

(1959) 07 KL CK 0008

High Court Of Kerala

Case No: C.R.P. No. 1015 of 1958

Vasudevan Ashtamoorthi
Namboodiri and Others

APPELLANT

Vs

Ramayyan

RESPONDENT

Date of Decision: July 22, 1959

Acts Referred:

- Travancore-Cochin Hindu Religious Institutions Act, 1950 - Section 37(2)

Citation: (1959) KLJ 1169

Hon'ble Judges: P. T. Raman Nayar, J

Bench: Single Bench

Advocate: G. Viswanatha Iyer and P. Parameswara Kaimal, for the Appellant; V. G. Sankaranarayana Pillai, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Raman Nayar, J.

I think that the trial court was right in allowing and the appellate court wrong in refusing, the 1st plaintiff-1st petitioner's application for a temporary injunction under Order XXXIX, rule 2 of the Civil Procedure Code. Plaintiffs 1 and 2 are admittedly the hereditary trustees of a temple over the management of which the Devaswom Board exercises superintendence u/s 37 (2) of the Travancore-Cochin Hindu Religious Institutions Act, 1950. The defendant is a paid manager appointed by plaintiffs 1 and 2 in 1949 with the approval of the Devaswom Board, and the terms of his appointment are embodied in the registered agreement, Ext. P. 1. (The 3rd plaintiff is only a creature of plaintiffs 1 and 2 and may well be ignored). There was no term specified for the defendant's appointment but under clause 18 of the agreement, the plaintiff trustees could terminate his services by registered notice for breach of duty. In purported exercise of the power under this clause, the

plaintiffs issued notice to the defendant on 5--3--1130 (22--10--1954) terminating his services. But, this notwithstanding, the defendant declined to remit office and he continued to function as the manager in defiance of the plaintiffs. In November 1955, the plaintiffs came forward with their present suit for removing the defendant from management, for recovery of the records of the temple, and for rendition of accounts. They also asked for a permanent injunction restraining the defendant from performing any act of management and, pending the suit, made the present application for a temporary injunction for the same purpose.

2. The defendant's case is that his dismissal was wrongful and that there was no breach of duty on his part entitling the plaintiffs to act under clause 18 of the agreement. Assuming that to be so, the position is, as rightly pointed out by the trial court, that the defendant would be entitled to damages for wrongful dismissal. The position is not that he continues in office and is entitled to manage the temple notwithstanding his dismissal. This of course assumes that the relations between the plaintiffs and the defendant are those of a master and servant which prima facie they appear to be, both because it was the plaintiffs that appointed the defendant (in their own rights as trustees and not on behalf of anyone else) and also because of the terms of the agreement, Ext. P. 1.

3. It is nevertheless argued that the position is different in this case by reason of the fact that the temple is under the superintendence of the Devaswom Board, that by reason thereof the plaintiffs have not the power of removing the defendant without the approval of the Board, that their removal without such approval is null and void and that, consequently, the defendant continues in office. This argument which found favour with the appellate court seems to me unacceptable. u/s 37 (2) of the Act, the Devaswom Board does not assume management. Management remains with the trustees by virtue of their office, and all that the Devaswom Board does is to exercise superintendence over the management by the trustees. The ordinary incidents of management by a trustee are unaffected except to the extent that his powers are curtailed by rules made by the Board u/s 37 (3) for the purpose of exercising superintendence. The rules so framed are printed at page 305 of Volume II of the Travancore Devaswom Manual. Rule 2 thereof stipulates that a manager shall be appointed with the approval of the Assistant Devaswom Commissioner, and rule 4 says that the trustee shall remove the manager if required to do so by the Assistant Devaswom Commissioner, in the interests of the institution. " Neither rule 2 nor rule 4 seems susceptible of the interpretation that the trustees' power of removal is in any way curtailed or is in any way dependant on action by the Assistant Devaswom Commissioner. That appointment can only be with the approval of the Assistant Devaswom Commissioner does not imply as a corollary that removal also requires such approval, and that the trustee is bound to remove a manager if required to do so by the Assistant Devaswom Commissioner, does not mean that that is the only way in which removal can be effected and that the trustee cannot remove on his own. On the other hand, rule 4 recognises that the power of removal

vests in the trustee, and this indeed is what Ext. P. 1 which governs the rights and liabilities as between the plaintiffs and the defendant lays down. The superintendence exercised by the Board u/s 37 (2) does not therefore take the defendant out of the character of a servant under the plaintiffs or clothe him with any right to remain in office notwithstanding dismissal by them. As I have already remarked, the position seems to be that, if the dismissal was unjustified, the defendant would be entitled to damages, not that he would be entitled to continue in office. He had ceased to be the manager whether or not his removal was proper, and that being so, it would necessarily follow that even pending the suit he can have no right to do any act of management.

4. In doubting the plaintiff's right of removal, the appellate court referred to certain rules framed by the Board u/s 35 (2) (e) of the Act as governing the conditions of the defendant's service. Now the power u/s 35 (2) (e) is confined to making rules for officers and servants of the Board and the Devaswom Department. The defendant is not an officer or servant either of the Board or of the Devaswom Department as we have seen, he is a servant of the plaintiff trustees. It is said that in making these rules for Devaswom servants, the Board has so defined the term, "Devaswom servants" as to include persons like the defendant who are not servants of the Board or of the Devaswom Department but are only servants of institutions over which the Board exercises superintendence. It is not necessary to examine whether that is so, for even if it be so, it is obvious that the Board cannot by such a device extend the ambit of its rule-making power. I do not think that the rules made u/s 35 (2) (e) apply to the defendant so as to throw any doubt on the relationship between him and the plaintiffs as that of an ordinary master and servant.

It is argued that the interests of the temple will not be safe in the hands of the plaintiffs. That is scarcely an argument that lies in the mouth of the defendant.

5. The plaintiffs are the trustees and, under the law, are entitled to manage the temple subject only to the superintendence of the Devaswom Board. The Board is charged with the statutory duty of safeguarding the interests of the temple and as pointed out by the trial court, there is no reason to believe that the Board will be failing in its duty. The question of any mismanagement by the plaintiffs is altogether beyond the scope of this suit, and is certainly something which the defendant, in the capacity in which he figures therein, is not competent to raise.

6. I allow the petition and restore the order of the trial court with costs throughout. It should be hardly necessary to say that any expression of opinion in this order will not be taken into account in the disposal of the suit.