

Privy Council Appeal No. 124 of 1919.

T. P. Srinivasa Chariar, since deceased (now represented by T. P.
Rangachariar and another) - - - - - *Appellants*

v.

C. N. Evalappa Mudaliar - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 6TH APRIL, 1922.

Present at the Hearing :

VISCOUNT CAVE.

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

This is an appeal against the judgment and decree of the High Court of Judicature at Madras, dated the 6th March, 1917, which varied a decree of the District Judge of Chingleput, dated the 11th December, 1914.

The suit was instituted by the present appellant and another, under the Civil Procedure Code, Section 92. The prayer of the plaint was for an account of the respondent's management of a temple in the district of Chingleput since his assumption of office, and that he "be made accountable for all losses occasioned to this temple by his breaches of trust, for his removal from office, and for the settlement of a scheme for the management of the Devasthanom and its properties." Incidentally, the judgment for accounts made in the suit has raised a question of complexity and importance as to the ownership of lands of considerable extent and value. The issue upon that topic is the principal one raised in this appeal. It is whether those lands belonged to the temple or are the private property of the respondent, who, in point of fact, is its Dharmakartha or hereditary trustee.

The grounds for the removal of the respondent from the position of Dharmakartha have been added to by the conduct of the respondent in the course of the suit, and now include not only misfeasance and breach of trust, but the proved falsification of the temple accounts.

This question of removal from the position of trustee will be afterwards dealt with, but it may here be mentioned that the former question, viz., the question of the true ownership of the temple properties, so keenly contested by the respondent, has not only to be determined on its merits, but may turn out to have a bearing upon the question of his removal from office.

The case is very involved, and their Lordships have to acknowledge the care which has been manifested with regard to it in the Courts below, and in particular the elaborate investigations of the history of this property made by the District Judge.

As it is desirable that the Board should endeavour to exclude from this judgment all such details as might obscure the question of principle dealt with, it may be well to consider the respective positions of parties in the clear language adopted by the District Judge. His narrative of the plaintiff's case is this:—

“2. The plaintiffs allege that they are the *tirtham mirasidars* and *ubhayakars* of the said temple, that the defendant is its trustee, that its management since 1842, when the Government handed over the same, has been in the family of the defendant, that the endowments to the temple consist of *meras* from Government, income from lands and contribution from *ubhayakars*, that the administration of the temple by the defendant has been unsatisfactory and that he is guilty of various acts of misfeasance, malfeasance, nonfeasance, breach of trust and neglect of duty. The instances of misconduct are set forth in paragraph 9 of the plaint, the main item being with reference to the lands wet and dry and manyams described in A(1) to A(8) schedules of the plaint which it is alleged to belong to the temple, and the defendant is charged with misappropriation of the income from them without bringing the same into the temple accounts, and it is alleged that these accounts are not regularly and correctly kept.”

His narrative of the defendant's case is as follows:—

“3. The defendant contends that he is the hereditary trustee of the temple and that his ancestors were the trustees even before the Government assumed management thereof, and denies that he is guilty of any act of misfeasance, etc., alleged in the plaint. He further states that the plaintiff temple never owned or enjoyed any of plaint A1 or A2 schedule lands, that item 1 of A3 schedule is enjoyed by the temple, and that, in item 2 of A3 schedule and in the first seven items of A5 schedule, the *melwaram* right alone belongs to the temple, that lands in A1, A2, A7, A8 were always exclusively owned and enjoyed by the defendant and his ancestors as their absolute property. The defendant further states that all the incomes arising from the lands belonging to the temple have been regularly entered in the temple accounts and duly accounted for, that the said income is not sufficient for the upkeep of the temple, and that the defendant has been meeting the deficit from his private funds, and that the accounts filed in Court were regularly maintained by the temple *karnams*.”

These statements show broadly and correctly the attitude of the parties to this litigation.

The temple in question is an endowment or institution for the worship of the God Vishnu. It is dedicated to a Saint or Incarnation called Tirumushi Alwar. The temple lands are at Madavilagam and other villages in the district of Chingleput,

in the vicinity of the City of Madras. As the plaintiff in Head 3 of the plaint avers :—

“ There is a Public Vishnu Temple at Madavilagam, a hamlet of Tirumushi, in Poonamalle Division, Saidapet Taluk, dedicated to Sri Jagannatha Perumal and Tirumushi Alwar.”

That, in point of fact, a temple did exist there from ancient times, and that it was in possession of certain endowments in the shape of lands, seems to be undoubted.

The Board has had a reference to various historical authorities upon the subject of the Chingleput district, and upon the mirāsi tenure therein. These records are voluminous. It is too much to expect that anything definite can be obtained prior to the devastation of the district by Hyder Ali in the latter half of the eighteenth century. The most valuable document is the Fifth Report of the Select Committee on the affairs of the East India Company of the year 1812. Says the Report :—

“ The Jaghire (Chingleput) appears to have been obtained in the years 1760 and 1763, from the Nabob of Arcot, in return for the services rendered him and his father, by the Company. . . . The Jaghire was twice invaded by Hyder Ali : in 1768, and in the war of 1780, when he entered it with fire and sword. On the termination of the latter war, in 1784, hardly any other signs were left in many parts of the country of its having been inhabited by human beings, than the bones of the bodies that had been massacred, or the naked walls of the houses, choultries, and temples, which had been burnt. To the havoc of war, succeeded the affliction of famine ; and the emigrations arising from these successive calamities, nearly depopulated the district.

“ The system of management in the Jaghire, while it was rented by the Nabob, was of the same oppressive and unjust character, which marked the administration of affairs in his own territory, the Carnatic.”

A period of no little confusion ensued, even after the Company Government assumed the Jagheer in the years previous to 1780, the confusion being much relieved in 1794 when the country was placed under the management of Mr. Lionel Place, who continued as administrator until 1798, and whose Final Report respecting the Jagheer is dated the 6th June, 1799. Mr. Place's views with regard to mirasi are stated to have undergone a material change, and in the language of the Report :—

“ He had become convinced that the mirasidar had an undoubted hereditary property in the soil ; that he derived this right originally from the Sovereign to whom he acknowledged obedience, and the rendering of a stated proportion of the produce, as the tenure by which he held it ; that he sold, mortgaged, gave away, and left his lands to his posterity.”

It would not elucidate the points at issue in this suit to enter further into the development, historically, of the adjustments of the rights regarding the land and its tenure and cultivation. This following excerpt, however, may be made from Mr. Place's Final Report :—

“ 702. The following definition, therefore, of *mecrassee*, or property in land, seems to be deducible from the discussions that have passed on it.

“ 703. That it is a right to the use and substance of the soil, vested in the present proprietor, his heirs and successors, so long as he does or can cultivate it, and pays the dues of Government and is obedient to its authority ; and that when he does not, or cannot, cultivate his lands, when he withholds the dues of Government, or is disobedient to its authority, such part as he neglects, or in the latter case the whole, *escheats* to Government, who may confer it on whom it pleases.”

These excerpts have been given because the fact has been acknowledged that the village, afterwards referred to, with the lands in suit in the present case, are held under the mirasi tenure. Nor, secondly, is it disputed that Vishnu as a juristic entity, and, as such, owner of the temple dedicated to and appearing under the following names : Sri Jagannatha Perumal and Tirumushi Alwar, can according to law and must if it accord with fact, be reckoned as a mirasidar holding a village mirasi. The point in the case is, Was the property in suit held under mirasi tenure by this mirasidar in the interests of the institution and worshippers of Vishnu attached to it, or was it held by the respondent personally ?

The respondent founds, and strongly founds, upon the state of the records of this property as for the year 1825. He maintains that there is sufficient indication from this record that the property in suit had wholly belonged, not to the temple as part of its endowments, but to Evalappa, his grandfather, as his own personal property.

The date of the origin of this temple is not apparently now ascertainable, but the first broad and fundamental fact appearing from the record founded upon is that in 1825 *de facto* such a temple did exist ; secondly, that the institution was at that date managed by a Dharmakartha ; and thirdly, that it was the owner of some lands. What were those lands ; and, in particular, did they include those in suit in the present case ? On that point the singularity of the position is that it appears to be, and that very rightly, assumed in the judgment of the Courts below, that originally the temple did own the lands, but that the state of affairs crystallized in the paimash of 1825 left it at least doubtful whether some change had not been effected under which a personal acquisition by the Dharmakartha had taken place.

And it is the fact, with regard to the large majority of the items composing the village lands, that the plots and portions are set out in detail in the name of Evalappa Mudalia, without describing him as trustee, and without giving any indication contrary to that of personal ownership. It is this circumstance upon which the respondent in the appeal strongly relies.

It may be said of the 1825 paimash or record, taken as a whole, that it does involve certain self-contradictions which contribute to leaving the point at issue in considerable doubt.

It will serve no useful purpose to load this opinion with details, although all these details have been carefully considered. It may suffice to say as follows : The Paimash Jariff Taram chitta for Mandavilagam village, dated the 31st August, 1825, forms the Exhibit A, and its headings and general preliminary state-

ments must be attended to. It states the "persons who were present at the Jariff," mentioning by name the Government Officer. Then follows this entry: "Alwar temple village Miras." This appears to describe in general terms the ownership by the temple of all the village miras. Then there appears this entry: "Appasami Mudali and Arunachala Mudali, gumasthas of Evalappa Mudali, Dharmakartha of the aforesaid temple—total, two persons." Up to this point it seems plain enough that the lands are owned by the temple, and that Evalappa is its Dharmakartha. When the specific entries begin there occur the following "remarks": "Village Miras—Sri Tirumushi Alwar," and a little further down, "No. 1 Miras. Tirumushi Alwar Devastanom Dharmakartha Nattu Evalappa Mudali." Then still another: "Alwar mantapam tope, No. 1 Miras Tirumushi Alwar Devastanom." Up to this point the doubt as to the lands being temple lands—it being admitted that they are part of the village miras—has not arisen. When these items came to be entered, the column of remarks shows "village miras," and by far the most important of the entries are those referring to the miras itself, viz., "No. 1 Miras," and one of the most important pieces of the property is a tope or grove, which is entered as punja, and in the remarks is stated to be Alwar mantapam tope. So far all is clear.

The confusion arises, however, from another document, Exhibit A1, called "Register of lands as per paimash or mamul account." It is to be observed that in it again occurs "No. 1 Village Miras. Tirumushi Alwar," and in No. 83, "No. 1 Miras Tirumushi Alwar Devastanom," there being added the words "Dharmakartha Nattu Evalappa Mudali."

While this is so, the remarkable thing is that all the other entries, with perhaps one or two exceptions, are stated to be "No. 1 Patta. Evalappa Mudali," with no indication that those particular items are temple lands or that Evalappa holds them as Dharmakartha. This fact, and practically this fact alone, forms the foundation of the respondent's claim that he is personal owner of these numerous items. The inconsistency of this with the other entries above referred to is unexplained, and in particular it is unexplained how property originally temple property ever came into his private ownership. No express grant is produced; no legal authority for a conversion so singular is suggested.

In these circumstances their Lordships are not prepared to say that if the records had stopped here they would have agreed with the judgments of the Courts below, and would have attributed the entries opposite Evalappa's own name as entries certiorating private property. It is unlikely; but for the reasons to be hereafter stated it is not necessary to decide the question.

Let it be assumed, however, that the point of ownership stands doubtful upon the 1825 records. To such a situation it is conceivable that the observation of the learned Chief Justice would apply. He says:—

"It is of course impossible at this distance of time to say exactly how it was that these properties passed from the temple into the hands of the

trustee's family, and the case may undoubtedly appear to be one of suspicion. But we cannot say, at this distance of time and in view of this long enjoyment, that the title of the temple has been sufficiently established in the present suit as to the great bulk of those properties, that is to say, in respect of those properties which, in the *paimash*, are not entered as temple properties. Where we find in the *paimash* properties entered as temple properties, that is sufficient to throw the *onus* on to the trustee of showing how these properties ceased to belong to the temple."

Their Lordships must dissent entirely from the view that where the discoverable origins of property show it to be trust property the onus of establishing that it must have illegitimately come into the trustee's own right rests upon the beneficiaries. Upon the contrary, the onus is, and is heavily, upon the trustee to show by the clearest and most unimpeachable evidence the legitimacy of his personal acquisition. Even upon the records of 1825 their Lordships would have inclined to this view.

But the records did not end here. In their Lordships' opinion it is necessary in a case of this kind to view the records, transactions and proceedings as a whole. And in their view the greatest weight must be attached to the elaborate proceedings of 1876, and in particular to the Survey and Settlement Register of the Village of Madavilagam. That Register contains 169 items, including among other particulars an identification, so far as possible, of each item with the old number or name of fields, and in particular the extent and assessment of each plot of land in the whole list. The Register is signed by Major C. J. Stuart, Acting Deputy-Director of Revenue Settlement, and is dated from the Revenue Settlement Office. It cannot be too clearly premised, however, that the Board would not hold any such record to be conclusive evidence of ownership; but, upon the other hand, their Lordships cannot be blind to the importance of such a document which appears, *de facto*, to have settled the bounds of the possessions of these plots for a period of thirty-five years—that is to say, from 1876 to 1910. This is especially important in any case where the personal as against the trust claim is supported also, and alone, by a reference to an earlier record of a similar character, marred as that record happens to be by the contradictions to which reference has been made.

It is, however, unnecessary, it may again be said, to enter into details. But the facts as to the 1876 records are outstanding and make the position much clearer. Evalappa had been succeeded by Varadappa, and numerous cases, including those in which in 1825 the entries of the owner had only been the name of Evalappa Mudalier, with nothing added thereto, now appear with the point as to the character of the ownership cleared up.

The Survey is headed "Descriptive Memoir of Madavilagam of the Saidapet Taluq." Extracts from it form Exhibit B of the present proceedings. Their Lordships have, however, seen a print of the Descriptive Memoir itself, bearing to be signed by Major

Stuart, "Acting Deputy-Director of Revenue Settlement." The following entries are important :—

"*Mirasi Tenure.* As the Government have recognized the Mirasidar's claim to a percentage fee (swatantram) on the taram assessment, the following arrangements are made for its future collection and payment."

This entry speaks for itself. The tenure was mirasi tenure, and there was one mirasidar. Then occurs the following :—

"The fee is fixed at 2 annas in the Rupee of assessment of both dry and wet lands for which the lands are divided into (I) Pangu, (II) Durkast, and (III) Waste."

The word "Pangu" refers to the original cultivated land—that is to say, land cultivated by persons or a person, or institution, belonging to the village. "Durst" refers to lands granted by the Government for cultivation not by villagers, but by outsiders. "Waste" refers to jungle or uncultivated land.

The main point to be kept in view is the form of the entries of the lands, the issue as to which is whether they are temple lands, or are private property or pangu lands. The importance, accordingly, of special reference to pangu lands is clear. That entry is as follows :—

"*Pangu Lands.* This is an Ekabogam village and the lands have hitherto been held by 1 Pattadar. The fee registered against these lands is at present a mere matter of account and need not be collected, as the Mirasidar himself holds the lands. But if these lands hereafter become waste by relinquishment and are taken up again by a stranger, they will be chargeable with the fee, plus the taram assessment, and the fee thus collected will be payable to the Mirasidar."

The village is spoken of as an ekabogam village. "Ekabogam" according to Wilson is :—

"The possession or tenure of village land by one person or family without any co-sharer. The appellation is continued in some instances where other parties have been admitted to hold portions under the original tenure as long as that remains unaltered."

It is stated that the lands have been hitherto held by one pattadar, and that the mirasidar himself holds the lands. The extreme importance of this entry arises from the events which had taken place in and about the early sixties of last century.

It seems fairly plain that by the middle of the nineteenth century various demands were being made to obtain a statement of the rights of mirasidars in this part of India. In the volume named "Chingleput, late Madras District," compiled under the orders of the Madras Government by Mr. Charles Stewart Crole, the position is thus described :—

"In 1834 it began to induct outsiders into the permanent possession of lands, and issued puttass to such persons. In 1859 it compelled the mirasidars to declare once for all the extent of their individual holdings, and proceeded to issue puttass accordingly, which it at first styled mirassi puttass.

"In the same and following years it warned mirasidars that they would have to pay the assessment on all lands in their holdings, whether

they cultivated or not, and limited by new rules, which have since increased in stringency, the occasions on which, and then only as a matter of grace, remissions would be given.

“ In 1863 the Government directed the abolition of the words ‘ Mirassi putta ’ and ‘ Páyikári putta, ’ which had previously appeared as a heading on those documents in order to distinguish mirassi from ordinary tenure, and it ordered the ‘ name of the *Puttadar* ’ merely to be inserted, thus distinctly proclaiming that it would no longer recognize any difference in tenure.”

This historical circumstance gave great weight to the Settlement and Survey, about to be referred to, made in the year 1876. It is in particular noticeable that a special column of pottadars, with a demand for their names, appears in the Return, and that this coincides with the acknowledgment of the mirasi tenure. The application of this to the situation of the village, whose ownership is in suit, will be immediately seen. It would rather appear that no public document of anything like equivalent value to that of the Report of 1876, with regard to the details of any properties which were at once mirasi and patta, had ever been previously issued.

It is accordingly of special importance to know who was the mirasidar holding a putta, and therefore pottadar of those particular lands in suit. Appended to each entry of grants of land in the village is a column headed “ Pottadar’s Name and No.” It cannot be seriously disputed that the putta was No. 1 Putta.

Who, then, was the holder of these lands, occupying the position at once of mirasidar and pottadar No. 1 ? Item by item the entries under “ Pottadar’s Name and No.” are “ Nattu Varadappa Mudaliar, Trustee of Tirumushi Alwar Pagoda.” The entries are repeated and repeated in the same sense. And, in short, there is here an official affirmation that these lands are temple lands ; that they are held in No. 1 Putta ; and that the trustee of the temple is Varadappa.

It would accordingly appear to be clear that this official document, which it cannot be doubted was prepared after minute inspection and enquiries on the spot, sets at rest any doubt as between private and temple ownership, and clearly affirms the latter. Varadappa was not the private owner ; he was the Dharmakartha or trustee. It, however, must be admitted that although this was the official view, the record does not commit Varadappa himself to such an affirmation or admission.

Most fortunately, however, there are elements of probation existing, applicable to the regime of Varadappa, which greatly help to clear this difficulty away. These instances may be given :—

(1) On the 8th February, 1888, Varadappa brought a suit against the Government in regard to certain lands and trees, which he alleged he was debarred from cultivating. He desired a declaration to establish his right “ to the said property as absolute owner thereof.” It is, however, an entire mistake to

reckon this an assertion of private ownership, because Varadappa describes himself as plaintiff and as Dharmakartha of the temple at Madavilagam village, and the first three statements of his plaint are as follows :—

“ 1. The village No. 137 viz., Madavilagam and all its miras appertain to, and form portion of the endowments of the temple of Tirumushi Alwar situated in the said village, Poonamallee Division, Saidapet Taluk, Chingleput District.

“ 2. The plaintiff above named is the hereditary Dharmakartha of the said Devasthanom.

“ 3. Plaintiff's ancestors have, from time out of mind, been enjoying the lands under Nos. described below by building choultry, cultivating the soil and raising a tope, &c., paying revenue to the Government for the said lands.”

As mirasidar and as trustee of the temple his grievance against the Government was that he was not entitled to extend the rights which he asserted over certain further lands and trees, and accordingly the suit was substantially for the purpose of enabling that extension to be made, presumably for temple purposes, and accompanied with the assertion that—*quoad* the temple—the village of Madavilagam “ and all its miras ” were the endowments of the temple of which Varadappa was the Dharmakartha.

(2) A statement signed by “ Nattu Varadappa Mudaliar, Dharmakartha,” and made before the Deputy Tahsildar, Poonamalle Division, is also produced. This statement refers to the Paimash of 1876, and is to the effect that the entire village is the ekabogam village of the temple, viz., of Tirumushi Alwar ; that he, Varadappa, is the Dharmakartha of the temple ; and he goes on to state : “ Whenever anyone wants to build a house on vacant lands other than the land on which houses have been in existence from time immemorial in the village nattam of this village, it is usual for me to grant lands to such persons, and to get deeds executed therefor.”

(3) This was quite true, and various deeds of that character are referred to in the proceedings—that is to say, they are called rental agreement deeds, and are addressed to Varadappa, as on the 27th March, 1876, and signed “ Nattu Varadappa Mudaliar, Dharmakartha of Tirumushi Alwar Devasthanom ” ; or, as in that of the 7th March, 1904, after Varadappa's death, to Evalappa the second, his son, thus named : “ S. Nattu Evalappa Mudaliar Avergal, son of S. Nattu Varadappa Mudaliar, Shrotriendar, Kondaikatti Vellala, Vaishnavite, Mirasdar of the village of Madavilagam as well as Dharmakartha of Tirumushi Alwar Devasthanom.”

It is of importance to observe that Varadappa is named and names himself the Dharmakartha. This is in truth the legal equipollent to trustee. The position of Dharmakartha is not that of a shebait of a religious institution, or of the Mattan of a Mutt. These functionaries have a much higher right with larger power of disposal and administration, and they have a personal interest of a beneficial character.

In the very learned judgments delivered in *Vidyapurna Tirtha Swami v. Swami*, 27 Madras 435, the distinction between those functionaries is explained. But a Dharmakartha is literally and no more than the manager of a charity, and his rights, apart it may be in certain circumstances from the question of personal support, are never in a higher legal category than that of a mere trustee.

The details need not further be entered upon as to these deeds, which appear to be numerous, and to assert clearly the fiduciary position in which Varadappa and even his successor, the present respondent, stand. They are by no means confined to a period subsequent to Major Stuart's report in 1876; one, for instance, is dated the 22nd January, 1870, executed to Varadappa as "Dharmakartha of Tirumushi Devasthanom," and describes Madavilagam as "the miras village of the said Alwar." In fact, there are documents extending over a period of about forty years, all framed on that footing, a footing which negatives private but affirms temple ownership. Their Lordships do not doubt that that was a public fact in 1876, when the report was made; and the subsequent transactions in the life of Varadappa, and even of his successor, the present respondent, confirm that view. This was plainly the state of affairs when, on Varadappa's death, the respondent succeeded him as hereditary Dharmakartha.

A separate argument involving some detail was submitted with regard to the topes, or groves, belonging to the temple, on which their Lordships will only say that after full investigation they are convinced the topes in suit have been sufficiently traced to temple ownership.

The doubts, accordingly, which would have warranted the line of judgment indicated from the opinion of the High Court, above cited, have now disappeared. In the opinion of the Board the properties in suit are established to be temple properties. The statements and records made in the year 1910 do not substantially bring any fresh light on the situation. It must, of course, be plain that it would require circumstances unique to warrant the transfer or transformation of those endowment lands into the private property of the trustee. There is, in fact, nothing of the sort. In the present suit the respondent's right and title as personal owner have been successfully challenged, and the lands in question must, all of them, be restored as endowments of the temple.

In case it should be thought to have been omitted, their Lordships merely further observe on this head that during the period extending from 1825 there were clearly established several items of the property in dispute which could be identified as still remaining as temple lands. To these items there were added, in the course of discussion, several further items which were traced from register to register, and clearly and separately identified as temple lands by name, and freed from the doubt as to the personal ownership of the former mirasidar, Evalappa.

They, too, have been claimed by the respondent as his own, and this is a notable circumstance. These facts might have proved obstacles to the learned Judges of the High Court in forming their conclusion and assisted in removing any doubt which they felt; but the view which has been taken by their Lordships of the larger issue, namely, of the effect of the 1876 register on the transactions to which Varadappa was a party, affects the whole of the lands in suit, and makes it unnecessary to deal with the individual items referred to.

It will now be seen how serious is the position of the respondent as a claimant for the continuance of the trusteeship of this temple and its endowments. The doubts in the minds of the Courts below, on the subject of his being allowed to continue in office, are sufficiently plain. But when it is now decided that the whole of this litigation has substantially been occupied by an unfounded assertion, supported by the concoction of accounts—an assertion by the trustee of private ownership in himself and a powerful resistance to the recovery of these properties for the trust which he administers—it does not appear to their Lordships to be open to them, on any sound principles either of administration or of law, to permit the continuance of the respondent in the office of Dharmakartha.

The conduct of the respondent, even in the course of the present suit, has been sufficiently grave to be thus noted by the Judges below. Says the District Court Judge :—

“ My finding is that the Exhibits K series were got up for the purpose of this suit, and that they have been proved to contain false entries in many instances.”

In the High Court the pronouncement was quite as strong. The learned Chief Justice observes :—

“ The District Judge has found that the defendant failed to keep proper accounts and that the accounts which he has brought into Court in this case were written up for the purposes of this case. We have ourselves examined the accounts, and we regret to say that there are very serious reasons for believing that that has been the case and that the accounts have been largely written up for the purposes of this case.”

Their Lordships have considerable doubt as to whether any litigant found to have been guilty of seriously reprehensible conduct of this description could ever have been retained in the office of Dharmakartha. The worshippers of the temple, the true beneficiaries in the endowments, are entitled, at least in regard to the trusteeship thereto, as also is a Court of Law before whom such delinquencies are established, to insist upon the first step towards trustworthiness in administration being taken by the removal of the trustee. Most unhappily the guarantee for that trustworthiness has been destroyed. Although the Board very willingly admits that much allowance must be made for the inaccuracy of karnams, and of other officials who may have been anxious to fortify the trustee's personal rights by methods which were unwarranted, the respondent must, however, stand answerable for such conduct.

Their Lordships do not doubt that if the High Court had been of the opinion now delivered with regard to the merits of the suit, the trustee would have been removed from office. The Board desires that in the remit, which their Lordships will humbly recommend to His Majesty to make, the High Court shall select as trustee a person or persons of such sufficient standing in the district as will enable the transfer from the respondent of the property to be effectively made, and the administration thereof purely for the purpose of the endowment effectively secured.

The scheme drawn up in the District Court, and referred to in the proceedings of the High Court, would appear to be not unsuitable for the case, but these two fundamental alterations must be taken into account. In the first place the list of endowments must, of course, be enlarged to suit the affirmation as to the extent of the temple property made in the plaint and here affirmed, and secondly a new and independent trustee will be nominated to administer the scheme.

Their Lordships will humbly advise His Majesty to remit the case accordingly to the High Court, with a finding that the properties in suit belong to the endowments of the temple; that the respondent as Dharmakartha and trustee thereof be removed from office; that a scheme be framed for trust administration under a new trustee; and that the judgment of the High Court of the 6th March, 1917, except as regards costs, be recalled, and that the respondent do pay the costs of this appeal.

In the Privy Council.

T. P. SRINIVASA CHARIAR, SINCE DECEASED
(NOW REPRESENTED BY T. P. RANGA-
CHARIAR AND ANOTHER)

vs.

C. N. EVALAPPA MUDALIAR.

DELIVERED BY LORD SHAW.

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