
(1925) 12 MAD CK 0006
In the Madras High Court

Chinnatha Rowther

APPELLANT

Vs

Karunji Andi and Another

RESPONDENT

Date of Decision : 18-12-1925

Acts Referred:

Citation : AIR 1926 Mad 538 : (1926) 23 LW 647

Judgement

1. Plaintiff is 1st defendant's son. Second defendant is 1st defendant's brother's son. They are members of an undivided Hindu family. Defendants

1 and 2 usufructually mortgaged the suit properties to 3rd defendant who hypothecated his rights to 4th defendant. 5th defendant purchased the

properties in execution of the decree obtained by the 4th defendant on his mortgage. The properties have been found to belong to a temple of

which the plaintiff and Defendants 1 and 2 are the dharmakarthas and pujaris. As pujaris they are entitled to appropriate for their own purposes

what remains of the income of the suit properties after meeting the puja and other expenses of the temple. The only question for decision in the

case is whether the plaintiff can alone maintain the suit. The District Munsif decided in favour of the plaintiff. The Subordinate Judge, relying on a

decision in Thandavaraya Pillai v. Shanmugam Pillai [1909] 32 Mad.167 reversed the judgment of the District Munsif and dismissed the plaintiffs

suit. Devadoss, J., setting aside the decision of the Subordinate Judge has restored the District Munsif's decree.

2. We think the decision of the learned Judge is right. It was argued on behalf of the 4th defendant, appellant that the learned Judge has not

recorded a finding as to whether the suit properties form the private property of the family or belong to the temple of which the plaintiff and

Defendants 1 and 2 are the pujaris. No doubt the language of the learned Judge is a little indefinite, but we are satisfied that he is of the opinion that

the suit properties belong to the temple.

3. The decision in 32 Mad. 167 is inapplicable to the present case. In that case it was held that, when the right to manage charity properties is

vested in a joint Hindu family, its senior male member is entitled to exercise that right vested in the family on its behalf and that, until a partition is

effected, no junior member is entitled to management by rotation in the absence of an agreement recognising such right. The learned Judges take

care to point out that in the case before them the family had no beneficial interest in the trust properties. This fact distinguishes the present case

from the decision in 32 Mad. 167. In the case before us we are not concerned with any question relating to the management of the family

properties. The plaintiff having a beneficial interest in the suit properties is entitled to recover them on behalf of the trust, if the alienation is not

binding on it, see Rama Chandra Panda v. Ram Krishna Mahapatra [1906] 33 Cal 507. In this view, the plaintiff is alone entitled to institute the

suit and recover possession of the properties in question. But the decree should be on behalf of the plaint-mentioned Kalamman Devasthanam.

The decree of the District Munsif restored by Devadoss, J., does not mention that possession is to be recovered on behalf of the devasthanam.

We modify the decree of the District Munsif to this extent. In other respects we dismiss the Letters Patent Appeal with costs.