APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Curgenven.

1926, December 6.

K. R. M. SINGARAM CHETTIAR (SEVENTH DEFENDANT), APPELLANT.

v.

K. SRINIVASA AIYANGAR AND 12 OTHERS (PLAINTIFFS 1 TO 7 AND DEFENDANTS 1, 2, 4 TO 6 AND 8), RESPONDENTS.*

Sec. 10 of the Religious Endowments Act (XX of 1863)—Election to vacancy in temple committee on the authority of managing member and not on the authority of the committee—Election on basis of old voters' list in spite of objection, validity of.

Where in accordance with the rules framed for the conduct of business of a temple committee, a member of the committee made a requisition in time to reopen a resolution of the committee fixing a date for filling up a vacancy in the committee, on the grounds that the voters' list on which the election was sought to be held was very old and required to be revised by the inclusion of names of new and eligible voters who had applied to be included and that the election should be held only after the revision of the list,

Held, that an election held on the basis of the old list without complying with the requisition of the member and on the authority of the managing member of the committee alone and not on the authority of the committee as required by section 10 of the Religious Endowments Act is invalid and should be set aside. *Tiruvengada* v. *Ranga* (1883) I.L.R., 6 Mad., 114, considered.

SECOND APPEAL against the decree of the Court of the Subordinate Judge of Kumbakonam in Appeal Suit No. 109 of 1923, preferred against the decree of the Court of the District Munsif of Kumbakonam in Original Suit No. 122 of 1920.

* Second Appeal No. 730 of 1924.

The necessary facts are given in the judgment.

S. Muthayya Mudaliyar and *T. S. Venkatesa Ayyar* for appellant.

T. V. Muthukrishna Ayyar, *N. Kunjithapatham* and *K. Narasimha Ayyangar* for respondent.

JUDGMENT.

KUMARASWAMI SASTRI, J.

KUMARASWAMI SASTRI, J.—This Second Appeal arises out of an election to a temple committee and the question is whether the election of the seventh defendant is valid. A vacancy was caused in the Devasathanam Committee by the death of one Ponnusami Nadan. Thereupon there was a resolution passed on the 18th January 1920 that the first defendant who was said to be the managing member should issue notices in connexion with it, appoint the tellers and take the necessary steps for holding an election that the voters' list prepared in 1908 be the basis for such an election and that the election be fixed to take place on the 22nd February 1920. The sixth defendant objected to this resolution on the ground that a correct list of voters had not been prepared in spite of the resolution of the committee to that effect passed on December 18, that the list of 1908 was old and defective and did not contain the names of more than 5 per cent of the legitimate number of voters. Both the Courts find that there was a valid rule or practice of the committee by which if a member calls for a reconsideration of a resolution passed within 24 hours after the passing of such a resolution it was to be kept in abeyance and not acted upon until it was reconsidered and reaffirmed. Acting under this rule the sixth defendant who was a dissenting member called for a reconsideration both of the date of the election and of the footing on which it was to be held, namely, the electoral roll of 1908. He wanted a new list to be

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prepared as the old list was very antiquated. It appears that a new list was prepared but only wanted confirmation. It also appears that as many as 180 voters who had a right to vote were not in the 1908 list but wanted their names to be included in the present list and to this effect they put in their applications. Upon this requisition of the sixth defendant for reconsideration, a meeting was held on the 1st February 1920 but as there was no quorum the meeting was again held on the 11th February and there were about 40 subjects on the agenda but the meeting dispersed without any business being transacted and it was adjourned to the 24th February. Again the election was adjourned to the 14th March 1920 with the hope that something will be done by that time but nothing was done. Even on the 24th February 1920 nothing could be done as there was not a majority of four members of one view as was required by the by-laws for a resolution to be passed. Then the meeting was adjourned to the 2nd March but there was no quorum even then. Then the first defendant took upon himself to pass proceedings and directed that an election was to be held on the 14th March and an election was in fact held on that day. The question is whether that election is valid. I am clearly of opinion that the election held under such circumstance is clearly void as has been found by the Subordinate Judge. First of all there was no resolution which could be enforced fixing the date of the election. The basis on which the election was to take place, namely, the electoral roll, was still under consideration and there was application for registration as voters and until the matter was considered, the resolution fixing the date of the election had no validity or effect. Further it is not shown that the authority of the first defendant alone is sufficient to proceed with the election.

It was virtually carrying into effect a resolution which was not validly disposed of. The sixth defendant objected to the list of 1908 being used for election in 1920; that it was long out of date and could not now be used and that 180 members, who had the requisite qualifications to vote had applied and their applications were kept pending while the election was allowed to be proceeded. There was nothing in the rules that their names could not be entered in the new list as eligible to vote for the 1920 election. I do not see how the resolution of the 18th January can be divided into two separate and independent portions, as the District Munsif has done, one of them as having authorized the holding of election and the other as having authorized its being held on the footing of the voters' list of 1908. I do not see how it can be held that the date of the election was irrevocably fixed for the date on which it was held, while the basis on which the election was to be held was not yet disposed of and was the subject of reconsideration. I agree with the Subordinate Judge that it was only a single resolution kept in abeyance and was the subject of reconsideration. It is clear that rule 14 requires that there shall be a register of voters eligible to vote for the election and that rule was not complied with inasmuch as there was no correct list of voters in 1920. I think that the election held in these circumstances is not valid.

Reference was made to *Tiruvengada* v. *Ranga*(1) to show that it is not material whether the list of voters was of 1908 or any other year. It is said that even if the list is quite out of date it does not matter. It is sufficient for our purpose to state that the question now raised goes far beyond that. In this case, there was no

(1) (1883) I.L.R., 6 Mad., 114.

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resolution at all under which an election can be validly held and again there arises the further question of how far an election held is valid which does not dispose of the application of persons who claim to have a right to vote in the election and which application ought to have been considered. I am of opinion that where the validity of the list on which the election is to be held is in question and where the applications of persons who are qualified to vote and who claim to be enlisted as voters are not considered, an election held on the basis of a list which was several years old would not justify the election as a valid one. To hold otherwise would be a negation of all elective principles and actually vest in the trustees the power to disenfranchise voters who are duly qualified to vote and are entitled to exercise their right. I think that the broad rule laid in *Tiruvengada* v. *Ranga* (1) that a list however inadequate would not invalidate an election requires reconsideration. The facts of this case however are not similar and the ruling has no application. I think the Subordinate Judge's judgment is correct and the Second Appeal fails and is dismissed with costs.

CURGENVEN, J.

CURGENVEN, J.—I agree. There are two clear reasons for holding with the learned Subordinate Judge that the election was not validly held, firstly that it was not duly authorized by the committee, and, secondly, that the basis of it, namely the voters' list, had not been revised. As regards the first point, section 10 of the Religious Endowments Act, XX of 1863, requires that when a vacancy arises the remaining members of the committee shall among other things fix a date for the election of a successor. My learned brother has summarized the effect of the several meetings held on the 18th January and

(1) (1883) I.L.R., 6 Mad., 114.

subsequently, and I think it is sufficient therefore to draw attention to the so-called "Proceedings" of the 2nd March 1920, from which it is evident that the committee had left the matter in abeyance pending disposal of the sixth defendant's objection with regard to the voters' list and that objection had still not been disposed of. It is then recited that as the period of three months prescribed for the election would soon terminate, it was not possible to postpone the matter any further. There is clearly an implied admission here. I think that the projected course was irregular owing to a lack of any clear expression of the committee's will that the election should be held on the date on which it was in fact held. Accordingly the provisions of section 10 were not complied with and the election was unauthorized.

With regard to the second point, the voters' list dated from 1908 and such a list cannot be held to be in compliance with rule 14 which requires that the committee should keep a register of voters. A list so antiquated cannot be a register of voters at all, because a very large proportion of persons eligible to vote were omitted from it. This is clear from the circumstance that as 180 applications had been received for inclusion in the list and were still kept pending, a circumstance which I think clearly differentiates the facts of this case from those considered in *Tiruvengada* v. *Ranga*(1). I am unable to accept the suggestion that the matter was of no practical importance, because the majority of votes obtained in the event was such that even if all the 180 had been included on the other side the result would have been the same. Unless there is some provision to the contrary, the validity of the

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election depends upon the regularity of the procedure according to which it is held and not upon the results, which may by accident be the same as if it had been regularly conducted.

I have only to notice one more objection, which is that both the plaintiffs were in the 1908 list of registered voters and accordingly that they had no grievance which entitled them to bring a suit under section 92, Civil Procedure Code. That section enables any two or more persons that have an interest in the trust to sue for certain reliefs and it is not necessary that they should have been personally affected by any act done by the person or persons sued. It is sufficient that they have enough of an interest in the trust to see that the trust is properly conducted and that the terms whereby it is regulated are complied with. I think accordingly that the plaintiffs were fully competent to sue under section 92, Civil Procedure Code. In the result I agree with my learned brother that the Second Appeal fails and should be dismissed with costs.

N. R.