
(1937) 02 MAD CK 0026
In the Madras High Court

Kolicherla Seshacharlu and Others

APPELLANT

Vs

Vidwan Ramanujacharulu and Another

RESPONDENT

Date of Decision : 26-02-1937

Acts Referred:

Citation : AIR 1937 Mad 789 : 173 Ind. Cas. 533 : (1937) 46 LW 413

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The question raised in this Second appeal is whether the properties involved in the suit, a house and lands, are trust properties dedicated to a charitable trust. The suit was instituted by the plaintiffs as representatives of the Sri Vaishnava Brahmins who are claimed to be the beneficiaries under the said trust to have it declared that a decree obtained by defendant 2 against defendant 1 in O.S. No. 354 of 1930 on the file of the Tirupathi District Munsif's Court on the foot of a mortgage of the suit property executed by defendant 1 is not binding on the trust. The trust mentioned in the plaint is the feeding of Brahmins or Brahmin pilgrims that assemble in Tiruchanur near Tirupati during the Brahmotsavam festival of Sri Padmavati Thayarammal. The said trust is alleged to have been founded in the year 1914 by the disciples of defendant 1 who is an acharya or guru, and defendant 1 constituted a trustee. Both the lower Courts have negatived the plaintiffs' claim on the ground that the plaintiffs have not proved that there was any trust as alleged by them.

2. There is no deed evidencing any such trust, nor has any oral evidence been let in on which any trust can be found. The only evidence relied on are the two sale deeds under which the suit properties were purchased and the evidence of P.Ws. 2 and 3. Ex. B is a deed dated 9th January 1914 evidencing the purchase of a house by defendant 1 for a sum of Rs. 3,000. The relevant recitals therein are as follows:

As you wanted the house for the use of Thadiaradhana to Vaishnavas conducted by you at the time of Brahmotsavam every year, I have sold this day to you for

Rs. 2,000. Having sold the property to you, I have received from your Sishya Narayanaswami Chetti, the sale price which he made dattam to you for the performance of the said charitable object.

3. Ex. A is a sale deed dated 4th March 1914 of certain lands in Padi village. The relevant recitals therein are as follows:

Having sold to you this day for Rs. 1,500 I have received in full the amount of sale consideration being the amount which was gifted to you by Narayanaswami Chetti as the agent of your disciples . . . for the purchase of feeding the Desantra Brahmins at the time of the Brahmotsavam of Sri Padmavati Thayaralu Varu at Tiruchanur.

4. Both the sale deeds contain the operative words which convey the property absolutely to defendant 1 with the full powers of alienation, gift, sale, etc. The evidence of P.W. 2 is that defendant 1 was the guru of her husband Narayanaswami Chetti, who is mentioned in the sale deeds, that he used to come to her places for collecting subscriptions, that he was himself feeding Brahmins in Tiruchanur, that he desired a house for that purpose and that moneys were raised by the disciples and given to him to enable him to have the said charity conducted. P.W. 3 does not know anything personally about it; he simply states that Narayanaswami Chetti told him that a house was wanted for the purpose of having the charity conducted and that ever since the purchase he knew that the feeding was done in the said house. There is no other evidence besides this.

5. The question is, are the suit properties dedicated to a charitable trust? I shall assume for the purpose of this case that a trust for the feeding of Brahmins is a valid charitable trust. The question still remains, was a trust created? From the said evidence it appears that two sums of money were gifted to defendant 1. The gift was prima facie absolute. The object of the gift was no doubt to satisfy the wishes of defendant 1, namely to put him in possession of funds to enable him to carry on the charity which he was per. forming. Defendant 1 is clearly the beneficiary. A beneficiary should not be made a trustee unless there are clear words indicating that he was intended to be made a trustee. All that the evidence indicates is that defendant 1 himself was doing some charity, namely feeding Brahmins; it was a charity which was entirely under his control both in the manner and method of performance.

6. It is common knowledge that an acharya like defendant 1 visits his disciples and collects moneys for the performance of the various objects which he has in view and that the disciples generally make gifts at such visits; whenever such gifts are made, they are always intended to be given absolutely to the guru because the object of such gift is to gain spiritual merit. The words appearing in the sale deeds are "dattam" and "samarpimpabadina" which connote an absolute gift. Having regard to the relationship between a guru and a disciple, it would hardly have been in the contemplation of the disciples to impose any restriction in the utilization of the moneys which were given to him absolutely or

"exact any promise or declaration to bind him". The holiness and sanctity of the guru are always taken as a guarantee for the due carrying out of any wishes which a disciple might express in making a gift to him. Before a trust can be found there must be an intention to create a trust. It is a recognized rule of construction that where a gift is absolute, followed by words merely expressing the motive of the gift, no trust at all would, be inferred. In *Mackett v. Mackett* (1872) 14 Eq 49 one John Brough on his death bequeathed all his personal property to one Sarah Mackett and to her heirs for her sole and separate use and in regard to the property so given, the proceeds to be applied for the upbringing and maintenance of J.M. and all her children. Sir James Bacon, Vice Chancellor, held that no trust was created. He observed thus at p. 53:

As to his personal estate, he gives it absolutely and without qualification to Mrs. Mackett for her sole and separate use. He then adds these words: and the proceeds to be applied by her in the bringing up and maintenance of her children. No doubt by these words he expresses the motive of his gift. But he lays no restriction upon the legatee.

7. The evidence in this case discloses nothing more than an absolute gift of the moneys to defendant 1 accompanied with an expression of a wish as to the mode of employing it, namely to carry on the charity which he was doing. The disappointment of a wish or expectation cannot be a reason for raising a trust. I am therefore of the opinion that there is no trust as alleged and the suit property is not trust property. The view taken by both the lower Courts is right. In the result, the second appeal fails and is dismissed with costs of respondent 2. Leave refused.