present : T. S. Fernando, J., and Sri Skanda Rajah, J.

A. VELUPILLAI and 12 others, Appellants, and S. THURAIAPPAH,
Respondent

S. C. 496/1964—C. D. Jaffna 52/TR

Evidence—Hindu temple—Evidence as to its origin—Entries in a public record made in performance of a duty enjoined by law—Admissibility—Evidence Ordinance, ss. 35, 74, 90—Trusts Ordinance, ss. 99, 102.

The defendant claimed to be the hereditary trustee of a certain Hindu temple in Jaffna. In order to establish a relevant fact that the temple was founded in the year 1860 by one Kathiresar, he produced, from the records of the Jaffna Kacheheri, document D1A which contained a list of temples compiled in 1884 by the Maniagar on an order received by him from his superior officer, the Government Agent and principal administrative officer of the Province. The trial Judge, observing that the administrator's official duty was not confined to his statutory duties but embraced all duties placed or imposed on him from time to time by the Government, admitted the document.

Held, that document D1A was admissible under section 35 of the Evidence Ordinance.

APPEAL from a judgment of the District Court, Jaffna.

H. W. Jayewardene, Q.C., with *S. Sharvananda*, for the plaintiffs-appellants.

H. V. Perera, Q.C., with *P. Somatillekam* and *P. Thuraiappah*, for the defendant-respondent.

December 13, 1966. T. S. FERNANDO, J.—

The plaintiffs-appellants instituted this action in terms of section 102 of the Trusts Ordinance (Cap. 87) seeking from the District Court (1) a declaration that a certain Hindu Temple called the Mahamariamman temple and its temporalities constitute a charitable trust within the meaning of section 99 of the said Ordinance, (2) a vesting order vesting the said temple and its temporalities in a board of trustees, (3) an order appointing a board of trustees, (4) an order settling a scheme for the management of the said trust, (5) an order removing the defendant-respondent on the ground of mismanagement, etc., from the position of trustee or manager which he was alleged to have assumed and (6) an order calling upon the said defendant to account to court for the monies and movables received by him.

The defendant, while not denying that the said temple and its temporalities constitute a charitable trust as alleged, contended that he was the hereditary trustee thereof, denied the mismanagement etc. alleged against him, as also the claim of the plaintiffs to any of the reliefs prayed for by them.

After a fairly lengthy trial, the District Judge delivered judgment decreeing the said temple, its assets, land and other properties to be a charitable trust as alleged, and vesting the immovable properties in the defendant as trustee of the said temple by virtue of his hereditary right as male descendant in the line of the original founder. The learned judge, however, went on to decree that the defendant shall maintain certain books of account, that these accounts be audited and the audited accounts be published for the information of the congregation.

The plaintiffs, having therefore substantially failed in the action they instituted, preferred this appeal to this Court. Two main points were raised before us on their behalf. The first related to the admissibility of certain documents which the defendant relied on to establish his claim to be hereditary trustee, while the second was confined to the question of fact as to whether mismanagement was established.

The plaintiffs claimed that this temple was founded about 120 years before the trial, i.e. about the year 1844, by one Vairamuttu, the great-grandfather of the 1st plaintiff. The case for the defendant was that the temple was founded not by the said Vairamuttu, but by his son Kathiresar, in the year 1860.

In support of his case, the defendant was permitted by the trial judge to produce the evidence of certain documents D1A to D4A of the year 1884 which are part of the records of the Jaffna Kachcheri. The first point raised by the appellants was that the order permitting production of these documents was illegal. The documents were in fact produced in court by a clerk of the Kachcheri, and there is little doubt that the presumption under section 90 of the Evidence Ordinance was available in respect of them. The dispute before us, as indeed at the trial, was

whether the contents of these documents (particularly those of the important document D1A) came within the class of entries declared by section 35 of the Evidence Ordinance to be relevant facts. That section contemplates entries in public records made by two classes of persons, (1) public servants in the discharge of their official duty and (2) any other person in performance of a duty especially enjoined by the law of the country. The plaintiffs relied heavily on a hitherto unreported judgment of this Court—(document P9)—delivered on 25th September 1946 by Keuneman J. and Jayetileke J. in a case¹ where a somewhat similar question had arisen. According to that judgment, the main document relied on at the trial there had been one described as a certified copy P36 from “a register of gifted lands belonging to the Chidambaram Ambalavanaswamy kept at the Jaffna Kachcheri”. Two of the lands belonging to the temple had been included in that “register”, and under the column “Belonging to which madam” was entered “The Punnianachcham madam”. Under the column “Name of person who is possessing now” was entered the name of one K. Arumugam, the uncle of the appellants in that case. In respect of this, Keuneman J. stated:—

“It has not been established or even suggested that the ‘register’ P36 was made under any statutory duty on the part of the Government Agent. It appears to be a purely private document. It had not even been shown for what purpose this document was made or on whose authority. We do not know what inquiries were made in this connection or from whom. All that the document indicates is that it was based on reports ‘submitted by the Udayar and Vidhanes of the village in question to the Maniagar’. What knowledge these persons had or could have had with regard to the title to these lands or the nature of the trust affecting them has not been shown..... In my opinion the document P36 should have been rejected as hearsay evidence. No section of the Evidence Ordinance makes this document admissible. Even if it was admissible I do not think any weight can be attached to this evidence.”

There is no express reference in this judgment to section 35 of the Evidence Ordinance. Even if the reference to the lack of “any statutory duty on the part of the Government Agent” can be considered suggestive of the inference that the learned judge had section 35 in mind, it is pertinent to remember, as the trial judge in the instant case has done and as I have earlier noted, that that section contemplates entries by two classes of persons. Persons acting in performance of a duty especially enjoined on them by the law (statute law or otherwise) of the country constitute one class. It is not contended on behalf of the defendant that the entries relied on by him in support of his claim were made by a person or persons of this class. What is claimed is that the entry or entries have been made by a public servant or public servants in the discharge of their official duty. Whether any particular function of a public servant is part of his official duty is not always a question of law.

¹ (1946) S. C. 249/D. C. (F) Jaffna No. 16614.

Often it is a question of fact to be determined on evidence by a judge before whom the question arises. According to the evidence at the trial the relevant entry in document D1A made in 1884 appears in Column III of what is described as “a list of temples etc. in the Island Division for 1884”. That column, according to the evidence, was meant for entering up the year in which a temple was founded, the manager of the temple and the nature of the building. In that column appear the words :

“In 1860, By Vyramuttu Kaderasar
 Manager, Kadasasar Thamber
 Stone building”.

The document D4A, the genuineness of which could not have been doubted, indicates that list D1A was compiled on an order received by the Maniagar from his superior officer, the Government Agent and principal administrative officer of the Province. There is much point in the learned trial Judge's observation that the administrator's official duty is not confined to his statutory duties but embraces all duties placed or imposed on him from time to time by the Government, as indeed in his other observation that it is idle to imagine that the Government Agent had this list compiled for private purposes or pleasure. On the evidence in the case, I think the trial judge was right in admitting the documents in question. The first point relied on by the appellants fails.

Reference was made to two cases, *Ramanather v. Ponniah*¹ and *Murugasu v. Aruliah*² which contain statements that temple registers are not public documents within the meaning of section 74 of the Evidence Ordinance, but the question whether entries therein can fall within section 35 of the same Ordinance does not appear to have arisen or been considered. Apart from that, it is right to add that in the instant case, the undisturbed management of this temple has been in the hands of the defendant and his predecessors in title, a fact which tells heavily against the plaintiffs.

In regard to the second point, viz. that of mismanagement, the learned trial judge who has had much experience of this class of case has examined the relevant evidence at some length and has even inspected the temple in order to form an assessment of the truthfulness of the defendant's evidence in regard to expenditure incurred by him on buildings and their maintenance. The question is solely one of fact, and, in the circumstances, I see no reason to differ from his conclusions on this point. Moreover, he has decreed a scheme of management and for keeping of accounts which has the merit of ensuring some degree of participation by the congregation in a wise handling of the trust property.

I would therefore dismiss the appeal with costs.

SRI SKANDA RAJAH, J.—I agree.

Appeal dismissed.

¹ (1916) 2 C. W. R. 333.

² (1913) 17 N. L. R. 91.