

(1893) 09 MAD CK 0014
In the Madras High Court

Appu Pattar and Another

APPELLANT

Vs

Sri Kurumba Bhagavati Devaswom Uttama Panampalli
Kurumba Umma and Others

RESPONDENT

Date of Decision : 18-09-1893

Acts Referred:

Citation : (1911) 21 MLJ 588

Judgement

1. The Subordinate Judge finds that the temple in question, though it might have originally belonged to the tarwad, has since, in the course of time, attained a quasi-public character. It is contended by appellants' pleader that the facts found do not warrant the conclusion arrived at. This

contention appears to us to be well-founded. In the plaint there is a distinct averment that the temple belonged to the tarwad. It is also in evidence

that for the maintenance of a member of the tarwad, the income derived from the Devaswom property was taken into account, and in that suit 1st

plaintiff was a party.

2. The Subordinate Judge refers to the fact that during the temple festival a horse is exhibited at the expense of the Palghat Rajah, and that the

Cochin Rajah makes certain offer-rings to the idol in the temple. It must also be remembered that the family was originally that of a "Naduvali" or

Provincial Chief. These facts referred to by the Subordinate Judge are not in themselves conclusive. There must be clear and strong proof of

subsequent dedication to the public if the institution originally belonged to the family.

3. If there was nothing more in the evidence, we should consider it necessary to direct further inquiry, but on referring to the plaint we find a distinct

averment that the temple belonged to the family.

4. No issue was taken as to whether it was a public or private temple. We cannot, therefore, accept a finding at variance with the case disclosed by the plaint.

5. It would, however, be necessary to adjudicate upon this question only if the appellants' second contention be upheld. It is urged by him that all

the family from the year 1875 have united to put an end to the endowment. No specific issue was raised on this point. It does not appear either

from Exhibit I or Exhibit IV that all the members of the tarwad were parties. These is also evidence that a member of the tarwad resisted an

attachment in 1883 on the ground that the property attached belonged to the Devaswom. In the absence of a specific issue directing the attention

of the parties to the matter in controversy, we do not consider it fair to rest our judgment on the evidence casually cited in the case with reference

to the other issues.

6. We must therefore ask the Subordinate Judge to try the following issue and return a finding : ""Whether the plaintiffs' family has united to put an

end to the endowment?

7. No question of limitation would arise if it was trust property and if the family had not put an end to the endowment. Further evidence may be

taken.

8. The finding is to be returned in one month from the date of reopening of the court after the recess and seven days will be allowed for filing

objections after the finding has been posted up in this court.

9. In compliance with the above order, the Subordinate Judge submitted finding to the following effect : that the family has not united to put an end

to the endowment.

10. This second appeal coming on for final hearing, on return to the order of this Court, dated 2nd March 1893, the Court delivered the following

1. The finding is that the family has not put an end to the endowment.

2. We accept this finding and dismiss this second appeal with costs.