1953 *Present :* **Rose C.J., Nagalingam S.P.J. and K. D. de Silva J.**

SITHAMPARANATHER MAILVAGANAM *et al.*, Appellants, *and* KUMARASWAMY KURUKKAL RAMANATHA AIYAR *et al.*, Respondents

S. C. 58—D. C. Jaffna, 395T

Hindu temple—No evidence of express dedication—Charitable trust—Inference of its existence—Relevant factors—Trusts Ordinance (Cap. 72), s. 107.

In deciding, under section 107 of the Trusts Ordinance, whether or not a temple, even in the absence of an express dedication, should be deemed to be a charitable trust, such matters as the holding of public services at the temple, donations to the temple by members of the public throughout a long period of time and improvements effected to it by them are matters which can properly be taken into consideration.

APPEAL from a judgment of the District Court, Jaffna. This case was referred to a Bench of three Judges owing to a difference of opinion between the two Judges before whom it had been previously listed.

S. J. V. Chelvanayakam, Q.C., with *C. Vanniasingham* and *C. Shanmuganayagam*, for the plaintiffs appellants.

E. B. Wikramanayake, Q.C., with *H. W. Tambiah* and *S. Sharvananda*, for the defendants respondents.

Cur. adv. vult.

[The following cases were cited at the argument :—*Kumarasamy Kurukkal v. Karthigesa Kurukkal* (1923) 26 N. L. R. 33, *Pujari Lakshmana Goundan v. Subramana Ayyar* A. I. R. 1924 P. C. 44, A. I. R. 1920 Madras 42, *Narayanan Nambudripad v. Board of Commissioners for Hindu Religious Endowments* A. I. R. 1938 Mad. 209, *Somasunderam v. Rangunather Mudaliyar* (1930) 12 C. L. Rec. 78 at 81, *Doraiswami Kurukkal v. Thambipillai* (1949) 53 N. L. R. 323 at 328, *Mandacheri Koman v. Thachangat Nair* A. I. R. 1934 P. C. 230.]

October 12, 1953. ROSE C.J.—

The plaintiffs-appellants pray for a declaration that a Hindu temple known as the Innuvil Kandaswamy Kovil and its temporalities constituted a religious charitable trust. They also ask for certain ancillary reliefs under Section 102 (1) of the Trusts Ordinance (Cap. 72).

In the past there has been some contest between the parties as to whether the land on which the temple stands belonged to the successors-in-title of one Kulandayar Velayuthar, as alleged by the plaintiffs. This matter appears to have been determined, for all practical purposes, in favour of the defendants in D. C. Jaffna case No. 8,813 decided in 1914,

2—J. N. B 33437–1,590 (1/54)

The matter to be decided in the present case is whether the temple in question is a charitable trust. The learned District Judge in a long and analytical judgment, while conceding that a number of improvements had been effected and donations given by members of the public, considered that these matters were insufficient to convince him that the temple was a charitable trust. In the course of his consideration of this matter, the learned Judge said :

> " To my mind, this erecting of a temple by a Brahmin priest and dedicating it for religious worship by the Hindus of the neighbourhood is no more than like a barber erecting a saloon and equipping it in order that he may ply his trade by shaving the beards of the men in the neighbourhood. If in appreciation of the services of the barber and the comforts enjoyed in the saloon men add to the equipment and the building, one will not argue that thereby the saloon had been converted into a trust."

It seems to me, with all respect to the learned District Judge, that his analogy is unhelpful, particularly in view of the fact that according to the decided cases the question as to whether or not a particular temple may be deemed, in the absence of express dedication, to be a charitable trust must depend upon the circumstances of the particular matter and the inferences to be drawn from such factors as the holding of public services, general access to the public at all times, donations of land and monies to the temple by the public and improvements effected to it by them.

There is no doubt that the defendants and their predecessors have for the last hundred years or so exclusively officiated at the temple and have had in effect unfettered control of the organisation and arrangements of the various services and festivals held there. This, however, to my mind, is a neutral fact when considering whether or not the temple should be held to be a charitable trust. The fact that a particular family of a priestly caste should be entrusted with the conduct of the services and the business management of the temple does not seem to me to be necessarily inconsistent with the fact of a charitable trust. It is significant, and does not seem to have been adequately appreciated by the learned Judge, that the very first deed, in which specific mention is made of the temple (P 15), states that a deed of charity donation had been executed and granted " unto the Trustee Paraparipukaran of Kandaswamy Temple Subramaniar Arumugam ". Subramaniar Arumugam was admittedly an ancestor of some of the present plaintiffs. It would thus seem to be that as long ago as 10th May, 1852—the date of the deed—Subramaniar Arumugam was regarded by the donors as being the Trustee of the Kandaswamy Temple.

Besides deed P 15, there is a long series of deeds from 1852 to 1909, in all of which, Subramaniar Arumugam and the members of his family have been described as Trustees of the Temple by various donors. P 3 also of 1852, P 16 of 1884, and P 5 of 1874 refer to Subramaniar Arumugam as trustee, while P 16 of 1885 and P 7 of 1886 refer to his son-in-law, Ramalingam Ambalavanar, in the same capacity, and deeds P 9 of 1906,

P 10 and P 11 both of 1907 and P 12 of 1909 describe Ambalavanar Cadiratamby, son of Ramalingam Ambalavanar, as the trustee. In fact even the ancestors of some of defendants, themselves, have been described as trustees and officiating priests of the temple—see deeds D 43 and D 44 of 1863, D45 of 1865, D 46 of 1867, D 10 of 1858, and D13 of 1937. In one deed, D9 of 1870, Vyravanather Aiyer Suppiyer, one of the ancestors of the defendants, is designated the owner of the temple, but the Tamil word, which has been translated as owner, is a word of neutral meaning—it may mean either an owner or a man who merely looks after and officiates in the temple.

Although, therefore, by reason of the fact that the ancestors of some of the plaintiffs in earlier deeds, and of some of the defendants in later deeds have been described as trustees or managers of the temple, leading to the inference that rival claims were advanced to the trusteeship of the temple at a date long after the foundation of the temple, there is very slight basis for the contention that the temple itself was the private property of the defendants or their ancestors. If the temple was a private temple of the defendants' ancestors, there would have been no need to describe them as managers of the temple, a term which negatives the private character that is claimed for the temple by the defendants.

Furthermore, as early as 1879 and 1891, by deeds of appointment, functionaries, styled as trustees have been appointed to look after the temporalities and the secular management of the temple, and in the operative words of the deeds are to be found specific statements as regards the person or persons who built the temple, the land on which the temple was built and the functions performed by the trustees. By deed P 4 of 1879 the first known individual designated as a trustee of the temple, namely, Subramaniar Arumugam, appoints his son-in-law Ramalingam Ambalavanar as trustee in succession to him, as he is old and unable to conduct and carry on the various activities in relation to the temple, and he further constitutes his son-in-law the trustee in succession to himself, of the properties held by him as trustee, to the intent and purpose that Ambalavanar too should manage and look after the affairs of the temple, in the same manner as he had up to then done. In this deed of appointment, even as in the earliest deed, in which specific mention of this temple is made, P 15, there is a statement that the land, on which the temple stands, is a land registered in the tombu in the name of Kulanthai Velayuthar (or Kulanthayan Velayuthan) and Kanthan Kanny, of whom the former is the great-grandfather of Subramaniyar Arumugam. Besides, the deed of appointment P 4 specifically records the fact that the father of Subramaniyar Arumugam started the " sacred work " of building the temple and that while the work was yet in progress he had died and that thereafter Subramaniyar Arumugam continued the task of completing the building by utilising his own funds and by receiving contributions from members of the public, and that thereafter he had the consecration ceremonies performed. In 1891, by deed P 8, Ramalingam Ambalavanar appointed his son, Ambalavanar Cadjratamby, the trustee of the temple in succession to him. It is not denied that the temporalities of the temple, referred to in the various deeds produced by the plaintiffs, have always been in the possession and control of these

trustees, clearly establishing that the deeds of appointment of trustees have been acted upon. On the other hand, the defendants have not been able to show any dealing with the temple as private property. One would have expected a temple, which, admittedly, is worth a considerable sum of money, to have been administered on the death of the various proprietors, if the claim of the defendants be true; but it is conceded by the defendants that on no occasion when, if the temple were private property, it would have been necessary to administer it had it been so administered. But an unconvincing excuse is put forward that the defendants and their ancestors did not do so, in order to evade payment of the stamp and estate duty that would have been payable if the temple had been administered as private property. The conduct of the defendants in not administering the temple would have been clearly proper and right if the temple were regarded by them too as a charitable trust.

One should not, I suggest, give serious weight to the consideration that all these deeds two of which were executed as long ago as 1852 were drawn up with a view to the subsequent litigation between the parties which did not come before the Courts until 1914 and 1953 respectively.

In the light of this consideration, it is convenient now to consider the subsequent history of the temple. It is in evidence, and does not appear to be in conflict, that over a considerable period of years the temple has been in consistent use by the public of the neighbourhood. Public and private services and ceremonies have been held, in which no doubt the services of the defendants and their predecessors have always been availed of. Sums of money have been presented by members of the public to the temple, walls have been built, the premises have been enlarged and towers (goparam) have been erected. Moreover, there was evidence, which is not adverted to by the learned District Judge, and which was not challenged in cross-examination, that a certain member of the public had presented a "Vel" car, used for the transportation of the images of deities, at a cost of Rs. 10,000 from money and materials collected from the public of the neighbourhood.

It is true that the mere fact that a temple is frequented by members of the public and that services are held which are attended by the public is not of itself sufficient to indicate that the temple is a charitable trust; but when such consistent and uninterrupted public user is added to the fact that throughout a long period of time the public have been in the habit of making contributions, both of money and kind, it seems to me that this militates strongly against the contention of the defendants that the temple and all the gifts received by it were and are their private property.

I would add that Section 107 of the Trusts Ordinance expressly negatives the necessity for specific evidence of a ceremonial dedication of a private temple to the public. It is sufficient if the Court considers "from all the circumstances of the case that a trust in fact exists, or ought to be deemed to exist".

Many authorities were cited to us by learned counsel in the case, but it seems to me that the principles to be applied can be derived from two of them—*Pujari Lakshmana Goundan and another v. Subramania Ayyar and others* [1] and in *Kumarasamy Kurukkal v. Karthigesa Kurukkal* [2], in which Sir John Edge and Bertram C.J., respectively, say in effect that such matters as the holding of public services at a temple, donations to a temple by members of the public and improvements effected to it by them are matters which can properly be taken into consideration in deciding whether or not a temple, even in the absence of an express dedication, should be deemed to be a charitable trust.

Whether any particular case falls on one side of the line or the other is, of course, a question of degree. As far as this particular case is concerned, I am of opinion that the plaintiffs have established that the circumstances surrounding the temple are such as should properly have led the learned District Judge to conclude that a charitable trust in fact existed or should be deemed to exist.

That being so, the appellants are entitled to succeed.

At one stage of the argument the Junior Counsel for the respondents adumbrated a submission that the learned District Judge had no jurisdiction to entertain the action at all, because the procedure indicated in Section 102 (3) of the Trusts Ordinance had not been followed. This objection, however, which was of a highly technical nature and had not been taken in the lower Court, was not pursued in appeal, and I do not, therefore, regard it as necessary to take it into consideration.

For these reasons the appeal is allowed, the judgment of the learned District Judge set aside, a declaration is granted to the plaintiffs that the Innuvil Kandaswamy Temple is a charitable trust and the matter is remitted to the learned District Judge to settle a scheme of management and to make such orders, in regard to the ancillary reliefs claimed by the plaintiffs, as may be deemed to be proper, and to enter a decree in conformity therewith. No relief, however, will be granted to the plaintiffs on the basis that the defendants have been guilty of mismanagement. He will, however, no doubt, take into account the fact that the defendants are admittedly the officiating priests of the Temple, and will, no doubt, also consider whether any special interests of the plaintiffs or any of them should be protected.

The respondents must pay the costs of this appeal and of the proceedings in the Court below which have resulted in the present appeal. The costs, if any, of any subsequent proceedings in the District Court will be in the discretion of the learned District Judge.

NAGALINGAM S.P.J.—I agree.

K. D. DE SILVA J.—I agree.

Appeal allowed.

[1] *A.I.R. 1924 P.C. 44.*

[2] *(1923) 26 N.L.R. 33.*