APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

KRISHNAMACHARLU (DEFENDANT), APPELLANT,

v.

RANGACHARLU (PLAINTIFF), RESPONDENT.*

1892. March 3, 4.

Religious trust, assignment of—Delegation of trust—Appointment by trustee of an agent for nine years.

One holding land on trust to supply a temple with rice, &c., out of the income of the land, placed the defendant in possession of it under a lease, and subsequently, in 1888, demised it to the plaintiff for nine years under an instrument which provided that the plaintiff should collect the income, pay part of it to the executant of the instrument, and with the rest perform the trusts above mentioned. In a suit for rent the defendant denied the plaintiff's title questioning the validity of the instrument of 1888:

Held, that the instrument was valid, as it merely appointed the plaintiff an agent, and did not amount to an assignment of the trust.

SECOND APPEAL against the decree of O. Wolfe-Murray, Acting District Judge of North Arcot, in appeal suit No. 228 of 1889, affirming the decree of C. Rama Rau, District Munsif of Tirupati, in original suit No. 720 of 1888.

Suit for arrears of rent accrued due on certain land which was occupied by the defendant under an ijara lease. The defendant's lessor was one Venkatachari, in whom the land was vested on a religious trust created by his grandfather. On 21st May 1888, Venkatachari executed in favour of plaintiff an instrument comprising the land now in question, which, after describing the land, proceeded as follows:—

"In all, three properties of the value of Rs. 2,000 having been "purchased by my adoptive grandfather Sri Bhashyam Raghava "Charlu for the purpose of offering curd rice daily in the temple "of the deity of Sri Vedanta Desukalu in Tripati and distribute "the same to foreigners, he had been, during his life time, "offering curd rice daily from the income of the said estates, and, "after his death, I too, in accordance with the will left by him at "the time of his death, continued to do in the same manner. And "as it is not convenient for me to do the said kainkaryam (service)

* Second Appeal No. 1069 of 1891.

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"in future myself in person, and as I requested you to be my "trustee to take possession of the said estates and do the said "kainkaryam (service) yourself from the incomes of the said "estates, you agreed to it. Therefore you shall take possession of "the said estates for nine years from 30th May 1888 to 30th May "1897, and from the balance of income left after deducting kist, "&c., out of the incomes derived from the said estates, you shall "daily offer curd rice of half Talia containing two measures in the "temple of Sri Vedanta Desikuluvaru and out of the cooked rice "left after deducting the swatantrams due to the temple people, "you shall give me one-sixth of it and distribute the remainder to "foreigners. In case any proceedings have to be taken in civil, "criminal and other courts of justice about the said estates, you "shall take from the incomes derived therefrom the expenditure "that you may have to incur and continue to do the said "kainkaryam (service) out of the remaining amount as far as "possible. You should continue to do the said kainkaryam "(service) in a low scale if the incomes of the said estates be "insufficient to do kainkaryam (service) in the manner mentioned "above, and in a grand scale if the incomes rise. You shall keep "and render accounts of receipts and disbursements of the same."

The above instrument was filed in the suit as exhibit A. Another trust-deed, dated 4th January 1889, executed by S. Venkatachari appointing plaintiff permanently as trustee was filed as exhibit D. The will of the executant's grandfather was not put in evidence, nor any deed whereby the trust was created.

The District Munsif passed a decree for the plaintiff, which was affirmed on appeal by the District Judge.

The defendant preferred this appeal.

Krishnasami Ayyar for appellant.

Rama Rau for respondent.

JUDGMENT.—The only question argued is as to the validity of document A. It is urged that Vencatachari, being himself a trustee, had not the power to assign the trust to the plaintiff, and that the Lower Courts are in error in decreeing plaintiff's claim.

The general rule as laid down by Lord Langdale in *Turner* v. *Corney*(1) is that trustees who take on themselves the management of property for others have no right to shift their duty on

(1) 5 Beav., 517.

other persons, and if they do so they remain subject to responsibility towards their *cestuis que trustent* for whom they have undertaken the duty. As observed by Bowen, L.J. *in re Speight*(1), the rule that a trustee cannot delegate means simply this, that a man employed to do a thing himself has not the right to get somebody else to do it; but when he is empowered to get it done through others, he may do so. On referring to document A we find that the plaintiff is authorized merely to take possession of the land for nine years, and after deducting from the income the kist, &c., to apply the balance in the mode described therein, and to keep and render accounts of the receipts and disbursements. Upon its true construction we do not consider that the document evidences an assignment of the trust, but only empowers plaintiff to hold possession of the land for a period of nine years and to collect the income and apply it for the purposes of the trust in the manner indicated by Venkatachari.

The provision for rendering accounts indicates that Venkatachari did not intend to divest himself of the responsibility to the *cestui que trust*. Though the document is headed a "trust deed," and plaintiff is therein spoken of as Venkatachari's trustee, the relation created appears to be only that of principal and agent for a limited period without impairing Venkatachari's responsibility to the temple.

Having regard to the object with which Venkatachari's grandfather purchased the land in the name of the temple, it seems to us that Venkatachari was only bound to see that the income was duly collected and applied for the benefit of the temple without himself collecting or applying it.

It might be a question whether, if the transfer were permanent and absolute, it could be upheld, but that is a question that does not arise, as the decision does not rest on exhibit D, which was executed subsequently to the institution of the suit.

The appeal fails, therefore, and is dismissed with costs.

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(1) 22 Ch. D., 727.