

OULA  
v.  
BEEPATHEE.

to determine whether petitioners are entitled to be admitted as the legal representatives of the deceased Kutti Hammad for the purpose of prosecuting the suit, and then deal with the suit according to law. Costs of this appeal will abide and follow the result, and be provided for in the revised judgment or order.

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## APPELLATE CIVIL.

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

1893.  
September 28.  
December 21.

SHEIK DAVUD SAIBA AND OTHERS (PLAINTIFFS  
Nos. 1, 3 AND 4), APPELLANTS,

v.

HUSSEIN SAIBA AND OTHERS (DEFENDANTS),  
RESPONDENTS.\*

*Religious Endowments Act—Act XX of 1863—Regulation VII of 1817, s. 13—Discretionary power of a temple committee to appoint new trustees when the power of management is not hereditary—Trusts Act—Act II of 1882, s. 49.*

A temple committee appointed under Act XX of 1863 may appoint new trustees when there is no hereditary trustee to add to the existing trustees, but this power, although discretionary, must be exercised reasonably and in good faith, and, according to the principle, which is applicable to public trusts, embodied in section 49 of the Indian Trusts Act. If it is not so exercised, the power may be controlled by a Civil Court of original jurisdiction.

SECOND APPEAL against the decree of W. C. Holmes, District Judge of South Canara, in appeal suit No. 171 of 1891, reversing the decree of J. P. Fernandez, District Munsif of Coondapoor, in original suit No. 73 of 1890.

The plaintiffs were four of five trustees of a mosque. The eighth and ninth defendants were members of the committee who had appointed the first to sixth defendants additional trustees. The seventh defendant was the fifth original trustee and khazi of the mosque, who had been dismissed from his office by the four other trustees, a proceeding which, *inter alia*, gave rise to rioting, in which two of the plaintiffs took part. The committee then appointed the additional trustees in order to counterbalance the influence of the plaintiff trustees in the management.

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\* Second Appeal No. 38 of 1893.

The District Munsif decreed that the appointment was unnecessary and collusively made by the eighth and ninth defendants, which decree was reversed on appeal by the defendants by the District Judge.

SHEIK DAVU<sup>N<sup>o</sup></sup>  
SALBA  
v.  
HUSSEIN  
SALBA.

The plaintiffs preferred this appeal.

*Ranga Rau* for appellants.

*Pattabhirama Ayyar* for respondents Nos. 1, 2, 4 to 7 and 9.

JUDGMENT.—It is urged on appellants' behalf that the committee constituted under Act XX of 1863 acted *ultra vires* in appointing six additional trustees to the plaint temple without any necessity for so doing.

It is certainly competent to the committee, when there is no hereditary trustee, to add to the number of the existing trustees and it has the same powers which the Board of Revenue had under Regulation VII of 1817. Section 13 of that Regulation authorizes the Board of Revenue to make provision for the administration of religious and charitable endowments. It was also held by this Court in Regular Appeal 31 of 1888 that the committee might validly appoint new trustees where the right of management is not hereditary. It is then contended, with regard to the power conferred on the committee, that it is bound to exercise it reasonably and in good faith in furtherance of beneficial administration, and this contention is entitled to weight. The power conferred on the committee is no doubt discretionary, but the principle embodied in section 49 of the Indian Trusts Act, viz., that when such discretionary power is not exercised reasonably and in good faith, such power may be controlled by a Civil Court of original jurisdiction, is equally applicable to public trusts. There is nothing in Act XX of 1863 or in Regulation VII of 1817 to support respondents' suggestion that the power is absolute.

The second issue raised the question and the District Munsif held that the committee exercised the power otherwise than reasonably and in good faith. But the Judge has expressed no opinion. Before disposing of this second appeal we shall ask the Judge to return a finding as to whether the appointment of the additional trustees was a reasonable *bonâ fide* exercise of their power conducive to beneficial management. Additional evidence may be admitted.