

(1915) 04 MAD CK 0077
In the Madras High Court

G. Doraiswamy Pillai and Another

APPELLANT

Vs

Sandanathammal and Others

RESPONDENT

Date of Decision : 26-04-1915

Acts Referred:

Citation : 30 Ind. Cas. 225 : (1915) 2 LW 577

Hon'ble Judges : John Wallis, C.J.; Coutts-Trotter, J

Bench : Division Bench

Judgement

John Wallis, C.J.—This is a suit by the plaintiffs claiming as trustees under two deeds of trust, Exhibits A and B, executed in the years 1851 and 1853 by the deceased Selvanayagam Pillai, a Roman Catholic Christian, to recover from the defendants possession of the suit properties, which are alleged to be the subject of the trust. The Subordinate Judge has found that it was not the intention of Selvanayagam to create any trust by these instruments, and that if it was otherwise, the trust was merely for the maintenance of the institution therein referred to, a chattram on the Tanjore Road in Trichinopoly alleged to have been built by the settlor, that this purpose failed as " the institution never came into existence and that, as no general charitable intention can be gathered from the deeds, there is no occasion for applying the cypres doctrine and the gifts must be held to have failed and a resulting trust to have arisen for the settlor and his heir.

2. According to the translation of Exhibit A given by the Subordinate Judge, the property was given as sarvamanyam (or endowment) "to the chattram which I have built for charity in the new road to Tanjore opened by the Engineer, Mr. Lapport, east of Varaganeri village and near the Vayakondan river, for the expenses of the upkeep and maintenance of the said chattravi and for the daily feeding of poor paradesis in the said chattram" Paradesi means stranger and is frequently applied to the Hindu religious mendicants who wander about the country and to pilgrims. Now it is quite clear that the object of the charity which was not varied by Exhibit B, was the maintenance of the chattravi at that particular spot and the feedings of paradesis there. As already stated, the settlor

had not constructed any such chattram at the date of the deed, Exhibit A, and did not do so subsequently and in fact there never was any such chattram. It may be that at the time he intended to construct one, and that he afterwards abandoned the idea because, as suggested somewhere in the evidence, the local Brahmins successfully opposed the grant of a site for the building, or as alleged in Exhibit I, because his female grandchild subsequently gave birth to a son. However this may be, it is quite clear the chattram never came into existence and that the gift under Exhibits A and B cannot be applied for the specific charitable purpose therein stated. We are asked, however, to hold that Exhibits A and B indicate a general charitable intention on the part of the settlor and the Court is invited to give effect to it cypres. Assuming that the decisions of the English Courts on this subject are applicable here as part of the rules of justice, equity and good conscience, I think that, as observed by Kennedy, L.J., in *In re University of London Medical Sciences Institute Fund*, *Fowler v. Attorney-General* (1909) 2 Ch. 1 : 78 L.J. Ch. 562 the question is correctly stated in Theobald on Wills, 7th Edition, at page 373: "if the gift is for a charitable purpose, the question is, is the testator's intention to promote some specific and well-defined purpose and that only, or is there a general charitable intention, which the testator wishes to carry out in a particular way," in which latter case, the Court will give effect to his wishes cypres. On the facts I do not think that any such general intention is sufficiently made out. Chattrams or feeding places for poor paradesis, mostly religious mendicants, were to be found on all the main roads in pre-railway days and it was probably thought that one was required at the place indicated on the new road from Trichinopoly to Tanjore opened by the Engineer Mr. Lapport as mentioned in Exhibit A. At the same time this form of charity is not likely to have appealed very strongly to an Indian Christian, and when the settlor came forward to supply the want, he was probably actuated by a desire to show his munificence and public spirit and to enhance his consideration with his fellow-citizens of all classes who joined in attesting these deeds. Subsequently in circumstances which cannot now be precisely ascertained, he abandoned the intention of erecting the chattram for the maintenance of which provision was made in these deeds, and shortly before his death and most probably with his knowledge and at his suggestion, part of the endowment was diverted to the support of a convent of nuns of his own religion. In the circumstances, I do not think we should be warranted in finding that he had any general charitable intention of feeding religious mendicants elsewhere than at the institution to be founded by him which never came into existence. A great many English decisions have been cited, but in none of them did the facts resemble those of the present case and I do not think it necessary to refer to them. They show, however, that the general charitable intention must be clearly made out and this, I think, has not been done.

3. There is one point taken for the respondents which it is desirable to notice. It is said the plaintiffs are not entitled to claim to succeed to the trusteeship under Exhibit B, as the settlor had no power to alter the succession to the office of

trustee provided for in Exhibit A, which did not reserve any power of revocation. Exhibit A provided that after the settlor's decease those members of his family who were competent to manage the affairs of the said chattram should manage it. It seems to me that this was bad for uncertainty and did not preclude the founder from subsequently exercising his right in Exhibit B to provide for the succession to the trust. In Jarman on Wills, Volume I, Chapter XIV, III, page 470, there is a reference to Webb's case 1 Roll Ab. 609 where it was held that if a man devise to twenty of the poorest of his kindred, this is void for uncertainty who may be adjudged the poorest. I think the provision in Exhibit A is void for the same reason, and that the Court cannot be required to undertake an investigation as to the competency of the various members of the family to manage the endowment. However, the appeal fails on the other grounds and must be dismissed with costs.

Coutts-Trotter, J.

4. This was a suit brought by the plaintiffs as descendants of one Gnanamuthu Pillai, otherwise known as Appavu Pillai, to have themselves declared the trustees of certain property which originally belonged to a Native Christian convert called Selvanayagam Pillai, and to be put in possession of it. Their title, if any, rests on two documents filed as Exhibits A and B in the suit. By the first, which is described as a deed of charity, dated 3rd April 1851, Selvanayagam Pillai purported to devote the suit lands as "manyam (i.e., endowment) to the dharma chattram (choultry or rest house for charitable purposes) constructed in my name by me.... For the maintenance of the charity of the chattram constructed for the purposes of charity by me in the new road to Tanjore and for the daily feeding of poor paradesis (mendicants) in the said chattram." The document goes on to provide that the settlor shall manage the charity during his life-time, and that after his death those members of my family who are competent to manage the affairs of the said dharma chattram shall manage the said charity." Selvanayagam Pillai procured the signature of upwards of 50 persons to this document, among them Brahmins, Muhammadans and Native Christians. Three years later he executed the second document, Exhibit B, described as a karar or agreement, dated the 7th February 1854, and this document was also executed by his daughter, Vedanayagam Ammal. It recites the former donation to the dharma chattram, and allocates a farther Rs. 10,000 worth of Government securities to the fund. It proceeds to vary the provisions of the former deed with regard to the management of the charity, which is now vested in the settlor and his daughter for their lives, and after the decease of the survivor of them is to pass to Gnanamuthu Pillai and his sons.

5. The facts proved or admitted are set out in the findings of the learned Subordinate Judge. We are not seriously pressed to disturb them nor do I see any reason for doing so. They disclose a somewhat remarkable history. Selvanayagam Pillai had not in fact built any chattram at the time he executed Exhibit A, nor did he afterwards at any time build one or provide any fund for

doing so. Selvanayagam Pillai died some time in 1858. On the 4th June 1858, by a deed of that date (Exhibit C), Vedanayagam Ammal conveyed the Government securities dealt with by the agreement of 7th February 1854 (Exhibit B) to the Catholic Bishop of Madura as a charitable gift to a nunnery in his diocese. There is no direct evidence to show whether Selvanayagam Pillai was alive or not at the date of the last alienation; but, as will be seen hereafter, there is good reason for thinking that he was and that he concurred in it. The next piece of evidence is a document executed by Vedanayagam Ammal on the 31st July 1884 (Exhibit I); this document could only in the first instance be admissible as against the defendants but both parties crave it in aid and agree that its recitals, in so far as they are statements of fact, are reliable. From them we can complete the history. Shortly before the death of Selvanayagam Pillai, his grand-daughter, Thangathamnial, the daughter of Vedanayagam Ammal, gave birth to a male child, there being up to that time no male in the family in the direct line of descent. Selvanayagam Pillai thereupon finally abandoned his design of building a chattram, gave the Government securities to the nunnery, and in the words of his daughter in Exhibit I "reserved the land as usual for the maintenance of the family." This must mean that he resolved to do so, not that he executed any document purporting to have that effect. The first document purporting to affect the lands was Exhibit I itself, executed by Vedanayagam Ammal in 1884, whereby she conveyed them to her grandson and another male relative, from whom the present defendants derive their title. Finally, an attempt was made at the trial to prove that both Selvanayagam Pillai and, Vedanayagam Ammal fed poor pampdesis at their house, despite the nonexistence of the chattravi. The learned trial Judge heard the evidence as to this, and characterised it as contradictory and unworthy of belief and I accept his finding of fact that nothing of the kind ever took place. Vedanayagam Ammal remained in possession of the land and personal enjoyment of its proceeds till her death in December 1910. In April 1912 the plaintiffs instituted the present suit. The learned Subordinate Judge dismissed their suit on a variety of grounds, and they have appealed to this Court against that dismissal.

6. The substantial question for our determination is whether the documents of April 1851 and February 1854 constituted a good and valid charitable gift; or whether the gift failed with a resulting trust for the benefit of the settlor, by reason either that it was intended for a particular purpose which could not be carried out, or that it never was and never was intended to be a valid charitable gift ab initio. Of one matter, I may dispose at once. It was said on behalf of the respondents that even if there were a good charitable gift, it was incompetent to the present plaintiffs to sue, as they were not in any event the persons entitled to be trustees, Selvanayagam Pillai having settled the devolution of the trusteeship by the deed of 1851, and having thereby rendered it incompetent to himself to vary the devolution by the later document of 1854 upon which the plaintiffs' claim to be trustees rests. The settlor's first appointment was of "those members of my family who are competent to manage the affairs of the

said dharma chattram." I think that such an appointment, in the absence of a designated tribunal to determine what persons were competent was too vague to be enforceable, and that the settlor's hands were free to make a subsequent valid appointment. This objection, therefore, fails.

7. On the main question, in the course of two learned and exhaustive arguments, most, if not all, of the English cases on the subject were brought to our notice. Mr. K. Srinivasa Aiyangar indeed entered upon that field under protest and with this large reservation that we ought to give the go-by to all the English cases and consider ourselves as unfettered by them. He urged that the English Courts adopted a principle of construction in regard to charitable trusts which was at variance with the principles applied in all other matters; that this was due to the historical accident of the past connexion of charitable trusts with the Anglican Church and the civil law which that Church favoured; and that Indian Courts should determine such matters in the light of "justice, equity and good conscience." Accepting this to be so, I nevertheless think that a construction beneficial to a bona fide charitable gift is in accordance with, justice, equity and good conscience; and I am ready to follow the English cases, whether they be binding on me or not, as guides to those desirable goals. The principle of the English decisions is clear, though its application may be difficult, and it is concisely stated by Kindersley, V.C., in *Clark v. Taylor* 1 Dr. 642: "There is a distinction well-settled by the authorities. There is one class of cases in which there is a gift to charity generally, indicative of a general charitable purpose, and pointing out the mode of carrying it into effect; if that mode fails, the Court says the general purpose of charity shall be carried out. There is another class in which the testator shows an intention not of general charity, but to give to some particular institution; and then if it fails, because there is no such institution, the gift does not go to charity generally." This is the principle which we have to apply, and I do not think any useful purpose would be served by a detailed examination of reported cases in which it has been applied to different words in other documents. Such a proceeding seldom offers much enlightenment, and is particularly unlikely to do so in the present case, which has one feature in it which, so far as I know, is unique and particular to itself. In this case the settlor purported to endow an institution which not only did not exist, but which he knew not to exist and which nevertheless he recited to exist and to have been founded by himself. That circumstance is so remarkable that, in my opinion, it must dominate any construction of the deed. It is said for the appellants that that consideration is conclusive as ascribing to the settlor a general charitable intention; he settled property to feed certain persons in a chattram, the chattram to his knowledge did not exist, therefore, his paramount intention must have been to feed the designated class of persons. That at first sight is a cogent argument, but I do not think it is sound. In the first place, the document itself continuously harps on the chattram the lands are given "as manyam to the chattram;" the chattram is the one "constructed in my name"; the gift is "for the maintenance of the charity of the chattram"; the purpose is that of feeding "any

mendicant in the chattram;" the lands "have been given for the expenses of the said chattram;" the affairs to be managed by the trustees are "the affairs of the said dharma chattram." This language all seems to suggest that what Selvanayagam Pillai had in mind was a chattram built in a particular spot, bearing his name, and standing as an outward and visible monument of his beneficence to the community. His position as a well-to-do Hindu Christian convert, and his anxiety to get men of all creeds and clashes to witness his deed support the same conclusion. Moreover, if his intention be supposed to have been generally charitable, who were to be the objects of his charity? If and when the chattram came into being, they became ascertainable at once--such mendicants as choose to avail themselves of its shelter. The chattram when built would have a definite limit of accommodation and a definite site. But in its absence what mendicants are to be fed? There is nothing to limit the gift to mendicants from all over India, to mendicants in the district or to mendicants in the village. It may be assumed that he intended to build a chattram at the date of the deed of gift, and because of that intention bespoke of it *PS* a thing already done. But I think that there is equally little doubt that his gift was what he described it to be, an endowment of that particular contemplated chattram; and he made it solely with a view to its employment in the chattram; and that in the absence of the chattram there was no general charitable purpose actuating him, inasmuch as without its existence the objects of the charity are incapable of limitation or ascertainment. In fact he revoked his intention of building the chattram; and with that revocation, I think that the deed of the gift which was conditional on the erection of the chattram falls to the ground, I think, therefore, that assuming Selvanayagam Pillai to have intended a charitable gift, it became incapable of attainment, and that the plaintiffs' appeal fails. This is sufficient to dispose of the case on the view most favourable to the plaintiffs; but it is impossible not to feel grave doubts as to whether any bona fide charitable gift was intended at all. Sham gifts to charities are often made in India to keep property out of the reach of creditors, actual or potential. It is difficult to see why a Native Christian should found a charity for the benefit of a class of persons of whom the great majority if not the whole would be Hindu or Muhammadan devotees; indeed some would translate parades as meaning religious mendicant. The false recital of the existence of a chattram is also a circumstance of grave suspicion. Nor are the doubts raised at the origin of the alleged charity in any way resolved by the subsequent conduct of the settlor. He not only took no steps whatever to carry out his charitable intention, but within a few years of his gift was dealing with the property as if no charitable gift were in existence. However, though the whole translation is full of suspicion, it is unnecessary to decide against its genuineness, and my construction is adverse to the plaintiffs even on the assumption that it was genuine.

8. The appeal fails and is dismissed with costs.