

(1977) 10 MAD CK 0006
In the Madras High Court

G. Duraikannu

APPELLANT

Vs

A. Natesa Pillai and Others

RESPONDENT

Date of Decision : 07-10-1977

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63(f), 63(g)

Citation : (1978) ILR (Mad) 398 : (1978) 91 LW 185 : (1978) 1 MLJ 296

Hon'ble Judges : Sethuraman, J

Bench : Division Bench

Judgement

Sethuraman, J.—The plaintiff's adopted son in O.S. No. 81 of 1970 on the file of the Court of the Subordinate Judge of Mayuram is the

appellant. One Ramaswami Pillai and a son of his brother Kolandavelayutham Pillai effected a partition between themselves on 26th July, 1969. In

the said partition certain lands were kept out of division and reserved for certain religious purposes to be set out presently. The area so reserved

was of the extent of 38 acres of lands situated in some villages in Thanjavur District. By a subsequent deed, dated 22nd September, 1969, there

was same modification of the purpose for which the properties were reserved and a part of the properties originally shown in the document was

also excluded. Ramaswami Pillai was to be in charge of doing the obligations contemplated by the said deed. The properties subsequently stood

recorded in the name of the successors of the said Ramaswami Pillai. Suo motu proceedings u/s 63(f) and (g) of the Madras Hindu Religious and

Charitable Endowments Act, 1959, were started by the Deputy Commissioner of the Hindu Religious and Charitable Endowments, Thanjavur, in

O.A. No. 5 of 1965 against the plaintiff, who was at the relevant time in charge of

the properties. The plaintiff filed a counter objecting to the said proceedings and pointing out that the properties were not specific endowments for a religious purpose. By an order dated 22nd November, 1966 the Deputy Commissioner held that the properties constituted a specific endowment, that the charities were of a religious nature coming within the scope of Section 63(f) and (g) of the Act and that there was no question of the facts of apportionment between the religious charities and secular charities as claimed by the plaintiff. The plaintiff thereafter filed an appeal to the Commissioner, Hindu Religious and Charitable Endowments in Appeal No. 14 of 1967. By his order dated 12th January, 1970 he upheld the decision of the Deputy Commissioner. The plaintiff issued the requisite notice u/s 80 of the CPC to the Commissioner and the Deputy Commissioner, who are the defendants in the present suit informing them that a suit to set aside the orders passed by them would be filed u/s 70 of the Act. The defendants pointed out in their reply that the suit would be barred by limitation. The plaintiff thereafter filed the present suit for setting aside the orders passed by the defendants and for a declaration that the suit properties were not trust properties and did not constitute a specific endowment, but only private properties subject to the liability for performing certain ""ubhayam"".

2. The defendants contested the suit stating that the orders passed by them were legal and valid and could not be set aside. They pleaded also that the suit was barred by limitation. They took up another contention in the additional written statement that the document dated 22nd September, 1869 was invalid.

3. The learned Subordinate Judge framed the appropriate issues, the main ones being whether the suit properties were not specific religious endowments and whether the suit was barred by limitation. The learned Subordinate Judge held that the suit was not barred by time, but that the deeds created a specific religious endowment and not a private endowment as contended for the plaintiff. It is this judgment and decree that are now challenged by the plaintiff's son.

4. The learned Counsel for the appellant took before us only one point viz., that there was no specific religious endowment which came within the scope of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1969.

The learned Counsel for the respondents argued that the suit was barred by time. We shall first consider the question of limitation. The order of the Commissioner is marked as Exhibit A-2 which is dated 12th January, 1970. A copy of the order communicated to the plaintiff was signed on 15th April, 1970 and it appears to have been received on 18th April, 1970. The order reads as follows:

5. ""The appeal be and is hereby dismissed"". There was no annexure giving the reasons for the order. On 18th February, 1970 the plaintiff filed a copy application. The stamps were called on 8th May, 1970. The stamps were deposited on 13th May, 1970 and the copy was ready on 28th May, 1970. The suit was filed on 24th August, 1970. Section 70 of the Act provides that any party aggrieved by an order passed by the Commissioner, among others u/s 63, which is the only relevant provision for our present case, may within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order. The period of ninety days commences from the date of the receipt of the order. As we have pointed out, the order stating that the appeal was dismissed, was received on 18th April, 1970. In *S.V. Thiruvengadaswami Iyengar Vs. Commissioner, Hindu Religious and Charitable Endowments*, , Balakrishna Ayyar, J., pointed out that where the Commissioner passed an order merely stating that the appeal was dismissed and called the reasons for the order as an Annexure, the Annexure would be an integral part of the order and that the date of the receipt of the order contemplated by the Act was the date of the receipt of the entire order including the Annexure and not merely the last sentence of the order stating that the appeal was dismissed. He pointed out that the aggrieved party had a right to file a suit within ninety days of his obtaining a copy of the entire order if the same was not communicated to him. There was no dispute that if the receipt of the entire order alone is relevant, then the suit is within time. The learned Counsel for the respondents submitted that the plaintiff was aware of the order that was passed even in February, 1970, and that is how the plaintiff filed the copy application on 18th February, 1970. It was, therefore, submitted that we have to reckon the period of limitation from that date.

6. There is no substance in this objection. The section contemplates a suit being

instituted within a period of ninety days from the date of the receipt of such order by the plaintiff. In the present case even the dismissal of the appeal had not been communicated at the time when the copy application was made. Merely because the plaintiff filed an application for the copy of the order, it does not mean that he had received the order. The filing of the copy application may indicate knowledge of the order but knowledge is not the criterion u/s 70. We, therefore, held that the suit was not barred by limitation.

7. The only point that now survives for consideration is whether there was a religious endowment created under the document dated 26th July, 1969, subsequently modified by a document dated 22nd September, 1969. The document dated 26th July, 1869 which has been marked as

Exhibit A-3 is in Tamil. This document is between Ramaswami Pillai and his nephew Namasivaya through his elder brother, Kolandavelayutham

Pillai, who had passed away by then. It recites that the family was indebted at the time when Namasivaya, the father of Ramaswami, died and that

Kolandavelayutham Pillai had by his conduct increased the indebtedness. It was Ramaswami who by his own exertions, redeemed the family from

its indebtedness. It further recites that the two parties to the document, out of their free will, released in favour of Ramaswami Pillai certain

properties in a village called "Vadavar". Thereafter the document states thus:

Freely translated it mentions that out of the rest of the properties which were not covered by the release in favour of Ramaswami, the family would,

in accordance with the status of the family, perform the charities done miscellaneously without any diminution and that the properties situated in

Thiruvadacharry etc., were kept for the purpose of doing the ""Dharmam or ubhayam"" out of the income from the said properties. Ramaswami was

to be in charge of the said properties. The religious obligations contemplated by the document are: (1) finishing the repair of the temple of

Kailasanathaswami in the ancestral village of the parties and for Puja and Naivedya for one kala puja of the said deity; (2) for doing in the same

manner as was done upto that date the "Ubhayam" for Subramaniaswami of Palani; (3) for doing similar "Ubhayam" to Vanchinathaswami; (4) for

doing "Ubhayam" for Sri Srinivasa Perumal of Nachiyarkudi; and (5) for the "Ubhayam" of Sri Saba Nateswaraswami at Chidambaram. Except in

the case of the repairs or reconstructions of the temple in the village and for doing the one kala puja in the temple in the ancestral village, the nature of ""Ubhayam"" in Palani, Srivanchiyam, Nachiyarkudi and Chidambaram is not specifically described. In the document dated 22nd September, 1869, the only changes made are the removal of ""Ubhayam"" of Sri Srinivasa Perumal of Nachiyarkudi or Nachiyarkoil and the removal of certain lands which were originally kept for the purpose of all these obligations in Exhibit A-3. As in the Court below there was some discussion about the validity of the document dated 22nd September; 1869, marked as Exhibit A-4, for our present purpose, it is unnecessary to go into the validity of the said document. If the said document is invalid, then it would be enough to concentrate on Exhibit A-3. Even if the said document is valid, it would only have the effect of removal of one of the objects for which the properties were reserved and also for removal of certain of the properties from our consideration. But the nature of the jurisdiction of the Deputy Commissioner or the Commissioner, as the case may be, is unaffected by the presence of that particular object in favour of Srinivasa Perumal of Nachiyarkoil or by the presence of that particular property, which was originally kept apart.

8. Mr. T.R. Ramachandran, the learned Counsel for the appellant vehemently argued that there was no trust at all and that the properties were merely held subject to a liability for meeting certain obligations. In his submission the properties continued to remain as the private properties of the family. He Stated also that there was only a private trust, which did not come within the scope of the Tamil Nadu Hindu Religious and Charitable Endowments Act.

9. We may now examine the question whether this is a public or private trust. In the Hindu Law of Religious and Charitable Trust (Tagore Law Lectures) by B.K. Mukherjea, Second Edition, by Justice T.L. Venkatarama Aiyar at page 50, this distinction has been brought out:

The line of distinction between a public purpose and which is not public is extremely thin, and is practically incapable of definition. Tudor in his "Charities" thus sums up the principles deducible from the cases on the subject (Tudor on Charities, P. 12, 5th Edn.):

If the intention of the donor is merely to benefit specific individuals, the gift is

not charitable, even though the motive of the gift may be to relieve their poverty or accomplish some other purpose with reference to those particular individuals which would be charitable if not so confined; on the other hand, if the donor's object is to accomplish the abstract purpose of relieving poverty, advancing education or religion or other purpose charitable within the meaning of the Statute of Elizabeth, without giving to any particular individuals the right to claim the funds, the gift is charitable.

The principle set out by Tudor holds good in this country also, as may be seen from the following passage in *Deoki Nandan Vs. Murlidhar*, where

the Supreme Court observed as follows:

The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment.

10. At page 167 of Mukherjea's *Hindu Law of Religious and Charitable Trust* it is stated as follows:

By public trust it must be understood such as are constituted for the benefit either of the public at large, or of some considerable portion of it, answering a particular description, while private trusts concern only individuals or families. A private trust providing for the material or spiritual benefit of individuals and families could not rank as a charitable trust in English law which must be public in its character. In Hindu law, however, it is competent for a donor to create a religious trust, the benefit of which is confined to the members of a particular family or the disciples of a particular religious preceptor.

11. In the present case the objects conceived are all worships in a temple. Mr. Ramachandran had, during the arguments, to admit a public religious purpose in the objects in respect of Kailasanathaswami temple in the ancestral village of the parties. The Thirupani may not be a recurring obligation as it was intended only to complete what had been left incomplete by Ramaswami, but that is irrelevant. A single kala puja had to be done in the temple and these two purposes in relation to the local temple are admitted to be public religious purposes. It is only with respect to the worship in the other temples that he stated that the purpose was a private one.

For instance as far as Palani temple was concerned the evidence of Doraikkannu (P.W. 1) aged about 75, was that they were taking only a kavadi and were performing an Abishekam on the Thaipusam day there.

The contention of the learned Counsel was that this was only a private or individual purpose and did not have anything to do with the public. The document Exhibit A-3 contemplates the performance of the "Ubhayam" or "Dharmam" (these are the expressions used in the document). They have to be done in the same manner as was being done prior to the document. There is no evidence in the present case about the manner in which it was being done prior to the document, during the lifetime of Ramaswami. It may be that subsequent to Ramaswamy's death the family was content with merely offering a kavadi and doing an Ahishekam in the Palani temple. The omission to do the charity in the manner contemplated by the document would not in any manner clothe the parties with a vested right to do the same only in the manner in which it was being done as claimed by P.W. 1. The word "Ubhayam" means gift to a temple or a monastery. See Tamil Lexicon, Vol. I, page 425 published under the authority of the University of Madras. This meaning is treated to the South Indian inscriptions. Thus, the word "Ubhayam" has got a historical and religious association as a gift to a temple. We have to take it, on a construction of the document, having regard to the use of the word "Ubhayam" that the gift was in favour of that particular temple.

12. The learned Counsel for the appellant contended that the whole terms of the document are so vague that it cannot be taken as a dedication "for any particular religious or charitable purpose so as to come within the- scope of the Act. The learned Counsel pointed out that the word "Dharmam" is one of vague and indefinite import and for this purpose he relied on a decision of the Privy Council in (1899) L.R. 26 I.A. 71 (Privy Council) . In that case the Judicial Committee referred to Wilson's Dictionary, where "Dharmam" was defined to mean law, virtue, legal or moral duty and it was held that these objects were too vague and uncertain to be administered by any Court. In Mukherjea's Hindu Law of Religious and Charitable Trust at page 105 in noticing this case it is observed as follows: With all respect to the Judicial Committee of the Privy Council, it may be pointed out, that the dictionary meaning of the word ""charity"" is equally

wide and indefinite, but what the English Judges proceed upon, is not the dictionary meaning of the word but the technical meaning that it has come to acquire on the basis of the Statute of Elizabeth.

Reference was also made to a decision of Subramania Iyer, J., in Parthasarathi Pillai v. Thiru Vengada ILR (1907) Mad. 340 : 17 M.L.J. 379,

which has been considered to be the correct exposition of the word "Dharmam". The learned Judge Subramania Aiyar, J., took "Dharmam" as

meaning Isthā and Purttā. For our present purpose it is unnecessary to go into the concept of the word "Dharmam" in the present case and

examine how far the decision of the Privy Council is to be followed. In the present document the word "Dharmam" is used in association with the

word "Ubhayam" and as the meaning of "Ubhayam" is clear we need not tarry to consider the question whether the word "Dharmam" is vague or

not. The document taken as a whole clearly shows that the gift was with reference to the various objects of charity conducted in respect of the

temples of Palani, Srivanchiyam, Nachiyarkudi and Chidambaram.

13. Another manner in which the learned Counsel for the appellant wanted to show that the document created only an obligation to do certain acts

in the said temples without any specific endowment being created therefore was that the income that would be consumed by these purposes would

be very little compared to the extent of the income available out of the lands. In other words, the attempt of the learned Counsel was to bring it

within the class of cases where the dedication was held to be partial. The distinction between an absolute and partial debutter was explained by

Mukherjea in his Lectures as follows at page 157:

Where the dedication made by a settlor in favour of an idol covers the entire beneficial interest which he had in the property, the debutter is an

absolute or complete debutter. Where however some proprietary or pecuniary right or interest in the property is either undisposed of or is

reserved for the settlor's family or relations, a case of partial dedication arises. In a partial dedication the deity does not become the owner of the

dedicated property but is in the position of a charge holder in respect of the same. A charge is created on the property and there is an obligation on

the holder to apply a portion of the income for the religious purposes indicated by the settlor. The property does not become extra-commercium

like debutter property, strictly speaking so called, but is alienable subject to the charge and descends according to the ordinary rules of inheritance.

It can be attached and sold in execution of a decree against the holder. Whoever gets the property however takes it burdened with the charge or

religious trust.

The learned editor, Mr. T.L. Venkatarama Aiyar in his second edition has given reference to the decision of the Supreme Court in Menakuru

Dasaratharami Reddi Vs. Duddukuru Subba Rao, . In that case it was pointed out at page 177 as follows:

The principles of Hindu Law applicable to the consideration of questions of dedication of property to charity are well-settled. Dedication to charity

need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the

property which show the extinction of the private secular character of the property and its complete dedication to charity. On the other hand, in

many cases Courts have to deal with grants or gifts showing dedication of property to charity. Now it is clear that dedication of a property to

religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of public religious charity is

created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the

property which retains its original private and secular character. Whether or not dedication is complete would naturally be a question of fact to be

determined in each case in the light of the material terms used in the document. In such cases it is always a matter of ascertaining the true intention

of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The

use of the word "trust" or "trustee" is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as

decisive of the matter. Is the private title over the property intended to be completely extinguished? Is the title in regard to the property intended to

be completely transferred to the charity? The answer to these questions can be found not by concentrating on the significance of the use of the

word "trustee" or "trust" alone but by "gathering" the true intent of the document considered as a whole. In the cases where documents purport to

dedicate property in favour of public charity, provision is made for the maintenance of the worshipper who may be a member of the family of the original owner of the property himself and in such cases the question often arises whether the provision for the maintenance of the manager or the worshipper from the income of the property indicates an intention that the property should retain its original character and should merely be burdened with an obligation in favour of the charity. If the income of the property is substantially intended to be used for the purpose of the charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of public charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own private purposes, it would be difficult to accept the theory of complete dedication. It is naturally difficult to lay down a general rule for the solution of the problem. Each case must be considered on its facts and the intention of the parties must be determined on reading the document as a whole.

The legal position "that emerges is that to ascertain whether the dedication is partial or absolute, we have to take the instrument as a whole. The intention of the author of the document has to be gathered and that has to be done only from the words used. Where, as here, the document speaks only of the income, the intention has to be ascertained from the disposal of the income. If for the maintenance of public charity, a minor portion of the income is required to be used and substantial surplus is left in the hands of the manager for his own private purposes, there would not be a complete dedication. But if the charity is given a substantial part of the income, then, the dedication would be a complete one. The document before us does not contemplate any surplus being left in the hands of the person in charge of the properties. The purpose contemplated is that the charity is to be done in accordance with the status of the family. The expenditure is thus bound to be elastic, so that when the income increases, the obligation to pay for the charity also expands. It is not as if any specific amount alone was contemplated to be spent so as to leave a balance.

Further there are no words of disposal with reference to the balance, if any, of the income from the said properties. It is, therefore, manifest that

the reservation for these purposes was absolute and not partial.

14. Section 63 confers on the Deputy Commissioner power to enquire and decide the question whether any institution or endowment is wholly or

partly of a religious or secular character; and whether any property or money was given wholly or partly for religious or secular uses. See Clause

(f). Clause (g) contemplates determination by the Commissioner of the amount to be allocated to religious uses where any property or money has

been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or

charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where

any property or money given was appropriated partly to religious and partly to secular uses. "Religious charity" is defined in Section 6(16) as

meaning a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math or temple or

not. "Religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or

endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the

institution concerned and also the premises thereof; but does not include gifts of property made as personal gifts to the archaka, service-holder or

other employee of a "religious institution". See Clause (17) of Section 6. Section 6(19) defines "specific endowment" as meaning any property or

money endowed for the performance of any specific service or charity in a math or temple, or for the performance of any other religious charity. In

this case there is an endowment for the support of the several temples mentioned in Exhibits A-3 and A-4, as the case may be. The word

"Ubhayam" itself goes to show, as seen already that there was an endowment to a temple for a religious purpose. Therefore, the provisions of

Section 63 were rightly attracted to this case.

15. The decisions of this Court are clear on the point that there can be a religious charity or religious endowment in respect of something to be

done at the time of a festival in a temple when the deity is taken out. In Vasudeva Rao Vs. C.K. Rangai Gounder, Managing Trustee of Sri

Koniyamman Devasthanam and Others, . Govinda Menon, J., as he then was,

was concerned with the charity by observance of Skanda Shashti and Soorasamhara festival in Sri Subramaniaswami temple and also for the erection of a Mandapam in front of a house for doing worship to the deity when it was taken out and brought through the street in which the house was located. It was held in that case that there was dedication of property for a religious purpose. If in view of the use of the expression "ubhayam" the properties are taken as gift to the temple, then there can be no question of any vagueness of purpose for which the properties are dedicated. The learned Counsel asked whether the Palani or other temples could ask for any particular amount) or part of the income as a beneficiary. Having regard to the scope of the present suit, it is unnecessary to decide this point, nor the point whether the document dated 22nd September, 1869, was invalid or not. The decision of the Court below that the order u/s 63 cannot be set aside is thus correct and needs no interference.

16. In the result, the appeal is dismissed with costs. (one set) .