

**(1948) 12 MAD CK 0004**  
**In the Madras High Court**

Ghadiyaram Seshayya

APPELLANT

Vs

Chintalapati Seetharamamma and Others

RESPONDENT

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**Date of Decision :** 08-12-1948

**Acts Referred:**

Hindu Religious Endowments Act — Section 43

**Citation :** (1949) 62 LW 320 : (1949) 1 MLJ 545

**Hon'ble Judges :** Mack, J

**Bench :** Division Bench

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**Judgement**

Mack, J.—The appellant is the plaintiff. He sued to recover 320 acres of inam land from the possession of Seetharamamma, the first

defendant, the daughter of his deceased brother Venkatapayya. This land is a portion of an inam grant of 1891 acres under inam title deed No. 99

for the performance of Swasthivachakam service in the temple of Sri Vennamudda Krishnaswami. The inam was admittedly confirmed in favour of

Ghadiyaram Dikshitalu in the year 1860 as evidenced by the inam register extract Ex. P-1. It is common ground that this grant was amicably and, it

would appear, informally divided for the purpose of enjoyment in equal shares between Dikshitalu's descendants one Surayya who is the father of

the plaintiff, the 7th defendant and Venkatapayya and Surayya's brother, Ramayya, the father of the 8th defendant. It is also common ground that

subsequently there was a similar partition between the brothers, plaintiff, the 7th defendant and Venkatapayya, which resulted in each obtaining

separate enjoyment of about 3 acres. On Venkatapayya's death on 22nd October, 1941, a dispute arose as to who should enjoy the share

allotted to him which is the suit property. The plaintiff and his brother on the one hand, and their brother Venkatapayya's daughter and her minor

sons through her husband Chintalapati Venkatapayya who is said to be a suits clerk under some merchant, competed with separate petitions for

recognition as hereditary heirs in place of the deceased Venkatapayya. The brothers claimed that their names should be included in the

Devasthanam record. On behalf of their brother's daughter a similar claim was made for herself and her minor sons. The daughter's petition was

dismissed by the trustee in an order Ex. P-8 and the names of the two brothers as male heirs of Venkatapayya were recorded. The District Munsiff

decreed the plaintiff's suit mainly on the basis of Ex. P-8 which he considered to be a decision u/s 43 of the Hindu Religious Endowments Act. The

learned Subordinate Judge in appeal found that the inam was divisible and had been enjoyed in distinct shares, that the brother's daughter and her

sons were nearer heirs to Venkatapayya who had divided from his brothers, and that the trustee could not validly interfere with the hereditary right

of succession to the office or emoluments in violation of Hindu law. He accordingly directed the dismissal of the suit with costs throughout.

2. There were some subsequent developments after the suit was filed. The trustee passed a formal order dismissing the 1st defendant, from the

office of ""Swasthivachakam"" service-holder on the grounds that she did not obtain the consent of the trustee for getting the service done by her

husband as proxy, (2) that the proxy did not, render service properly as he was absent from the village on his own business, and (3) on the ground

that the proxy was not well versed in vedas. The Madras Hindu Religious Endowments Board on 23rd November, 1945, after the judgment of the

learned Subordinate Judge dismissing the suit, allowed the appeal and restored the first defendant to her place as Swasthivachakam servicedar

permitting her to get the service performed by her husband as proxy. I permitted the Board's order to be marked as evidence in this appeal in

C.M.P. No. 7233 of 1948 not for purposes of evidence as such but for some comments, I desire to make on the illegality of the entire procedure

which appears to be adopted as regards the recognition of partitions of religious service inams, and the right to enforce hereditary rights to

fragmented portions of these inam grants.

3. In the present case, both sides are on common ground as regards the right of the family to whom the inam grant was originally made to partition

the inam itself and to go on doing so in each succeeding generation. It is also common ground that the plaintiff, the 7th defendant and Venkatapayya

had divided their half share in the inam amongst themselves and they cannot get away from the position that they are on their own showing divided

brothers. If strict hereditary right is to be applied to the succession to this portion of the inam so divided, there can be no doubt that

Venkatapayya's daughter is a nearer heir than his divided brothers and that from this point of view the learned Subordinate Judge's dismissal of

the suit is correct. Even treating the trustee's order Ex. P-8 as an administrative order u/s 43 of the Religious Endowments Act the subsequent

dismissal of the first defendant has been upset in appeal by the Board itself which has re-instated her in Swasthivachakam service.

4. There is plenty of authority for the position that sex does not bar a woman in the absence of proof of a special custom or user to the contrary

from succeeding to the office and emoluments of an archaka and to have the service performed by a proxy. See *Raja Rajeswari v. Subramania*

*Archakar* (1915) 30 M.L.J. 222 : ILR Mad. 105. On the legal ground on which both parties have taken their stand the plaintiff is therefore clearly

not entitled to succeed as against his divided brother's daughter and her sons and his suit was: rightly dismissed with costs by the learned

Subordinate Judge.

5. I am also far from satisfied that such a suit as that filed by the plaintiff lies in law. I find that one of the issues framed was "whether the plaintiff

disclosed a cause of action" and on this issue the learned District Munsiff found that as the plaintiff alleged that he was doing this service and the

emoluments were out of his possession this was a cause of action enough. The Subordinate Judge made no comment on this issue which was not

raised before him nor indeed has it been raised before me. The point of law arising is such that it cuts away the common legal ground on which all

the members of the family take their stand, namely, a right to partition service inams in this way, and to apply strictly the law of inheritance to each

portion so divided from generation to generation. The succession to office-holders such as those who have to perform such services as

Swasthivachakam whether hereditary or non-hereditary is governed by Section 58 of the Madras Religious Endowments Act. This prescribes that

where the office of service is hereditary, the next in the line of succession shall be entitled to succeed. Section 58(3)" is very important and reads as

follows:

In making an appointment under the proviso to Sub-section (2) the trustee shall have due regard to the claims" of members of the family, if any,

entitled to the succession.

This section clearly contemplates one hereditary office-holder and confers no right on an office-holder in enjoyment of emoluments to partition

those emoluments amongst members of his family, and then those members similarly to go on partitioning their shares of each member with a right

to enforce hereditary rights under Hindu law to fragments of the original inam in suits such as these. Section 58 was enacted in accordance with the

following observations of the Select Committee which recommended these provisions:

The indefiniteness of the existing law as regards the powers which trustees of temples could exercise over office-holders and servants therein

especially those possessing hereditary rights has been a fruitful source of litigation hitherto.

These clauses are an attempt to define these powers in a clear manner. It may be that in the past such service inams have been for the purpose of

enjoyment divided between members of a family, and that in such cases it may not always be possible to put the clock back, and insist on only one

office-holder or a registered religious inam service.

6. I should like to give expression here to the illegality of a trustee recognising any partition of a service inam subsequent to the enactment of

Section 58 of the Religious Endowments Act. This gives an office-holder or his family no such right." The section merely recognises a hereditary

right to the office in the office-holder's family. That simply means that when a registered and unrecognised office-holder dies the vacancy shall be

filled up *ceteris paribus* subject to the provisions of Section 58 by the next in the line of succession. If the next in the line of succession happens to

be a woman, for instance, and if a daughter has to be preferred to a divided brother as in the present case, she certainly is entitled to the office and

can perform it by proxy. It follows from this that no suit on the basis of any partition of a religious service inam will lie subsequent to Section 58 of

the Act. If the hereditary office-holder of an inam is permitted to partition the inam amongst his family, and each member of the family in turn

allowed to partition, the service inam will in a few generations, as indeed it has become in my own experience of suits which have come up before

me, be so fragmented and responsibility for service so divided that the religious service will become impossible of performance and enforcement. I

have thought it fit to give expression to this view of the law for future guidance in the very difficult task which confronts temple administration that

of effective enforcement of religious inam service.

7. The second appeal is dismissed with costs.

8. C.M.P. No. 577 of 1948 has been filed by the Government Pleader as regards pauper court-fee for which the Subordinate Judge made no

provision. The suit was filed by the plaintiff in forma pauperis and he has also filed this second appeal in forma pauperis. He must pay the pauper

court-fee payable to Government in the suit and in second appeal. Leave refused.