

## APPELLATE CIVIL.

*Before Mr. Justice Varadachariar and Mr. Justice Mockett.*

SRI MAHANT SITARAM DASS BAVAJI (PLAINTIFF),  
APPELLANT,

1936,  
September 14.

v.

THE HINDU RELIGIOUS ENDOWMENTS BOARD,  
MADRAS, AND TWO OTHERS (DEFENDANTS),  
RESPONDENTS.\*

*Madras Hindu Religious Endowments Act (II of 1927), sec. 63—Powers of Hindu Religious Endowments Board under—Power to settle list of properties of the institution to be covered by the scheme—Associate trustee appointed under sec. 63 (1)—Status same as that of co-trustee.*

The power given to the Hindu Religious Endowments Board by section 63 of the Madras Hindu Religious Endowments Act to frame a scheme carries with it the power to settle what the properties of the institution are, so that the authority framing the scheme may know what properties are to be governed by the scheme and what the resources are whose disposal is to be provided for by the scheme.

An associate trustee appointed under section 63 (1) of the Act should have the powers which a co-trustee has under the general law and it is not contemplated by the section that he could be invested by the scheme with the power in effect to supersede the existing trustee.

APPEAL against the decree of the District Court of Ganjam in Original Suit No. 34 of 1928.

*B. Jagannatha Doss* for appellant.

*K. Subba Rao* for *P. V. Rajamannar* for respondents.

## JUDGMENT.

VARADACHARIAR J.—This appeal arises out of a suit under section 63 (4) of the Hindu Religious

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Endowments Act, impugning a scheme framed by the Board for the management of a group of maths. Only two points have been pressed before us : (i) as to the propriety of giving the associate trustee overriding powers over the mahant and (ii) as to the power of the Board to settle a list of properties belonging to the institution. The latter point may be briefly disposed of.

It does not appear from the record whether any objection was taken by or on behalf of the mahant before the Board about the properties to be included in the list attached to the scheme of properties belonging to the math. We cannot agree with the contention advanced by Mr. Jaganatha Doss, on behalf of the mahant, that the Board has no power to settle such a list. Section 63 undoubtedly gives power to the Board to frame a scheme for the management of the institution and this power carries with it the power to settle what the properties of the institution are, so that the authority framing the scheme may know what properties are to be governed by the scheme and what the resources are whose disposal is to be provided for by the scheme. A question of this kind was raised before this Court in *Vaithinatha Aiyar v. Thyagaraja Aiyar*(1) and the learned Judges held that, in a suit under section 92 of the Code of Civil Procedure asking for the framing of a scheme, the Court has the power to settle the question whether certain properties belong to the institution or not. This decision was confirmed on appeal by the Privy Council in *Vaidyanatha Aiyar v. Swaminatha Aiyar*(2)

(1) (1919) 41 M.L.J. 20.

(2) (1924) I.L.R. 47 Mad. 884 (P.C.).

and, though the question of the Court's power was not specifically raised before their Lordships, the Judicial Committee did deal with the merits of the claim, thus clearly implying that this was within the legitimate scope of the Court's power when framing a scheme. Some observations on this question will also be found in *Anjaneya Sastri v. Kothandapani Chettiar*(1).

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In the lower Court an attempt was also made to prove that some of the properties included in the list attached to the scheme, Exhibit F, are the private properties of the mahant and do not belong to the math. In support of that claim, reliance was placed on the circumstance that these properties came to the present mahant under the will of his predecessor, Exhibit D. As the learned Judge has pointed out, this will make no distinction between the properties now claimed as the private properties of the mahant and the other properties in respect of which no doubt has been raised as to the ownership of the math. From the few sale deeds filed in the case, it no doubt appears that some of those properties were purchased in the name of the prior mahant ; but, it being admitted that he was an ascetic and a celibate and the head of the institution, the probabilities are that they were purchased with the funds of the institution. At any rate, in the absence of anything to show any difference in his method of dealing with these properties as compared with the other admitted properties of the institution, the Court is entitled to draw the inference that he purchased them for the benefit

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(1) (1935) 43 L.W. 409.

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of the institution. We therefore see no reason to interfere with the lower Court's decision on this point.

Proceeding next to the objection taken to clauses (2) and (3) of the scheme\*, we think that the appellant's objection to these clauses is well founded. We agree with the learned Judge that the circumstances justify the appointment of an associate trustee ; but section 63 does not contemplate that the person so added is in effect to supersede the mahant. Clause (2) of the scheme almost makes it clear that the new trustee is to have the management of the institution, with a vague direction that, in so managing it, he may avail himself of the help and advice of the mahant in all important matters. We are not satisfied that this kind of substantial supersession of the mahant is warranted by the terms of section 63. Clause (3) of the scheme gives further effect to the principle underlying clause (2) by declaring that, in matters in which the mahant might not co-operate with

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\* NOTE.—Clauses (2) and (3) of Exhibit F run as follows :—

*Clause (2).*—The paid trustee shall take possession of all the maths, their endowments and other properties belonging to them and all the title deeds and documents relating to the institutions and retain such possession in conjunction with the mahant and manage the institutions with the help and advice of the mahant in all important matters connected with the institutions.

*Clause (3).*—In any matter in which the mahant might not co-operate with the paid trustee, the paid trustee shall have the power of acting independently of him. He shall however place the mahant in possession of sufficient funds for conducting the pooja and other services to the deities in the maths and the distribution of Sadavritti to travellers subject to the mahant's maintaining proper accounts showing the expenditure from the amounts allowed to him for these purposes.

the paid trustee, the paid trustee should have the power to act independently of him. It is true that the scheme draws a distinction between religious matters and secular matters and leaves the mahant comparatively free in religious matters. This distinction is more easily drawn on paper than worked in practice. But, apart from that consideration, for the reasons we have already given, this kind of special power conferred on the new trustee is not warranted by the Act. We appreciate the necessity for some provision to ensure the working of the institution in the event of a deadlock between the two trustees; but the Board or other competent authority must devise some means of ensuring it in a form consistent with the provisions of the Act. We must accordingly direct that clauses (2) and (3) of the scheme, Exhibit F, must be omitted and a general provision inserted that the paid trustee appointed under clause 1 shall have the powers which a co-trustee will have under the general law.

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We are informed that the locality in which the suit institution is situate has now ceased to form part of this Presidency and we do not know which authority will in the new state of things be competent to deal with this institution by way of supervision. All that we can do at this stage is to leave the matter with the above direction, so that any other authority competent to give further directions may do so when the contingency contemplated by clause (6) of the scheme is availed of.

The appeal is accordingly allowed to the extent above indicated and in other respects dismissed. There will be no order as to costs because the parties succeed in part and fail in part.

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MOCKETT J.—I agree. Under section 63 (2) of the Hindu Religious Endowments Act, provision is made for associating one or more persons with the trustee for the purpose of participating or assisting in the administration of the endowments. By that I understand that the person appointed is to participate with the trustee and to assist the trustee. What has happened in this case is that a paid trustee has been appointed who, as I understand clause (2) of the scheme, has the right to have his views and intended actions prevail over the present mahant, and the result seems to be that the position of the mahant is virtually negligible. It is the paid trustee who is to manage the institution, he can ask for the advice and the help of the mahant, but nothing is said about the necessity for him to accept them, and the whole of that part of the scheme is qualified by the most ambiguous words "in all important matters". Then, under clause (3), "if the mahant does not co-operate, the paid trustee can act independently". It seems to me, the result is that the mahant remains there as a mere cipher so far as secular matters are concerned and, so far as powers are concerned, he might very well have been removed. In my view, this position is not contemplated by any of the relevant provisions of the Act. If the Board desire to remove the trustee, provision is made by section 73. If they desire to retain him, then provision must be made, as indicated by my learned brother, for a scheme by which he continues to function, but in co-operation with somebody else nominated by the Board.