

APPELLATE CIVIL.

Before Sir Guy Ruddle, Kt., K.C., Chief Justice, and Mr. Justice Brown.

DAW PHAW

v.

MA TIN NU AND ANOTHER.*

1929

Feb. 18.

Shwe Dagon Pagoda—Trustees' power of control—Decision of Trustees as to who should do repairs—High Court not competent to question such decision—Register of donors and their representatives, maintained as an act of grace—Entry in such register not claimable as of right.

Held, that the entire control of the buildings in the Shwe Dagon Pagoda precincts together with the right to repair the same is vested in the Trustees by virtue of the decree of the late Court of the Recorder of Rangoon, relating to a scheme for the management of the said Pagoda. The High Court had no power to interfere with the Trustees' decision as to who should do repairs to any structure on the premises.

Held, further, that the register of donors and their descendants, who may be requested by the Trustees to undertake the repairs of religious buildings and *zayats* in the Shwe Dagon Pagoda precincts is maintained by the Trustees purely as an act of grace; and no person has a legal right to have his name placed thereon.

Halkar for the appellant.

E Maung for the respondents.

RUTLEDGE, C.J., and BROWN, J.—This is an appeal from a judgment of the Original Side of this Court, dismissing the plaintiff-appellant's suit, which was for a declaration that she had the sole right to do repairs to the *zayat* situated at the southern slope of the Shwe Dagon Pagoda now registered wrongly in the name of Daw Kyin as against the defendant-respondents.

The defence set up in paragraph 10 of the written statement stated: "That the *zayat*, being property subject to a charitable trust under a Scheme framed by the late Court of the Recorder of Rangoon in

* Civil First Appeal No. 215 of 1928, from the judgment of the Original Side in Civil Regular No. 287 of 1927.

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Civil Regular Suit No. 139 of 1884, the Trustees of the Shwe Dagon Pagoda appointed under the said Scheme have full legal title to and control over the *zayat* in suit, and that the plaintiff is not entitled to maintain this suit against the defendants."

A reference to the Scheme shows that amongst the duties of the Trustees are enumerated the following :—

"(i) They shall, out of the trust funds, keep in repair the said pagoda, and the pagoda, *zayats*, and other buildings connected therewith, and the platform thereof, and the steps leading thereto.

(ii) They shall control the erection of new pagodas, *zayats*, spiral sheds, altars, idols, flag-poles, and bells on the above * * *

They shall have control over all offerings made at the said pagoda and all other property held in trust for the purposes of the said pagoda."

Though, in the Scheme, no paragraph specifically vests the property in the Trustees, the decree in the said suit—Civil Regular No. 139 of 1884—has the following paragraph :—

"And it is further ordered and decreed that all the funds and property now held for the purposes of the said decree shall be, and the same is, hereby vested in the above-mentioned persons as Trustees of the same for the purposes of the said pagoda."

We are satisfied that the property within the precincts of the Pagoda grant is vested in the Trustees, and that they—and they only—have the right to repair buildings, such as *zayats*. This has not been disputed by the appellant, and the Trustees have not been joined as parties to the present suit.

The Rules and Regulations of the Shwe Dagon Pagoda Trust (Exhibit A), set out this very clearly :—

" * * * All the *kuthodars* built and standing on the Sacred Hill shall be repaired, decorated and maintained only by the Pagoda Trustees according to their will and pleasure * * *"

The Trustees in the exercise of their will and pleasure may request the original donor or his or her representative or descendants to undertake the repairs, and their bye-law goes on to mention that for this purpose a register shall be kept by them, and the names of such descendants may be changed as may be necessary through death or migration elsewhere. But the reading of this bye-law as a whole makes it clear that the maintaining of such a register is purely an act of grace on the part of the Trustees, and entries on such register are matters with which they (the Trustees), are only concerned.

In effect the appellant is asking this Court to act as a Court of Appeal or Revision from the acts of the Trustees. Our simple answer is that we have no such power. From any decision which the Trustees might make as to what name should be entered on this register, there is no appeal to this Court. They are in a much better position to come to a right decision than we are, and it is clear that they were acting within their powers.

The appeal accordingly fails and must be dismissed with costs, seven gold mohurs.

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