

N H. M. Abdul Cader and others - - - *Appellants*

v.

S. L. Ahamado Lebbe Marikar, since deceased, and others *Respondents*

FROM

THE SUPREME COURT OF THE ISLAND OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 8TH NOVEMBER, 1935.

Present at the Hearing:

LORD ALNESS.

LORD MAUGHAM.

LORD ROCHE.

[*Delivered by* LORD ROCHE.]

This is an appeal from two decrees of the Supreme Court of the Island of Ceylon dated the 14th of October, 1931, affirming a decree of the District Court of Colombo dated the 25th of August, 1930, in an action wherein the first two respondents were plaintiffs and the appellants and the other respondents were defendants. The facts out of which this appeal arises are shortly as follows :

There is and has been since the year 1818 an important Mosque in the City of Colombo known as the Maradana Mosque. At the times material to the present action and appeal the affairs of this Mosque were regulated by an Ordinance entitled " The Maradana Mosque Ordinance of 1929 ". This Ordinance incorporated persons named in a schedule thereto and their successors as a corporation under the name and style of " The Board of Trustees of the Maradana Mosque ". The Ordinance also provided that the rules and regulations set out in another schedule should be the rules of the corporation reserving certain powers to the congregation to make fresh rules.

The following rules are material :—

Rule 1 (b) provided that :—

" (b) The right of managing the affairs appertaining to the said mosque shall be exercised by Ceylon Moors (Sonager) professing the Muhammadan religion who have attained the age of majority and who are permanent residents of Colombo, and who have their religious ceremonies performed by the Khatib or Khatibs (priests) of the said mosque, and by other Mubammadans who may be admitted as members of the congregation under paragraph (c) of this article."

Rule 1 (c) provided that :—

“(c) It shall be competent for the congregation of the said Maradana mosque to admit by special resolution any Muhammadan, though not a Ceylon Moor, as a member of the congregation of the Maradana mosque at a duly convened meeting of the congregation.”

Rule 1 (d) provided that :—

“(d) The term congregation in the following rules and regulations shall refer to Muhammadans of the class described in paragraphs (b) and (c) of this article.”

Rule 2 provided for elections to the board of trustees and for the election of a member of the board of trustees as secretary to the said board and for the entry by such secretary in a minute book of the proceedings of every meeting of the congregation of the mosque.

Rule 3 (a) provided that :—

“(a) The Board of Trustees shall within twenty-one days from the date of their appointment or from the date of the appointment of any section of the Board, as the case may be, elect from among the members of the Board an Executive Committee consisting of eighteen persons. Six members of the Executive Committee shall be elected from among the residents of Maradana.”

Rule 3 (b) provided that :—

“(b) The Board of Trustees shall also elect from among the members of the Executive Committee, a President, a Vice-President, a Secretary, two Treasurers, and a Managing Trustee.”

Rule 3 (c) provided that :—

“(c) The Secretary of the Board of Trustees and the Secretary of the Executive Committee shall not be one and the same person.”

Rule 9 (a) provided that :—

“(a) The Executive Committee shall have power to manage all the affairs of the said mosque and the educational institutions established in connection with the mosque.”

Rule 9 (b) provided that :—

“(b) The Executive Committee shall have control over the Khatibs (priests) of the Maradana mosque; shall inquire into any complaints made against any of them by the members of the congregation; and have power to remove any of the Khatibs from office, if necessary, and appoint his successor, and to fill any vacancy caused otherwise among the Khatibs, subject to the approval or otherwise of the congregation.”

Rule 15 provided that :—

“The Managing Trustee of the Maradana mosque and the Treasurers of the Executive Committee shall individually or jointly furnish the Executive Committee with a half yearly balance sheet, which shall be duly audited by a chartered accountant selected by the congregation for the purpose. The audited balance sheet shall be printed, and a copy thereof shall be sent to all members of the Board of Trustees, and to such members of the congregation as may ask for the same.”

Rule 17 provided that :—

“A meeting of the congregation of the Maradana mosque shall be called by the Secretary of the Board of Trustees, when the Board or the Executive Committee has any business to submit for their consideration, or when he is requested to do so in writing by fifty members of the congregation, who shall state in their requisition the object for which they desire that the meeting should be called. Every such meeting shall be convened in the manner laid down in rule 2 (f).”

At the material times the plaintiffs were members of the congregation of the mosque and were members of the board of trustees: the appellant and defendant D. M. Burhan was secretary to the board of trustees and the other defendants and appellants were members of the executive committee—the first defendant, Abdul Cader, being president, the third defendant, Abdul Jabar, being secretary, and the fourth defendant, A. M. K. Isadeen, being managing trustee. The defendants who are respondents to this appeal, were the remaining members of the executive committee. They had not supported but had opposed the measures and acts of which the plaintiffs complained in the conduct of the affairs of the mosque. They were joined as defendants because the original defendants to the suit, the present appellants, complained of their non-joinder and pleaded that the plaint was bad for non-joinder of parties. Such added defendants did not resist but supported the plaintiffs' claim to relief. They did not all appear on this appeal.

The substantial complaint of the plaintiffs in the action was that a meeting purporting to be a meeting of the congregation of the Mosque held on 25th August, 1929, was irregularly held in that the defendants wrongfully caused to be excluded therefrom a large number of the members of the congregation. The plaintiffs' claim was for a declaration that this meeting was irregularly held, that the proceedings were null and void, that the resolutions passed thereat were not duly passed, and for an order that such resolutions should be expunged from the minute book. There was also a complaint that the first defendant had wrongfully appropriated a sum of about 30,000 rupees, the property of the Mosque and a claim that balance sheets should be ordered to be submitted.

The last mentioned matter may be disposed of shortly. Balance sheets had been in fact submitted before the hearing of the action before the District Judge and no relief under this head was asked for before him. The matter of the complaint was however investigated at length because of its bearing upon the question of motive for the proceedings of the appellants in connection with the material meeting of the congregation. The trial Judge and the Judges on appeal formed an adverse view of the conduct of the first appellant in respect of the receipt by him of a sum of over 23,000 rupees out of the proceeds of sales of certain property of the Mosque to the Municipality of Colombo. They found that the sum received was an enormous sum for simple work and was not remuneration on a normal basis for professional services as a proctor but was a bargain for a share of the proceeds of sale. They also found that the transactions were conducted without proper and timely disclosure of the first appellant's interest and that his manner of obtaining payment was irregular and unworthy of his

position as president. The fourth appellant as managing trustee was held to have been too complaisant and ready to assist the first appellant in this matter, and it was held that both these appellants disliked the idea of a general meeting of the congregation, at which a scrutiny of these transactions and opposition thereto might have emerged. Their Lordships see no reason to differ from these conclusions, but, having regard to the view adopted in the judgments under appeal on the matters more directly in issue, the question of motive seems now to have little importance, and not to require further consideration. Their Lordships desire however to make one matter plain. Counsel for the appellants not unnaturally expressed concern lest in this matter the findings of the Court below that the appellants as a whole acted in concert might be misunderstood as amounting to a finding that they were implicated in the monetary transactions which were criticised. While it is true that all the appellants were found to have combined in resolutions and actions in respect of the conduct of the officers of the Mosque and in particular in respect of the meeting of 25th August, 1929, which were irregular and illegal, there was no evidence and no finding involving any reflection upon the personal integrity of the defendants generally. The first defendant and to a less extent the fourth defendant were alone the objects of criticism in this respect.

As to the meeting of 25th August, 1929, the facts as found by both Courts in Ceylon were as follows: The business of the meeting was to appoint or approve the appointment of two khatibs or priests and to appoint auditors. Notice of such meeting was issued on 13th August. It had for some time become increasingly clear that opposition to the views and policy of the appellants was strong. On 8th August notice was given requesting members of the congregation to register, and stating that the register would close on 19th August, and that no person not registered would be considered as entitled to vote at any meeting of the congregation. In spite of protests, an extension of the very short time for registration was refused, and, when the meeting of 25th August was held, admission was by ticket, and was confined to the limited number of members of the congregation who had registered. In consequence a very large number of persons who were admittedly members of the congregation and who demanded admission, were excluded from it and the resolutions were passed in their absence. It was held in both Courts that the idea of registration was conceived and carried out with the object of keeping out the opposition members from the meeting, which was so carried out as to be a farce. It was held on these facts that the limitation of the meeting to those on the register and the exclusion of the other members of the congregation were illegal, that the meeting was irregularly held, and that its proceedings were null and void.

On the hearing of this appeal it was not sought to impeach these findings of fact, which were arrived at by both Courts, and were manifestly warranted by the evidence and documents in the case. The arguments on the appeal were confined to matters of procedure and parties, and it was said that the relief sought should not have been granted because of the provisions of the Trust Ordinance No. 9 of 1917, and because the proper parties were not before the Court either as plaintiffs or defendants.

As to the Trust Ordinance of 1917 it was submitted in the Courts below that the only remedy of persons aggrieved as the plaintiffs in this action alleged they were aggrieved was to proceed by way of an action to be brought by not less than five persons as plaintiffs under section 102 of that Ordinance. At the hearing of the appeal before their Lordships it was conceded that a civil wrong was complained of in the present action, and that section 102 did not exclude the jurisdiction of the Courts to entertain this action; but it was said that, the procedure under section 102 being available, and being the more appropriate and convenient procedure, the Courts as a matter of discretion were entitled to refuse to make the declarations and grant the relief prayed, and should have refused to do so. Their Lordships see no inconvenience involved in the procedure adopted in this action, and are of opinion that the plaintiffs were entitled to relief, and that the declarations were properly made. In any case, and in so far as discretion was involved their Lordships see no ground for interfering with the exercise of their discretion by the Courts below.

As to the matter of parties, the first complaint of the appellants was that the plaintiffs were not persons properly entitled to appear in that capacity. It was said that they were two members of the board of trustees and that they were not excluded from the meeting of 25th August. It was said that the proper plaintiffs would have been members of the congregation who were excluded from participation in the meeting. This objection is in the opinion of their Lordships ill founded. The plaintiffs were members of the congregation, and as such, in their individual and not in a representative capacity, had an interest in the proper conduct of the affairs of the Mosque, and had a right to complain of a meeting irregularly held, and of resolutions illegally passed. It was next said that the action was not rightly brought against the present defendants and that the necessary parties were not before the Court as defendants. As to the present defendants, the Courts below found that the acts complained of were the acts of these defendants who were persons entrusted with the management of the affairs of the Mosque. These findings seem to their Lordships to be justified by the evidence and to dispose of this objection. As to the absence of other persons from the suit it was said that the trustees, the

congregation, and the khatibs or priests ought to have been parties. As to the latter their Lordships are of opinion that, speaking generally, persons in the position of the priests in the present case are neither necessary or proper parties to such a suit. As to the trustees, the members of the executive committee were all of them parties, and, the executive committee being a committee of the board of trustees, no further representation of the larger body seems to their Lordships to have been required. The position as to the congregation is somewhat different. It appears to their Lordships that, in a matter concerning the interests of the congregation so closely, it would have been proper that it should have been represented in the action by some member or members of it, not being officials, and that it would therefore have been proper to have joined as defendants one or more such persons and to have obtained an order appointing him or them to represent the members of the congregation who were not before the court. But it is provided by section 17 of the Civil Procedure Code of Ceylon (Ordinance No. 2 of 1889) that no action shall be defeated by reason of the misjoinder or non-joinder of parties, and that the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Section 22 of the same Code provides that all objections for want of parties shall be taken at the earliest possible opportunity and in all cases before the hearing. It was said with truth on behalf of the respondents that the objections now under consideration, unlike the objection which led to the joinder of the defendants who are respondents to this appeal, were not so taken.

Their Lordships do not doubt that in a proper case a defect of necessary parties may be dealt with by the Court at any stage but in their view the present is not such a case. On the contrary the language of Lord Macnaghten in the case of *William Brandt's Sons & Co. v. Dunlop Rubber Co. Ltd.* [1905] A.C. 454, at p. 462 of the report is applicable to the present case. The material passage from the judgment is as follows :

“Strictly speaking Kramrisch & Co. or their trustee in bankruptcy, should have been brought before the Court. But no action is now dismissed for want of parties and the trustee in bankruptcy had really no interest in the matter.”

In the present case the opposing views and contentions as to the validity or invalidity of the meeting of 25th August and of the resolutions passed thereat were placed fully before the Court by the parties interested. Their Lordships are satisfied that no injustice resulted from the absence from the record of any further or other parties, and that, on the contrary, injustice would result from now giving any effect to the appellants' belated objection on this score.

The last point raised by the appellants was that the decrees below were wrong in that they ordered the appellants to pay the costs of the respondents who were added

as defendants. The decrees appear to their Lordships to be in this respect proper and just, and in any case were made by the Courts below in the exercise of a discretion with which it would be improper to interfere.

For these reasons their Lordships are of opinion that this appeal should be dismissed, and that the appellants should pay to the respondents who have appeared their costs of this appeal. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

N. H. M. ABDUL CADER AND OTHERS

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S. L. AHAMADO LEBBE MARIKAR,
SINCE DECEASED, AND OTHERS

DELIVERED BY LORD ROCHE

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