

Appasami and Five ors. Vs. Nagappa

Appasami and Five ors. Vs. Nagappa

SooperKanoon Citation : sooperkanoon.com/777629

Court : Chennai

Decided On : May-21-1884

Reported in : (1884)ILR7Mad499

Judge : Charles A. Turner, Kt., C.J. and ;Brandt, J.

Appellant : Appasami and Five ors.

Respondent : Nagappa

Judgement :

Charles A. Turner, Kt., C.J.

1. This suit was brought by Nagappa Mudaliar, a minor, through his guardian T. Vedadri Sadasa Mudaliar, against Annasami Ayyar and five others, the members of the Siva committee of the Tinnevelly District, to obtain a declaration that the [500] endowment of the Bhrantheiswara pagoda at Palamcottah is an hereditary trust, and that Nagappa Mudaliar is the hereditary trustee thereof, and in that character entitled to the sole management of the endowment. It was asserted in the plaint that the pagoda was built by Vengu Mudaliar, the great grandfather of the minor, who furnished it with idols, vahanams (vehicles), cars, etc., endowed it with lands, and procured for it a tasdik allowance from Government amounting to Rs. 2639-14-0 and constituted it an hereditary trust; that on the death of Vengu Mudaliar in 1829 the trust passed by succession to his son Gnanasigamani, who administered it till his death in 1845, when the trust descended to his son Vengu

Mudaliar, the minor's father, who also administered it until his death in October 1881.

2. It was also alleged that the minor's father left a will whereby he appointed Vedadri Sadasa guardian of his son.

3. It was charged that the members of the Siva committee had in December 1881 appointed other trustees in the place of the minor's father, and had refused payment of the tasdik allowance to or on behalf of the minor. The members of the committee traversed the allegations that the temple was originally built by Vengu Mudaliar or that any hereditary right to the management of the temple had been acquired by or vested in the family of Vengu, and it was alleged that the temple was one of those to which the nomination of the dharmakarta vested in, and was exercised by, the Government at the time of the passing of Act XX of 1863. It was admitted that the alleged founder, Vengu Mudaliar, had restored, beautified and enlarged the temple, that he had furnished it with movable properties and had Dedicated lands for the support of religious services in connection with the temple, and that these properties and lands had been created by him an hereditary trust, of which the administration had been throughout exercised by his family. The members of the committee asserted no claim on behalf of themselves or of the persons appointed by them as dharmakartas to interfere with these endowments. On the other hand it was pleaded that the temple building, the tasdik allowances, and properties other than the endowments, had been throughout held by persons appointed or approved by the Government and afterwards by the committee, and that members of Vengu Mudaliar's family had from time to time, in virtue of such appointment, held the properties other than the endowments, but subject to the control of the Collector or of the committee.

4. The Subordinate Judge came to the conclusion that the temple had been built long before the introduction of British rule, and that a shrine in connection with the temple had been built by one Chengalraya Mudaliar, with whom it is said Vengu was connected, that Vengu had had the management of the temple under the superintendence of Government officials from the commencement of British administration, and that Gnanasigamani succeeded, whether in right of inheritance

or in virtue of nomination by the Collector was not clear. The Subordinate Judge considered that it was immaterial whether the committee proved that prior to 1841 the appointment of the trustees was in the hands of the Collector or not, inasmuch as by the nomination of trustees in 1842, which the Collector intended to be final, the Government lost all power of nominating trustees and could transfer no power to the committee in 1864. In support of this view he referred to *Ramiengar v. G. Pandara Sannadhi* 5 M.H.C.R. 53.

5. He considered that if the Collector or Board up to March 1863, and the committee subsequently, had exercised any interference in the nomination or confirmation of trustees, all such acts were ultra vires, and that any acquiescence in these proceedings on the part of the trustees was in consequence of mistakes of law and fact, which would neither legalize unlawful acts of the Collector or committee, nor bind the person who acquiesced in them, and still less his successor.

6. On appeal a great number of objections are taken in prolix terms, but which may be briefly stated as follow:

That the burden of proving an hereditary title to the general trusteeship of the temple lay on the respondent.

That the proceedings in 1841, 1842, and 1864 have been misconstrued : that the Subordinate Judge has erred in holding that the acts of the Government and of the committee since 1842 were invalid, or that the acquiescence of the trustee for the time being would not bind him and his successors, assuming (which was not admitted) that there had been a mistake of fact or law on the part of the authorities or of the committee, that the Subordinate Judge has erroneously confounded the trusteeship of the endowments of Vengu with the general trusteeship of the temple, and that trustees of the temple had been throughout nominated or approved by the Government and subsequently by the committee.

7. It appears from the evidence that Vengu, the great grandfather of the respondent, came to Tinnevely as a stranger, and that being a man of large wealth and piety he re-established institutions which had suffered during the

Muhammadan rule and founded others. It is said that there existed some connection through females between the families of Vengu and Chengalraya, whose name was connected with the pagoda which is the subject of this suit.

8. The Subordinate Judge found, and it is not disputed on appeal, that a Siva temple dedicated to Bhramthiswaraswami had existed in Palamcottah for many years prior to 1802. It is said by the respondent that this ancient temple did not stand on the site occupied by the present temple, but this assertion is denied by the appellants, and there is no evidence to show that the temple existed on any other than its present site.

9. The circumstance that a tasdik allowance was allotted to the temple argues that it was an ancient institution. These allowances were made by the Company's Government in lieu of lands with which temples had been endowed, but which had been resumed by the Muhammadan Government (Proceedings of Board of Revenue, 30th May 1842, Court Exhibit 3).

10. We have no definite information as to the condition of this temple at the time that Vengu Mudaliar first became connected with it.

11. With regard to another temple, then in ruins, dedicated to Ramasami, a document has been produced on appeal to show that in 1805 a tasdik allowance for this was given, as Vengu Mudaliar had undertaken the dharmakartaship. It may be that the tasdik allowance for the Branthiswara temple was paid under similiar circumstances. That Vengu became dharmakarta is not denied, and the payment of the tasdik allowance was then made. The appellants are justified in contending that there is nothing to show that Vengu. either claimed or was recognized as an hereditary trustee of the temple. When the trusteeship is hereditary, it is ordinarily described in Southern India as athina, and the trustee as athina-dharmakarta. In none of the official or private documents has this term been applied to Vengu or any of his successors.

12. The terms of the documents, on which the respondent relies, are fully satisfied if the distinction for which the committee contend is recognized between the general trusteeship of the temple and the trusteeship of the special endowments

admittedly made by Vengu. That this distinction is not now taken for the first time is shown by Exhibit N, an order issued by the Collector on 7th September 1842 to the Tahsildar, directing that possession of the kattalai (endowment) villages and properties should be given to Gnanasigamani, and that the dharmakartas should, as superintendents of the temple, superintend the villages and topes of the temple.

13. In 1827 an application was made to the Collector by Muttukrishna Mudaliar, a foster son of Vengu. This application has not been produced, but its contents are to be gathered from the reply, Exhibit J. From this it appears that a request was made that the lands purchased for the purposes of the temple of Bhrajnthiswara and other temples and choultries should be entered in the names of the institutions severally, and that the movable properties provided for the institutions should be numbered and examined by the Government, and that the management of the said charities should be kept only in the name of Vengu Mudaliar.

14. It will be seen that the application referred only to the lands, etc., purchased by Vengu, and not to the general property of the temple, and that no claim is advanced by Vengu for recognition as an hereditary trustee of the institution. The fact that he seeks special recognition in that character in respect of his own endowment suggests that he did not regard himself as entitled to the trusteeship of the temple in virtue of any private right.

15. On appeal, the respondent produced a copy of the probate of Vengu's will. It is conceded that he died about May 1828. The will was proved in June 1828. It is in the form of a power-of-attorney addressed to Annasami Mudaliar and Ramayyengar directing them to present an arzi to the Collector on account of the pagoda and choultry, etc., and to superintend the business thereof, paying all the expenses from the income set apart for the same. Gnanasigamani, the son of Vengu, was a minor, and these gentlemen were appointed to act for him. They brought the will to the notice of the Collector, who endorsed the petition in acknowledgment of the information. A witness (Nallasivan Pillai) has deposed that Annasami and Ramayyengar held the dharmakartaship, but we do not think much weight can be attached to his evidence, as it is possible he has refreshed his memory by reference to the will. It is not unlikely that the guardians of

Gnanasigamani were recognized as dharmakartas. We find in 1832 that Gnanasigamani was addressed as trustee of the pagodas in Palamcottah and other taluks. There is no evidence whether he was appointed by the Collector or entered on the office as his father's heir : but it appears from an order issued by the Collector in 1834 to the Tahsildar that Gnanasigamani, who is described as doing the duties of dharmakarta, being, with other officers of the temple, suspected of misconduct and neglect of duty, was suspended pending inquiry, and that one Arumugam Pillai (a man of another caste) was appointed. We may notice that this document with others was admitted by us on appeal. For some time it was difficult to persons to obtain documents from the Collectorate unless they could specify them, but under recent orders of the Board facilities for search have been afforded, and of these the committee availed themselves, and subsequently to the conclusion of the trial traced the documents we have admitted. They had sought but were refused an adjournment for the purpose of search before judgment was given. The respondent had notice of the application on the 17th March when the appeal came on for hearing, and an adjournment for one month was granted that he might have the records searched on his behalf. In 1835 Bhranta Bhatta, one of the officers suspended, was restored to his appointment as nothing was proved against him; but in 1836 Gnanasigamani was dismissed and the appointment of Arumugum made permanent.

16. In 1841 the Government desired to put an end, so far as it was possible, to its connection with native temples and places of religious resort. Orders were issued to the Board to report in detail the arrangements they would propose for each institution, to explain the then existing extent of interference and control, and to show how far such interference might be withdrawn. They were also to suggest in what manner vacancies in the office of trustee might be supplied, so that the withdrawal by the Government from active interference in the affairs of pagodas and mosques might be final and complete (Court's Exhibit 4). The Board approved the proposals made by the collector respecting the pagodas in Tinnevely, excepting a clause empowering surviving or continuing trustees to fill up vacancies; and suggested that where the succession was not ex officio, it should be regulated by election by the community (Court's Exhibit 3).

17. It appears from Exhibit E, 27th August 1842, that it had been proposed that five trustees should be appointed as a general committee for the management of the seven temples in Palamcottah including the Bhranthiswara pagoda. This proposal was not carried out; the officer sent for the purpose was required to report why he had not carried out the order but had appointed separate trustees to separate institutions. He replied that he had conferred with the people of the place, including Gnanasigamani; that Gnanasigamani said, 'if five of his people were appointed it would be pleasing to him, if otherwise he did not care.' Whether Gnanasigamani intended by this expression to signify his indifference, or absence of objection, or his intention to ignore the appointment if it were made otherwise than he desired, is doubtful. The villagers objected to Gnanasigamani's suggestion; a warm discussion ensued. It does not appear that any claim was made by Gnanasigamani to an hereditary trusteeship, but claims were advanced by three persons, of whom he was one, and, on the ground that his father Vengu had established kattalais (endowments) and had provided furniture for the temple, he was selected as one of the trustees. To meet the objection of certain Vallalas who opposed the election of any one of the three candidates, two Pillais were associated with Gnanasigamani, Subra-manyu and Periathambi, a minor, for whom Palania was appointed a wakil. In concluding his report the Tahsildar suggested that as the appointments had been made, it would be undesirable to revoke them. His report shows that the Collector considered that the temple was one of which the Government controlled the appointment of trustee, and that he had full power to make such arrangements for the appointment as he thought fit, that he had power to revoke appointments, and that the appointments were made as far as possible in accordance with the ascertained wishes of the community.

18. Gnanasigamani thus recovered his position as a dharmakarta: he raised no protest, on the ground of hereditary right, either to his own appointment or to the association with him of persons who had no connection with his family. On the contrary, he, on 3rd September 1842, with the other trustees, entered into an engagement which in so far as it is material is as follows : As the whole of the management of the Bhranthiswara pagoda of Polamcottah and the surrounding pagodas attached to it, which had hitherto rested in the hands of the Government, has now been given over to us, we agree, etc.' The agreements are to receive and

account for the expenditure of the tasdik and to take care of the jewels, etc., enumerated in a signed list. The arrangements of the Tahsildar were confirmed by the Collector on the 1st September 1842 (Exhibit 32).

19. It is not apparent that there was any intention on the part of the officer who made the arrangement, or any understanding on the part of the trustees appointed in 1842, that the office of trustee should be made over permanently to them and their heirs. The intention, if any, which is to be gathered from the order of the Board of Revenue is that on the occasion of a vacancy the succession should be determined by election.

20. On the 7th September 1842, four days after the execution of the engagement, the Collector issued the order, Exhibit N, to which we have already adverted. This order directed the Tahsildar to place Gnanasigamani in possession of his father's endowments, and the dharmakartas as a body in possession of the other lands of the temple.

21. In 1845 Gnanasigamani died. His widow thereupon applied that his minor son might be recognized as dharmakarta in his stead. The Collector assented to her application, giving as his reason that he understood the temple had been embellished by the father of Gnanasigamani (Exhibit H).

22. In 1862 Subramanya Pillai died, and Palania Pillai, who had been recognized as the wakil of Periathambi in 1842, was appointed by the Collector to succeed him. This is proved by the evidence of Palania, who was examined as the third witness for the respondent.

23. In February 1869 the committee removed from office Periathambi and Palania, the former on the ground of insolvency, the latter of incapacity. At the same time they directed that Vengu should conduct the duties alone (Exhibit XVIIa).

24. On 27th June 1869 the committee suspended Vengu pending an enquiry into his conduct, and appointed his younger brother Agastiappa to act in his place (Exhibits XXV, XVIIb).

25. On the death of Agastiappa in 1870, Vengu was restored to office by the committee as permanent dharmakarta (Exhibit XIX).
26. In 1874 the committee appointed Muttusami Mudaliar joint dharmakarta; and Vengu on 21st April 1874 took exception to the appointment on the ground that the pagoda had been founded in the days of his ancestors, and that he had been conducting the affairs duly. He also complained that the person appointed was not a fit person for the office and had been intriguing against him (Exhibit A). In October 1874 Vengu and Muttusami, who were described as the joint dharmakartas, were ordered to attend the committee to explain why accounts of a festival had not been rendered. We find no other mention of what was done on this petition except that the secretary to the committee stated that Muttusami did not execute an engagement, while Neliappa, a member of the committee, professed his inability to state whether Muttusami had done duty.
27. In 1880 the committee appointed Vanamuttu and Tiraviyam joint dharmakartas with Vengu, but these gentlemen declined to take up their appointments.
28. Vengu again objected to the appointment of joint dharmakartas, and requested that his rights in respect to the temple should be considered. The committee repudiated his claim and appointed Ammiappa Mudaliar superintendent until a fit dharmakarta should be appointed (Exhibit XXIII). Intimation of this resolution was given to Vengu, who acknowledged the appointment of Ammiappa as superintendent (Exhibit XII). In the following month Vengu died, and on the 24th December 1881 the committee appointed trustees in the place of the respondent's father, which is the cause of action alleged.
29. It is admitted, and there is much documentary evidence to prove, that from 1842 accounts were rendered with more or less regularity of the expenditure of the temple funds to the Collector and afterwards to the committee.
30. The burden of proof in this case clearly lay on the respondent. He came into Court asserting an hereditary title founded on the circumstance that his forefather was the original builder of the temple. This, the Subordinate Judge admits, he failed to prove; and it would seem the Subordinate Judge was not prepared to

overrule the appellant's contention that up to 1842 the right of appointing dharmakartas was vested in the Government. The (Suspension and dismissal of Gnanasigamani and the circumstances connected with his re-appointment afford strong evidence that the Government claimed to exercise the light which the committee assert they possessed. The admission of Gnanasigamani in the engagement dated the 3rd September 1842 lends strong support to it. The circumstance that Gnanasigamani and possibly his guardians were permitted to assume the dharmakartaship on the death of Vengu alone gives colour to the claim of the respondent, but this circumstance may in our judgment more safely be referred to the natural willingness to recognize the succession of the heir of Vengu as a matter of property rather than of right, in view of the liberality of his father.

31. The pagoda was a public institution, and if Vengu had no hereditary title to the trusteeship, the Collector could not have conferred it on him, at least prior to the Regulation of 1817. It may be conceded that under native rule the Government assumed the supervision of public trusts even when they were administered by hereditary trustees, that the English Government succeeded to the same obligations and exercised the same control, and that consequently the intervention of the Collector would not necessarily disprove the existence of an hereditary trusteeship. But the origin of the claim asserted in this suit is disproved; and we do not find any proof that Vengu asserted an hereditary right, or that his possession of such a right in the public property of the temple was recognized. Here, as not unfrequently happens, the true origin of the claim appears to us to be traceable to the circumstance that descendants of Vengu have been allowed to succeed, or have been appointed in succession, to the office of dharmakarta either alone or with others. But wherever we have any proof of the circumstances of their succession, we find it was due to the act of the Collector or of the committee, and that before the committee came into existence the reason for the appointments was on both occasions expressed to be the munificence of Vengu.

32. Assuming as we find, and as we understand the Subordinate Judge to allow, that up to 1842 there is no proof in support of the respondent's claim, we are unable to agree with the Subordinate Judge that anything then occurred which conferred on the respondent's family the right for which he contends. The inquiry

made by the tahsildar did not result in the conclusion that Gnanasigamani enjoyed an hereditary right; the arrangement made was made in deference to the wishes of Gnanasigamani and the other inhabitants so far as their wishes could be reconciled, and was in defeasance of any such right to the sole trusteeship as is now claimed : it was accompanied by the execution of an engagement by Gnanasigamani in which the right of the Government was admitted; and the properties of the temple and of the private endowment were dealt with distinctly. There is nothing to show that there was an intention that the trusteeship should thereafter descend hereditarily in the families of the trustees then appointed. Assuming it was competent to the Collector to create, or to the Board to sanction the creation of such a title in the trustees, there is nothing to show an intention to do so : if there was at that time an intention to regulate the future devolution of the dharmakartaship, the only trace of it is to be found in the suggestion, to which reference is made in the Board's letter, that appointments should be made by election. With all deference to the opinion of the learned Judges in *L. Venkatesa Nayudu v. Shri Shatagopasivami* 7 M.H.C.R. 77 we doubt whether, so long as the Regulation VII of 1817 subsisted, it was competent to the Government absolutely to divest itself of the obligations imposed on it by the Regulation. The Board might certainly have recognized, but it is doubtful whether they could have created, an hereditary trusteeship; the utmost that can be urged is that it was competent to them to withdraw from the administration of the trust; they could not create an heritable title in others. In the case cited by the Subordinate Judge, *Ramiengar v. G. Pandara Sannadhi* 5 M.H.C.R. 53 the right of appointment of the dharmakarta was admitted by the Government in 1842 to be 'athinam,' and in the case cited by the Advocate-General above quoted the Court of First Instance found, and the finding was not overruled on appeal, that up to 1840 the Government respected the right of succession to the dharmakartaship, which was inherent in the Jheers of the Mutt (p. 79). In both these cases then the Government, in assuming to make a permanent arrangement, respected rights they had already recognized.

33. The mere succession of son to father in a trusteeship does not create an hereditary right; it is doubtless some evidence of an hereditary right, but it is not conclusive evidence, as was pointed out by this Court in *Veerasami Naick v. K. Subba Rao* 6 Ind. Jur. 629 a case which in more than one respect resembles the

present. There, too, there was evidence of several instances of succession in the family of the appellant to the office of trustee, to which one Kumarappa Nayak (whose representative the appellant claimed to be) had been appointed by a Collector (date not given): in 1849 the appellant, then a minor, was appointed, his uncle performing the duties of the office during his minority but prior to the institution of the appellant's suit no claim to the office had been made in virtue of hereditary right, and the attempted explanation of that fact, and of submission for many years to the authority of the committee, was not accepted by the Court.

34. The Acts of the Collector, the acts and inaction of Gnanasigamani and his son, are consistent with the conclusion at which we arrive, that no hereditary right in the general trusteeship of the temple was vested in the family of Vengu. This disposes of the suit, but we also find that at the time of the passing of the Act XX of 1863, the right of appointment to the dharmakartaship vested in and was exercised by the Government. We therefore reverse the decree of the Court of First Instance and dismiss the suit with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com