

Privy Council Appeal No. 16 of 1931.

K. Shanmukhasundara Mudaliyar and others - - - *Appellants*

v.

S R. Ratnavelu Mudaliyar, since deceased, and others - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 29TH NOVEMBER, 1935

Present at the Hearing:

LORD MAUGHAM.

SIR JOHN WALLIS.

SIR GEORGE RANKIN.

[*Delivered by* LORD MAUGHAM.]

This is an appeal from a judgment of the High Court at Madras dated 2nd March, 1928, dismissing the action. The case came in the first instance before the Subordinate Judge of Chingleput who made a decree giving the plaintiffs certain relief. The suit was brought in 1921 by the trustees of the Sri Karneeswarar Temple in Saidapet for an account against the former trustees, defendants 1 to 4. The account claimed is in reference to a temple belonging to the Senguntha Mudaliyars or weavers of a village near Saidapet. The temple is controlled by a number of households situated round the temple itself, and the members of the community are said, for the most part, to be illiterate. Trustees are appointed from time to time to manage the affairs of the temple, and the community exercises control over the affairs of the temple without, it seems, any deed or other written instrument prescribing the way in which this control is to be exercised. It should be said here that the respondents, though the first four have put in a case, did not appear before the Board.

The proceedings have taken a somewhat unusual course. The suit was one claiming a general account from the defendants extending over the years 1908 to 1917, and the plaintiffs annexed to the plaint particulars of a sum of Rs.14,458, which they sought to recover from the defendants as the probable amount they would have to make good to the trust. The first prayer in the plaint was that the defendants should be directed to furnish a full and true account of their management of the plaint shrine during the period of their trusteeship from 1908 to 1920. When the matter came before the Subordinate Judge, Counsel for the plaintiffs appear to

have abandoned their claim for a general account, and to have sought to make the defendants liable simply for the items mentioned in the particulars contained in the schedule to the plaint. The learned Judge seems to have gone into the whole matter with great detail at a very lengthy trial, and in the result he made a decree in favour of the plaintiffs, allowing a portion of the first item in the particulars, and allowing the claim made in the second item in the particulars, which together with interest, amounted in the whole to the sum of Rs.5,733. There was an appeal to the High Court, and on that appeal, Counsel for the respondents, the plaintiffs, admitted that the reasons given by the Subordinate Judge for his conclusions in favour of the plaintiffs could not be supported, and he seems to have claimed a general account against the defendants confining it, however, to the years 1913 to 1917. The first defendant was in control as from the beginning of that period, and the two items in respect of which the plaintiffs succeeded, were items alleged to have been received by the defendants, or some of them, in June and November, 1913. The High Court appear most carefully to have considered the question whether a general account could properly be ordered against the defendants, and came to the conclusion that inasmuch as certain accounts had been from time to time put before the Senguntha community at annual meetings, and scrutinised by members of the community, and passed or allowed by them, the defendants could not be held to account in any strict manner for items of expenditure going back to the year 1913. They held, and there seems to have been ample evidence to justify the holding, that the community did from time to time hold meetings in connection with the temple, that they inspected the accounts, removed trustees, and appointed others, although the documents relating to such proceedings of the community are for the most part not forthcoming. The High Court also came to the conclusion that there was no ground for thinking that the absence of the documents last referred to and of many of the accounts kept by the trustees from time to time is a matter for which the defendants are responsible. Here, again, their Lordships after reading the evidence are unable to come to the conclusion that the High Court was not justified in so holding.

In these circumstances, and having regard to the nature of the trust, to the length of time which elapsed before the action was instituted, and to the other circumstances of the case, their Lordships agree with the conclusions of the learned Judges of the High Court that it would be unjust and inequitable to call upon the late trustees to account for the moneys received by them many years ago. As defendant No. 4 did not join in the appeal to the High Court the decree of the trial court stands as against him.

A point was suggested in the High Court based upon the contention that the present suit would not lie having regard to the terms of section 92 of the Civil Procedure Code,

and that the necessary authority for the suit was not obtained. This point might have been a serious one, but it was not dealt with in the High Court as they founded themselves on other reasons for dismissing the suit, and in these circumstances their Lordships do not think it necessary to express an opinion upon it.

Accordingly, their Lordships will humbly advise His Majesty to dismiss the appeal. The respondents Nos. 1 to 4 will have their costs up to and including the lodgment of their printed case and consequential charges.

In the Privy Council.

K. SHANMUKHASUNDARA MUDALIYAR
AND OTHERS

v.

R. RATNAVELU MUDALIYAR, SINCE
DECEASED, AND OTHERS

DELIVERED BY LORD MAUGHAM.

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