

1947

Present : Keuneman A.C.J. and Jayetileke J.

SIVAGURU, Appellant, and ALAGARATNAM, Respondent.

S. C. 117—D. C. (Inty.) Batticaloa, 3,401.

*Trust—Religious trust—Application under section 102 of Trusts Ordinance—Certificate of Government Agent—Sufficiency of certificate—Particulars required.*

Plaintiffs brought this action under section 102 of the Trusts Ordinance. With their plaint they filed a certificate from the Government Agent in the following terms "I certify that Mr. A and others presented a petition on January 24, 1945, praying for the appointment of a Commission to inquire into the accounts and management of the Mamangapillaiyar Temple. The Commissioners duly appointed by me have reported that an inquiry has been held into these matters which form the subject-matter of the plaint and that the assistance of the Court may be obtained to implement the scheme adopted by the members of the congregation".

Held, that the certificate was not a sufficient compliance with section 102 (3) (a) and (b) of the Trusts Ordinance and that the action could not therefore be entertained.

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

H. V. Perera, K.C. (with him G. Thomas), for the first defendant, appellant.

B. G. S. David, for the plaintiffs, respondents.

July 4, 1947. KEUNEMAN A.C.J.—

In this case five persons interested in the temple in question brought an action under section 102 of the Trusts Ordinance praying *inter alia* that the defendants who were the trustees be held unfit to hold office. With their plaint they filed the certificate of the Government Agent marked P 1 and the only question in issue is whether that certificate P 1 sufficiently complies with section 102 (3) (a) and (b) of the Trusts Ordinance. The certificate is as follows:—"I certify that Mr. A. Alagaretnam and others presented a petition on January 24, 1945, praying for the appointment of a Commission to inquire into the accounts and the management of the Mamangapillaiyar Temple. The Commissioners duly appointed by me have reported that an inquiry has been held into these matters which form the subject-matter of the plaint and that the assistance of the Court may be obtained to implement the scheme adopted by the members of the congregation".

Now, under section 102 (3), the Government Agent's certificate must contain the statement "that an inquiry has been held in pursuance of the said petition and that the Commissioner or Commissioners or a majority of them has reported (a) that the subject-matter of the plaint is one that calls for the consideration of the Court and (b) either that it has not proved possible to bring about an amicable settlement of the questions involved or that the assistance of the Court is required for the

purpose of giving effect to any amicable settlement which has been arrived at. The document P 1 certainly does not show that Commissioners have held categorically that "the subject-matter of the plaint is one that calls for the consideration of the Court". I think it is advisable that all Commissioners should make specific reference to that fact as required by section 102 (3) (a). But even if we can assume for the purposes of the argument that such an allegation is to be implied in P 1, it is not possible for us to hold that there has been a compliance with section 102 (3) (b) for the simple reason that it is impossible for us to say from P 1 whether there has or has not been an amicable settlement of the questions involved. There should have been a statement that there either was or was not an amicable settlement. The words in P 1 "the assistance of the Court may be obtained to implement the scheme adopted by the members of the congregation" do not necessarily convey the idea that there was an amicable settlement between the plaintiffs in this case and other parties possibly interested in the temple or with the trustees in the case. We do not know what the scheme adopted was, whether it related to the subject-matter of the plaint or not and we do now know who were "the members of the congregation".

I think in the circumstances we shall have to answer issue 1 of the preliminary issues against the plaintiffs and hold that the certificate produced is not a sufficient compliance with section 102 (3) (a) and (b). It follows from this that the action could not have been entertained by the District Judge and we now allow this appeal and dismiss the plaintiffs' action with costs. The appellant will also have the costs of appeal.

We reserve to the present plaintiffs the right to bring a fresh action on the same cause of action if they can satisfy the Court with regard to the requirements of section 102 of the Trusts Ordinance.

*Appeal allowed.*

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