

(1937) 10 MAD CK 0032
In the Madras High Court

K. Subba Reddi

APPELLANT

Vs

M. Chengalraya Reddi

RESPONDENT

Date of Decision : 06-10-1937

Acts Referred:

Madras Hindu Religious Endowments Act, 1923 — Section 73

Citation : AIR 1938 Mad 314

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This appeal arises out of a suit u/s 73, Madras Hindu Religious Endowments Act, for the framing of a scheme in respect of the administration of two village temples and for incidental reliefs relating thereto. The plaintiff also prayed for the removal of the defendant from trusteeship, and for vesting certain properties in the plaintiff as trustee. Certain sums of money were also claimed as due from the defendant to the institution. The learned Judge dismissed the defendant from the trusteeship and allowed a small portion of the money claimed, but dismissed the suit so far as it claimed relief in respect of the lands forming item 1 in Schedule B to the plaintiff on the ground that those lands had been constituted a special trust and that the Court acting u/s 73, Endowments Act, had no jurisdiction to award any relief in respect thereof. In this appeal by the plaintiff nearly all the reliefs disallowed by the lower Court were claimed in the memo of appeal but during the arguments before us nearly all the money claims have been given up, it being stated that in the present condition of the defendant, nothing could be got out of him as a result of any money decree that may be passed against him. Only one portion of the money claim was pressed, namely that relating to a sum of Rs. 250 which it was stated constituted part of the trust funds realized by the defendant as per the razinamah decree in O.S. No. 85 of 1921 in his family and was traceable as part of the consideration for Ex. L, a mortgage taken by the defendant in 1926. We agree with the learned Judge that it is not possible on the terms of Ex. P, the razinamah decree, to say what items of property were allotted to the suit temples as distinguished from

the chatram charity at Tiruttani. It is not denied that Ex. I is restricted to the immovable properties and makes no reference to the moneys which it is said were also constituted endowments to the temple in Ex. P. Further, even assuming Ex. Q to be genuine, it is impossible to say that the money said to have been received by the defendant Under Ex. Q could have formed the advance to Rama Reddi which is referred to in Ex. L, because that advance is said to have been made on 10th May 1921 whereas Ex. Q is dated 12th May 192d. We are therefore unable to hold that the suit temples can claim any portion of the moneys forming the consideration for Ex. L, as part of the trust funds of the temple.

2. As regards the immovable properties forming item 1 of the B schedule to the plaint, we regret we are unable to agree with the view taken by the lower Court. The language of Ex. I, the deed of endowment, is clear enough even as it is; and if it is read in the light of Ex. P, there is no room for doubt as to what was intended. Ex. P contemplates these lands being set apart for the temple. Ex. I as originally worded also ran as a gift of these properties to the temple. A line was however inter, polated before the completion of the document describing the defendant as trustee of the temples. We do not see that these interpolated words in any manner alter the scope or effect of the document. It appears from the evidence that the temples in the village were just then in the process of renovation and it is not suggested that there were any other trustees who may be described as "general" trustees of the temple if one would take Ex. I to constitute the defendant special trustee, as the learned Judge in the Court below held him to be. The learned Judge says that the defendant could not have been appointed a trustee of the temple by the donors under Ex, I because they could not have had any such power under the law. That seems to as beside the point; whether the said appointment by the donors would be valid |in law or not, it is obvious that it is in the capacity of a trustee of the suit temples that the donor conveyed the property to the defendant. Whether he was a trustee de facto or de jure, having taken the property under such a gift deed ha cannot claim to have held the properties in any character except that of the trustee of the temples. Further, there is no basis for any argument on this gift deed, having regard to the terms of Ex. I, that any special purpose was contemplated. The purposes specified in the document are purposes connected with the ordinary worship in the temple, namely maintenance of the gurukkal, putting up lights and the performance of festivals. It is only in a lease where there are other persons in management who can be regarded as general trustees and there are other funds out of which the general upkeep of the trust can be carried on that there will be any sense in distinguishing any endowment as a special trust or kattalai intended for a [particular purpose. There is no room for any such differentiation in the present case. We must accordingly hold that the lands specified as item I to Schedule B, in the plaint constitute an endowment to the temple and we make a declaration accordingly. For the time being, the properties will be vested in the plaintiff as the only existing trustee, the defendant having been removed. In

view however of the observation of the learned District Judge as to the way the plaintiff himself has been carrying on the management of the temple, it will be for the authorities concerned and for persons interested in the temple to take proper steps to ensure that the institution is duly managed.

3. The learned District Judge found that if defendant is to be held accountable for mesne profits in respect of the lands above referred to, a sum of Rs. 400 will be the proper estimate for the years prior to suit. He has not given any declaration even in respect of that amount because of his view that these properties could not be held to be an "endowment" to the temple. In the view that we have above expressed, there will be a declaration that the defendant is accountable to the temple in respect of the above sum of Rs. 400, and for any other amounts which the Court may on enquiry fix to be properly payable as profits from these lands for the period subsequent to the institution of the suit and before the defendant ceased to be a trustee Under the decree of the lower Court. We agree with the lower Court that having regard to the character of the institution it is scarcely worth while to frame a scheme; but if it is not possible to rectify the management in any other manner, it will be time enough to consider whether a scheme may not be necessary. To the extent above indicated, the decree of the lower Court will be varied and the case sent back to the lower Court for further inquiries and directions. As the appeal has succeeded only in part, there will be no order as to costs of this appeal.