APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Coutts Trotter.

ULLATHIL KOLATHIL NETHIRI MENON (PLAINTIFF), APPELLANT,

v.

MULLAPULLI GOPALAN NAIR AND THIRTEEN OTHERS (DEFENDANTS NOS. 1 TO 13 AND THE NINTH DEFENDANT'S LEGAL REPRESENTATIVE), RESPONDENTS.*

1915. March 24 and 25 and July 15 and 30.

Trust, charitable—Acts of majority binding on minority—Indian Trusts Act (II of 1882), sec. 42—"Any trustees or trustee," meaning of—Payment to some only of the trustees, not a valid payment.

An act of the majority of a body of charitable trustees binds the whole body. A mortgage purporting to be on behalf of all but executed only by a majority of the trustees when the others have declined to join in its execution is binding on all the trustees.

Teramath v. *Lakshmi* (1883) I.L.R., 6 Mad., 270, followed.

A payment to one only of several trustees is not a valid payment unless he has or is held out by his co-trustees as having authority to receive the same.

The words "any trustees or trustee" in section 42 of the Indian Trusts Act mean the trustee where there is only one, the trustees where there are more.

Rambalu v. *Committee of Rameshwar* (1899) 1 Bom. L.R., 667, not followed.

Semble: If a document is drawn up in the names of several persons and it is the intention of the parties that all should execute it, it will be incomplete and inoperative till all have done so.

Sivaswami Chetty v. *Sevugan Chetty* (1902) I.L.R., 25 Mad., 389 and *Latch* v. *Wedlake* (1840) 11 A. & E. 959, followed.

It is a question of fact in each case as to what was the intention of the parties.

SECOND APPEAL against the decree of A. EDGINGTON, the District Judge of South Malabar, in Appeal No. 306 of 1912, preferred against the decree of K. A. KANNAN, the District Munsif of Ottapalam, in Original Suit No. 29 of 1911.

The facts appear from the judgment.

C. V. Anantakrishna Ayyar for the appellant.

G. S. Ramachandra Ayyar and *Eroman Unni* for the respondent.

The following judgment of the Court was delivered by COUTTS TROTTER, J.:—The facts of this case are reasonably clear, and can be shortly stated as follows: Defendants Nos. 9 to 13 are the *uralans* or trustees of a temple known as the Tiruvegapura

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Devaswom, and the lands referred to in the suit are the property of the temple, and at the period material to this suit the management of the property of the temple was vested in the whole body of *uralans*. In 1904 the lands in question in this suit were mortgaged to the first defendant on behalf of the tavazhi of defendants Nos. 1 to 6 with a corresponding obligation on them to pay certain rents and revenues while in possession to the *uralans* (Exhibit A). In this state of things, the ninth defendant, who appears for some reason to have been on bad terms with his fellow *uralans*, brought a suit against them, obtained a decree, and attached in execution the moveables of the temple, including the vessels and jewels necessary for the performance of the daily worship. It thereupon became an urgent matter to free the vessels and jewels, and the plaintiff came forward with the requisite funds. Meetings of the *uralans* were held which the ninth defendant though summoned refused to attend, and it was argued that the plaintiff should be reimbursed by making over to him certain of the rents and revenues due under Exhibit A. For this purpose a karar was drawn up, Exhibit B, and it is on this document that he brings his action. As drawn up, the contracting parties are expressed to be all the five *uralans* of the one part and the plaintiff of the other part; but the ninth defendant could not be got to execute it and in fact never did execute it. Finally it was executed by the remaining four *uralans* on the 24th April 1909 and handed to the plaintiff, who forthwith paid into Court the monies necessary to release the moveable property of the temple. When the plaintiff endeavoured to recoup himself by collecting the monies due to him under Exhibit B, he was met by a refusal based upon various grounds and among them the allegation that the monies had already been paid to defendants Nos. 9 and 12, and in support of this allegation a receipt was produced, dated 27th November 1910 and signed by defendants Nos. 9 and 12 and the *anandravan* of defendant No. 11's tarwad (Exhibit I). He thereupon instituted the present suit; so far he has failed in both Courts below, and he now comes in second appeal before this Court. No one conversant with the facts of this case can fail to entertain strong suspicions that the alleged payment to the defendants Nos. 9 and 12 was a fiction, and Exhibit I a sham document concocted to defeat the plaintiff's just claim; and that

was part of his case in the Courts below: the manner in which this issue was treated below is most cursory and unsatisfactory; however both Courts have found that the payment was made; that is a finding of fact in support of which there was no doubt some evidence, and we must accept it here; that being so, two questions only arise for our decision. First, was Exhibit B a valid document or was it vitiated by the fact that only four of the five contracting trustees executed it? and secondly, was the payment evidenced by Exhibit I a good discharge to the defendants from the plaintiff's claim? At one time a third point was suggested, viz., that Exhibit B only effected an assignment of an actionable claim; but this was not seriously pressed, and is at once refuted by an examination of the documents. As to the first point, the law is well settled and clearly understood both in this country and in England. The majority of a body of charitable trustees can legally bind the whole body—*Wilkinson* v. *Malin*(1), *In re Whiteley, Bishop of London* v. *Whiteley*(2) and *Teramath* v. *Lakshmi*(3)—but if a document is drawn up in the name of all, and it is the intention of the parties that all should execute it, it will be incomplete and inoperative till all have done so. See *Sivasami Chetty* v. *Sevugan Chetty*(4) and *Latch* v. *Wedlake*(5). It is a question of fact as to what was the intention of the parties. In this case the District Munsif has found as a fact that they intended the document to be executed by all the five trustees, and the District Judge has accepted his finding; if there is evidence to support that finding, we cannot interfere with it on second appeal; if there was no evidence to support it, it is our duty to set it aside. Upon a careful consideration of the facts, we think that not only was there no evidence in support of this finding, but that all the evidence points wholly and conclusively the other way. The document was drawn up certainly as early as the 17th March 1909, as on that day the four trustees sent an urgent notice to the ninth defendant informing him that it was drawn up, that his signature to it was required, and that if he did not sign it, the other four would sign it without him and "give it the same effect as if he had also taken part" (Exhibit C_1). Another

(1) (1832) 2 Tyr, 544. (2) (1910) 1 Ch., 600.
(3) (1887) I.L.R., 6 Mad., 270. (4) (1902) I.L.R., 25 Mad., 389.
(5) (1840) 11 A. & E., 959; s.c., 113 E.R., 678.

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equally urgent notice in similar terms was sent to the ninth defendant on the 9th April (Exhibit C_2). As he did not answer these communications the document was executed by the other four trustees on the 24th April and handed to the plaintiff, who thereupon paid the money in satisfaction of the decree. The Judges below have been misled by an answer in the plaintiff's cross-examination, which appears in the deposition as follows: "The intention when Exhibit B was written was that ninth defendant should also execute it." That is doubtless perfectly true; but the learned Judges have overlooked the fact that more than a month elapsed between the writing of the document and its execution; that during the month the ninth defendant had been asked repeatedly to sign, and had failed to do so, and that the remaining *uralans* had announced their intention of signing themselves and delivering the document to the plaintiff. The intention of the *uralans* is sufficiently evidenced by their own words in Exhibits C_1 and C_2; that of the plaintiff is equally manifest from the fact that as soon as he got the document signed, he parted with his money. We think that there was no evidence to support the finding of the Lower Courts, and we set it aside and declare Exhibit B to be a valid and binding document.

There remains the question as to whether the payment to two of the five trustees is a valid payment. There is no doubt that even one out of many trustees can receive and give a good discharge for rent and similar payments of income, if he has or is held out by his co-trustees as having authority to do so. Here it is not contended that the two *uralans* had any such authority actual or by estoppel. But it is said that though the Indian Trusts Act does not apply to charitable trusts, its provisions should guide us by analogy in matters of this sort; and that was the view adopted in *Rumbabu* v. *Committee of Rameshwar*(1), and that section 42 of the Indian Trusts Act if applied validates this payment. The Court in that case (JENKINS, C.J. and RANADE, J.) applied the provisions of section 42 of the Act to a case of a charitable trust; and proceeded to give an interpretation of the section. It runs as follows:—

"Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable,

(1) (1899) 1 Bom. L.R., 667.

transferable or deliverable to them or him by reason or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof."

It will be noticed from the report of the Bombay case that the learned Judges quote the section as beginning "any trustee may," whereas the words are "any trustees or trustee may." They proceed to interpret the section as meaning that any member of a body of trustees may give an effectual receipt for a payment made to him solely. We do not agree with the decision; and we do not think that the learned Judges would have decided it as they did, if their attention had been drawn to the sections of the English statutes upon which the Indian section is modelled. These sections are 23 and 24 Vict., c. 149, sec. 29; 22 and 23 Vict., c. 35, sec. 33; and 44 and 45 Vict., c. 41, sec. 36. Before the first of those enactments, a person who paid money over to trustees was responsible to the *cestui que trust* for seeing to the proper application to the trust of the moneys so paid. The object of the English sections (their purport is the same, but they apply to different classes of trust) was to put an end to so great a hardship, and to discharge those who in good faith paid trustees from any further responsibility as to the disposal of the moneys. Such being the origin of the English sections, we think it is clear that on their true construction the words "any trustees or trustee" mean "the trustee where there is only one, the trustees where there are more;" and we see no reason for applying a different construction to the words of the Indian Trusts Act. Accordingly we hold that the payment to the defendants Nos. 9 and 12 and the receipt (Exhibit I), failed to discharge defendants Nos. 1 to 6, and leaves them no answer to the plaintiff's claim.

The appeal is allowed with costs in all Courts, and the plaintiff must have a decree in the terms of his plaint, except as regards the rent due for the Malayalam year 1080, which is not now pressed. In default of payment within six months, the properties in suit must be sold.

N.R.