APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Krishnan Pandalai.

1930. November 21.

MANAVIKRAMA RAJA, THE ZAMORIN OF CALICUT (SECOND DEFENDANT), APPELLANT,

v.

THATTAMANGALATH ALIAS MALLISSERI ILLATH KRISHNAN NAMBUDRIPAD AND ANOTHER (PLAINTIFF AND FIRST DEFENDANT), RESPONDENTS.*

Madras Hindu Religious Endowments Act (II of 1927), Chs. IV, V and VI—Excepted temples—Policy in respect of—Decree —Two possible constructions of—Rule to be applied.

The policy of the Madras Hindu Religious Endowments Act, as seen from a comparison of Chapters IV, V and VI thereof, is to place maths and excepted temples, in normal conditions, under much less direct and detailed interference from the Religious Endowments Board in matters of internal management than ordinary temples. This does not mean that, in cases of proved mismanagement or incapacity or in the imperative interests of future good government, such interference may not have to be provided for in a scheme. Consequently, in a case where there is no proof of mismanagement, it is appropriate, in a scheme in respect of an "excepted temple," that the appointment of a manager should be with the trustees who are the persons really responsible.

Of two possible constructions of a decree, the Court will not accept the one which leads to plain injustice and makes its own decree an instrument of depriving parties, whose case had not been heard and decided, of valuable and cherished rights which no one had any intention to destroy.

APPEALS against the decree of the District Court of South Malabar in Original Suits Nos. 1 and 2 of 1929.

The appellant in both the appeals was the Zamorin of Calicut, who was a trustee (Uralan) of the Guruvayur

* Appeals Nos. 211 and 212 of 1930.

Devaswom. In certain proceedings between him and the Mallisseri Illom, which culminated in Appeal Suit No. 35 of 1887, the High Court declared that the latter was also entitled along with the former to the joint trusteeship (Uraima right) of the Devaswom, with equal powers to manage its affairs except with reference to certain minor details which are not material in connection with these proceedings. In 1912 four persons, as relators, with the sanction of the Advocate-General, filed a suit (which was afterwards numbered as Original Suit No. 27 of 1916) against both the trustees alleging mismanagement and praying for their removal and for a scheme. When this suit was pending, the Court of Wards took charge of the estate of the Zamorin and with it the management of the Devaswom. The Mallisseri Illom also gave a power of attorney to the Court of Wards to manage the Devaswom. The Subordinate Judge who tried the suit directed that the power of attorney should not be revoked by the Mallisseri Illom during the management of the Devaswom by the Court of Wards and held that no scheme was necessary. On appeal from this judgment the High Court, in Appeal Suit No. 8 of 1917, instead of merely leaving it to the Mallisseri Illom and in order to provide for the undivided responsibility of the Court of Wards, removed the members of the Mallisseri Illom from the trusteeship, with a direction that, after the expiry of the management by the Court of Wards, the parties be at liberty to apply to vary the decree with reference to the then existing facts. The management by the Court of Wards terminated in 1927 and the Zamorin was put in possession of the Devaswom along with his estate by the Court of Wards. The Zamorin, having thus got an unlooked for advantage, was in no mood to recognize the right of the Mallisseri Illom to

ZAMORIN OF CALICUT v. KRISHNAN NAMBUDRIPAD.

the joint trusteeship. By that time the Madras Hindu Religious Endowments Act had come into force. This Devaswom was one of the excepted temples under the said Act. Certain worshippers of the Devaswom applied to the Hindu Religious Endowment Board to hold an enquiry into the affairs of the Devaswom and settle a scheme. Before the Board, the Mallisseri Illom, through its representative Thattamangalath alias Mallisseri Nambudripad, urged their right to the hereditary trusteeship. But the Board settled a scheme ignoring the right of the Illom to the hereditary trusteeship, stating that their right should be established in Court. It is this scheme that is the subject-matter of the present appeals. Thereupon the Mallisseri Illom filed Original Suit No. 1 of 1929 on the file of the District Court of South Malabar, under section 63, clause (4) of the Act, to amend the scheme framed by the Board and also filed, in pursuance of the liberty to apply expressly reserved in Appeal No. 8 of 1917, a petition in Original Suit No. 27 of 1916 asking to be restored to the position which the Illom occupied before the Court of Wards took over the management. The lower Court upheld the claim of the Illom to be a hereditary trustee of the temple as declared in Appeal No. 35 of 1887 and made certain amendments to the scheme which, in its view, were required for the future good management of the institution.

T. M. Krishnaswami Ayyar and *A. Parameswaran* for appellant.

T. S. Anantarama Ayyar for first respondent.

P. Venkataramana Rao for second respondent.

JUDGMENT.

These appeals are by the Zamorin of Calicut from decrees in two suits, Original Suits Nos. 1 and 2 of 1929,

in the District Court of South Malabar in both of which he was the second defendant. Both suits were brought under section 63 (4) of the Madras Hindu Religious Endowments Act to amend a scheme of administration settled by the Hindu Religious Endowment Board (the first defendant in both suits) under section 63 (1) of the Act in respect of the Guruvayur Devaswom, of which the appellant is a trustee (Uralan). The plaintiff in Original Suit No. 1 was the Mallisseri Nambudri, the first respondent in Appeal Suit No. 211. His claim was that he also was an Uralan of the Devaswom. His complaint was that the Board had, in their scheme, ignored his rights and he prayed that the scheme be amended in that respect. The plaintiffs in Original Suit No. 2 were certain worshippers, on whose petition the Board had started the enquiry which led to the scheme. Their complaint was that the Board had accepted *in toto* the scheme put forward by the Zamorin and had not adopted sufficient safeguards for the proper management of the institution, and their chief prayer was that the scheme should be amended by adding to the number of trustees and placing the management in the hands of a Board of five trustees, three of whom were to be nominated and a manager who was to be appointed by the Board. The appellant was the chief contesting defendant in both suits. He resisted the Mallisseri Nambudri's claim to Uraima on certain technical grounds, which will be explained more fully later, depending on the construction of the decree of this Court in Appeal Suit No. 8 of 1917 and section 73 of the Religious Endowments Act. He resisted the suit of the worshippers on the ground that the amendments in the scheme as proposed by them were unnecessary. The Board, while adopting an attitude of unconcern about the rights claimed by Mallisseri Nambudri, was inclined to favour the proposals of

ZAMORIN OF CALICUT v. KRISHNAN NAMBUDRIPAD.

the worshippers as to future management because, in its opinion, the appellant had not worked the scheme already settled by it in the proper spirit, and it was improper to leave any longer an important temple like Guruvayur in the sole management of a hereditary trustee, like the appellant, who could never pay personal attention to the temple affairs both by reason of the great age at which Zamorins usually attain the stanom and the distance of their residence from the temple.

Two groups of questions thus arose in the suits—the first, relating to the claim of the Mallisseri Nambudri and the second, to the amendments of the scheme which were either proposed by the worshippers and the Board or became necessary by the Nambudri's claim being allowed.

[Their Lordships after stating the facts proceeded as follows :—]

The Zamorin does not, as indeed he cannot after the decree in Appeal Suit No. 35 of 1887, deny the right of the Nambudri's Illom to joint Uraima with him. But he contended (1) that the decree in Appeal Suit No. 8 of 1917 deprived the Illom of the Uraima till the Nambudri became restored to it by appropriate proceedings and that no such proceedings have been taken; (2) that, so far as the application of the Nambudri in the suit of 1912 is concerned, it is ineffective because, according to the Full Bench decision in *Veeraraghavachariar* v. *Advocate-General, Madras*(1), it was incompetent to this Court to reserve power to modify a scheme and therefore the power could not be used; and (3) that, so far as the Suit No. 1 of 1929 is concerned, the Court has no power, on a proper construction of the relevant provisions of the Hindu Religious Endowments

(1) (1927) I.L.R. 51 Mad. 31 (F.B.).

Act, to appoint, in a suit brought under section 63 (4), new trustees to an excepted temple.

The learned Judge, on the strength of the decision in *Veeraraghavachariar* v. *Advocate-General, Madras*(1), held that the direction in the judgment in review in Appeal Suit No. 8 of 1917 reserving liberty to apply *inter alia* to the Nambudri to be recognized as or restored to the trusteeship, could not be given effect to. He therefore dismissed the Nambudri's application in the suit of 1912 (Miscellaneous Petition No. 344 of 1929). The Nambudri has acquiesced in that decision and has not appealed therefrom.

The learned Judge also held that, in a suit brought under section 63 of the Religious Endowments Act to amend a scheme settled by the Board, the Court has only the powers of the Board, which, according to him, do not include the right to appoint a new trustee in an excepted temple.

The learned Judge, having thus accepted the two technical objections raised by the appellant, was faced with the difficulty that the Nambudri's suit, if regarded as one to get himself appointed as trustee of the Devaswom, would be incompetent under section 73 of the Act, as the consent of the Board had not been obtained for its institution. The learned Judge overcame this by holding that the Nambudri's suit may be regarded as one for the vindication of his personal rights or the rights of his Illom to the trusteeship and not one for any of the reliefs for which a suit under section 73 is necessary. For the purpose of ascertaining the Nambudri's rights in such a suit, the learned Judge held that he was at liberty to consider the effect of the decree in Original Suit No. 27 of 1916. On this

(1) (1927) I.L.R. 51 Mad. 31 (F.B.).

ZAMORIN OF CALICUT v. KRISHNAN NAMBUDRIPAD.

last point he came to the conclusion that on the decree ceasing to operate (by the termination of the management of the Court of Wards) the rights affected by the decree revived. The result was that the Nambudri became automatically restored to his position before the suit began, as a hereditary co-trustee with the Zamorin.

It is plain that, if the opinion of the learned Judge about the meaning and effect of the decree in Appeal Suit No. 8 of 1917 is right, the technical objections raised by the appellant in bar of the suit and upheld by the Judge, together with the answer to them on which he found the Nambudri's suit still maintainable, all become irrelevant as they would not arise at all. This was admitted by the learned Advocate for the appellant.

We agree with the learned Judge in his construction of the decree in Appeal Suit No. 8 of 1917. The appellant's Advocate has drawn our attention to the judgments and decree in the appeal and urged that the removal of the Nambudri, though only intended for a temporary purpose to prevent the power of attorney given by the Illom to the Court of Wards from being revoked during its management, was still in terms neither temporary nor conditional but absolute and effective until altered as contemplated by subsequent application. We are unable to agree with this contention. To ascertain the meaning and effect of a decree of any Court, it is permissible, where the words are capable of more than one meaning, to look at all relevant papers and circumstances which were before the Court and the object which the directions contained in the decree were aimed to achieve. Of two possible constructions, the Court will not accept the one which leads to plain injustice and makes its own decree an instrument of depriving parties, whose case had not been heard and decided, of valuable and cherished rights which no one had any

intention to destroy. That would be the effect of adopting the appellant's construction of this decree. It is not necessary to repeat the considerations set out in paragraphs 28 to 30 of the judgment of the lower Court which deal with this question. It is sufficient to refer to the fact that removing the representatives of the Mallisseri Illom was only an expedient devised to ensure that the management by the Court of Wards should not be disturbed by the power of attorney given by the Illom being revoked. It was not for any misconduct. In fact the only male member who had any subsisting rights in the Illom was then a minor and therefore incapable of misconduct. As pointed out by the learned Judge, when this Court said in Exhibit J that it would be open to the Sub-Judge to consider whether any change should be made in the management, it meant, not the management of the Court of Wards but the management before the Court of Wards entered, the management by both the trustees. The effect of this is that, on the termination of the Court of Wards' management, the previous state of affairs revived and Mallisseri Illom became restored to its previously existing rights.

In this view of the case, objection to the Nambudri's suit as one under section 73 of the Act and as involving the appointment of a new trustee for which the Court has no power in a suit under section 63 does not arise. He is entitled, as a trustee, to sue under section 63 (4) to have the scheme settled by the Board which ignores his rights so amended as to provide for them. The Board itself does not object to this and the worshippers also do not object. The main ground of Appeal No. 211 of 1930 therefore fails. The only matter left in it is whether the consequential amendments made by the learned Judge to the scheme are suitable. It is convenient to deal with this matter separately.

ZAMORIN OF CALICUT v. KRISHNAN NAMBUDRIPAD.

We shall deal now with the major objections and suggestions of the several parties before the Court to the scheme settled by the learned Judge. The minor objections can be dealt with in finally passing the draft scheme on the footing of our conclusions.

Objections and suggestions of the appellant.

Objection is taken to the manner of appointing the manager on the ground that it will, in practice, vest the real power of appointment in the Board and not in the trustees whose nomination the Board is empowered to veto. The procedure of the Zamorin submitting three successive names in three months to the Board is also criticized as cumbrous and likely only to result in much needless waste of time. Taking the scheme as a whole, the learned Judge, while not acceding to the request of the Board and the worshippers to add new trustees, as in his view, the Court had no power to do so in a suit brought under section 63, produced almost the same effect by taking the appointment of the manager, the Chief Executive Officer, out of the hands of the trustees. The elaborate procedure prescribed in clause 3 of the scheme, viz., of the Zamorin sending nominations to the Board, their consulting the Nambudri and, on the Board's disapproval of the nominated person, itself calling for two more nominations one after the other after the interval of a month each time and, after all this, the Board choosing its own man, really puts the appointment into the hands of the Board, and if we intended to uphold that principle, we should adopt the much more simple and direct method of empowering the Board to make the appointment in the first instance. But we think the principle wrong. The duties and powers of trustees are generally laid down under section 40 of the Act. The provisions of the other sections in Chapter IV of

the Act which applies to all religious endowments impose specific duties on trustees and confer specific powers on the Board in respect of all religious endowments. Chapter V relates to ordinary temples and Chapter VI to maths and excepted temples like Guruvayur. The policy of the Act as seen from a comparison of these chapters is to place maths and excepted temples, in normal conditions, under much less direct and detailed interference from the Board in matters off internal management than ordinary temples. This does not mean that, in cases of proved mismanagement or incapacity or in the imperative interests of future good government, such interference may not have to be provided for in a scheme. But, in the absence of such special grounds, we conceive that the proper aim, in a scheme of administration for an excepted temple, is to leave the internal management as much as possible to the trustees, providing only such safeguards as are sufficient to prevent grave misgovernment and to make the power of superintendence of the Board effective.

There is absolutely no evidence in the case of any previous mismanagement by the present trustees in this case for the very good reason that for twelve years ending September 1927 the temple was in the hands of the Court of Wards. A scheme was settled by the Board on 3rd November 1928 leaving the power of appointing the manager to the existing trustee who was to consult the Board about it. These suits were filed within six months afterwards. The learned Advocate for the worshippers complained that the learned Judge had shut out evidence of mismanagement. But the evidence which the learned Judge considered irrelevant and so excluded was not evidence of mismanagement before the date of the scheme but of evidence that the scheme

ZAMORIN OF CALICUT v. KRISHNAN NAMBUDRIPAD.

had not worked satisfactorily. We consider that the learned Judge's opinion that, in a suit under section 63 for the modification of a scheme, evidence to show how the scheme worked is inadmissible is wrong. Obviously the need to amend a scheme may arise as much from the fact that it does not work or has not been worked properly as from previously existing facts such as mismanagement. But we consider that this defect does not affect the case seriously, because, we agree with the learned Judge that the evidence, which was intended to be offered and which the Board has by separate petition requested this Court to admit in appeal, was not of great moment on the question of the power of appointing the manager but relates to suggested improvements in lighting, sanitation, custody of records and the like. There being thus no question of mismanagement, we think it appropriate that the appointment of manager should be with the trustees who are the persons really responsible. It is argued that Mr. Venkatarama Sastri, in the lower Court, said that he did not object to a provision for the appointment being made with the previous consent of the Board. But, having regard to the elaborate provisions found necessary by the learned Judge in the attempt to reconcile that consent with any real freedom of choice in the trustees which ends, as it must, in the Board really making the appointment, we think it proper to abandon the attempt and to give the power of appointment to the trustees themselves to be exercised as between themselves in the manner provided by the agreement, Exhibit I, after consultation with the Board.

[Their Lordships discussed the qualifications necessary for the post of the manager and dealt with the objections and suggestions of (1) Mallisseri Nambudri, (2) the Hindu Religious Endowments Board, (3) and the

worshippers, with regard to some of the clauses in the scheme framed by the lower Court and concluded as follows:—]

Final scheme has been drawn up and passed to-day. Costs of all parties in Appeal No. 212 of 1930 will come out of the estate, Rs. 500 each to the four parties, Zamorin Raja, second defendant, Mallisseri Illom, first defendant, Hindu Religious Endowment Board, and plaintiffs. There will be no costs in Appeal No. 211 of 1930. No orders are necessary on the memoranda of objections. Second defendant (Zamorin Raja) will get the cost of printing out of the estate on presentation of vouchers accepted by the Deputy Registrar.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Krishnan Pandalai.

SOUDAGAR MUHAMMAD ABDUL RAHIM BAIG SAHEB (FIRST DEFENDANT), APPELLANT,

1930, November 28.

v.

SOUDAGAR MUHAMMAD ABDUL HAKIM BAIG SAHEB AND SIX OTHERS (PLAINTIFF, SECOND DEFENDANT AND LEGAL REPRESENTATIVES OF SECOND DEFENDANT), RESPONDENTS.*

Muhammadan Law—Co-heirs—Trade founded by a deceased Muhammadan continued as a family trade by his adult heirs —Whether contrary to Muhammadan Law—Relationship of the adult heirs to the other members of the family in such a business—If one of creditor and debtor, or one of co-ownership, or of trustee and cestui que trust.

The adult heirs of a deceased Muhammadan who founded a trade may carry on the same as a family trade for the benefit

---

* Appeals Nos. 280 to 283 and 460 to 463 of 1924.