

(1935) 10 MAD CK 0047
In the Madras High Court

Barki Venkata Rao Chatram Charity

APPELLANT

Vs

S.V. Ramaswami Ayyar and Another

RESPONDENT

Date of Decision : 10-10-1935

Acts Referred:

Citation : AIR 1936 Mad 138 : 160 Ind. Cas. 1003 : (1936) 43 LW 620 : (1936) 70 MLJ 407

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This appeal arises out of a suit brought on behalf of a charity, to set aside an order passed in claim proceedings in the

course of the execution of a decree obtained against the trustee in his personal capacity. The plaint proceeds on the footing that the suit properties

were dedicated to a charity and, being trust properties, are not liable to be attached in execution of a decree obtained against the trustee in his

personal capacity. The contesting defendants, who are the decree-holder and the auction purchaser in the money suit, claim that the properties

have all along been the private properties of the judgment debtors and their ancestors or at any rate have become so after certain resumption

proceedings and the issue of an ayan patta in 1901. On these contentions the first issue was framed in the following words:

Whether the plaint properties belong to the plaint charity or to the plaintiffs as their private properties.

2. In paragraph 16 of the lower Court's judgment it is observed that,

the grant in question must have been a personal grant made to the ancestor of first plaintiff for the maintenance of himself and his family burdened

with the obligation of performing also a feeding charity....As ayan patta was issued to plaintiff and as full assessment was also levied from him in

respect of the suit properties, it has to be held that they are his private properties.

3. We do not think it necessary for the purposes of this appeal to determine the question whether the suit properties are absolutely the private

property of the judgment debtors either according to the original tenure on which they were held or even as a result of the resumption and the issue

of the ayan patta. We wish to make this reservation, because, there is some basis in the evidence for the view taken by the learned Subordinate

Judge in the first sentence above extracted, that the properties were at least subject to a burden of feeding certain persons and we have not heard

arguments on the question whether such burden will be defeated merely by reason of the resumption proceedings brought about by a breach of

trust on the part of the very person who had to perform the feeding and the issue of an ayan patta to such person. We accordingly propose to rest

our decision on the narrow ground that the suit properties have not been shown to be so completely or absolutely dedicated to the trust as to make

them inalienable or unattachable. The nature and extent of the interest that will pass to the auction purchaser and the obligation subject to which he

may take, such interest, are matters which are not strittly relevant to the present litigation and must be left open.

4. It is clear that from even before the date of the inam inquiry, there was no document available to indicate the terms on which the suit properties

were held on behalf of the so-called charity and it would appear from the remarks of the Inam Commissioners as well as the observations of Mr.

Brandt in his judgment marked as exhibit B in the case, that at any time of which we have any evidence there was no choultry building in which the

feeding charity could have been conducted till one was constructed under the directions of Mr. Cotton in his decree in Appeal Suit No 295 of

1856. The earliest evidence we have is that furnished by Exhibit, J., a kararnama executed by one Sivarama Avathani then in possession, of the suit

properties. It is noteworthy that at the time of Ex. J., and on several later occasions, the so called trustees, whenever it suited their purpose, always

asserted that they held the properties as their own, though when it suited them to put forward a different version, they have occasionally pleaded

that they were trust properties. From Exhibit, J., and the remarks in the Inam Register it would appear that in 1802 Mr. Hurdis imposed a jodi on the Inam lands and issued a patta to one Ramaswami Ayyar asking him to enjoy the lands making annadanam, but that as no annadanam was done, the Sub-Collector resumed the lands in 1836. Under the orders of the Collector, the lands were restored at the time of Exhibit, J., and all that was provided for in Ex. J., as a condition of such restoration was that the grantee was to conduct the annadanam in respect of Brahmins coming to his house in the noon and that according to mamool he and others should maintain themselves. The Deputy Collector who held the Inam inquiry, referred to the very unsatisfactory situation resulting from allowing the grantee to hold on such a tenure and recommended a different proposal, but the Inam Commissioner confirmed the inam on the existing tenure, which presumably means subject to the obligations undertaken by Exhibit, J.

5. There have been two or three subsequent litigations in regard to these properties, but it is not easy to get anything like a consistent or logical view as to the nature of the tenure from these judgments. Obviously they cannot be res judicata nor were they based on any evidence not now available to the Court; at best, they are only expressions of opinion by the Courts which had to deal with this matter under varying circumstances. As particular stress was laid before us on the judgment delivered by Mr. Brandt as District Judge in Appeal Suits 171 and 172 of 1881, it may be useful to point out that the learned Judge was himself of opinion that it could not even be said that the feeding of Brahmins was the primary object of the grant. These litigations and such other evidence as we have in the case make it pretty clear that there has been very little by way of performance of charity for all the time that we have any evidence of and that is what led the Government to take resumption proceedings in 1900.

6. It is true that as a matter of law the mere non-performance of charity will not negative the existence of a charitable trust, if otherwise the trust is proved; but in the absence of a deed of endowment, where the Court has to draw an inference as to the existence of the trust only from a course of conduct, the character of the enjoyment by the so called trustees will be a material factor and the Court cannot start with the presumption that

they were throughout guilty of breach of trust. The reasonable inference from the available evidence in the case seems to be that the obligation

referred to in Exhibit, J., is all that could be said to have been proved by way of dedication of the properties; but this certainly cannot amount to

such a complete dedication as to impress the whole property with the character of a charitable trust rendering it inalienable or unsaleable in

execution.

7. Mr. Venkatarama Ayyar drew our attention to the decisions in *Mutu Ramanandan Chettiar v. Vava Levvai Marakayar and Sundaraja Chariar*

Vs. Ali Muhamad Ethibar Khan Sahib and Others, where dealing with wakfs, it has been held that a wakf will not be the less so because some

provision is also made for the maintenance of the descendants of the grantor; but in *Mutu Ramanandan Chettiar v. Vava Levvai Marakayar* the

Judicial Committee emphasised the fact that charity was the dominant purpose of the endowment. The decisions in *Secretary of State for India v.*

Abdul Hakkim Khan I.L.R.(1880) 2 Mad. 294; *Kolandai v. Sankara* I.L.R.(1882) 5 Mad. 302 and *Venkatfitswara Iyer v. The Secretary of State*

for India in *Council* I.L.R.(1907) 31 Mad. 12 : 17 M.L.J. 549 also proceed on the footing that the inam had been granted primarily for the

maintenance of a religious endowment. Similarly in *Sathianama Barathi Vs. Saravanabagiammal and Others*, the objects of the endowment are

summarised at page 276 and at page 274 the learned Judges say that the grant contemplated the improvement of the mutt and the maintenance of

the charity as its primary object. For reasons we have already given it is impossible to postulate the same of the grant in this case.

8. It was next argued by Mr. Venkatarama Ayyar that even taking it that the properties were held by the judgment-debtors subject to the burden

of feeding Brahmins, they will nevertheless be inalienable and not attachable in execution. The decision in *Neti Anjaneyalu Vs. Sri Venugopal Rice*

Mill (Limited), on which he relied as an authority for this contention, is clearly distinguishable. It was a case of a service grant and the learned

Judges held that the service was of such a nature that it could not be performed by a transferee. Some observations in the judgment would even

suggest that in their view that grant would come to an end on the cessation of service and in a case of that kind there was really no transferable or

attachable interest. That is not the position here.

9. The appeal accordingly fails and is dismissed with costs.