

1942

Present : Moseley S.P.J. and Jayetileke J.

VELUPILLAI *et al.* v. SABAPATHIPILLAI.

205—D. C. J. *Ind.* 8,708.

Public Charitable Trust—Scheme of Management—Election of Trustees—  
Holding of Meetings at other than appointed place—Validity of election  
—Trust Ordinance (Cap. 72).

The Scheme of Management settled by Court for a Public Charitable  
Trust provided that it should be under the control of a board of trustees  
and that certain trustees should be elected at a general meeting of the

The members of the congregation, who were prevented from holding the meeting to elect the trustees in the Temple premises, held it outside with the permission of Court.

*Held*, that the election of the trustees was good so long as the holding of the meetings outside the Temple premises did not or could not affect the result of the election, quite apart from the order of the District Court granting permission to hold the meeting outside.

**A** PPEAL from a judgment of the District Judge of Jaffna.

H. V. Perera, K.C. (with him N. Nadarajah, K.C., and H. W. Thambiah and V. K. Kandasamy), for second defendant, appellant.

N. E. Weerasooria, K.C. (with him T. K. Curtis), for first to fourth substituted plaintiffs and fifth plaintiff, respondent.

*Cur. adv. vult.*

September 10, 1942. JAYETILEKE J.—

In action No. 23,628 of the District Court of Jaffna it was decreed that the Nochikadu Pillaiyar Kovil and its temporalities be declared a public charitable trust within the meaning of the Trusts Ordinance (Cap. 72) and that their management should be under the control of a board of trustees, on which the fifth plaintiff in the present action and his successors should have a hereditary seat and the other four should be appointed by Election by the congregation.

Thereafter, a scheme of management was framed by the Court which provided, *inter alia*, that the four trustees should be elected at a general meeting of the members of the congregation held at the temple premises and that the trustees so elected should hold office for a period of three years.

On December 1, 1932, the first, second, third and fourth plaintiffs were elected trustees and on August 2, 1933, the Court made an order vesting all the immovable property belonging to the temple in them and the fifth plaintiff.

The defendants prevented the plaintiffs from taking possession of the temple and its temporalities and the plaintiffs thereupon instituted this action against them for ejection and for the recovery of certain movables and damages.

The first defendant did not file an answer but the second and third defendants filed a joint answer, in which they alleged, *inter alia*, that the plaintiffs could not continue the action as the term of office of the first, second, third and fourth plaintiffs had expired on December 1, 1935.

At the trial, the contesting defendants invited the Court to try that question as a preliminary issue. The District Judge held that they could continue the action but on appeal his order was reversed. In the concluding part of his judgment, Maartensz J.<sup>1</sup> said:—

“This order, however, does not, subject to the law with regard to abatement of suits, preclude those persons who claim to have succeeded the plaintiffs as trustees of the temple from applying to the Court for leave to continue the suit against the defendants.”

<sup>1</sup> 40 N. L. R. 109.

Thereafter, the members of the congregation wanted to hold a meeting at the temple premises to elect new trustees but they were prevented from doing so by the second defendant. They thereupon moved the District Court in action No. 23,628 for permission to hold the meeting outside the temple premises at some place convenient to them.

The District Judge noticed the second defendant to show cause why he should not permit the members of the congregation to hold the general meeting at the temple premises. He appeared and objected on the ground that the holding of the meeting in the temple premises would be an invasion of his rights in this action.

The District Judge thereupon discharged the notice and granted the permission asked for. The meeting was held at a temple about half a mile away and four new trustees were elected. They were substituted in place of the first, second, third and fourth plaintiffs.

Prior to the next date of trial, the third defendant died, but no one was substituted in her place as her claim was limited to a life interest.

At the trial, a large number of issues were framed, all of which were answered against the second defendant.

The District Judge entered judgment in plaintiffs' favour and the second defendant has appealed.

The only point that was seriously pressed before us by Counsel for the appellant was that the election of the first, second, third and fourth substituted plaintiffs was void, as the general meeting at which they were elected was not held at the temple premises. He contended that the order of the District Judge granting permission to hold the general meeting outside the temple premises was a variation of the scheme that was framed and that it was made without jurisdiction.

He based his argument on the second point very largely upon the judgment of the Full Bench in *Veeraragavachariar v. Advocate General*<sup>1</sup>, and upon the judgment of the Privy Council in *Sevak Jeranchad Bhogilal v. Dakora Temple Committee*<sup>2</sup>.

On the first point he laid great stress upon clause 4 of the scheme, which provided that the general meeting of the members of the congregation shall be held at the Nochikadu Pillaiyar Kovil and contended that the election ought to be held void as the conveners of the meeting had violated the provisions of that clause.

It must be noted that the scheme that was framed by the Court does not contain a clause that the election of trustees would be void if it is not conducted in accordance with its provisions. If there had been such a clause there would have been great force in the argument that was addressed to us.

Though the election took place more than three years ago no application has so far been made by any member of the congregation to have it declared void on the ground that the general meeting was not held at the temple premises as required by the scheme.

<sup>1</sup> (1927) A. I. R. Madras, 1073.

<sup>2</sup> (1925) A. I. R. Privy Coun., 155.

At the trial, the second defendant failed to place any evidence before the Court that the holding of the general meeting outside the temple premises did or could affect the result of the election.

In these circumstances, it seems to me, quite apart from the order of the District Judge granting the members of the congregation permission to hold the general meeting outside the temple premises, that the election of the substituted plaintiffs as trustees was good.

In the *Islington Division Case*<sup>1</sup>, an application was made by the unsuccessful candidate to have the election declared void on account of breaches of the law relating to Parliamentary elections committed by the presiding officers and their assistants at certain polling stations. It was alleged that voters had been allowed to vote after 8 P.M. on the day of the election in contravention of the *Elections (Hours of Poll) Act, 1885* (48 Vic. c. 10. s. 1). The Court held that, in the absence of proof that the infraction of the law in the supply of ballot papers did and could affect the result of the election, it would not be justified in declaring the election void.

In the joint judgment of Kennedy and Darling JJ., the following passage appears at page 125 :—

“ It appears to us to be convenient, at this point, to state our view of the law in regard to this matter. Our opinion is that an election ought not to be held void by reason of transgressions of the law committed without any corrupt motive by the returning officer or his subordinates in the conduct of the election where the Court is satisfied that the election was, notwithstanding those transgressions, an election really and in substance conducted under the existing election law, and that the result of the election, i.e., the success of the one candidate over the other, was not, and could not have been, affected by those transgressions. If, on the other hand, the transgressions of the law by the officials being admitted, the Court sees that the effect of the transgressions was such that the election was not really conducted under the existing election laws, or it is open to reasonable doubt whether these transgressions *may* not have affected the result, and it is uncertain whether the candidate who has been returned has really been elected by the majority of persons voting in accordance with the laws in force relating to elections, the Court is then bound to declare the election void. It appears to us that this is the view of the law which has generally been recognized, and acted upon, by the tribunals which have dealt with election matters . . . .”

This case is a clear authority which covers the present case. I have only to add that it is unnecessary for me to deal with the other question argued as to whether the Court acted without jurisdiction in granting permission to the members of the congregation to hold the meeting outside the temple premises. The appeal is dismissed with costs.

MOSELEY S.P.J.—I agree.

*Appeal dismissed.*

<sup>1</sup> *5 O'Malley and Hardcastle. Elect. Pet. 120.*