

(1952) 10 MAD CK 0032
In the Madras High Court
Case No : Appeal No. 237 of 1950

Kondavitti Brahmayya and Others

APPELLANT

Vs

Rajeswaraswami Temple and Others

RESPONDENT

Date of Decision : 08-10-1952

Acts Referred:

Evidence Act, 1872 — Section 35

Citation : AIR 1953 Mad 580 : (1953) 1 MLJ 164

Hon'ble Judges : Subba Rao, J; Ramaswami, J

Bench : Division Bench

Advocate : G. Venkatarama Sastry, for the Appellant; K. Ramaseshayya, N.C. Sekhar and R. Rama Rao, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—This appeal arises out of O. S. No. 178 of 1949, a suit filed by the plaintiff-respondent 1, for recovery of possession of the plaint schedule property and for mesne profits. The plaintiff, defendant 27 and one Nagayya are the trustees of the temple of Sri Rajeswaraswami of Ponnekallu. Defendants 1 to 7 are the archakas of the suit temple and defendants 8 to 26 are the lessees under defendants 1 to 7. The plaintiff alleging that the plaint schedule properties are the properties of the deity, filed the aforesaid suit for recovery of possession. Defendants 1 to 7 denied that the properties are the properties of the deity and claimed that the suit lands were granted to the archakas burdened with service to the deity. They also claimed that they acquired a right by adverse possession. As many as seven issues were framed in the suit and they reflect the contentions of the parties. They are,

1. Whether the plaintiff has title to the suit lands
2. Whether the defendants acquire title by adverse possession?
3. Whether the suit lands are "service inams" and whether the defendants are entitled to be in possession of the same?

4. To what mesne profits, if any, is the plaintiff entitled?
5. To what relief?
6. Whether plaintiff is legally constituted trustee?
7. Whether plaintiff's suit is not maintainable on account of O. S. No. 103 of 1934, District Munsif's Court, Guntur?

The learned Subordinate Judge held that the deity is the owner of the plaint schedule properties and gave a decree for possession.

2. The first question that arises in the appeal is whether the deity has title to the plaint schedule items or whether they were granted to the archakas subject to the service to the deity. The Inam register is almost conclusive on this question. Column 11 gives the name of the grantor. It shows that the lands were granted by Vasireddi Verkaiadri Naidu. Column 13 shows the name of the grantee. The name of the grantee is given as Sri Rajeswaraswami. Under Col. 8 the following recital is found :

"For the worship of the Idol in Pagoda of Ponnekallu, Worship is performed."

Under Cols. 16 and 17 giving particulars regarding the present owner, the name of the deity Sri Rajeswaraswami is given though under the name of the deity the worshipper's name is also given. Columns 20 and 21 show that the Inam Commissioner confirmed the grant so long as the service is performed. It has been held that in the absence of the original grant, the recitals in the Inam register are of great evidentiary value. The recitals indicate beyond any reasonable doubt that the grantee is the deity and the object of the grant is the worship of the deity. The learned counsel relied upon the mention of the name of the worshipper in Col. 16 in support of the contention that the grant should have been made only to the archaka burdened with service. If that was the fact, under Col. 13 the name of the archaka would have been given and under cols. 16 and 17 the name of the deity would have been omitted. The name of the worshipper obviously was given in Col. 16 as there was no separate trustee at the time and the worshipper filed a statement before the Inam Commissioner giving the details of the inam. If there is any doubt, that is dispelled by the recitals in the inam statement, Ex. A. 2, filed by the archakas themselves. In col. 1 under the heading "name of the Inamdhar" the deity's name -- Sri Rajeswaraswami -- is given. The "present enjoyer" is also described as the same. In col. 4 under the heading name of the original grantee and the relationship existing between him and the present enjoyers" Sri Swamivaru's Devastanam is mentioned. If really the archakas were the grantees their names would have been mentioned and their relationship would also have been given. Under col. 5, particulars of the family of the present enjoyers, again the Devastanam is mentioned. These recitals are consistent with that found in the Inam register. We, therefore, have no hesitation to agree with the finding of the Court below that the original grant was made to the deity.

3. If so, it follows that the plaintiff would be entitled to a decree for possession and the learned Subordinate Judge rightly gave a decree for possession. But the learned counsel for the appellants contended that in view of some unreported judgments of this Court they are entitled to continue to be in possession, at any rate, of two-thirds of the plaint schedule properties, even though the subordinate Court and this Court have held that they have no title to the properties. In A. S. No. 218 of 1946, Satyanarayana Rao and Chandra Reddi JJ. held that having regard to the circumstances of that case the archakas would be entitled to be put in possession of two-third of the temple properties in lieu of remuneration. Satyanarayana Rao J. rightly observed in the judgment as follows:

"No doubt on our findings it would follow that the plaintiffs would have no right to retain possession of the lands."

But the learned Judges proceeded to make an allotment between the temple and the archakas and directed two-thirds of the lands to be put in possession of the archakas in lieu of remuneration. From the observations extracted above, it would appear that the learned Judges would have decreed possession of the plaint schedule properties; but obviously as the other side did not object, they made an equitable distribution of the properties having regard to the circumstances of that case. A copy of the judgment of the Chief Justice and Panchapakesa Aiyar J. in A. S. No. 286 of 1945, has not been placed before us. We presume that in that case also the allotment was made as the parties agreed to that course. In C. M. A. No. 8 of 1949, Govinda Menon and Basheer Ahmed Sayeed JJ. observed as follows:

"According to the decisions of this Court, if the archakas have been properly performing the nitya naivedya aradhana and other religious ceremonies in the temple, they are entitled to an allotment of nearly 2/3rd of the net income for performing these ceremonies and also for present services. If the Court, after evidence, is satisfied that since the filing of the suit, the defendant-archakas have properly performed the ceremonies in the temple and have not committed any default, in this behalf, then the lower Court will direct that they be paid 2/3rd of the net income remaining in Court, after defraying all the expenses As regards the future, we direct that if and when the lower Court is satisfied that ceremonies are being properly conducted, the 2/3rd of the net income will be paid over to the archakas. If any default is committed in the performance of the ceremonies the lower Court will withhold payment to the archakas."

The learned Judges were dealing with an appeal filed against an order appointing a receiver to take possession and manage the properties pending the suit. The order made by the learned Judges was obviously intended to be an interim order and was presumably made without prejudice to the rights of the parties in the suit. We do not think that the learned Judges meant to lay down as a proposition of law that irrespective of the circumstances in a particular case, the archaka should be allotted two-thirds of the properties of the temple. If that is so, it may lead to the following anomaly among others. Suppose the archakas have been in

possession of the temple properties which at present are fetching an income of Rs. 10,000. Though a few hundreds would quite suffice for the remuneration and padithram and other expenses, the trustee would be bound to put the archakas in possession of properties fetching an income of about Rs. 7000. The learned Judges in the aforesaid three decisions we are sure never intended to lay down a proposition which would lead to this startling result. The allotment of a particular share would depend upon the total income of the lands, the value of the articles required for worships, the amount of reasonable remuneration intended to be provided and other similar circumstances.

4. At the same time we may observe that the archakas have been in uninterrupted possession of the plaint schedule properties for over a long period of time. It is also likely that they will continue to be in the village and function properly if they are given properties sufficient for the expenditure of nitya naivedya deeparadhana and remuneration. Though in law they are not entitled to insist that they should be put in possession of a portion of the lands of the deity, it appears to us proper, as it appeared to other Judges of this Court, that the temple authorities may in consultation with the Commissioner put the archakas in possession of a reasonable proportion of the lands, having regard to the circumstances of this particular case. Those observations are not intended to preclude archakas from accepting a salary. In the result the appeal fails and is dismissed with costs.