

Appellate Jurisdiction (a)*Referred Case No. 14 of 1869.*

PANDURUNGY ANNACHARIYAR and another
against

IYATHORY MUDALY and another.

The defendant was sued as the Trustee of a pagoda to recover a certain sum of money for which he had not accounted. The defendant was dismissed by three members of the District Committee, which consisted of six members, the other three members refusing to sign the order of dismissal. The plaintiffs were appointed trustees in place of the defendant by the members who dismissed the defendant.

Held, that the appointment of the plaintiffs was invalid, and that that they were not entitled to sue the defendant.

THIS was a case referred for the opinion of the High Court by R. Vassudeva Row, the District Munsif of Mannargudy, in Suit No. 100 of 1869.

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The case as stated was as follows :—

This is a suit brought for the recovery of rupees 16-11-11, the same being the value of a certain piece of teakwood belonging to the pagoda which the 1st defendant while acting as trustee entered in the pagoda accounts as sold to the 2nd defendant on the 27th June 1866, but which has not yet been paid for.

The 1st defendant admits having made the entry in the accounts, and the fact of the pagoda being entitled to the plaintiff amount, but he denies that the 2nd defendant bought the piece of wood, which he says he has himself otherwise disposed of. The 1st defendant chiefly contends, 1stly, that the plaintiffs are incompetent to sue on behalf of the pagoda, inasmuch as their appointment to the office of Trustee by three out of six members of the Pagoda Committee of the Tanjore Circle is illegal and therefore invalid.

2ndly, that no suit can lie against him while he is still in office, as his dismissal by the Committee is invalid; because, having been appointed by all the six members of the

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Committee, he cannot be removed by only three of the said members, and because the said dismissal has not been based on good and sufficient grounds.

The 2nd defendant denies having bought the piece of wood.

The case came on for hearing before me on the 1st day of March 1869, and was adjourned for further consideration, subject to decision of the High Court upon the following case :—

Under Act XX of 1863, the Local Government appointed six members to serve on the Committee for the Tanjore Circle, which includes the Rajagopalsawmy pagoda at this station. They entered upon their duties, and all the six members signed an order appointing the 1st defendant as a trustee of the pagoda. He took charge of the pagoda and carried on the duties for a few years, when three members of the Committee signed an order dismissing the 1st defendant from his office of trustee upon certain grounds therein specified, and appointed the two plaintiffs in his stead. The plaintiffs affirm and the 1st defendant denies that the dismissal of the 1st defendant is for a good and sufficient cause. The plaintiffs have been managing the affairs of the pagoda. The 1st defendant contends that he has not yet made over charge of the pagoda to the plaintiffs, and that he still continues in the management thereof which, he has not proved. Under these circumstances, the plaintiffs sue for the recovery of rupees 16-11-11. The 1st defendant admits the truth of the claim, but only denies the competency of the plaintiffs to sue and his liability to be sued because the plaintiffs have been illegally appointed, and because he has been improperly and unjustly dismissed. I have made no inquiry, nor have I at all considered the point as to whether there are good and sufficient grounds to warrant the removal of the 1st defendant by the Committee.

Upon the foregoing facts, I am of opinion that the plaintiffs are fully competent to sue the 1st defendant as they have done in this case. It appears that Madras Regulation VII of 1817 was applicable to the pagoda in

question, and the nomination of the punchayet rested with the Board of Revenue on the date on which Act XX of 1863 was passed. It is admitted that the 1st defendant himself was appointed by the Tanjore Committee some time after their nomination. The High Court have ruled that a Committee appointed under Act XX of 1863 have power to dismiss the Trustees described in Section 3 of the Act without having recourse to a civil suit—vide page 334 of the *Madras High Court Reports, Volume III*. The said Act is no doubt silent as to the number of members who are to form the quorum for the transaction of business, but still Section 7 provides that the Committee shall consist of three or more persons and shall perform all the duties imposed on such Board, &c., and consequently I consider that the appointment of the plaintiffs and removal of the 1st defendant by three out of the six members of the Committee are quite legal, and that the same must be held good until cancelled by the decree of a competent Court. The fact of the 1st defendant having been appointed by six members of the Committee cannot, I consider, incapacitate the required number of members of the said body from acting against him and removing him from office. The 1st defendant alleges that his dismissal by three of the members is illegal, because it was against the will of the remaining three members of whom one appears to have since died, so that it is of no use to ascertain the opinion of the two other surviving members, inasmuch as the three members who have acted in the matter constitute the majority at present.

The question, therefore, for the decision of the High Court is, whether the appointment of the plaintiffs and the dismissal of the 1st defendant by three out of the six members of the Tanjore Committee, while the 1st defendant had been originally appointed by all the six members, are legal and valid under Act XX of 1863, so as to entitle the plaintiffs to sue the 1st defendant in respect of property belonging to the pagoda in question.

No Counsel were instructed.

The Court delivered the following

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JUDGMENT:—The plaintiffs, as Trustee of the Rajagopalasamy pagoda, sue 1st defendant and another; the dismissed trustee, for the value of certain timber belonging to the temple which he disposed of while trustee, and for which he has not accounted.

First defendant, while admitting the debt, pleaded that he was not lawfully dismissed and was still trustee and not liable therefore to account to plaintiffs; also that plaintiffs were incapable of suing him, as they had not been lawfully appointed trustees. First defendant was, it appears, dismissed by three out of a Committee of six who had been duly appointed under Act XX of 1863. The other three considered that there were no sufficient grounds for dismissal of 1st defendant and declined to sign the order dismissing him. The same three who dismissed 1st defendant appointed plaintiffs, the others again dissenting; and the question for decision is whether this dismissal and appointment by only three of the Committee are valid.

The District Munsif is of opinion that they are so, because Section 7 of Act XX of 1863 provides that a Committee may consist of three or more members. The question, however, is not whether, if the Committee had consisted of only three members, that number would have been sufficient to pass these orders, but whether, the Committee consisting of six members, three out of that number can overrule the other three.

There might perhaps have been sufficient to form a quorum in the absence of the other members; but as the case is stated, every member of the Committee voted. Without deciding whether the Committee must not be unanimous in dismissing or appointing a manager or trustee of a temple, we are clearly of opinion that at least there must be a majority of the Committee assenting to such dismissal or appointment, and that consequently the appointment of the plaintiffs in the present case was invalid, and they are not entitled to sue the defendant.
