

(1920) 03 MAD CK 0046
In the Madras High Court

Chinnammall

APPELLANT

Vs

P. Ratnasabapathy Chettiar (Died) and Others

RESPONDENT

Date of Decision : 10-03-1920

Acts Referred:

Citation : 59 Ind. Cas. 241 : (1920) 12 LW 191

Hon'ble Judges : John Wallia, C.J;Krishnan, J

Bench : Division Bench

Judgement

1. This is an appeal from the judgment of the learned City Civil Judge, in a suit brought by the trustees of Sri Kashaleeswarer Temple to recover

from the defendant a small plot which is situated in George Town close to the temple itself. The defence is that the plot is held on a permanent

tenancy at a monthly rental of twelve annas. The law is perfectly clear that the presumption is against the existence of a permanent tenancy, and that

it is upon those who allege it to prove it. The learned City Civil Judge has found that the evidence in this case is not sufficient to discharge that

burden. The evidence simply comes to this, that, for the last 32 years, the land has been let at this rate and that the superstructure on the land was

purchased by the defendant in 1895 and has been subsequently mortgaged by her.

2. It is easy to lay down what the presumptions are, but it is often difficult to decide whether the evidence is sufficient to rebut the presumption

against a permanent tenancy or not. However, there, is a circumstance in this case on which the learned Judge has not relied but which strengthens

his conclusion and that is, that the lessors in this case are the trustees of a temple. Now, the circumstances under which trustees of temples may

make permanent alienations of temple property have been considered by the Privy Council in *Palaniappa Chetty v. Sreemath Deivasikamony*

Pandara Sannadhi 39 Ind. Cas. 722 . It is only under very exceptional circumstances that such permanent alienation of temple property can be

justified, and when it is a question whether the temple authority granted a permanent lease or not, the presumption is against any intention to make

such a grant. That has been laid down by the Privy Counsel in *Maharanees Shibessouree Debia v. Mothooranath Acharjo* 13 M.I.A. 270 , and the

same rule has again; been laid down by Sir Lawrence Jenkins in *Satya Sri Ghoshal v. Kartik Chandra Das* 13 Ind. Cas. 596. What the learned

Judge laid down there was: ""The presumption in favour of a permanent tenancy implies that there is ground for inferring that the tenure was always

intended to be and always was hereditary, or that it acquired that character by subsequent grant. But a presumption in favour of a transaction

assumes its regularity; it cannot be made in favour of that which offends legal principle."" No presumption of permanency is, therefore, applicable to

a property which was debutter (i.e., dedicated to charity) at the time the tenancy originated, for to create a new and fixed rent for all time, though

adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty

in a shebait, i.e., a trustee.

3. Now, having regard to the evidence in the case which the learned Judge thought not sufficient to rebut the presumption against the intention to

grant a permanent tenancy when the tenancy originated and to the rule which we have just quoted as to the existence of a presumption against such

an intention on the part of the trustees of a charitable endowment, there is no sufficient reason for interfering with the conclusion of the learned

Judge. Therefore, the appeal must be dismissed with costs. Three months" time is allowed for removing the superstructure.