

1950.

Present : Nagalingam J. and Pulle J.

ARUMUGAM *et al.*, Appellants, and SHANMUGAM *et al.*,
Respondents

S. C. 71 (Inty.)—D. C. Batticaloa, 8,234

Charitable trust—Settlement of scheme of management—Powers of intervention of Court thereafter—Trusts Ordinance (Cap. 72), sections 102 and 106 (1).

Where a scheme for the management of a temple has been settled in an action brought under section 102 of the Trusts Ordinance, intervention of Court cannot be subsequently sought in the same action in respect of a matter, e.g., election of Board of Trustees, for which provision has already been made under the scheme.

Obiter: A fresh action to displace a scheme settled previously appears to be possible on a reading of section 106 (i) in the light of the definition of the expression "instrument of trust" which includes a scheme settled under Chapter X of the Trusts Ordinance.

APPEAL from a judgment of the District Court, Batticaloa.

P. Navaratnarajah, with *S. Canagarayer*, for the petitioners appellants.

H. V. Perera, K.C., with *C. T. Olegasegarem*, for the respondents.

Cur. adv. vult.

December 15, 1950. PULLE J.—

This appeal arises out of an unsuccessful application by the appellants to have themselves substituted as plaintiffs in an action instituted in 1936 under section 102 of the Trusts Ordinance (Cap. 72) by five persons interested in a Hindu Temple known as "Sri Siththara Velayuthaswamy Kovil" against three defendants who were *de facto* managers of the temple. Relief was prayed for in the action under four heads of which one was that a new scheme be framed for the proper management of the affairs of the temple. The defendants pleaded that they and some others were the duly appointed trustees of the temple and prayed for a dismissal of the action on the ground that it had been instituted frivolously and maliciously.

On the 14th July, 1938, a decree was entered of which the terms quoted below are material for the purposes of this appeal:

- (a) The plaintiffs' action was dismissed, with costs.
- (b) The defendants were declared trustees of the temple and the management thereof was vested in them subject to a scheme.

The scheme provided for the management by the defendants functioning as a Board of Trustees for three years from the date of decree and thereafter for the management by a Board of six trustees elected by the

inhabitants of six villages who worship at the temple. The duty was cast on each Board of Trustees before going out of office to prepare an electoral list of voters eligible to elect the trustees. The scheme further provided, "on the failure of the Board to prepare the said list, twenty-five persons interested in the proper management of the Kovil may request the Vanniah of the division to prepare a list. His fee of Rs. 10 will be paid out of Kovil funds". An elaborate table of duties to be performed by the Board of Trustees was incorporated in the scheme of which clause (H) reads:

"If the Board of Trustees omit or decline to carry out these instructions or misappropriate funds, they shall be liable to suspension or dismissal after an inquiry by Court".

By their petition dated the 22nd April, 1949, the appellants who described themselves as regular worshippers at the temple alleged that of the original five plaintiffs three were dead and the surviving plaintiffs were not taking any interest in the affairs of the temple and that the three defendants who constituted the first Board of Trustees ceased to function as from 14th July, 1941, namely, after the expiration of their period of office. It was further alleged that two out of three defendants were dead and that the remaining defendant was having no hand in the management and that all three failed in their duty to prepare the electoral list before they went out of office.

Three respondents, who are also the respondents to this appeal, were named in the petition filed by the appellants. It was stated that the management of the temple which had come into their hands was not in conformity with the object and spirit of the scheme and that the income, of which no accounts were kept, was being wastefully expended. They prayed to be substituted in place of the original plaintiffs and for notice on the respondents to show cause why an election should not be held in terms of the scheme for the election of a Board of Trustees.

The learned District Judge held that the appellants had no status to make the application and that if they were dissatisfied with the management of the temple it was open to five persons interested in it to take steps under section 102 of the Trusts Ordinance. He made order dismissing the application and the appeal is from that order.

For the appellants it was argued with considerable force that on the facts disclosed by them in their affidavit the scheme of management has, since 1941, been a dead letter and that the whole object of the scheme has been frustrated. Learned Counsel submitted that an action under section 102 is of a representative character and that not merely the original plaintiffs but that all persons interested in the performance of rites in the temple and the conservation of its temporalities had a legal right to intervene not only for the purpose of continuing an action interrupted, for example, by the death of a party but even after decree for the purpose of giving full effect to it. Reliance was placed on the case of *Raja Anand Rao v. Retndas Duduram and others* (A. I. R.) 1921 *Privy Council* p. 123 which was a suit instituted with sanction under section 539 of the Indian Code of Civil Procedure of 1882, which has

been replaced with some modifications by section 92 of the Code of 1908, for the removal of a trustee and the appointment of new trustees to manage a Hindu place of worship. Lord Dunedin said, "There was also a point that the persons who originally raised the suit could not go on, but there does not seem any force in that point either, it being a suit which is not prosecuted by individuals for their own interests, but as representatives of the general public. Their Lordships are also of opinion that for the purpose of determining on a scheme the suit was properly renewed against the present Raja". Assuming that decisions under section 92 of the Indian Code can properly be applied to actions under section 102 of the Trusts Ordinance, the case cited does no more than warrant the procedure that upon the death of the plaintiffs in such an action before decree parties interested as worshippers may intervene. The second case cited was *Mahadev Heramf Dev. v. Govindrao Krishnarao Kale and others, A. I. R. (1937) Bombay p. 124* in support of the proposition that any person interested in the institution of a suit under section 92 of the Indian Code can apply to modify a scheme even if he was or was not a party or a representative to the suit in which the scheme was originally framed.

The proposition enunciated in the latter case was in relation to a scheme one clause of which enabled the District Judge of his own motion or upon the application of any person interested in the place of worship to remove trustees for mismanagement or incompetence and another clause of which recognized the rights of persons interested to ask for a modification of the scheme.

For the purpose of the present appeal it is not necessary to examine the applicability of the decisions of the Indian Courts to actions instituted under section 102 of the Trusts Ordinance. It is sufficient to state, first, that the power of the court to suspend or dismiss a trustee has not been invoked to enforce clause H of the scheme and, secondly, that a fresh action to displace a scheme settled previously appears to be possible on a reading of section 106 (1) in the light of the definition of the expression "instrument of trust" which includes a scheme settled under Chapter X of the Ordinance.

Now what is the precise nature of the relief claimed by the appellants and against whom? I would assume in favour of the appellants that when they sought to be "substituted" as plaintiffs they were in effect moving to be added as parties to prosecute the original action. The relief they claim as against the respondents is that an election be held "in terms of the scheme for the election of a board of trustees". Why the intervention of the Court was necessary for the election of the Board of Trustees has not been satisfactorily explained. Clauses 1, 2 and 3 of the scheme contain a detailed procedure for the election of the Board even where the trustees failed to act. The position is that since 1941 twenty-five worshippers could not get together to initiate the steps for holding an election by addressing a request to the Vanniah to prepare an electoral list. Why the respondents should show cause in the matter of holding an election any more than the appellants themselves or other worshippers, I fail to understand. The respondents were under no legal

liability, either by themselves or in conjunction with others to proceed to the election of a Board of Trustees. Their indifference to the proper governance of the temple according to the scheme was not actionable. It seems to me that the scheme has since 1941 broken down and the good intentions of those who framed it have been defeated by a spirit of indifference on the part of the worshippers. The appellants in trying by their zeal to infuse new life into the scheme have misconceived their remedy. The learned Judge was right in refusing their application and I would dismiss the appeal, with costs.

NAGALINGAM J.—I agree.

Appeal dismissed.
