

(1929) 04 MAD CK 0036
In the Madras High Court

(Kommineddi) Kotayya and Another	APPELLANT
Vs	
(Manuri) Venkata Gopala Rao Pantulu Garu and Others	RESPONDENT

Date of Decision : 19-04-1929

Acts Referred:

Citation : AIR 1930 Mad 466

Hon'ble Judges : Ramesam, J; Jackson, J

Bench : Full Bench

Judgement

Ramesam, J.—This appeal arises out of a suit by three plaintiffs u/s 92, Civil P.C., for a scheme respecting the temple of Sri

Sitharamaswami Varu at Koritepad formerly a village but now a nourishing suburb of Guntur included within its municipal limits. There are eight

items of lands in the plaint schedule. The Subordinate Judge held:

that items 1 to 7 of the plaint schedule do not constitute a grant to the suit deity as its absolute property, but they are inams granted in favour of the

defendants' ancestors to be held by those grantees and their heirs burdened with the trust of doing the specific services mentioned in Ex. 4(a) for

the benefit of the deity.

2. He similarly found on issue 8 that item 8 of the plaint schedule was not an endowment to the suit deity. He therefore thought that a scheme was

not necessary and dismissed the suit. The plaintiffs appeal.

3. The history of the connexion between the suit lands and the suit temple may now be discussed. First we have got two documents, Ex. 4 and

4(a). These documents are dated 20th October 1822. Both were addressed by Raja Manuri Venkatarayanimgaru. The Manuri family were at that

time owners of a zamindari in the Kistna district. Some time afterwards the zamindari was sold for arrears of revenue and the zamindars are now in

receipt of a pension from Government. The present representative of the family is defendant 1. The zamindari was not lost at the time of Ex. 4 and

Ex. 4(a). Ex. 4(a) was a letter by the Rajah to Peddinti Ratnamacharyulu and Paruchuri Appalacharyulu. Their description in Ex. 4(a) shows that

they must have been learned Vaishnavite Brahmins. The former is the ancestor of defendants 2 to 11 and the latter was the ancestor of defendant

12. The letter Ex. 4(a) says that four kuchallu of land was allotted for the purpose of the daily worship of the temple and a certain scale on which

the worship is to be conducted is given in the letter. Then the letter concludes thus:

With the money remaining after spending for the Nitya Nivedya (daily worship) in the said mariner you should perform the Friday sevas (services)

Punarvasu savas (services) and festival sevas (services). We would ourselves perform the annual utsavams (festivals).

4. The heading in the document describing it as a ""sanad"" does not appear in the document itself. One would think that this is at least a document

providing for the daily worship in the temple on a definite scale. It leaves no discretion to the worshippers or archakas to reduce the scale. As to

the manner in which the surplus should be spent while it refers to services on Fridays, Punarvasu days and festivals it fixes no definite scale. Ex. 4 is

a letter addressed to the karnams and ryots. It says:

We have granted four kuchallu of land (as) manyam for meeting the expenses of the daily offerings, Friday sevas and Punarvasu sevas.

5. This sentence shows that the other document which was executed simultaneously with Ex. 4 was really intended to be a grant at least of the

income required for the daily worship and this letter directs the karnams to measure off the land and mark it with boundaries according to the

practice in those days. Both these documents are very old. They bear the zamindar's seal in Nagari characters. It has been urged before us by the

learned advocate for the appellants that the inam statement for these lands, namely Ex. A, says that the sanad is lost (vide Col. 6) and therefore Ex.

4(a) cannot be genuine. But whether the statement in the inam statement that the document is missing is true or whether the document was then

suppressed by the archakas for some purpose of their own, it seems to me that Ex. 4(a) is genuine. It provides for the daily worship of the temple

on a definite scale. Five days after this document the Rajah addressed another letter Ex. 5 to the former of the two archakas namely Peddinti

Rathnamacharyulu. It is dated Friday the 10th Aswija Suddham of Chittrabhanu. The translator of the document has converted this into an English

date 27th September 1822, but 27th September 1822 corresponds not to the 10th day but to the 11th day of Aswija Suddham which was

intercalary or Adhika. But the 10th Aswija Suddha proper was a Friday and corresponds to 25th October 1822. Ex. 5 is five days later than Exs.

4 and 4(a). That this is also the correct date is seen from the fact that the Rajah in this letter is giving further directions as to the mode of enjoyment

of the land as I will presently show. The Subordinate Judge has also read it as five days later than Exs. 4 and 4(a). This document says that the

addressee should enjoy one-half share and the other archaka Parasuri Appalacharyulu should enjoy the other half share of the archaka inam of

Sitharamaswami Varu:

Whose samprokshana (purification ceremony) was caused to be performed by our mother Rukmayamma Garu in Koritepad of our zamindari.

6. It then proceeds to say that all the other functions of the archana shall be discharged and the money derived from the various services shall be

enjoyed half-share each from son to grandson. The document then finally winds up thus:

So you shall, in the said manner, enjoy the same happily from son to grandson and so on in succession so long as the sun and moon last.

7. It is true that the first words from son to grandson"" refer only to the enjoyment of the perquisites derived by the archakas from the services of

the temple and cannot indicate the interest of the archakas in the archaka inams, though they may indicate that the office of the archaka is to be

hereditary. But the last sentence in the document which must be taken to cover the whole of the arrangement referred to in it refers to enjoyment

from son to grandson. The first question that arises in connexion with this document is whether the archaka inam referred to in it is the same as that

in Ex. 4 (a). The fact that this is written five days after the other suggests it, but beyond this there is nothing in the document to describe or identify

the inam. To clear up this point we called for the diglot register of the village. It was obtained from the Revenue Board's office and we now

directed it to be exhibited as Ex. 8. This document is the survey and settlement register and describes all the holdings in the village. Among the

inams there, the suit lands are all described. But there is no other inam described as archaka inam. I therefore infer that Ex. 5 relates to the same

inam as Ex. 4 (a). Seeing that Ex. 4 (a) was primarily a document providing for the daily worship in the temple and the meaning of the word

archaka"" is worship, I think the words ""archaka inam"" in Ex. 5 mean the inam providing for the daily worship of Seetharamaswami and that inam

must be the same as that of Ex. 4 (a). Still we have the words that ""the archaka should enjoy from son to grandson in this manner."" These words

mean that the archakas were intended to have some beneficial interest in this archaka inam. How much it is, it is not stated, and it is left indefinite.

The net result, of these three documents Exs. 4, 4 (a) and 5 is that this inam provides first, for the performance of the daily worship on a definite

scale which the archakas have no discretion to reduce; secondly, conducting the Friday service, Punarvasu service and festival services and thirdly

their own enjoyment. Items 2 and 3 are left indefinite showing that some latitude was intended to be given to the archakas as to the manner in

which they should apportion these two inams. If they conduct item 2 in an economical scale more will be left for their own benefit than when the

services are conducted on an extravagant scale. What they should do seems to be left to their discretion. If they are otherwise well off they may be

extravagant in the performance of the services. But if they have no other means of livelihood they may conduct the service more economically,

provided they are performed in a reasonable manner.

8. The lands must have been yielding a very small income in 1822 leaving a very moderate surplus for the other services and for the livelihood of

the archakas. Even by 1860 when Ex. A inam statement, was filed and Ex. C, inam register was prepared, the income was only Rs. 135-8-0

though the extent was 81 acres and 80 cents and one-fourth of the income namely Rs. 34 was fixed as the quit-rent. In Col. 15 of the inam register

Rs. 4"" is a mistake for ""four kuchallas."" After conducting the daily worship according to the fixed scale during all the 365 days a very moderate

amount would be left for the other services and for the benefit of the archakas. Recently the income of the inams has increased. According to the

evidence of D. Ws. 1 and 8 it is now about Rs. 1,600. Some five years back it was Rs. 800; vide P.W. 2, who says that the lands were yielding

10 an acre; ten years ago it was Rs. 400; vide para. 10 of the Subordinate Judge's judgment. We know the income in 1860 was only Rs. 135.

The question now is, who should take the beneficial interest of the surplus? The archakas say that the grant is a grant to the archakas burdened

only with the duty of rendering the daily worship and service to the temple and therefore they should get all the benefit of the surplus.

9. The appellants say it is a grant to the temple and only reasonable remuneration should be given to the archakas and after the reasonable

remuneration all surplus should again go to the temple. I think the proper legal inference lies midway between these two extreme contentions. We

note first that there is a provision for a definite purpose connected with the temple and then two purposes which were not made definite but in

respect of which some latitude was left to the archakas, namely services connected with the temple and the archakas' enjoyment. Whatever may

be spent for the definite purposes mentioned in item 1, that is, the daily worship, the rest should, I think, go equally to the benefit of the temple and

the archakas. If the income is increased both would participate in the increase, and if the income is diminished both would suffer the loss. No one is

entitled to say he should take all the surplus.

10. Thus I would say that the inam is not purely an archaka inam in the sense of a grant to the archakas only burdened with their doing duty in the

temple; nor is it also an inam entirely belonging to the temple but it is an inam a definite portion of the income of which was specially allotted to the

temple and the rest of the income is again allotted in two shares, one to the temple and one to the archakas and is liable to increase or decrease

according as the lands yield a higher or a lower income. In this respect it is somewhat different from the many cases that have come up before the

Courts. Most of the cases in this Court were examined by me in a judgment of myself and Cornish, J., reported in Vadlamannaty Bala Tripura

Sundaramma Vs. Secretary of State and Others, . Most of the cases discussed therein proceeded on the footing of only two alternatives either a

grant to the archakas or a grant to the temple. But on the construction of Exs. 4, 4 (a) and 5 in this case I would say that the present is an

intermediate case. Before referring to the English cases cited by the learned advocates, I would say one word about the inam statement and the register.

11. The learned advocate for the appellants strenuously contended that these documents show that the grant must be treated as a grant to the deity

only. No doubt, where the grant itself is not forthcoming, utmost importance must be attached to the inam statement and register as evidence of

later conduct. But where the original grant is forthcoming later conduct cannot affect their proper construction: vide Dost Muhammad Khan and

Another Vs. Hassarath Kibulae Sayyad, . The fact that the land is described as ""devadayam"" in these documents does not necessarily show that

the grant is to a temple, but merely that it is connected with a religious purpose; and such a description is consistent with being a grant to the

archakas also. This I pointed out in the case already referred to. Seeing that in 1860 the income was very small and a large portion of it was to be

spent for the daily worship and even out of the remainder a portion went for the temple service and the other portion only for the maintenance of

the archakas, the land might have been described as belonging to Septharamaswami Varu in the inam documents. But in the face of Ex. 5, I do not

think it can now be said that the land was wholly an inam to the deity. In Attorney-General v. Sidney Sussex College [1869] 4 Ch. A. 722 the two

colleges were appropriating all the rents and profits not spent for the specific trusts in favour of the testator's descendants it corresponds to the

specific trusts of daily worship in the present case and the College's right to the surplus corresponds to the right of the temple for the services and

the right of the archakas. In Attorney-General v. The Grocers' Co. [1842] 6 Beav. 526 the surplus after the expenses for the charity are met was

held to belong to the company though there as no express beneficial gift. In Attorney-General v. The Cordwainers' Co. 3 My1. & K. 534 it was

held that the company took a beneficial interest in the rest of the estates, subject to the payment of the specified sums for charitable purposes. In

the present case both the temple and the archakas take the surplus after the specific bequest. The same principle is laid down in the Attorney-

General v. Trinity College Cambridge [1857] 24 Beav. 383 and in Attorney-General v. Windson [1860] (D&C) 8 H.L.C. 369. In the present

case it cannot be said that the whole of the income was to be spent in one way or the other and only for the purpose of the temple as Ex. 5 says

that the archakas were to enjoy the inam. The case of Attorney-General v. Corporation 2 J & W 294 may be mentioned as an application of the

principle. The principle itself is clear from these cases though there is some difficulty in the application of the same to the particular facts of each

case. In Srinivasacharyulu v. Pratyanga Rao AIR 1921 Mad. 467 (not discussed by me in the decision referred to already) the deed of gift itself

was to the deity. In the view I have taken above, the Subordinate Judge is not right in dismissing the suit. The temple is so much interested in the

income that it cannot be left to the total discretion of the archakas and a scheme is necessary to safeguard the interests of the temple.

12. The Subordinate Judge has found that the archakas have so far not been guilty of any serious breach of duty (vide finding on issue 3), and the

finding on this issue has not been attacked before us. So long as the archakas are properly performing the duties, they ought not to be ousted from

the possession of inam. Even if there is a general trustee looking to the general interests of the temple, there is no objection to the archakas being

regarded as trustees for the specific purpose of the daily worship and the specified services on Fridays, etc. We frame the following scheme for the

purpose of ensuring the proper performance of the duties of the daily worship, etc.:

(1) As defendant 1 is reported to be dead, the Court will appoint his nearest heir in the line for succession who is willing to be trustee or if there is

no heir any other suitable person, as the trustee for all the general purposes of the temple and for supervising the work of the archakas in connexion

with the daily worship and the services on Fridays, etc.

(2) The archakas will continue to be in possession of the suit lands and will lease them out to tenants but on each occasion of leasing they will take

written leases or muchilikas from the tenants. Drafts of the muchilikas shall be submitted by them to the trustee before execution for his suggestions

and approval. The leasing may whenever possible, be effected by auction.

(3) The archakas will maintain accounts showing how much gross income has

been derived from the lands, any incidental expenses and the net income and how the net income of every year has been spent. In particular, they will show first how much has been spent for the Nithya Nivedya, etc., required for the daily worship according to the scale in Ex. 4 (a). They shall spend the amount required for the service on Fridays, etc., out of half the surplus. But how much the surplus amounts to will be shown in the account and the other half of the surplus will be taken as remuneration by the archakas themselves. The trustee shall frame a scale for the Friday service, festival service and Punarvasu service so as to be within half of the surplus after paying the expenses of the daily worships and any balance, after the expenses of the services are met, should be invested in the name of the trustee in a local Bank; and if the amount exceeds Rs. 100 or more, it may be invested in Government promissory notes. To explain my meaning, I would give an arithmetical illustration. The Subordinate Judge finds that about Rs. 100 a month will be required for the daily worship. Taking Rs. 3 a day tentatively as the expense of the daily worship this item requires Rs. 1,095 or Rs. 1,100 annually. If the income is Rs. 1,600 this leaves a balance of Rs. 500. Half of this would be Rs. 250. Towards services on Fridays, etc., Rs. 150 may be spent and Rs. 100 shall be invested as the property of the deity so that it may be useful for the repair of the temple or its accessory buildings or repairing the vahanams or other similar purpose. Rs. 250 will be taken as the remuneration of the archakas.

13. No question inter se between the archakas' families which now seem to consist of five or more branches has been raised before us and is not intended to be decided. Once every quarter the trustee will be entitled to call for the accounts from the archakas for inspection.

14. Issue 8 relates to item 8 of the plaint schedule. It is in a different village called Pasumaru and only defendant 12 is interested in it. Issue 6 relates to this inam and it is dated 13th September 1833. This shows that an inam for the archakas was originally allotted to them. But they afterwards surrendered that deed and Parasui Appalacharyulu wanted his archakas' inam should be given to him, in Pasumaru. So one kochulu and nine pagodas were given to him. It appears that there is no other inam belonging to Peddinti people as purely archakas' inam and it also appears that Paruchuri people are not interested in the other inam in Koretipad already

discussed. It may be that by some arrangement prior to Ex. 6 between 1822 and 1832 the archaka inam of Peddinti people is somehow included in items 1 to 7 which contain perhaps 4 kochulu in Ex. 4 and also the archaka inam of Peddinti people. This of course is a conjecture. If it is true our earlier conclusion is still more justified. Anyhow, so far as the Pasumaru inam is concerned, it is a grant to the archakas only. The inam statement connected with this, Ex. D is entirely in favour of the archakas and is in contrast with the inam statement of the other land. This land, therefore, belongs solely to the archakas and is not subject to any specific trust in favour of the temple and any scheme we can frame ought not to include this land.

15. So far as the appeal against defendant 12 is concerned, it is dismissed with costs. As between the plaintiffs and defendant 11 each party will bear his own costs. The appellants will be entitled to get the costs of both Courts from the surplus income of the inam earmarked for the temple if any.

Jackson, J.

16. I agree.