

**IN THE HIGH COURT OF FIJI AT SUVA**

**CIVIL JURISDICTION**

**Civil Action No: HBC 73 of 2020**

**BETWEEN: SHASHI KAPOOR and KEITH ANAND SINGH, both of Vuci Road, Nausori, as lawful remaining Trustees of the AASHIRWAAD RAMAYAN MANDALI , an unincorporated trust and the governing body of the AASHIRVAAD NAAG TEMPLE.**

**PLAINTIFFS**

**AND: RAKESH KUMAR, DIVESH KARAN, DANIEL SUJIT LAL, RAMENDRA KUMAR, FRANCIS RAVIN LAL and SATYA NAND MAHARAJ, all of Vuci Road, Nausori, as former office bearers and members of the AASHIRWAAD RAMAYAN MANDALI .**

**DEFENDANTS**

**Counsel:** Mr. J. Savou for Plaintiffs

: Mr. A. Chand with Ms. S. Dass for the Defendants

**Date of Trial :** 25-26<sup>th</sup> July 2022

**Date of Judgment:** 17<sup>th</sup> October 2022

**JUDGMENT**

**The Plaintiff**

1. The Plaintiffs are the remaining Trustees of a religious trust, 'Aashirwaad Ramayan Mandali' [ARM].
2. The Defendants were either office bearers or members of the ARM since March 2016.
3. ARM was formed under a Deed of Trust registered on 21<sup>st</sup> April 2016 with the Registrar of Deeds bearing the registration number 48244.

4. On 10<sup>th</sup> March 2016 during an Annual General Meeting held, ARM made the following appointments,

1. As Trustees

- I. Shashi Kapoor
- II. Keith Anand Singh
- III. Pandit Ragwan Nand Maharaj

2. As Office bearers

- I. President - Madan Pillay
- II. Secretary - Daniel Sujit Lal
- III. Treasurer - Satya Nand maharaj
- IV. Committee Members - Shelvindra Prasad, Rakesh Kumar, Narain Singh
- V. Internal Auditor - Francis Lal

5. ARM has adopted their principle governing document, 'Constitution' on 21<sup>st</sup> April 2016.

6. The Plaintiffs held a land lease since 12<sup>th</sup> April 2016 with the itaukei Land trust Board situated at the junction of Vuci Road and Naduru Road, Nausori described as Waimate No 2, Subdivision, Lot 10, Nausori. The temple named Aashirwaad Naag Mandir is situated on this property which has been administered by the ARM.

7. The Plaintiffs state that on 09<sup>th</sup> March 2018 the Defendants held an Annual General Meeting [AGM] without notifying the Trustees. In that the Defendants

went on to appoint themselves in to the positions of the ARM. The Plaintiffs on 12<sup>th</sup> March 2018 wrote and informed the Defendants that due to the violation of several Constitutional provisions, the AGM held on 9<sup>th</sup> March was null and void.

8. The Plaintiffs further state that they have conducted an analysis on to the Statement of Account for the ARM's bank account held in ANZ bank, and discovered some discrepancies.
9. In 2018 the Defendants registered the ARM under Shree Sanatan Dharam Pratinidhi Sabha Fiji [SSDPS] without Plaintiff's sanction as Trustees. Further Plaintiff state that this was never sanctioned by the members of the ARM.
10. On 20<sup>th</sup> March 2019, the Plaintiffs wrote to the Secretary [3<sup>rd</sup> Defendant] seeking 2018 audited financials of 2018 and calling explanations on the matters relating to the ARM.
11. On 02<sup>nd</sup> July 2019 the plaintiffs issued a statement (Ruling) to the President of ARM in 2018 informing that they have dissolved the Defendants as office bearers pursuant to the expiry of their term and appointed an interim committee. The Plaintiffs had requested the Defendants to handover all documentations to the interim committee.
12. The interim committee was sanctioned by the Trustees;
  1. To act on behalf of all the members;
  2. To receive and communicate in correspondence on behalf of the Trust;
  3. To retrieve all relevant secretariat and financial documents of the trust;and

4. Conduct an audit of the Trust until the following AGM.
  
13. On 11<sup>th</sup> July 2019 the Plaintiffs wrote to the first and third Defendants to revoke their membership.
  
14. On 12<sup>th</sup> July 2019 the Plaintiffs wrote to the ANZ bank advising them of the status of the earlier committee and requested the bank to restrict the account until the new signatories are appointed.
  
15. Despite the ruling on 2<sup>nd</sup> July 2019 by the Trustees, the Defendants continue to act as the office bearers of ARM.
  
16. On 11<sup>th</sup> November 2019, the Defendants with three members of SSDPS Rewa branch conducted a meeting to have a vote of no confidence against the Plaintiffs.
  
17. Following this meeting a Special General Meeting [SGM] was held and according to the Plaintiffs in the company of five members of SSDPS Rewa branch.
  
18. Then the Defendants on 1<sup>st</sup> December 2019 held an AGM for the year 2018 and appointed one Anil Pratap, Sundeep Roy and Raj Deo as new Trustees of ARM.
  
19. The Plaintiffs by filing this action, seek following orders from the Court;
  - a. Special damages for the following losses: -
    - i. All funds mismanaged by the Defendants in the ANZ Bank Account, following an audit of the financial report of the ARM from 2017 till July 2019; and

- ii. Loss of potential collections estimated at a total of FJD 150.00 per Tuesday at the weekly *Ramayan Katha* since February 2018.
- b. General damages for the following losses:
  - i. Loss of Member Contributions at FJD 25.00 per member for three years;
  - ii. Loss of Membership fees at the rate of FJD 5.00 per member for three Annual General Meetings;
  - iii. Loss of potential collections during religious festivities since 1 December 2019;
  - iv. Loss of costs associated with the printing of notices against Trespassers, lamination costs, signage, signwriting and locks;
  - v. General Damages for emotional stress suffered by the Trustees, the Organization and the temple going community as a result of the Defendants' conduct, at a place of worship.
- c. That the Defendants be permanently restrained from directly or indirectly carrying out acts related to the business and administration of the Organization including but not limited to, issuing notices for and carrying out meetings in the name of the Organization, opening a bank account in the name of the organization, collecting donations from the devotees or dues from members and making payments on behalf of the Organization.
- d. That the Defendants permanently cease and desist any acts already in progress, directly or indirectly related to the business and administration of the Organization, including but not limited to, the opening of any bank account, Notice of any meeting sent out to members, for registration or engaging the Organization with other organization, particularly the SSDPS, unless approved by the Trustees.
- e. That the Defendants be permanently restrained from directly or indirectly representing themselves as Office Bearers of the Organization.

- f. That the Defendants be permanently restrained from directly or indirectly representing themselves as members of the Organization.
- g. That the Defendants, their servants, agents, contractors, representatives or persons under the control, direction or guidance of the Defendants, be permanently restrained from entering the temple premises, with the intention to directly or indirectly threaten the Plaintiffs, the Organization and its members, and temple goers within the temple premises, except for the purposes of worship.
- h. That there be a reversal of any form of registration of the Organization with the SSDPS.
- i. That the Organization and Trustees resume its duties in effecting the objectives of their Constitution.
- j. Costs against the Defendants on a Solicitor-Client indemnity basis;
- k. Pre-judgment and post judgment interest at the rate of 8% per annum;
- l. Any other orders and directions that the Court deems fair, just and reasonable.

**The Defendant**

20. The Defendants state that the Plaintiffs no longer hold the positions of Trustees.

21. They further state that the Trust Deed 48244 was never endorsed or approved by the members of ARM in any AGM or SGM held. The Defendants state that the Constitution of ARM is the only governing document since Deed of Trust was never presented or approved by the members.

22. The Defendants believe that the opening of the second bank account in HFC bank by the Plaintiffs was never intended and as per the Constitution ARM's bank account has been with ANZ bank.
23. The Defendant states that there was no practice of inviting the Trustees to the meetings and only financial members attend such meetings. They do not agree that the AGM held was unconstitutional. Further state that the office bearers appointed were properly made.
24. Defendants do not agree that there were discrepancies in the bank account. However they say that freezing of the ANZ bank account by the Plaintiff was a deliberate attempt to cause disruption to the daily affairs of ARM which could have an adverse impact in public's eye.
25. Joining of ARM and SSDPS according to the Defendants, was something agreed by the Plaintiffs.
26. The Defendants do not agree with the ruling issued by the Trustees on 2<sup>nd</sup> July 2019 as they do not have 75% of the members to make such decisions. The Defendant's position is that the SGM was held lawfully and in a peaceful manner.
27. The Defendants sought following from this Court;
- i. The meeting held on 11<sup>th</sup> November, 2019 of Vote of No Confidence against the Trustees be declared valid.
  - ii. Pursuant to vote of no confidence, Keith Anand Singh and Shashi Kapoor are no longer Trustees of the ARM.

- iii. All meetings and AGM held by Defendants in year 2018 and year 2019 are pursuant to the constitution of the temple.
- iv. Plaintiffs action to dissolve the executive committee members elected in the 2018 Annual General Meeting of the said Mandali and temple be declared null and void since Plaintiff not having 75% majority of members to vote for a position the Plaintiffs.
- v. Defendants' claim that the appointment of new trustees namely Anil Pratap, Sundeep Roy and Raj Deo as appointed and elected Trustees pursuant to the AGM of 1<sup>st</sup> December 2019 be declared as Trustees and registered with the registrar of deeds office.
- vi. Defendants claim that they be declared as the current executives of the organization.
- vii. That HFC account that was opened by the Plaintiffs should not have been opened as it is a breach of constitution.
- viii. Defendant claims HFC account should be audited by an independent auditor as agreed to by the Plaintiffs in the joint AGM with SSPDS president and representative held on 11<sup>th</sup> November 2019.
- ix. Defendant claims that Plaintiffs have been misusing the temple funds from HFC account where no records are available to the executive committees on the usage of monies from the HFC account which shall be immediately investigated thoroughly.
- x. That Defendant claims none of the withdrawals and or usage of money by Plaintiffs had any consent and authority from Defendants.

Therefore, the Defendants seeks the following orders:



1. A declaration orders from paragraphs 48 to 57 of its Counter Claim.
2. Plaintiffs Claim be struck out with costs in favor of Defendants and Orders as per the Counter Claim be awarded.

### Agreed Facts

28. It was agreed that the Plaintiffs,

1. Were at all material times the trustees of ARM pursuant to the Trust Deed 48244 dated 11<sup>th</sup> April 2016.
2. The ARM has a Constitution that was adopted on 21<sup>st</sup> April 2016.
3. Plaintiffs are the Lessee of all that land known as Waimate No 2 Subdivision Lot 10 situated in the Tikina of Nausori in the province of Tailevu and comprising 0.1004 hectares and contained in the Agreement for Lease TLTB 4/14/9986 issued to the trustees of the ARM. The Plaintiffs are holding the said property on trust for the benefit of the temple and its members.

29. And the Defendants,

1. Were at all material times office bearers and members of the ARM.

30. On the 11<sup>th</sup> November 2019 the Defendants purported to constitute a SGM and vote out, as trustees, the Plaintiffs by way of vote of no confidence.

31. On 01<sup>st</sup> December 2019, the Defendants, purported to constitute an AGM where under the purported termination of the appointment of the Plaintiffs as Trustees was endorsed.

### **Facts in Dispute**

32. The Plaintiffs and the Defendants seek following issues to be determined by the Court;

1. Whether the SGM of 11<sup>th</sup> November 2019 convened in accordance with the Constitution of the ARM.
2. Does the Constitution authorise the removal of the Plaintiffs as Trustees in the manner that the Defendant' purported to effect at the purported SGM of 11<sup>th</sup> November 2019.
3. Whether the AGM of 01<sup>st</sup> December 2019 properly convened.
4. Does the Constitution authorise an AGM to endorse the removal of the Trustees in the manner that was done on 01<sup>st</sup> of December 2019.
5. Whether the ruling delivered by the Plaintiffs under the capacity of Trustees valid.
6. Whether the Defendants are entitled to their counter claim.

33. Further the parties seek determination on a legal point, whether the Trustees can be removed from a Trust in the manner the Defendants did on 11<sup>th</sup> November 2019.

### **Evidence at the Trial**

34. At the Trial one of the Plaintiffs, Mr. Keith Anand Singh gave oral evidence and for the Defendant's case Mr. Francis Ravin Lal and Mr. Daniel Sujit Lal testified in Court.

35. Plaintiff Mr. Keith Anand Singh stated;

- i. That he is a Trustee of ARM. He provided the Constitution of ARM (marked as exhibit 01) the Deed of Trust 48244 (marked as exhibit 02), meeting minutes of the AGM held on 10<sup>th</sup> March 2016 (marked as exhibit 03), agreement for lease of the land with ITLTB (marked as exhibit 04)
- ii. That in 2018 a Committee came in forcefully and sacked the Trustees. However the Plaintiff did not know that he was terminated as no formal notice has been served.
- iii. That they initiated these legal proceedings in 2019 after writing a letter in 2018 to the Secretary of ARM (marked as exhibit 05) informing that the 09<sup>th</sup> March 2018 AGM was null and void due to the way it was held and not providing the necessary reports to the Trustees.
- iv. During his Cross examination the witness stated that he has been a member of the ARM for the last 20 years and has been the Secretary between the years 2000-2016. He further stated that the Trustees are guided by the Deed of Trust and the Constitution of the ARM applies to the financial members of the Mandali.
- v. He said that the Trustees have powers to take action without member's consent. His position is when the Constitution of ARM was made the Trust wasn't there and the Trust Deed was prepared subsequent to the Constitution.
- vi. Stated the Constitution doesn't restrict that there can be only one financial account with ANZ bank and that was the reason for the Trustees to open another bank account at HFC bank. The witness stated that the Trustees may act in any manner for the betterment of the ARM though it is not written in the Constitution. He further said though there is no written proof, in 2017 it was verbally agreed with the members at that time to open the Trust Account with HFC bank. He informed that the three

Trustees were the signatories of the account and that they have paid the legal fees of this action through the Trust account.

- vii. Stated that approximately they have received \$36,000 so far in to the trust account from the lease agreement they have with the Vodafone to maintain a telecommunication tower from the premises of the temple.
- viii. Stated that he was never invited to attend the AGM which they were removed as Trustees.
- ix. He further took up the position that the Trustees did not attend the AGM held on 09<sup>th</sup> March 2018 as it was not a legitimate meeting. The witness stated that the Trustees were never informed of the registration of ARM under SSDPS.
- x. It was also stated that the members did not take a vote for the sacking of the Trustees. The Defendants broke open the temple to have the meeting on 01<sup>st</sup> December 2019. He said that the Trustees went to receive the items returned by a resident after a funeral and not to obstruct the Defendants. Witness further said that they have seen mismanagement in the ANZ account though they are unable to produce evidence.
- xi. During his re-examination the witness stated that there is no clause or procedure available in the Constitution to terminate the Trustees. Also that they have not received any resolution or notification of any termination given to them. Further there was no opportunity given to them prior to the sacking of the Trustees and the viber message that was circulated informing the AGM did not have any agenda of the meeting. The Audit of the trust account was not done as they did not receive any note from the Treasure or any Auditor.

36. The Defendant's first witness Francis Ravin Lal stated;

- i. That he joined ARM 22 years ago and he has been appointed as an internal auditor of ARM. Now most of the Trustees and the members are not in talking terms due to the incidents took place.
- ii. He said that the relationship between the members and the trustees started to deteriorate after the Vodafone tower was built in the temple premises and during the time the first payment received from the Vodafone.
- iii. He stated that it was fully agreed by the members that the payments from Vodafone to be deposited into the ANZ bank account. However one of the Committee members, who worked at the Vodafone handed over the payment cheque directly to the Trustees.
- iv. He said the Committee members were not aware of this until lot later and the Trustees refused to discuss this with the Committee. He marked the 09<sup>th</sup> March 2018 AGM meeting minutes as D-Exhibit 01. He then said that they called help from SSDPS to mediate the matter between the Trustees and the Committee. But the Trustees went away.
- v. The witness stated that in late July or in August 2019 there was a joint meeting held between the Trustees and the Committee to agree that the Trustees to unfreeze the ANZ account and to provide statements of HFC account. However this did not eventuate. He said that the AGM for 2019 did not proceed as there were no bank statements of the HFC account provided by the Trustees. The witness produced the audit report of year 2018 and marked as D-Exhibit 2. He further stated that the Trustees wrote to them to dissolve the Committee. However his position was that the Trustees could have done that only with 75% of the members agree. Hence it was not done according to the Constitution.

- vi. He said that they disregarded the Trustees letter and worked as normal.
- vii. Witness stated that on 11<sup>th</sup> November 2019 they held a meeting to move a vote of no confidence against the Trustees and the minutes of the meeting was marked in Court as D-Exhibit 3.
- viii. He stated that the AGM was held subsequent to this meeting in December and the Trustees were no longer invited. This was the meeting where the Trustees locked the gates of temple premises which resulted a heated argument. The witness marked a letter written after the meeting held on 11<sup>th</sup> November 2019 as D-Exhibit4 and the minutes of AGM held 01<sup>st</sup> December 2019 as D-Exhibit 5. The witness marked notice that was displayed at the temple as D-Exhibit 6, letter dated 09<sup>th</sup> August 2019 as D-Exhibit 7, and letter addressed to Registrar of Titles dated 24<sup>th</sup> November 2019 as D-Exhibit 8.
- ix. During Cross examination the witness agreed under clause 13.2 of the Constitution there was no mention about having another second trust account for ARM. When the initial paragraphs of Exhibit 4 was read, he agreed that the ARM would have been set up under the Charitable Trust Act. However he emphasized that the ARM was not in the need of having two bank accounts.
- x. The witness stated that he has not produced any letters invited the Trustees to the AGM. He further stated that in 2018 Trustee Keith Anand Singh was terminated, however he was reinstated later. The witness was of the view that under clause 15.2 of the Constitution, the Committee could remove a Trustee. He further said that the 2018 dismissal of trustee Keith Anand Singh was for writing a letter to the Committee and not for mismanagement.

- xi. During re-examination the witness said that at the AGM they had the majority to terminate the trustees. Also under clause 5.1 the trustees too can be terminated as they are considered as members of ARM.

37. The Defendants then called Mr. Daniel Sujit Lal as their final witness.

- i. He has been the Secretary of ARM for the last 5-6 years. He stated that all meeting minutes are prepared by him. Before any AGM, the notices will be sent on 'viber' to the attendees. He said that the membership fees is collected at the AGM before the meeting. He was shown a receipt book, however this was not marked as an exhibit.
- ii. During Cross examination the witness stated that D-Exhibit 3 was the meeting minutes of the meeting which terminated the Trustees. However it was not an AGM. During re-examination witness stated that it was a SGM.

38. The parties filed their written submissions on 26<sup>th</sup> August 2022.

### **Analysis**

39. Firstly the Court needs to determine whether Aashirwaad Ramayan Mandali [ARM] can be classified as an incorporated body established under the **Charitable Trusts Act 1945**.

40. The Agreement for Lease [exhibit 4] is where it states in the introductory paragraph of the agreement that ARM is a religious body registered under the

Charitable Trusts Act. The Court examined the Deed of Trust which has been marked as Exhibit 2 to find whether it comes under the definition of the Act.

41. Section 3 of the **Charitable Trusts Act** states that it shall be lawful for the Trustees or a Trustee for the time being of any Charity for religious purpose to apply to the Registrar of Titles for a certificate of registration of the Trustees as a corporate body. Section 4 requires that every such application for registration to be in writing as per the schedule 1 of the Act.
42. Section 5 states 'before a certificate of incorporation is granted, trustees of the charity shall be effectually appointed to the satisfaction of the Registrar; and, where a certificate of incorporation has been granted, vacancies in the number of the trustees of such charity shall from time to time be filled up so far as shall be required by the constitution or settlement of the charity, or by any such conditions or directions as aforesaid, by such legal means as would have been available for the appointment of new trustees of the charity if no certificate of incorporation had been granted, or otherwise as shall be required by such conditions or directions as aforesaid; and the appointment of every new trustee shall be certified by or by the direction of the trustees to the Registrar within one month of such appointment'.
43. According to section 6 of the Act 'A certificate in the form in Schedule 2 purporting to be signed by the Registrar shall be conclusive evidence in all courts that the trustees therein named (hereinafter called the board of trustees) has been duly incorporated, and of the date of such incorporation. The Registrar shall not issue a certificate when the name of the proposed board of trustees, in his or her opinion, resembles too closely the name of any existing board of trustees'.



44. There has been no evidence led before the Court by either party to establish that ARM has any certificate of incorporation or that the Trustees come under the preview of **Charitable Trusts Act 1945**. Hence the Court decides that ARM is an unincorporated organization.
45. As mentioned by His Lordship Justice Tuilevuka in **Singh v Reddy** [2014] FJHC 724/ HBC 123 of 2011 “Generally, except in certain cases, Courts do not interfere with the affairs of private clubs. In **Rokotavaga & Ors as the FPGA v Singh & Others** [2007] FJHC; HBC 170 of 2007S (3 June 2008), Madam Justice Phillips took the view that the remedy to disputes over election of office bearers in a private club is to be found in the association’s constitution and not in the Courts. In **Horner v Trustees and Executives of the Sigatoka Club** HBC 241.2010L (1 June 2011), Justice Inoke observed that, where management has taken a heavy handed approach and acts with self-interest at the expense of the interests of members as a whole leading to disunity, the court will interfere to put a check on the dispute escalating. In **Mistry v Chandra** [2009] HBC 149 of 2009 (23 October 2009), Inoke J opined “Further, this is a matter of private law and not public law. The Articles clearly, in my view, give absolute authority to the Council and the Board. They have the power to change the Articles and hence the power to validate any election procedure or result. The Plaintiffs as members of DIAS are bound by the Articles. This Court should be loath to rewrite those Articles which have been adopted by consensus of the members. This Court should also be loath to interfere with the use of any such powers, unless there is a clear case of fraud or abuse and the majority of the members want the Court to interfere”.

46. It is long recognized in law that members of an unincorporated association are bound together by contract, the terms of which will be in the rules of the organization. Those rules will identify their common purpose, mutual undertakings, duties and obligations, who shall control the funds, and how members can join leave the association. In **Conservative and Unionist Central Office v Burrell** [1980] 3 All ER 42, it was argued that there are six characteristics which are either essential or normal characteristics of a non-profit association.

These are, it was argued:

1. there must be members of the association;
2. there must be a contract binding the members among themselves;
3. there will normally be some constitutional arrangement for meetings of members and for the appointment of committees and officers;
4. a member will normally be free to join or leave the association at will;
5. the association will normally continue in existence independently of any change that may occur in the composition of the association; and
6. there must as a matter of history have been a moment in time when a number of persons combined or banded together to form the association.

47. Lawton LJ in *Conservative & Unionist* said as follows:

“I infer that by "unincorporated association" in this context Parliament meant two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings, each having mutual duties and obligations, in an organization which has rules which identify in whom control of it and its funds rests and upon what terms and which can be joined or left at will. The bond of union between the members of an unincorporated association has to be contractual”.

48. The Court's view is, because of the unincorporated nature of ARM, it lacked the capacity to hold property under their name of the association. In the circumstances there can be two options. All members can hold the property as joint tenants or lessees of the property or the property can be held by few as Trustees for the benefit of all members. That is what happened in this case.
49. It has been agreed by the parties that the Deed of Trust 48244 executed on 11<sup>th</sup> April 2016 prior to the adopting of ARM's Constitution on 21<sup>st</sup> of April 2016. It is clear that both these documents came in to operation subsequent to the AGM held on 10<sup>th</sup> March 2016. It is also noteworthy to mention that on the final page, the Trustees have endorsed the 'Constitution'. A document such as a Constitution can be continued over many years by any organization or an association allowing it to have amendments. Therefore it is important to identify the correct version of the document which is applicable to the issue in hand.
50. The preamble of the 'Constitution' of ARM states, "This Constitution is a guideline specifically designed to the financial members of the given year of Aashirwaad Ramayan Mandali in discipline to maintain stability, accuracy, transparency and honesty to foster culture tradition in promoting the coming generation".
51. Under its 'Objectives' 3.1 states that the "Organization shall protect the interest of all financial members of the given year". It is important to understand the meaning of "members" under the Constitution of ARM to decide the exact position of the Trustees. In 4.0 'Membership' it states "membership shall be open to the individuals of the Sanatan faith over the age of 18 years who have vested

interest in the mandala and it should be approved in the AGM and also next of kin of those who were members of the mandala, which shall continue until the end of each financial year". 4.2 states "Membership fees per member shall be determined and shall be paid prior to the AGM". In 4.3 it states "A financial member shall contribute accordingly for the functions as determined and approved in the general meeting".

52. In clause 15 the Constitution describes the definition of 'Trustee'. 15.1 states "The trustee shall be appointed to undertake to maintain and develop the temple premises". 15.2 "there shall be three trustees. In event of death or dismissal of any trustees[s], the executive committee shall appoint trustee[s] in the next AGM".

53. Under clause 16 the Constitution stipulates the 'Power of Trustees'. According to 16.1 the trustees shall have the full voting rights. 16.2 states "in the event of mismanagement of any mandala activities, the trustees have the right to take over the management of the organization upon a written submission with 75% members agreeing. They then call a Special general meeting as soon as possible, but no later than one month from the date of take over, and appoint a full management board to look after the affairs of the organization". In 16.3 states "All trustees must agree with each other on any decision to be taken".

### **Removal of Trustees**

54. It is clear that the Constitution has given a special recognition to the Trustees of ARM. It has placed the Trustees above the other financial members of the mandala and the office bearers. Once a Trustee has been appointed he/she would

hold the position till death or dismissal. The question before the Court is whether all clauses of the Constitution would be applicable to the governing of the Trustees. In clause 5.1 it states "Any class of membership may be suspended or terminated at any time of the General Meeting, decided that such member does not comply with the Constitution of ARM which directly affects the activities of the organization". Defendant's view was that this is applicable to the removal of a Trustee. I disagree with that. The preamble of the Constitution is clear that the Constitution is a "specifically designed" guideline to the "financial members" of the given year of Aashirwaad Ramayan Mandali in discipline to maintain stability, accuracy, transparency and honesty. In my view the Trustees do not come under the definition of 'Financial member' who holds their membership for one calendar year. The Constitution has a lacuna. There is no expressed provisions for the removal of a Trustee.

55. On the other hand the Deed of Trust which has been prepared to bestow the rights and liabilities of ARM on the Trustees. It does not provide any clear procedure on how to remove a Trustee for a cause.

56. This issue could have resolved by relying on the provisions of **Trustee Act 1966**.

57. Section 3 of the Act states as follows;

3(1). Except where otherwise expressly provided, this Act applies to every trust, whether constituted or created before or after the commencement of this Act.

3(2). The powers conferred by or under this Act on a trustee are in addition to the powers given by the provisions of any other Act and by the instrument (if any) creating the trust; but the powers conferred on a trustee by the provisions of this Act, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument (if any) creating the trust and have effect subject to the terms of that instrument.

58. Section 73 (1) of the **Trustee Act** states “The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is inexpedient, difficult or impracticable so to do without the assistance of the court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee”.

59. However the Defendants chose to have a vote of no confidence on 11<sup>th</sup> November 2019 to remove the Plaintiffs. The minutes of this Special General Meeting has been marked as D-Exhibit 3. As per the minutes this meeting has been held in the presence of three delegates of Sanatan Dharam Rewa Branch. More importantly the meeting which decided the fate of the Plaintiffs was chaired by the President of Sanatan Dharam Rewa Branch. Clause 12.1 of the ARM Constitution states “it shall be the duty of the President” of ARM to preside all meetings of ARM including any SGM or AGM. From the meeting minutes is evident that the President of the ARM had been present at this meeting but did not chair the same. Therefore the Court rules that this is a clear violation of the ARM Constitution, thus cannot be considered as a legitimate meeting.

60. Thus the endorsement given at the AGM held on 01<sup>st</sup> December 2019 has no effect. The Court rules that both Plaintiffs hold the positions of Trustees to date.

### **Trustee's Ruling**

61. On 02<sup>nd</sup> July 2019 the Trustees have written to the President ARM elected for the year 2018 to inform that the Trustees have dissolved the standing committee and all executive positions appointed in the AGM held in 2017/2018 which expired as at 31.12.2018. The letter states that they have done this due to the breach of guideline constitution by not having the 2018/2019 AGM giving the Trustees no responsible executive position despite sending two reminder notices, failure to present the audited financial report and unethical practice of protocol to the trustees.

62. By this letter the Trustees appointed an interim committee to continue the daily affairs of the ARM until the next AGM. It appears that this appointment of interim committee has been the escalation of the disagreement both parties had since the AGM for year 2017. The Court believes that this ruling by the Trustees later led to the Defendants action to remove them during the SGM held on 11<sup>th</sup> November 2019.

63. The Constitution of ARM has given certain powers to the Trustees to take over the management of the organization for any mismanagement in mandala activities. According to clause 16.2 "in the event of mismanagement of any Mandali activities, the trustees have the right to take over the management of the organization upon a written submission with 75% members agreeing. They then

call a Special General Meeting as soon as possible, but no later than one month from the date of takeover, and appoint a full management board to look after the affairs of the organization”.

64. The Plaintiffs have not provided any evidence before this Court on whether they had 75% of the members consent to issue such ruling, which in my view is a prerequisite. Therefore the Court rules that the letter issued by the Plaintiffs on 02<sup>nd</sup> July 2019 dissolving the standing committee and the executive members has no legal bearing.

65. The Court notes that the dispute between the Trustees and the Office bearers started mainly due to the opening of a second bank account by the Plaintiffs and depositing the monies collected from Vodafone tower lease. Clause 13.2 states “The Organization will bank with ANZ Banking Corporation and all payments are to be made by cheque approved by the Committee”. Court’s view is that this clause in the Constitution does not act as an absolute bar to have banking activities with any other bank. However it must be done with the approval of the organization. The same rule applies to any affiliation with another organization such as SSDPS. With a proper approval of organization, ARM could have joined with SSDPS. The Court notes that the Plaintiffs who also had voting powers were never present in such decision making meeting of ARM.

### **Conclusion**

66. The Court notes that both Plaintiffs and the Defendants were liable to the deadlock created at ARM. According to the evidence the last AGM held without any dispute was in 2016.



67. The Court also wants to highlight that this unharmonious behavior by both the Plaintiffs and the Defendants shouldn't have taken place as they all were part of religious organization established to promote religious principles for the future generations.
68. From the evidence it is clear that most of the members and the office bearers reside within the same area and by restraining any of them from the place of their religious activities, will not going to achieve any finality to this dispute.
69. Therefore the Court will not consider ordering any damages to either party.
70. In order to conclude this dispute the Court orders as follows.

### ORDERS

1. The two remaining Trustees Mr. Shashi Kapoor, Mr. Keith Anand Singh together with the President and Secretary elected in 2016, Mr. Madan Pillay and Mr. Daniel Sujit Lal to act and form an interim Committee from the date of this judgment until the next AGM.
2. All payments of ARM from now and the next AGM must be approved by both Trustees and thereafter payments to be facilitated by 2016 Treasurer elected Mr. Satya Nand Maharaj.
3. The interim Committee to obtain audited financial reports and the annual reports for Aashirvaad Ramayan Mandali for each year from 2016 to 2022, including bank accounts held at ANZ and HFC, on or before 31<sup>st</sup> December 2022.

4. An Annual General Meeting be held on first Sunday of year 2023 per clauses 9.5 and 10 of the Constitution to elect the Management Committee for the year 2023 as mentioned under clause 7.0.
5. No orders for costs.

**Yohan Liyanage**

**JUDGE**

At Suva on 17<sup>th</sup> October 2022