APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

1914. July 28 and 29, August 6 and September 14.

A. THIRUVENGADATHAIYANGAR AND ANOTHER (DEFENDANTS NOS. 1 AND 2), APPELLANTS,

v.

R. PONNAPPIENGAR AND NINE OTHERS (PLAINTIFF AND DEFENDANTS NOS. 3 TO 5, 7 AND 9 TO 11), RESPONDENTS.*

Religious Endowments Act (XX of 1863), sec. 3—Temple falling under—Power of Temple Committee to appoint additional trustees in good faith and in the interests of the temple—Onus of proving bad faith, on person challenging the appointment.

For the better management of a certain Hindu temple which had no settled scheme of management and which was governed by section 3 of the Religious Endowments Act (XX of 1863) a Temple Committee appointed two trustees in addition to the three then existing.

Held:

(*a*) that the committee had power to appoint the additional trustees in virtue of their general power of superintendence over temples committed to their care as successors to the Board of Revenue, who had such power under section 2 of Regulation VII of 1817,

(*b*) that this power must be exercised reasonably and in good faith, in the interests of the temple,

(*c*) that the *onus* of proving that it did not exercise this power "reasonably and in good faith" lay not on the committee but on the person challenging the appointment of additional trustees, e.g., on the already existing trustee, as in this case, who sued to set aside the additional appointments, and

(*d*) that the power of appointing new trustees was not confined to filling up vacancies alone, but extended to creating additional trustees.

Sheik Davud Saiba v. *Hussein Saiba* (1894) I.L.R., 17 Mad., 212, referred to.

Venkatachala Pillai v. *The Taluk Board, Saidapet* (1911) I.L.R., 34 Mad., 375, *Nelliyathakshi Ammal* v. *The Taluk Board, Mayavaram* (1911) I.L.R., 34 Mad., 383; s.c., 20 M.L.J., 885 and *Ganapathi Ayyar* v. *Sri Vedavyasa Alasinga Bhattar* (1906) I.L.R., 29 Mad., 534, distinguished.

SECOND APPEAL against the decree of F. D. P. OLDFIELD, the District Judge of Tinnevelly, in Appeal No 275 of 1911, preferred against the decree of T. SRINIVASA AYYANGAR, the

* Second Appeal No. 2122 of 1912.

Temporary Subordinate Judge of Tuticorin in Original Suit No. 12 of 1909.

The necessary facts are given in the judgment.

K. Srinivasa Ayyangar and *N. Rajagopalachariar* for the appellants.—The temple concerned in this suit falls under section 3 of the Religious Endowments Act and the committee is entitled to appoint additional trustees whenever it considers such a step necessary. The District Judge has placed the *onus* of proving the validity and the necessity of appointing the additional trustees on the defendants, viz., the newly appointed additional trustees and the temple committee that appointed them. This is wrong—*vide Bhavanishankar* v. *Timmanna*(1). The temple committee being a statutory body its acts must be presumed to be reasonable and *bona fide;* compare section 47 of the Indian Trust Act (II of 1882) and *Sheik Davud Saiba* v. *Hussein Saiba*(2) and Godefroi on Trusts (3rd edition, page 330). The power to appoint additional trustees is one incidental to and included in the right of superintendence which originally vested in the Revenue Board under sections 2 and 13 of Regulation VII of 1817 and which thereafter descended to the temple committee under section 7 of the Religious Endowments Act. See *Ganapathi Ayyar* v. *Sri Vedavyasa Alasinga Bhattar*(3). Looking to facts of the case, these are not really appointments of additional trustees but only filling up of vacancies among the trustees whose number was at one time five.

T. Rangachariar for the respondent.—The powers of the committee are only those possessed by the Revenue Board under section 13 of Regulation VII of 1817. The Board had not under that section the power to appoint anybody as trustee except where there was a vacancy: see *Venkatachala Pillai* v. *The Taluk Board, Saidapet*(4) and *Nelayathakshi Ammal* v. *The Taluk Board, Mayavaram*(5) nor did section 2 of the Regulation empower the Board to appoint additional trustees. The existing trustees having a right of freehold in their office, the *onus* is on the authority appointing. This is really altering a scheme of management.

(1) (1906) I.L.R., 30 Bom., 508. (2) (1894) I.L.R., 17 Mad., 212.
(3) (1906) I.L.R., 29 Mad., 534 at p. 536. (4) (1911) I.L.R., 34 Mad., 375.
(5) (1911) I.L.R., 34 Mad., 333; s.c., 20 M.L.J., 885.

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The District Judge has held on the evidence in this case that the additional appointments were not only not justified but were unnecessary either from an administrative point of view or as a punishment to the existing trustees, on the alleged ground of their incompetency or impropriety in the discharge of their duties. Hence the additional appointments are illegal.

SADASIVA AYYAR AND NAPIER, JJ.

JUDGMENT.—The Second Appeal arises out of a suit by one of five trustees of a temple against the members of the temple committee and the other four trustees, the relief asked for being a declaration that two of the trustees have not been appointed lawfully by the temple committee. The temporary Subordinate Judge of Tuticorin in whose Court the suit was filed dismissed the suit. The District Judge of Tinnevelly on appeal set aside the decree of the lower Court and granted a declaration that the appointment of the trustees by the temple committee was not legally valid, ordered the cancellation of the appointments and issued an injunction restraining the newly appointed trustees from interfering with the management of the temple.

It is argued before us that the appointment was valid and that the District Judge has misapprehended the powers of a temple committee and wrongly thrown the burden on them of justifying the appointment. For the respondents it was contended, first that the appointment of the two trustees was an addition to the constituted number and thereby amounted to an alteration of the scheme which, it was argued, was entirely beyond the power of the temple committee, and secondly, that even if the committee had power to make the appointment it lay on them to justify it and that the District Judge having found that it was not justified this Court could not interfere in Second Appeal.

We can dispose of the first point very shortly. There is nothing in the plaint to indicate that objection was taken on the ground that the appointment was a variation of the scheme nor was the view ever urged during the course of the protracted proceedings in both the Courts; nor does the District Judge base his judgment on that ground. Further it appears that there is no record of any scheme ever having been settled and it is clear on the evidence, the admissions of the plaintiff and the findings of the Original Court that at one time there were actually five

trustees, the number now constituted by the present appointments and that at the time of the plaintiff's own appointment there were actually four. This objection therefore fails on two grounds and the appointment could very fairly be justified as one filling up two vacancies which had improperly been allowed to exist for a considerable time. If these appointments are to be viewed as the filling up of vacancies they are clearly justified under the provisions of regulation VII of 1817 as applied by the Religious Endowments Act, Act XX of 1863. The temple in question was, at the date of the passing of Act XX of 1863, one covered by the language of section 3 of that Act and, by section 7 of the Act, a temple committee was constituted to exercise the powers of the Board of Revenue and the local agents vested in them by the regulation. Turning to regulation VII of 1817, it is clear that, under sections 12 and 13, the Board of Revenue had power to appoint suitable persons as trustees and to fill up vacancies from time to time. We are of opinion, however, that even if these were not vacancies the temple committee had power to appoint these trustees if they thought it advisable to do so in the interests of the endowment, the appointments, as we have already pointed out, not being a variation of an existing scheme. Reliance is placed by the respondents on *Venkatachala Pillai* v. *The Taluk Board, Saidapet*(1) and it is argued that that case is an authority for the proposition that the only powers of appointments recognised by the regulation are appointments to fill vacancies. That is, however, not the *ratio decidendi* of the case. What was done in that case was that a trustee, namely, the Taluk Board, had been appointed without the existing trustee being dismissed, and the Court held (*vide* page 385) that the Board of Revenue could not ignore the rights of existing trustees and appoint trustees to the prejudice of one who is in possession of the office under the instrument creating the trust. The duty of the Board was, first, to dismiss the trustee which could be done for good cause shown and, then, there being a vacancy, exercise the powers under sections 12 and 13 of filling up the vacancy. That case, therefore stands on an entirely different footing to the present. But it is to be noted that the power to dismiss a trustee was assumed to exist by virtue of section 2 although no specific

(1) (1911) I.L.R., 34 Mad., 375.

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power to that effect is to be found in the words of the regulation. This was on the authority of *Chinna Rangaiyangar* v. *Subbraya Mudali*(1), a case quoted with approval in *Seshadri Ayyangar* v. *Nataraja Ayyar*(2). Further, the Court points out that on the occasion of a vacancy various powers are given to the Board by section 13 in that they need not fill up the vacancy but may make such other provision for the trust, management or superintendence as may seem to them right and fit. Reliance was also placed on *Nelayathakshi Ammal* v. *The Taluk Board, Mayavaram*(3) for the proposition that there was no power in the Board to appoint trustees except on the occasion of a vacancy. It is true that the Court in that case does doubt whether this power can be found in the Regulation other than in section 13; but the judges express no decided opinion on the point which was not necessary for the decision of the case. What was decided there was that where the Taluk Board had taken over the management by virtue of section 51 of the Local Boards Act it could not divest itself of its duty of management by appointing an independent trustee. That case is, therefore, no authority for the broad proposition contended for and in our opinion it is untenable; we have no hesitation in holding that a power to appoint an additional trustee when such appointment is not a variation of the scheme is necessarily vested in the temple committee as successors to the Board of Revenue. It was specifically so held in *Sheik Davud Saiba* v. *Hussein Saiba*(4). The Judges there use language which seems to indicate that they base the right on section 13, though it is not clear from the somewhat short judgment that this is so. They certainly lay down, however that it is competent to the committee where there is no hereditary trustee, to add to the number of the existing trustees if, in their opinion, it is advisible to do so in the interests of the trust. We prefer to find this power in section 2 of the Regulation. *Chinna Rangaiyangar* v. *Subbraya Mudali*(1) which decides that the Board of Revenue has power to remove a trustee lays down that the Regulation does not contain any restriction on the performance of the duties of general superintendence and

(1) (1867) 3 M.H.C.R., 334. (2) (1898) I.L.R., 21 Mad., 179 at p. 199.
(3. (1911) I.L.R., 34 Mad., 335; s c., 20 M.L.J., 885.
(4) (1894) I.L.R., 17 Mad., 212.

management and that decision was followed in *Ramiengar v. Pandarasannada*(1) and in a later case *Virasami v. Subba*(2) it was assumed that, in cases falling within section 3 of Act XX of 1863, such a power as this, the power of dismissal existed just as the authority to suspend or remove for just cause was held to be properly incidental to other duties and responsibilities of the Board of Revenue and to have been impliedly given by the Court in *Chinna Rangaiyangar v. Subbraya Mudali*(3); so the power to add additional trustees for the purposes above mentioned must likewise be held to be properly incidental to the duties and responsibilities of the temple committee and to be inherent from their power of general superintendence. The last argument addressed to us was that there was a distinction between the exercise of this power for administrative purposes and for punitive purposes. We are unable to accede to the argument that there is anything punitive in appointing fresh trustees where a temple committee are not satisfied that the existing trustees are dealing with the work successfully or properly. This contention is one that found favour with the learned District Judge and is the basis of his judgment. He remanded the case to the lower Court for the trial of an issue whether the appointments were a reasonable and *bona fide* exercise of the committee's power and in consequence of certain admissions made by the temple committee's vakil held that the appointment was punitive. He then required the temple committee to justify the appointment and eventually set it aside on the ground "that no such punishment should have been inflicted, adding, however, that if it was made on purely administrative ground it could not be supported since it did not result and, so far as has been shown, would not necessarily result in any improvement in the submission of accounts." We are unable to find any authority for this distinction between a punitive appointment of additional trustees and administrative one. The learned District Judge seems to rely on *Ganapathi Ayyar v. Sri Vedavyasa Alasinga Bhattar*(4). That, however, was a case where additional trustees were appointed in such a manner as to alter the scheme of management already

(1) (1867) 5 M.H.C.R., 53.
(2) (1883) I.L.R., 6 Mad., 54.
(3) (1867) 3 M.H.C.R., 334.
(4) (1906) I.L.R., 29 Mad., 534.

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settled by the Board. As pointed out above, there is no evidence of a scheme of management ever having been settled or what its nature was. We hold that where no person is deprived of his freehold there is no duty cast on the temple committee to show affirmatively that the appointment was for just and sufficient cause. In our view the only limit to be imposed on the temple committee in the exercise of their discretion is by an analogy to section 49 of the Trusts Act II of 1882, "where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction." This has been expressly held in *Sheik Davud Saiba* v. *Hussein Saiba*(1) in circumstances resembling the present case. The learned District Judge has cast a higher duty on the temple committee than he should have done and his finding on the issue based on his view of the burden of proof and on his limitation of the materials for justification cannot be supported. We do not think it advisable to send this case back after having carefully considered the case ourselves. We propose, therefore, to exercise, the powers conferred on this Court by Order XLI, rule 24 of the Civil Procedure Code of resettling the issues and finally determining the suit ourselves. The issue will be whether the Temple Committee has not exercised its power of appointment in this case "reasonably and in good faith."

Cur ad vult.

This Second Appeal coming on for final hearing, the Court delivered the following

SADASIVA AYYAR AND NAPIER, JJ.

JUDGMENT.—In the judgment pronounced by us on the 6th August 1914 we expressed our opinion that the real question for decision in this case was whether when the majority of the members of the temple committee appointed the defendants Nos. 1 and 2 as additional trustees at a meeting of the committee held on the 28th February 1909 (Exhibit A_1), they did not exercise "reasonably and in good faith" the discretionary power vested in them by law to make such new appointments.

We have heard the learned vakil who argued for the plaintiff (first respondent) on this question at some length but we are not satisfied that the committee members who by a majority of four to two passed the resolution, Exhibit A_1, did not act reasonably

(1) (1894) I.L.R., 17 Mad., 212.

or in good faith in making the disputed appointments. Some of the reasons given by the said majority of the committee are that the plaintiff and the fourth defendant (who were two of the then existing three trustees) had been, in the opinion of the said majority of the committee, "very remiss in the discharge of their duty" and "have allowed the temple accounts to fall into arrears" and "have badly treated" those temple servants who did not belong to their faction. We see no sufficient grounds for believing that these four committee members (three of whom were not Sree Vaishnavas and had no interest in either of the two factions raging among the trustees) did not honestly believe in the facts on the truth of which they acted or did not honestly come to the conclusion that the additional appointments of trustees would be conducive to the interests of the temple, even though it is very probable that they knew that the additional trustees belonged to the faction opposed to that of the plaintiff and the fourth defendant.

In this view, the lower Appellate Court's decree is reversed and that of the Subordinate Judge is restored. The plaintiff will pay the costs of defendants Nos. 1 and 2 in this and in the lower Appellate Court while the other defendants will bear their own costs.

N.R.