

KT. N. RM. Thenappa Chettiar & Ors.

Vs

N. S. KR. Karuppan Chettiar & Ors.

Civil Appeal No. 355 of 1965

(J. C. Shah, V. Ramaswami – I JJ)

31.01.1968

JUDGMENT

RAMASWAMI, J. –

This appeal is brought on behalf of the plaintiffs, by special leave, against the judgment of the Madras High Court dated April 4, 1961 in Appeal No. 99 of 1957.

In the suit which is the subject-matter of this appeal, the plaintiffs prayed for the settlement of a scheme in respect of a Trust known as Sina Ravanna Mana Pana Sona Guru Puja Mutt at Pillamangalam Alagapuri, Tiruchunapalli District and for an account of the management of the Trust by the late N. S. Chockalingam Chettiar and for certain incidental reliefs. The case of the plaintiffs was that the Trust a Joint foundation made on November 12, 1919 by Sinnakaruppan Chettiar, father of plaintiffs 1 and 2 and grand-father of plaintiffs 3, Raman Chettiar, father of plaintiff no. 4, Subramaniam Chettiar Plaintiff no. 5, Perianan Chettiar, father of defendant no. 3 and Chockalingam Chettiar, father of defendant no. 1 and grand-father of defendant no. 2. It was said that the Trust was founded for conducting puja to God Vinayagar installed in the Mutt, by an Oduvar; to do special pujas for the Samayarcharyars, viz., Appar, Sundarar, Sambhandar and Manickavachakar and ordinary pujas to the other 63 Nayanmars on their birth days; to conduct a Thevaram Patasala, and feeding the pupils. It was alleged that at the time of the foundation Chockalingam Chettiar contributed Rs. 25,000/- Sinnakaruppan Chettiar, Raman Chettiar, Subramaniam Chettiar, and Perianan Chettiar contributing Rs. 6,250/- each. Hundies were passed by the four contributors for Rs. 6,250 each in favour of the first defendant's father on November 12, 1919 and they were cashed in due course. It was alleged that the joint founders had at the time of foundation appointed Chockalingam Chettiar who was the largest contributor as the manager and executive Trustee and the latter had constructed buildings for the Mutt and bought lands in Manakkarai village, Mannargudi taluk. On November 27, 1943, Chockalingam Chettiar nominated defendant no. 2, his grand-son as the executive Trustee. It was alleged by the plaintiffs that defendant no. 2 had stopped the pujas to the Nayanmars and Samayacharyas and had discontinued the Thevaram school and the feeding of the boys. Several other acts of mis-management were alleged in the plaint. The suit was mainly contested by the second defendant who alleged that the sole founder of the Mutt was the late N. S. Chockalingam Chettiar, his grandfather, who at first installed the Vinayakar image and also the 63 Nayanmars and established the pujas for the four Samayacharyars and the Nayanmars. He was also the sole trustee and was in exclusive management from the foundation of the trust till November 29, 1943 when by a registered instrument he appointed the second defendant and his descendants as hereditary trustees. It was denied that the plaintiffs were joint-founders, though they had made contributions for the management of the Mutt. It was said that from the very date of contribution the plaintiffs never bargained for any rights as

trustees but they accepted N. S. Chockalingam Chettiar as the sole trustee. The charge of mis-management was totally denied by the defendants and it was said that the trust was being maintained and conducted on a much grander scale than during the trusteeship of the senior Chockalingam. It was asserted that the daily puja to the Vinayakar and the ordinary and special pujas to the Nayanmars and the Samayacharyars were all performed with scrupulous regularity. The suit was dismissed by the Subordinate Judge of Pudukkottai by his judgment dated January 31, 1957. The finding of the Subordinate Judge was that the sole founder of the trust was the senior Chockalingam Chettiar who conducted it with the aid of moneys contributed by himself and other persons and that at the time of the foundation the other four contributors did not reserve for themselves any right in the trusteeship of the Mutt. It was also found by the Subordinate Judge that the charges of mis-management were unfounded and no case was made out on behalf of the plaintiffs for framing a scheme. The judgment of the Subordinate Judge was affirmed by the High Court in Appeal No. 99 of 1957 by its judgment dated April 4, 1961. The High Court substantially agreed with the finding of the Subordinate Judge. It was held by the High Court that the evidence made it quite clear that the ___ contributors agreed to leave the management of the trust solely in-charge of the senior Chockalingam. The High Court also agreed with the Subordinate Judge that the plaintiffs had failed to establish that all the contributories were joint founders and that they were entitled to turns of management in proportion of their contributions. The only matter on which the High Court expressed its disagreement with the Subordinate Judge was with regard to the date of the foundation of the trust. The High Court expressed the view that the trust was founded in 1919 but the Subordinate Judge found that the trust had been founded much earlier, though it took a definite shape in the year 1919. As regards the charge of mis-management, the High Court agreed with the Subordinate Judge and held that none of the charges had been established and accordingly there were no grounds made out for the framing of a scheme or the removal of the second defendant from the management of the trust.

The first question to be considered in this appeal is whether the appellants are right in their contention that they were joint founders of the trust along with the senior Chockalingam. It was contended on their behalf that Exs. A-1 and A-3 described the contributions of the sum of Rs. 6,250/- as having been made towards 1/8th 'Pangu' or share. Reference was also made to Ex. A-5, ledger account of the Mutt in which the contribution is described as the share capital. It was pointed out by Mr. N. C. Chatterjee that the vilasam of the trust S. R. M. P. A. S. supports the claim of the appellants that they were joint founders. The High Court has, however, rightly pointed out that these two circumstances are not decisive. There is on the contrary an admission on behalf of the first plaintiff that the contributories were not treated as founders. In the course of his evidence the 5th plaintiff as P.W. 1 stated as follows :

"As Chockalingam Chettiar held the largest number of shares the other four requested him to administer the suit trust maintain accounts and render accounts to the four other shares on demand..... All the five pangudars were present when the decisions to found the charity was arrived at. We decided that senior Chockalingam should manage the charity to be founded. None of us demanded that the pangudars should administer the trust by rotation. None of us suggested that the terms of the endowment should be reduced to writing. We wanted senior Chockalingam to consult us with reference to important matters pertaining to the administration. We did not define the nature of the matters with reference to which we should be consulted.

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Since the inception of the trust no meeting of the five pangudars was ever held. Nor were minutes of such proceedings kept. Chockalingam used to have informal consultations with us. At no time, between 1919 and 1945, the year of senior Chockalingam's death did we ever call upon him to show us his accounts. Nor did he show us his accounts. We never asked him to what the total income from the lands and buildings was. I do not remember the particulars of information which senior Chockalingam voluntarily gave us."

The conduct of the parties subsequent to the foundation of the trust is also not consistent with the claim now put forward on behalf of the appellants. Senior Chockalingam acquired considerable properties between 1919 and 1945 on behalf of the trust. Exhibit B-2, dated June 23, 1920, Ex. B-3, dated January 27, 1927, Ex. B-5, dated June 18, 1931, Ex. B-6 dated June 22, 1931, Ex. B-7 dated January 4, 1934, Ex. B-8 dated March 2, 1934, Ex. B-9 dated September 30, 1934, Ex. B-10 dated September 30, 1934, Ex. B-11 dated June 6, 1936 and Ex. B-12 dated April 5, 1937 are all sale deeds solely in the name of the senior Chockalingam. The mutt building had always stood in the name of the senior Chockalingam in the register of Alagapuri Panchayat Union. The oral evidence adduced on behalf of the respondents which has been accepted both by the Subordinate Judge and by the High Court also shows that there was a total non-interference on the part of the plaintiffs in the management of Chockalingam till he appointed the second defendant as his succeeding trustee under Ex. B-1 and there was a total non-interference also with the management of the second defendant after that date. P.W. 1 also admitted in his evidence that the second defendant was appointed as the successor of senior Chockalingam and at the time of the appointment all the plaintiffs and defendant no. 3 agreed that defendant no. 2 should be so appointed as the sole managing trustee. If the plaintiffs had any right to manage the trust by turns, as they now claim, it is not likely that they would have agreed to the second defendant being appointed as the sole trustee in place of senior Chockalingam. In our opinion, the High Court was right in reaching the finding that the plaintiffs have failed to establish that they were the joint founders of the trust or that they were entitled in turns to management in proportion to their contributions.

It is not a correct proposition of law to state that very donor contributing at the time of foundation of a trust becomes a founder of the trust. It may be that in a particular case all the contributors of a trust fund become the founders of the trust itself, but the question when a contributor would become in law a joint founder of the trust would depend not merely upon the fact of his contribution but also upon the surrounding circumstances proved in the particular case and the subsequent conduct of the parties. In *In the Matter of the Endowed Schools Act, 1869 - and In the Matter of the St. Leonard, Shoreditch, Parochial Schools* [10 A.C. 304] it was held by the House of Lords that where a charity is established by subscriptions the original subscribers alone are the founders, and the later benefactions are on the footing of the original foundation. At page 308 of the Report Earl of Selborne, L.C. stated :

"Now let us consider what is the reasonable manner of applying to such a charity the word 'founder'. It is reasonably clear that not every subscriber or contributor could be a founder having control over the school, or capable within the meaning of the Act of Parliament of impressing on it, by his own act or by his own authority a denominational character. It is also reasonably plain, when you have once started with a foundation in 1705, though by small beginnings, yet that everything afterwards added, every accretion to the original subscriptions, which was not an endowment for any new and special purpose, must be taken to be upon the footing of the original foundation; not a new foundation, but something contributed for the

purpose of the original foundation..... Now it is quite conceivable that a number of persons might have met at that time, and might have come to a common agreement as to the purposes for which they should subscribe and solicit subscriptions; and if that had been embodied in writing, and if they had solicited subscriptions on the footing that either they themselves were to make a law for the charity and give it statutes, or that this was to be done by others in a particular manner, or if in any original documents soliciting subscriptions there had been a written law laid down for the charity expressing the purposes for which it was to be founded, those persons so initiating the subscriptions, and so declaring the purpose for which they were made and solicited, might be regarded as founders within the meaning of this clause. But it appears to their Lordships to be quite impossible to attribute that character to those who come after them - whether they contributed to the building fund or any other fund in aid of the existing charity or not. They did not found the charity; they found it existing; they merely aided and assisted it."

In *Sattikara Venkatarama Chettiar v. O. P. Damodaram Chettiar* [51 M.L.J. 547] there was a deed of trust executed by V in favour of 19 persons known as Chettithanakaras which stated that he alone was unable to make and set up idols of Ramalingam and Choudeswari Amman in the Choudeswari Amman Temple Devasthanam built by him and that the nineteen persons agreed to raise a fund and to put up the idol in the temple and according to the agreement that they set up the idols of Ramalingam and Choudeswari Amman and they agreed to purchase property for endowing the temple, and the document then went on to state "that the nineteen persons should manage the temple from generation to generation." Funds were collected by V and by the nineteen persons mentioned in the document; they built the temple installed the idols in it, and collected funds for the upkeep of the temple and managed the temple under the deed of trust. It was held by the Madras High Court that the deed of trust conferred the hereditary right to the trustee-ship upon V and the nineteen Chettithanakaras. At page 461 of the Report the High Court stated as follows :

"If persons invite subscriptions on a representation that they would devote the subscriptions so collected to a particular purpose and they divert the subscriptions to some other purpose the subscribers have to object to the funds being diverted to other purposes that those for which they were collected. But so long as the subscribers do not object to the person or persons collecting subscriptions for building or endowing any particular institution, the person or persons so building or and endowing it have the right to provide for its management for all time to come. There is nothing in the evidence to show that the persons who gave subscriptions gave them on the understanding that the founders should not have the hereditary right of management. All that appears from Ex. A is, that subscriptions were collected, funds were raised, a temple was built and idols were installed and the management was in the hands of Venkatarama Chetti and others and all of them."

As we have already stated, the appellants have failed to prove that all the contributories were the joint founders of the trust and that they were all in turns entitled to management in proportion to the amounts that they had contributed. On the other hand, the evidence makes it quite clear that the contributories agreed to leave the management of the trust solely in the hands of the senior Chockalingam and subsequently of defendant no. 2. We are accordingly of the opinion that Mr. N. C. Chatterjee has been unable to make good his argument on this aspect of the case.

We proceed to consider the next question arising in this appeal, viz., whether the plaintiffs are

entitled to ask for the settlement of a scheme even on the assumption that they were not co-founders of the trust. The parties in this case have proceeded on the footing that the trust is a private trust, but the authorities establish that even in the case of a private trust a suit can be filed for the removal of the trustee or for settlement of a scheme for the purpose of effectively carrying out the objects of the trust. If there is a breach of trust or mismanagement on the part of the trustee, a suit can be brought in a civil court by any person interested for the removal of the trustee and for the proper administration of the endowment. - (See, for example, Pramatha Nath Mullick's case [52 I.A. 245] and Manohar Mookerjee v. Peary Mohan [24 C.W.N. 478]. There are also authorities to the effect that a Civil Court may frame a scheme in the case of a private endowment at the instance of the parties interested. The question has been discussed by the Calcutta High Court in Bimal Krishna's case [41 C.W.N. 72] and it was held in that case that a scheme for the administration of a private endowment can be framed by a Civil Court. Mookerjee, J. observed in that case that in India the Crown is the constitutional protector of all infants and as the deity occupies in law the position of an infant, the shebait who represent the deity are entitled to seek the assistance of the Court in case of mismanagement, fraud or maladministration on the part of the shebait and to have a proper scheme for management framed for the administration of the private trust. In Pramatha Nath Mullick's [52 I.A. 245] case to which we have already made reference, the Judicial Committee itself directed the framing of a scheme in the case of a private endowment and the case was expressly remanded to the trial court for that purpose. In the present case the appellants being contributors to the trust are interested in the proper administration of the trust and, in our opinion, they have a sufficient right to bring a suit in a Civil Court in case there is mismanagement or breach of trust on the part of the managing trustee and for framing of a scheme.

But the question in the present appeal is whether the appellants have made out any grounds for framing of a scheme or for the removal of the second defendant from the management of the trust. It was alleged by the appellants in the plaints that the trust had been mismanaged by the senior Chockalingam and by his grandson, 2nd defendant and both have been guilty of breach of trust. The main charge levelled against defendant no. 2 was the non-performance of the pujas and the closing down of the Thevara Patasala and the feeding of the pupils. The Subordinate Judge has examined the evidence dealing with the charge and found that it was not established. The High Court, upon analysis of the evidence, has reached the same conclusion. It was also alleged by the appellants that Account Books, Exs. A-9 and A-10 have been fabricated by defendant no. 2 but the Subordinate Judge and the High Court both held that the allegation was not true. Certain other charges were also levelled by the plaintiffs against defendant no. 2 and senior Chockalingam but the High Court as well as the Subordinate Judge found that these charges were not substantiated. The question whether defendant no. 2 or the senior Chockalingam was guilty of breach of trust or of acts of mismanagement is a question of fact and in view of the concurrent finding of both the lower courts on this question we are of opinion that no ground has been made out on behalf of the appellants for framing of a scheme or for removal of defendant no. 2 from the office of the managing trustee. It follows that the suit brought by the appellants has been rightly dismissed.

For these reasons we hold that the judgment of the High Court dated April 4, 1961 in Appeal No. 99 of 1957 is correct and this appeal must be dismissed with costs.

#R.K.P.S. Appeal dismissed.##

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