
Present: Pereira J. and Ennis J.

1913,

KANDAPPU v. SEGUNATHA.

181—D. C. Batticaloa, 3,666.

“Madam”—Action to remove trustee for breach of trust—Action by residents of the village where “madam” is situated—Interest of residents to maintain action under s. 639 of the Civil Procedure Code.

The residents of a village where a “madam” is situated have a sufficient interest in the “madam” to enable them to maintain an action (with the sanction of the Attorney-General), under section 639 of the Civil Procedure Code, for removing a trustee for breach of trust and for the appointment of another.

THE facts are set out in the judgment.

Grenier, K.C. (with him *Joseph*), for the appellants.—There is no evidence to show that the defendant had committed a breach of trust. The order removing the defendant from his office as trustee is wrong. The persons who claim the lots in dispute are not before

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the Court. The District Judge should not have adjudicated as to the ownership of these lots without making the claimants parties.

Counsel cited *Muttiahpillai v. Sanmugam Chetty et al.*¹

H. A. Jayewardene (with him *Balasingham*), for the respondent.—The defendant is unfit to be trustee, as he has shown an anxiety to prove that the lots in dispute belong to others and not to the “madam.” An action has to be brought against the claimants for these lots, and the present trustee cannot possibly be the plaintiff in that case.

[*Pereira J.*—What interest have you to maintain this action?] The plaintiffs are the descendants of the founder of the “madam.” Moreover, they are residents of the village, and are as such interested in a public charitable trust as this.

Counsel cited *D. C. Jaffna*, 3,686.²

Cur. adv. vult.

July 16, 1913. *PEREIRA J.*—

In this case the plaintiffs, claiming to be persons interested in a certain trust created for public charitable purposes, that is to say, a trust of which the subject is a “madam” or halting place or rest-house devoted to the use of the public, sue the defendant, who is admittedly the trustee, with the consent of the Attorney-General obtained under section 639 of the Civil Procedure Code, complaining of a breach by the defendant of his trust. The defendant complains in his answer that the action is false and vexatious, and has been instituted against him “out of personal animosity.” The plaintiffs’ interest in the alleged trust otherwise than as members of the general public is of the vaguest possible description, and I should like to observe that, in the case of these alleged public trusts, there is always the suspicion that the plaintiffs, if private individuals, are actuated, in instituting legal proceedings, by motives of self-interest no less perhaps than the defendant in claiming to continue as trustee; and that therefore it is, in my opinion, always desirable that the Attorney-General himself should institute inquiries and initiate proceedings in his own name under the section cited rather than allow private individuals to do so, unless, of course, their claim is, doubtlessly, honest and *bona fide*. In the present case the first plaintiff, when he entered the witness box on the day of trial, had managed to give himself the appearance of a Sivite. As noted by the District Judge, he had ash on his forehead and looked like a Sivite; and he commenced giving evidence under affirmation. In the course of the cross-examination, however, it appeared that he was a Christian, and he was promptly made to take his oath before continuing his evidence. Although a Christian, one of his grievances was that the defendant had omitted to perform the “puja” ceremonies in connection with the “madam,” and that he had

¹ (1910) 14 N. L. R. 15.

² S. C. C. Min., July 8, 1905.

failed to perform these ceremonies for five or six years. Be that as it may, the plaintiffs aver in the plaint that they bring this action as "descendants of former trustees" and residents of the village Ondaatjimadam. As evidence of the former, there is only the bare statement of the first plaintiff, and it is clear that a mere claim, even though it be well founded, of being descendants of former trustees is insufficient to give the plaintiffs a status in this case; but it has been argued that they have a right to bring this action as residents of Ondaatjimadam; in other words, as members of the general public who, as such, have an interest in this public charitable trust. Following the principles laid down in the Indian authorities available (see *Thackersey Denrag v. Herbhum Nursery*¹ and *Chintaman v. Dondo Gonesh Dev*²), I am inclined to think that the plaintiffs, as residents of the village where the "madam" is situated, have a sufficient interest in the "madam" to enable them to maintain an action like this. In the latter case cited, in spite of the fact that section 539 of the Indian Code of Civil Procedure, which corresponded to section 639 of our Code, required, as it then stood, the qualification of a "direct interest," and not merely an "interest" in the person suing, it was held that the worshippers and devotees living in the village in which a temple was situated were entitled to file a suit complaining of a breach of trust.

The next question that need be considered in the case is whether the defendant has committed a breach of his trust. In this connection issue No. 5 sets forth the acts and omissions relied on by the plaintiffs as constituting a breach of trust. They are: (1) That the defendant failed to maintain the "madam" in good order and condition; (2) that the defendant failed to carry out the object of the charity; and (3) that the defendant appropriated to himself property belonging to the charity. Of the first there is not a tittle of evidence; on the contrary, there is overwhelming evidence led by the defendant that shows that the defendant maintained the "madam" in excellent order and condition. The charge of failure to carry out the object of the charity is much too vague. The plaintiffs have not, to my mind, proved that the defendant failed to carry out the trust in any particular respect. As regards misappropriation of trust property also, there is no definite or reliable evidence. What has been shown is that certain allotments of land said to be property belonging to the "madam" are in the possession of third parties, who claim them by right of prescriptive possession. The defendant's reply to this is that these lots do not really belong to the "madam," but that only an extent of 2½ acres of land belongs to it, and that the income of this extent of land has been spent for the purposes of the "madam." The District Judge has, however, held that the allotments of land referred to above as being in possession of third parties are really and truly the property of the "madam,"

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¹ I. L. R. 8 Bom. 432.

² I. L. R. 15 Bom. 612.

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and there is certainly reason to think that an earnest effort might well be made to retrieve these lots. From the defendant's attitude in this case, however, it is clear that he is the least qualified person to make such an effort. In this view I think it will be to the interest of those intended to be benefited by the charity that the defendant should cease to be trustee. At the same time I do not think that the second plaintiff has shown himself to be the right man to be appointed trustee. I think we should make an order in this case on the lines of the order made by this Court in a similar case before, namely, case No. 3,686 of the District Court of Jaffna.¹ Following the order in that case, I would set aside the judgment appealed from, and direct the District Judge to place the "madam" with all property belonging and appertaining to it, not necessarily specifying the same in his order, under the management of the Government Agent of the Province, if that officer is willing to undertake the trust, or under the management of such other public officer or other person as may be willing and, in the opinion of the District Judge, fit to undertake the trust, with power to apply the income of the lands to the management and upkeep of the property; the surplus, if any, to be held by him as a fund to abide the further orders of the District Court. I would let each party bear his own costs in both Courts.

ENNIS J.—I entirely agree.

Varied.

¹ *B. C. C. Min., July 8, 1905.*