

Zakka Pattabhirami Reddi - - - - - Appellant
v.

Menakur Balarami Reddi and others - - - - - Respondents

FROM
THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL DELIVERED THE 22ND NOVEMBER, 1949

Present at the Hearing :

LORD MACDERMOTT

LORD REID

SIR JOHN BEAUMONT

[*Delivered by* LORD MACDERMOTT]

This appeal is by special leave from a judgment and decree of the High Court at Madras, dated the 6th September, 1944, affirming a judgment and decree of the Court of the District Judge at Nellore, dated the 28th November, 1942, which varied a judgment and decree of the Court of the Subordinate Judge at Nellore, dated the 30th August, 1940.

The present respondents are the representatives of the plaintiffs who brought the suit in which these judgments and decrees were pronounced, the appellant being the first-named and principal defendant therein.

Before referring to the nature and history of this litigation it will be convenient to indicate, in chronological order as far as possible, the events and circumstances out of which it arose.

Many years ago the village of Jonnavada was granted as an endowment to two temple deities. In 1860 the Inam Commission confirmed the grant and the government granted a title-deed in the following year. In 1924 the Court of the Subordinate Judge at Nellore, acting under section 92 of the Code of Civil Procedure, settled a scheme for the management of the affairs of the temple and appointed five managers or trustees. They were appointed for a term of five years which, it would seem, expired on or about the 1st May, 1929. These trustees are hereinafter referred to as the scheme trustees. In 1926, during their period of office, the Madras Hindu Religious Endowments Act was passed to provide for the better administration of certain religious endowments in the Province, including those pertaining to the temple in question. It will be necessary to refer later to certain parts of this enactment in more detail, but it may be stated now that it provided, *inter alia*, for the constitution of a Board responsible for the due administration and general superintendence of all religious endowments within its area, and the establishment of local temple committees empowered to appoint temple trustees not exceeding three in number. The Act (hereinafter referred to as the "1926 Act") also provided that schemes settled under section 92 of the Code should be deemed to be settled under it, the 1926 Act, even if inconsistent therewith, and might be modified or cancelled in accordance with its provisions.

In 1928 the scheme trustees appear to have applied for directions to the Subordinate Judge. The nature of their difficulty is not specified in the Record, but their term was running out and it would seem from the Order made by the Subordinate Judge on the 3rd January, 1929, that doubt had arisen as to how new trustees should be appointed and whether the local temple committee had power to make the appointment. The Order referred to the fact that the scheme, though deemed to be settled under the 1926 Act, did not provide for appointments by the committee and drew attention to the power to modify schemes contained in the statute. It then continued:—

“ Pending such modification the three trustees [i.e., those of the five originally appointed who were still in office] will have to carry on the management of the temple.”

On the 13th May, 1930, the local committee for Nellore purported to appoint new trustees for the temple for a term of five years. There is nothing to show that the scheme had been modified by this time. But, whether on this or on some other ground, the scheme trustees appear to have questioned the appointment made by the committee. For the next five years—till 1935—the scheme trustees continued to act and the committee trustees seem to have taken no active part in the administration of the temple's estate and affairs. The evidence as to the actual management during this period is to be found in the testimony of Nellore Kothandarami Reddi, one of the scheme trustees and also one of the committee trustees, who was called as a witness for the plaintiffs. According to him the committee trustees “ did not take charge as V. Rama Rao objected saying that the committee had not power to appoint. I do not know whether his objection was communicated to the committee. Since 1930 to 1935 myself, V. Rama Rao and M. Adinarayanayya [i.e., the scheme trustees] functioned as trustees. We were sending budgets to the Board and corresponding. They were consenting to our working as trustees. They raised no objection”. This evidence is meagre and somewhat vague, but it was not contradicted and may be accepted as far as it goes.

On the 17th July, 1933, during the period just mentioned, the scheme trustees made a lease to the appellant of certain wet, dry and pasture lands, part of the temple estate, comprising in all some 400 acres and 46 cents. The rent was Rs.2,000 per year and the term one of five years expiring on the 30th June, 1938. The lease was registered and the appellant went into possession.

On the 8th August, 1935, the Board, pursuant to its powers under the Act of 1926, appointed three new trustees and directed them to take immediate steps to recover possession of the temple properties. The scheme trustees, apparently, were reluctant to hand over, but eventually they had to do so in compliance with an Order of the District Court made on the 21st July, 1936.

On the 12th January, 1938, the Board trustees wrote to the appellant calling on him to deliver up the lands leased on the expiry of the lease as they desired to put them up for leasing by public auction for a further period of at least five years. This letter contains three paragraphs which were much canvassed before their Lordships. In so far as material they read thus:—

“ (1) That on 17th July, 1933, you have taken a registered lease for pasturage and for cultivation, from the previous trustees of the said temple for five years, i.e., from fasli 1343 to fasli 1347, both inclusive, of the following lands in Padamati Khandam . . .

(2) That the said lease expires with the end of fasli 1347, i.e., on 30th June, 1938, and that you should deliver possession of the said lands, as per the terms of the lease, to my clients who are the present trustees of the said temple, at the end of fasli 1347, as per the terms of the lease . . .

(4) That the rent for this fasli 1347, i.e., Rs.2,000, should be paid by you to my clients who are the present trustees of the temple, according to the terms of the lease, before the expiry of the lease, on the date specified therein."

The rent, it may be noted, was payable, according to the terms of the lease, on each 30th of May. There is no evidence, nor was it suggested, that it fell into arrears and their Lordships will assume that the lessee duly discharged his obligations in respect of payment.

The appellant replied to this letter on the 7th March, 1938. He expressed himself as willing to pay the stipulated rent, but claimed the right to continue in possession of the lands, in so far as they were ryoti lands, by virtue of the provisions of the Madras Estates Land Act, 1908, as amended.

On the 12th August, 1938, shortly after the term of the lease had expired, the Board trustees filed the present suit for recovery of possession of all the lands leased, for rent or damages for use and occupation for fasli 1348 (i.e., the year after the termination of the lease) and for an enquiry as to further mesne profits till date of surrender. It is unnecessary to detail the terms of the plaint. It may be observed, however, that it referred to the letters just mentioned and alleged:—

"The 1st Defendant is only a tenant holding over after the expiry of the lease to him."

In its substance the case made by the plaintiffs was this. The lessors (the scheme trustees) were not *de jure* trustees and, therefore, not landowners within the meaning of the Madras Estates Land Act and the appellant had, in consequence, no occupancy rights thereunder.

The Subordinate Judge held that the appellant had acquired permanent rights of occupancy in the wet and dry cultivable lands, but not in the pasture lands which were not ryoti lands within the meaning of the said Act. He accordingly dismissed the suit in so far as it related to the wet and dry lands and made an order for possession in respect of the pasture lands. On appeal the District Judge varied this decree and ordered the appellant to deliver up the cultivable as well as the pasture lands. He took the view that though the lease was not invalid—he says that was not contended—the scheme trustees were not at its date the lawfully appointed trustees of the temple; they were but "trustees *de son tort*" unable to bind the temple estate by leasing as they did and, in consequence, were not entitled to collect the rent or to rank as landholders within the meaning of the Madras Estates Land Act. On further appeal to the High Court the matter was reserved for a Full Bench, apparently on the ground that it involved the consideration of conflicting decisions as to the rights and liabilities of manager trustees acting *de facto* and not *de jure*. The Full Bench upheld the decision of the District Judge and dismissed the appeal. The grounds for this determination may be briefly summarised. In the opinion of the High Court the facts did not require a review of the conflicting decision to which reference has been made. Even assuming that *de facto* trustees, acting *bona fide* and for the benefit of the trust, could alienate, the scheme trustees were not, as lessors, in this category. They had wrongfully kept the lawful trustees out of possession and had acted in fraud of their rights. They had no authority to lease under the Act of 1926 and could not be treated as landholders for the purposes of the Madras Estates Land Act. "If", said the learned Chief Justice, "the argument advanced on behalf of the appellant were to be accepted it would mean that *de jure* trustees could be defeated by persons who are in law mere trespassers."

In appealing from this decision to His Majesty in Council the appellant did not seek to vary the decree of the Subordinate Judge or to challenge his division of the holding. The only question now for determination therefore, is whether he was right in dismissing the suit in respect of the cultivable lands. As will appear later this issue may be stated in narrower form; but before doing so it will be convenient to refer to certain of

the provisions of the Madras Estates Land Act, 1908, as amended by Act VIII of 1934 and Act XVIII of 1936. Omitting what is not material they are as follows:—

“SECTION 3.

In this Act, unless there is something repugnant in the subject or context:—

(2) “Estate” means—

(d) any inam village of which the grant has been made, confirmed or recognised by the British Government notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees.

(5) “Landholder” means a person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor-in-title or of any order of a competent Court or of any provision of law.

(15) “Ryot” means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it.

(16) “Ryoti land” means cultivable land in an estate other than private land but does not include— . . .”

“SECTION 6.

(1) Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land situated in the estate of such landholder shall have a permanent right of occupancy in his holding.

EXPLANATION 2.

In relation to any inam village which was not an estate before the commencement of the Madras Estates Land (Third Amendment) Act, 1936, but became an estate by virtue of that Act, or in relation to any land in an inam village which ceased to be part of an estate before the commencement of the Act, the expressions “now” and “commencement” of this Act in this sub-section and Explanation (1) shall be construed as meaning the thirtieth day of June, 1934, and the expression “hereafter” in the sub-section shall be construed as meaning the period after the thirtieth day of June, 1934.

EXPLANATION 3.

Every landholder who receives or recovers any payment under section 163 from any person unauthorisedly occupying ryoti land shall be deemed to have thereby admitted such person into possession unless within two years from the date of receipt or recovery of payment or the first of such payments, if more than one, he shall file a suit in a Civil Court for ejectment against such person.”

It was properly conceded (a) that the land with which this appeal is now concerned was ryoti land and part of an estate within the meaning of those terms as thus defined; (b) that the temple lands had been brought within the scope of the Act by amendment so as to make section 6 (1) read for the purposes of the present case as though “now” referred to the 30th June, 1934, and “hereinafter” meant after that date; and (c) that the appellant held the land he occupied for the purpose of agriculture. These admissions leave as the main question for consideration that which was the chief subject of discussion in the courts in India. In effect it was this—were the scheme trustees in a position to bind the temple by the lease of 1933 and so to rank as landholders for the purposes of the Act? If and only if they were, was the appellant a ryot, as defined, on the 30th June, 1934, and entitled to a permanent right of occupancy under section 6? Before their Lordships a further point, which does not appear to have been raised in India, was taken on behalf

of the appellant. It may be put thus. Even if the lessors (i.e., the scheme trustees) were not landowners for the purposes of the Act the plaintiffs (i.e., the Board trustees) were when they took over the estate and, as they had recognised the lease and the appellant as in occupation thereunder, the appellant had been "admitted by a landholder to possession" after the 30th June, 1934, and was therefore entitled to permanent rights under section 6. The question thus raised will be referred to as the "additional question". It will be reverted to later.

In the course of his argument on the main question Mr. Gray, on behalf of the appellant, submitted that the committee trustees had never been validly appointed and, accordingly, that at the date of the lease the scheme trustees, though admittedly then *de facto*, were the only trustees. This contention was not raised in India and as it might well depend on matters of fact which have not been investigated their Lordships cannot consider it. They will assume that the committee trustees were duly appointed.

Reference must now be made to another submission on the main question which was based by Mr. Gray on the provisions of the 1926 Act. The following are the relevant parts of this enactment:

SECTION 9.

In this Act, unless there is anything repugnant in the subject or context:—

(13) "Trustee" means a person, by whatever designation known, in whom the administration of a religious endowment is vested and includes any person who is liable as if he were a trustee.

SECTION 40.

(1) The trustee of every religious endowment is bound to administer its affairs and to apply the funds and properties of such endowment in accordance with the terms of the trust, and usage of the institution and all lawful directions which a competent authority may issue in respect thereof, and as carefully as a man of ordinary prudence would deal with such affairs, funds or properties if they were his own.

(2) A trustee shall, subject to the provision of this Act, be entitled to exercise all powers incident to the provident and beneficial management of the religious endowment and to do all things necessary for the due performance of the duties imposed on him."

The argument here was to the effect that, by reason of the definition of "trustee" so as to include "any person who is liable as if he were a trustee", the powers conferred by section 40 would enable *de facto* trustees, acting *bona fide*, to do whatever *de jure* trustees could do in the due course of administering the temple estate. Their Lordships are not prepared to accede to this submission in all its width and without qualification. It may well be that section 40 can operate to confer a measure of authority upon *de facto* trustees, but their Lordships cannot agree that the sole test is one of *bona fides* as, were it so, well-intentioned intermeddlers could by their wrongful acts assume and exercise a jurisdiction as complete and effectual as that possessed by the lawful trustees. The better view may be that the effect of section 40 in relation to *de facto* trustees must be considered in the light of the facts of each case with special reference to the circumstances which have attracted to the *de facto* trustees the liability mentioned in the definition. For reasons which will shortly appear, however, their Lordships do not find it necessary to express a final view on this, and they therefore refrain from any attempt to determine if, or how far, the scheme trustees derived authority from the Act of 1926.

The appellant's case on the main question was not confined to the operation of section 40 and their Lordships must next consider a further submission advanced on his behalf. It was, in effect, that on the facts proved, the appellant's lessors ought to be regarded as authorised to

make the lease and bind the temple thereby. At that time and until after the 30th June, 1934, the argument proceeded, the *de jure* trustees, as a body, stood by and made no attempt to interfere. What was done was done with their consent and with that of the Board which, it was pointed out, remained the superior authority charged with a duty of general superintendence and entitled under section 18 of the Act of 1926 to "do all things . . . reasonable and necessary to ensure . . . that all religious endowments are properly administered. . . ." The fact that the validity of the lease was not challenged and that the Board trustees when appointed did not seek to treat the appellant as a trespasser but, on the contrary, only demanded possession on the expiry of the lease, were circumstances relied upon by the appellant, in support of this branch of his case, as going to show that the position thus accepted had never been objected to.

As already appears the evidence of Nellore Kothandarami Reddi throws little light on the exact nature of the situation which resulted in the scheme trustees continuing to hold office and the committee trustees failing to take charge. But it does show, in their Lordships' opinion, that until 1935 the scheme trustees were acting on behalf of the temple with at least the tacit assent of the *de jure* trustees as well as that of the Board. The work of management had to go on and there can be no suggestion that the scheme trustees acted furtively or so as to hide what they were doing. This witness was himself a *de jure* trustee at all material times; and he acted as well and was, indeed, a party to the lease. When these circumstances are coupled with the facts, proved by the same witness, that the Board consented to the scheme trustees acting as trustees, that they raised no objection and that they were sent budgets and correspondence during this period, it is impossible to resist the inference that the *de jure* trustees, who were subject throughout to the directions of the Board, were also consenting parties.

It next becomes necessary to consider how this state of affairs affected the position of the appellant. In his lease the lessors purported to act as trustees of the temple and there is nothing from first to last of the material available for their Lordships' examination to suggest that he knew or ought to have known, then or at any time, that those he dealt with were not all *de jure* trustees. Nor can it be suggested that the transaction was out of the ordinary course of the management of the estate or such as to put one taking land from the acting trustees on special enquiry as to their right and title to act. In these circumstances their Lordships think the appellant is justified in the contention that, by their conduct, the *de jure* trustees and the Board clothed his lessors with sufficient authority to lease as they did and to collect the rent thereafter while the same state of affairs prevailed. From this conclusion it follows, in the opinion of their Lordships, that the appellant did not lack a landholder to whom he was bound to pay rent. This suffices to dispose of the main question but two observations may perhaps be added. In the first place, it having been proved that the lease was granted by lessors acting ostensibly on behalf of the temple and in fact holding the office of trustees the onus was, in the circumstances, upon the plaintiffs to prove affirmatively, if they might, that the lease was unauthorised. And secondly, as against the appellant it was not, on the facts of the case, for the plaintiffs as nominees of the Board to repudiate an act of management to which the Board must be held to have consented.

The additional question referred to above involves a state of fact. On that account and as it was not taken in the courts in India it would be contrary to the practice of their Lordships' Board to entertain it unless the relevant facts could fairly be regarded as beyond all controversy. For the appellant it was contended that this condition was satisfied as the appellant's right to hold for the term of the lease appeared from the plaintiffs' letter of the 12th January, 1938, and was admitted in the plaint. Their Lordships think there is much to be said for this and for the

submission based on the material referred to. As, however, they have already reached a conclusion in the appellant's favour on the main question they are not disposed to embrace the additional question or express any final view upon it.

For the reasons mentioned their Lordships will humbly advise His Majesty that the appeal be allowed, the decrees of the District and High Courts reversed and that of the Subordinate Judge restored. The respondents must pay the appellant's costs of this appeal and in the District and High Courts in India.

In the Privy Council

ZAKKA PATTABHIRAMI REDDI

1.

MENAKUR BALARAMI REDDI
AND OTHERS

DELIVERED BY LORD MACDERMOTT