

(1925) 04 MAD CK 0058
In the Madras High Court

Audiyappa Naidu

APPELLANT

Vs

Muthulakshmi Achi

RESPONDENT

Date of Decision : 20-04-1925

Acts Referred:

Citation : AIR 1925 Mad 1281

Judgement

1. As the respondent's vakil has no instructions we have not had the advantage of hearing arguments on both sides. Mr. Muthukrishna Ayyar for the appellant has very fairly placed the facts and the law arising out of the parties' contentions before us. The main question to be decided is whether two trust deeds, Exs. B and B-1, one being in favour of a Pilliar temple and the other for the feeding of Brahmins, are valid and binding on the executor of Ramalingam Pillai and the members of his family. The Subordinate Judge has found in favour of both. So far as B-1, a registered trust deed of 1914, is concerned, we have no doubt that he was right in treating it as valid. It was made on the occasion of Ramalingam's father's and mother's and brother's deaths and the only other co-parcener in the family, Muthuvelu, consented to it and was himself constituted a trustee under it. It was held in Ramalinga Chetti v. Sivachidambara Chetty (1919) 42 Mad. 440, that the manager of a Hindu family could lawfully dedicate a small portion of joint property to a temple on the occasion of the funeral of a deceased member. In the Will, which is the subject of the connected Appeal 243 of 1922, Ramalingam made no attempt to revoke this gift. But he did purport to revoke Ex. B as not being in force. The other members of the family did not attest Ex. B, and there is no proof that they gave their consent to it. There was no religious occasion for making this gift, and the statement of D.W. 9 that it was acted upon for 3 years before Ramalingam's death cannot be true, seeing that the trustee died in less than 3 years from August 1915, when Ex. B was executed. Moreover there is a settlement in the Will (Ex. 1) that was not in force. We must therefore allow the appeal in respect of the trust under Ex. B and dismiss it as regards moveables. As regards costs we are of opinion that Muthulakshmi, Ramalingam's widow, is not entitled to be paid her costs in the suit O.S. No. 87, in which she

took no active part or in O.S. No. 57 in which she impeached the Will and colluded with the reversioner, who was unsuccessful. In modification of the lower Court's decree she will be directed to bear her own costs throughout in both cases. The costs of the trustee in this suit and the appeal may be met from out of the income of the trust. The appeal is not pressed as regards moveables.