
(2000) 08 MAD CK 0106

In the Madras High Court

Case No : LPA No"s. 61, 62 and 128 of 1991 and Cross Objection No. 106 of 1995

L.S. Mariappan, 205 Dindigul Road, Madurai-1

APPELLANT

Vs

Kuppamuthu and 6 others

RESPONDENT

Date of Decision : 09-08-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Transfer of Property Act, 1882 — Section 6

Citation : (2000) 3 CTC 405

Hon'ble Judges : Jayasimha Babu, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Mr. T.R. Mani, for Mr. AR.L. Sundaresan, Mr. S.T. Srinivasa Raghavan, for the Appellant; Mr. T.L. Ramohan, for Mr. S. Subbaiah, for the Respondent

Judgement

Judgement Pronounced by F.M. Ibrahim Kalifulla, J.—One L. Palanichami Chettiar and his wife Kaveri Ammal had two sons by name L.P. Lakshmanan Chettiar and P. Shanmugam alias Palani Chami Chettiar. Thiru L.P. Lakshmanan Chettiar had two sons by name P.L. Shanmugam alias Palanichami and Chellam alias Subbaiah. Thiru P.L. Shanmugam alias Palanichami, the elder son of L.P. Lakshmanan Chettiar had six sons namely, 1. Kuppamuthu; 2. Lakshmanan 3. Chellam alias Palanichami; 4. Subbaiah, 5. Pechimuttu and 6. Shanmugam. Thiru Lakshmanan son of P.L. Shanmugam alias Palanichami had four sons namely 1. Palani Chami, 2. Pechimuttu, 3. Subramanian and 4. Narayanan. The younger son of P. Lakshmanan Chettiar namely Thiru Chellam alias Subbaiah got one son by name L.S. Mariappan, whose paternity was questioned by P.L. Shanmugam alias Palanichami, and others. Besides the younger son of the late L. Palanichami Chettiar and Kaveri Ammal namely P. Shanmugam alias Palanichami Chettiar had one son by name Tangam Palanichami Chettiar. The said Thiru. P. Shanmugam alias Palanichami Chettiar died on 6.2.75. The said Tangam alias Palanichami Chettiar got one son by name Ramalingam.

2. The descendants claiming through P.L. Shanmugam alias Palanichami will be

herein after referred to as P.L.Shanmugam group. The sole heir of Chellam alias Subbaiah, who is the brother of P.L.Shanmugam alias Palanichami, is one Thiru L.S.Mariappan, who is the appellant in LPA No.61 and 62 of 1991, who will be herein after referred to as the Appellant. The other branch of late Palanichami Chettiar and Kaveri Ammal through his only son P.Shanmugam alias Palani Chami Chettiar was represented by his son Tangam alias Palanichami Chettiar and after his demise by one Ramalingam who can be conveniently referred to by his name itself.

3. It is to be noted that Thiru L.Palanichami Chettiar is no more and his elder son L.P.Lakshmanan Chettiar also died on 10.4.1973. The younger son of the said Late L.P.Lakshmanan Chettiar expired on 14.2.1980, though it was claimed by P.L.Shanmugam group as 10.4.1979. The second son of P.L.Shanmugam y Palanichami Chettiar of P.L.Shanmugam group namely one Thiru Lakshmanan also died on 29.9.1981. The only son of late P.Shanmugam alias Palanichami Chettiar, the brother of late L.P.Lakshmanan Chettiar by name Tangam alias Palanichami Chettiar died on 17.1.1983 leaving behind his only son Thiru Ramalingam. Therefore as on date P.L.Shanmugam group represented by P.L.Shanmugam alias Palanichami and his sons Kuppumuttu, Chellam alias Subbaiah, Pechimuttu, Shanmugam along with the four sons of the second son of P.L.Shanmugam alias Palanichami Chettiar on the one side as P.L.Shanmugam group and Thiru L.S.Mariappan, the only son of Chellam alias Subbaiah the Appellant, apart from Thiru Ramalingam, the only grand son of P.Shanmugam alias Palanichami Chettiar on the otherside are fighting this litigation.

4. The family tree of late L. Palanichami Chettiar and his wife Kaveri Animal are shown as under:-

L.PALANICHMI	CHETTIAR	-	KAVERI	AMMAL	
-----			L.P.Lakshmanan	Chettiar	(Died)
(10.4.1973)			P.L Shanmugam alias Palanichami	Chellam alias Subbisah	
(D-3)	(P-1)	(Died 10.2.1980)	=	Govindammal alias Seethalakshmi	-->
Kuppamuthu	(P-2)		L.S Mariappan		-->Lakshmanan
(P-3)-----			1. Palanichami	-->	Chellam alias Palanichami
(P-4)	2. Pechimuthu		3. Subramanian	-->	Subbiah (P-5)
	(Spns-not impleaded	-->	Pechimuthu (P-6)	in A.S)	-->
Shanmugam	(P-7)		-----		P.Shanmuga
alias Palanichami Chettiar	(Died 6.2.1983)				

Thangam alias Panalichami Chettiar(D-1) (Died 17.1.1983) | Ramalingam (D-2)

5. The origin of the dispute involved in these appeals dates back to the year 1944 when a preliminary scheme decree was formulated in O.S.No. 9 of 1943 dated 31.3.1944. The said suit was laid by Sri Tangam alias Palanichami Chettiar, the father of Thiru. Ramalingam as against 11 persons, viz., 1. L.P.Lakshmanan Chettiar, 2.Shanmugam alias Palanichami Chettiar (younger brother of L. P, Lakshmanan Chettiar), 3.Shanmugam alias Palanichami Chettiar elder son of L.

P.Lakshmanan Chettiar, 4.Chellam alias Subbaiah Chetty the younger son of L. P. Lakshmanan Chettiar, 5. the then minors Kuppumuttu Chetti, 6.Lakshmananan Chetti, 7. Chellam alias Palanichami 8. Subbaiah Chetti, 9.Pechimuttu Chetti (minors 5 to 9 are the sons of Shanmugam alias Palanichami Chetti the third defendant), 10.Kaveri Ammal wife of the Late Palanichami Chettiar, the father of L.P. Lakshmanan Chettiar and 11. Somasundaram Chettiar.

6. In the said scheme decree dated 31.3.1944. Clauses (iii) and (iv) dealt with the manner in which the suit temple and its properties should be managed by the respective parties. Clause (iii) and (iv) reads as under:.

Clause (iii): that the C schedule properties be managed in turns between the plaintiff and the 2nd defendant on the one hand and defendants 1 and 3 to 9 on the other, each branch for a period of two years"

Clause (iv): that the said two branches also be in possession during their term of management of the temple jewels mentioned as items 1 to 6 at page 13 of the 1st defendant's written statement (specified hereunder) in addition to amend as per order in I.A.No.375 of 1944, dt.15.4.1944) the bronze soodam thattu with kalais referred to in the some page of the said written statement"

7. The suit in O.S.No. 9 of 1943 was adjourned sine-die for passing a final decree in accordance with the terms contained therein. Thus as per Clause (iii) and (iv) of the preliminary decree, the Late Thiru. L.P.Lakshmanan Chettiar the father of P.L.Shanmugam alias Palanichami of P.L. Shanmugam Group, along with his two sons and their descendants were entitled to administer and manage the temple and its properties as trustees and poojaries for a period of two years and the descendants of P.Shanmugam alias Palanichami Chettiar, the brother of L.P.Lakshmanan Chettiar now represented by Thiru Ramalingam were entitled for such management and administration for the next period of two years and to carry on such administration in turns for every successive two years. Subsequent to the passing of the preliminary decree dated 31.3.1944 in O.S.No. 9 of 1943, a registered partition deed came into being between P.L.Shanmugam group on the one hand and Chellam alias Subbaiah, now represented by the Appellant the brother of P.L.Shanmugam alias Palanichami along with their father late L.P.Lakshmanan Chettiar. Under the partition deed, it was agreed between Thiru L.P.Lakshmanan Chettiar and P.L.Shanmugam alias Palanichami and his brother Chellam alias Subbaiah the two year period which was allotted to the descendants of L.P.Lakshmanan Chettiar under the scheme decree dated 31.3.1944 in O.S.No. 9 of 1943 to be enjoyed in turn of eight months each, namely L.P.Lakshmanan Chettiar, P.L.Shanmugam alias Palani Chami and Chellam alias Subbaiah. It was also mentioned therein that the first eight months to be enjoyed by P.L.Shanmugam group and the next two eight months to be concurrently enjoyed by L.P.Lakshmanan Chettiar and his younger son Chellam alias Subbaiah, the Appellant herein.

8. P.L.Shanmugam group launched O.S.222 of 1975 on the file of the

Subordinate Judge at Madurai against Tangam alias Palanichami Chettiar and his son Ramalingam as well as against Chellam alias Subbaiah. The prayer in the said suit was, in view of the mis- management of the temple and its properties by the defendants therein, a need for framing a scheme arose and therefore for settling a scheme for the administration and management of the suit Pechiamman Temple, its properties specified in A and B schedule and its affairs and festivals and also exercise of rights of trusteeship and poojariship by plaintiffs and their male descendents. In fact, P.L.Shanmugam group wanted to realign the period of trusteeship amongst the descendants of late L.P.Lakshmanan Chettiar. Apparently with a view to exclude L.S.Mariappan, the appellant, the lone son of Chellam alias Subbaiah. In the said suit, written statements were filed by the first defendant Tangam alias Palanichami Chettiar and by the third defendant Chellam alias Subbaiah. On behalf of the first defendant Tangam alias Palanichami Chettiar, it was contended that the scheme decree dated 31.3.1944 passed in O.S.No. 9 of 1943 would operate as resjudicata apart from the suit being hit by Order 2 Rule 2 of C.P.C. It was also contended that by virtue of the partition deed dated 4.7.1956, the plaintiffs in O.S.No. 222 of 1975 were estopped from claiming the relief mentioned therein. As far as the third defendant Chellam alias Subbaiah was concerned, it was contended that for non-joinder of necessary party, namely, his legal heir and son Thiru L.S.Mariappan, the appellant herein, the suit was liable to be rejected. It was also contended that having regard to the partition deed, dated 4.7.1956, there was no scope for granting any relief to the plaintiffs therein. The third defendant also brought to the notice of the Court a will deed dated 24.5.1962 executed by the late L.P.Lakshmanan Chettiar, the father of P.L.Shanmugam alias Palanichami, of P.L.Shanmugam group bequeathing his turn of management (L.P.Lakshmanachami Chettiar) to the third defendant i.e. Chellam alias Subbaiah and his heirs.

9. By judgment and decree dated 19.2.1979, O.S.No. 222 of 1975 was disposed of by the III Additional Subordinate Judge, Madurai, wherein 12 issues with one additional issue altogether 13 issues were framed. As far as pedigree and the legitimacy of Thiru L.S.Mariappan, the trial Court held that having regard to the nature of relief claimed in the suit it was not necessary go into the said question in that suit. As far as the other issues, as to, whether the defendants were guilty of misfeasance and malfeasance and whether the suit was barred by resjudicata by virtue of the decree in O.S.No.9 of 43? Was concerned, the learned subordinate Judge held that there was no scope nor any need for settling any scheme. The Trial Court also held that apart from the conclusion that though the decision in O.S.No.9 of 1943 would operate as res judicata, the plaintiffs were estopped by their conduct from claiming the framing of a scheme at that stage in the absence of. new circumstances necessitates framing of such a scheme. The Trial Court also held that having regard to the clear recitals in Ex.B34, the partition deed dated 4.7.1956, the plaintiffs were estopped from claiming the relief of framing of a scheme. The additional issue, namely about the non-

impleading of Thiru L.S.Mariappan son of Chellam alias Subbaiah, as stated earlier, the learned trial Judge held that having regard to the nature of the relief claimed in the suit, there was no necessity to deal with the said issue in the present suit.

10. As against the judgment and decree in O.S.No. 222 of 1975, appeal in A.S.No. 661 of 1979 was preferred initially by P.L.Shanmugam group, who were plaintiffs 1 to 5 and 6, plaintiff No.7 was respondent No.4 in A.S.No. 661 of 1979. Respondent No,1 was Tangam alias Palanichami Chettiar. Respondent No.2 was the son of Tangam y Palanichami Chettiar. Respondent No.3 was Chellam alias Subbaiah and after his demise on 10.2.1980, Thiru L.S.Mariappan, the appellant herein was impleaded as legal representative of the deceased respondent No.3 as per orders dated 20.4.1981 in C.M.P.No.5909 of 1980. The first appellant and fifth appellant in A.S.No. 66 of 1979 namely Shanmugam alias Palanichami Chettiar and Subbaiah got transposed as Respondents 6 and 7 as per orders dated 16.8.1990 in C.M.P.8615 of 1990.

11. In the mean time, P.L.Shanmugam group filed O.S.No. 83 of 1982 against Tangam alias Palanichami Chettiar, Ramalingam and L.S.Mariappan, the appellant herein who were arrayed as defendants 1 to 3 in the said suit. While displaying the pedigree of the late L.Palanichami Chettiar, the third defendant in the said suit, the Appellant herein was not shown as a party, inasmuch as, his paternity was disputed by P.L.Shanmugam group. The claim of P.L.Shanmugam group in O.S.No.83 of 1982 was for a declaration that the third defendant in that suit namely Thiru L.S.Mariappan, the Appellant herein was not the legal heir of Chellam alias Subbaiah Chettiar and that the plaintiffs alone were entitled for Poojariship and trusteeship for the entire period of two years representing the branch of the deceased L. P. Lakshmanan Chettiar after the demise of Chellam alias Subbaiah Chettiar, who died on 10.4.1979 (who is really said to have expired only on 14.2.1980 and not on 10.4.1979 as claimed by P.L.Shanmugam group). The paternity of the third defendant was questioned by P.L.Shanmugam group on the premise that the said L.S.Mariappan way born out of illegitimate intimacy between late L.P.Lakshmanan Chettiar, with one Smt Govindammal alias Seethalakshmi, whereas it was contended on behalf of the third defendant L.S.Mariappan, the appellant herein that he was born out of lawful wedlock of Chellam alias Subbaiah with Govindammal alias Seethalakshmi whose marriage took place in Tiruparagundram in Madurai in 1952 and that he was born on 9.7.1953. It was further contended that the first plaintiff P.L.Shanmugam alias Palanichami of P.L.Shanmugam group who was aware of the legitimacy of the third defendant L.S.Mariappan came forward with a suit with a view to grab the properties and the trusteeship. He would contend that by virtue of partition deed, dated 4.7.1956 and the will dated 24.5.1962, the descendants of Chellam alias Subbaiah became entitled for the management of the affairs of the temple as trustees and poojaris for a continuous period of 16 months in a total period of two years, which provoked the P. L. Shanmugam group to launch the above suit by taking the extreme contention of questioning the paternity of the third

defendant, the appellant herein in order to and in their vain attempt to prevent the third defendant from enjoying the trusteeship and poojariship, which he lawfully inherited through his father the Late Chellam alias Subbaiah. The first and second defendants also supported the stand of the third defendant the appellant herein that he was the legitimate son of Chellam alias Subbaiah and was entitled for the period of trusteeship as provided under the partition deed dated 4.7.1956 and the will of L.P.Lakshmanan Chettiar dated 24.5.1962.

12. By judgment and decree dated 13.1.1986 in O.S.No. 83 of 1982, the learned I Additional Subordinate Judge, Madurai held that the third defendant, the Appellant herein was born out of lawful wedlock of Chellam alias Subbaiah Chettiar with Govindammal alias Seethalakshmi and therefore he was the legal heir of the said Chellam alias Subbaiah and his wife Govindammal and Seethalakshmi. It was further held in the said suit that the third defendant was entitled for trusteeship and poojariship subsequent to the period of management of defendants 1 and 2 and the other branch of L. Palanichami Chettiar represented herein by Thiru. Ramalingam. As against the judgment and decree in O.S.No. 83 of 1982, A.S.No. 86 of 1986 was preferred on the file of the District Judge, Madurai at the instance of P.L.Shanmugam group, consisting of S.Rathinam alias Kuppamuttu. P2, S.Sellam alias Palanichami Chettiar. P3, S.Pechimuttu. P5, S.Shanmugam. P6. L.Palanichamy - P7 against the second defendant Ramalingam as first respondent, third defendant L.S. Mariappan, the Appellant herein as second respondent, first plaintiff P.L. Shanmugam alias Palanichami Chettiar as third respondent, fourth plaintiff Subbaiah as fourth respondent, eighth plaintiff L.Pechimuttu as 5th respondent, 9th plaintiff minor Subramanian as 6th respondent and 10th plaintiff minor Narayan as 7th respondent. The Appeal in A.S.No. 86 of 1986 on transfer to the file of this Honourable Court was numbered as Tr.A.S.No. 1363 of 1988.

13. A.S.No. 661 of 1979 and Tr.A.S.No. 1363 of 1988 was disposed of by a common judgment by the learned Single Judge of this Honourable Court on 28.1.1991. In A.S.No. 661 of 1979, the learned judge was of the view that it would be better if turn management system between the appellants and respondents is replaced by the management of Board of Trustees by giving proper representation maintaining the present share in the management and benefits held by each of the parties inasmuch as years pass on more and more number of descendents in each of the two branches may come in, in which event, the new scheme can also provide for setting apart a reservation of common fund for meeting the capital expenses and unforeseen circumstances while providing for the exercise of right of poojariship of the parties. The Learned Judge accordingly while setting aside the judgment and decree in O.S.No.222 of 1975 gave a direction to the parties to file their respective draft schemes for the administration and management of the suit temple and its properties on the lines suggested above. As far as A.S.No. 1363 of 1988 was concerned, the learned Judge while upholding the finding that Thiru L.S.Mariappan, the Appellant herein was the legitimate child of Chellam alias Subbaiah proceeded to hold that in view

of the dictum of this Honourable Court to the effect that "a person entitled to succeed as a hereditary trustee cannot be deprived of his right to succeed by relinquishment or release by predecessor" hold that the will cannot be held to be valid though the said conclusion would not affect the right of Thiru L.S.Mariappan, the appellant herein in claiming the trusteeship and turn management as a heir of his father Chellam alias Subbaiah.

14. As against the judgment and decree dated 25.1.1991 passed in A.S.No. 661 of 1979, L.P.A.61 of 1991 has been preferred by Thiru L.S.Mariappan, the legal heir of the deceased third defendant in O.S.No. 222 of 1975. The sum and substance of the attack made in L.P.A.61 of 1991 is that the direction of the learned Single Judge in framing a fresh scheme of management was totally unjustified. L.P.A. 62 of 1991 has also been preferred by the said L.S.Mariappan, the Appellant herein who was the third defendant in O.S.No. 83 of 1982 against that part of the order of the learned Judge in A.S.No. 1363 of 1988, dated 28.1.91 upsetting the will of late L.P.Lakshmanan Chettiar under Ex. B18. The stand of the appellant in L.P.A.62 of 1991 is to the effect that the Ruling in 1985(2) MLJ 145 was not applicable to the facts of this case. L.P.A.128 of 1991 has been filed by Thiru Ramalingam, the second defendant in O.S.No. 83 of 1982 who is the son of the late Tangam alias Palanichami Chettiar, the descendents of second branch of late L.Palanichami Chettiar against the Judgment and decree dated 28.1.1991 in A.S.No. 661 of 1979 on the ground that there was no need or necessity for framing a fresh scheme for management inasmuch as in view of the operation of the decree passed in O.S.No. 9 of 1943 framing of a fresh scheme for the suit temple was uncalled for. Cross-objection 106 of 1995 has been filed by S.Rathinam y Kuppumuttu, S.Sellam alias Palanichami and S.Pechimuttu, plaintiffs 2, 3 and 5 respectively in O.3.83 of 1982 of P.L.Shanmugam group against L.S.Mariappan, the Appellant herein, once again questioning the paternity of the said L.S.Mariappan and the finding of the learned Judge on that score.

15. When the above appeals were taken up for hearing, the learned counsel appearing for the appellants in L.P.A.61 and 62 of 1991 drew our attention to the decree dated 24.4.1992 passed in A.S.No.661 of 1979 in and by which while setting aside the judgment and decree of the lower Court in O.S.No. 222 of 1975, the learned judge approved the draft scheme for the management of the suit temple in future and also recorded the said scheme as an annexure to the decree. Clause (iv) of the scheme which was annexed as schedule to the decree reads as under:

"The second defendant i.e. the second branch shall have the right of management of the said temple and exercise Poojari rights for two years. After the expiration of the period of management by the second defendant, the third defendant (fifth respondent) shall take over and exercise each right of management for twelve months and after the expiry of the said twelve months the plaintiffs shall take over and be in management for twelve months, and after

the completion of the said twelve months, the second defendant shall get into management and the scheme of turn management shall be on the above rotation"

Sri T.R.Mani, learned Senior Counsel appearing on behalf of the appellant in L.P.A.61 of 1991 and 62 of 1991 therefore contended that having regard to the draft scheme thus approved and forming part of decree dt. 24.4.1992 in A.S.No. 661 of 1979, the said scheme having been put into implementation, the parties being satisfied with the operation of the said scheme, majority of the controversies involved in the suit are not being agitated in these appeals and that the Appellant is rest content with only two contentions, namely, about the legitimacy of Thiru L.S.Mariappan, the appellant herein and the validity of the will dated 24.5.1962. The learned counsel would contend that in view of the overwhelming evidence available on record and the consistent finding of the trial Court as well as that of the learned Single Judge, the legitimacy of the appellant in L.P.A.61 and 52 of 1991 can no longer be held to be in any way doubtful. The learned counsel would therefore contend that there is absolutely no valid ground for interfering with the said conclusion in the Cross Objection No.106 of 1995 filed by the cross objectors. It was further contended that the learned Judge was not right in holding that the will was an invalid one. In support of his submission, the learned counsel relied upon sub para 4 in para 419 of Mulla's Hindu Law. The learned counsel also referred to Banku B. Das Vs. Kashi N. Das and Another, in support of his contention that "shebaitship" is a property not mere office and therefore, "shebaitship" can be subject matter of testamentary disposition and it can be validly disposed of by a will. The learned counsel also relied upon Sovabati Dassi Vs. Kashi Nath Dey and Another, for the proposition that "shebaiti right" can be transferred by a will inasmuch as distinctive feature of a shebaiti right is that there is an element of property also in the concept of "shebaiti right" unless there is an absolute bar under Hindu Law or an express prescription in the deed of religious endowment providing for any limitation of the power of "shebait" to transfer his "shebaiti right" by gift or by will. The general limitations under which such transfer is stated to be permissible has been drawn in the said decision to the following effect:

"(a) The transfer of shebaiti right is permissible if such transfer is not contrary to the intentions of the founder as expressed in the deed of Endowment unless an ancient or reasonable custom or usage has been followed to the contrary.

(b) Where there is perpetual or hereditary line of succession of shebaitship prescribed by the founder in his Deed of Endowment a particular shebait cannot change the line of succession by any Deed of transfer unless the shebait transfers the totality of his rights in favour of the succeeding shebait or shebaits during his lifetime.

(c) A transfer of a shebaiti right is also permissible for the benefit of the idol or the deity or for imperative necessity under special circumstances"

Yet another decision relied upon by the learned Senior Counsel is the one reported in AIR 1975 Raj. 225, the learned Single Judge of the Rajasthan High Court relying upon a Full Bench Judgment of Calcutta High Court reported in Manohar Mukerjee v. Bhupendranath Mukerjee, AIR 1932 Cal. 791, the principle enunciated therein having been held to be valid by their Lordship of the Privy Council and the Supreme Court in AIR 1943 89 (Privy Council) and Angurbala Mullick Vs. Debabrata Mullick, respectively, held that it was within the competence of the Shebaiti to make a gift of his right to a single person standing in the line of succession in exclusion to other successors provided, he was not otherwise disqualified by personal unfitness.

16. By relying upon the above stated position of Law in the above referred to judgments, the learned Senior Counsel would contend that the appellant in LPA No.61 of 1991 namely Thiru L.S.Mariappan is entitled for trusteeship and poojariship for a continuous period of sixteen months consisting of first eight months which he directly inherited from his father late Chellam alias Subbaiah as a legal heir and the other eight months by virtue of the will dated 24.5.1962 executed by L.P.Lakshmanan Chettiar in favour of his younger son and father of L.S.Mariappan, Chellam alias Subbaiah and his descendents. The learned Senior Counsel also contended that inasmuch as the legitimacy of the appellant, L.S.Mariappan having been conclusively set at rest by the lower Court as well as by the learned Single Judge, the interference with the right of trusteeship based on the will dated 24.5.1962 by the learned Single Judge was unjustified and same should be interfered with.

17. As against the said contention, the learned counsel for the cross objectors in L.P.A.No.62 of 1991, referred to the partition deed dated 4.7.1956 marked as Ex.B.34 in particular, the portion relating to the manner in which the C schedule property in that document had been dealt with, and submitted that the recitals contained therein clearly show that the first party had no right of alienation in respect of C schedule property which has been described in the schedule as"

The learned counsel therefore contended that admittedly as per Ex.B.34, when the late Thiru T.P.Lakshmanan Chettiar did not have the right of alienation in respect, of C schedule properties, the claim on the basis of the, will dated 24.5.1962 was not valid. In other words, the contention was that inasmuch as the right of trusteeship and poojariship enjoyed by late L.P.Lakshmanan Chettiar was inalienable, the bequest made by the said L.P.Lakshmanan Chettiar in favour of his son Chellam alias Subbaiah Chettiar itself cannot be legally enforced. The learned counsel therefore contended that the judgment of the Rajasthan High Court was distinguishable. The learned counsel also did not address arguments on the question relating to the legitimacy of Thiru L.S.Mariappan, the appellant herein as the sole heir of the late Chellam alias Subbaiah Chettiar apparently being aware of overwhelming evidence available on record confirming the legitimacy of the appellant as the lawful son of the late Chellam alias Subbaiah Chettiar.

18. L.P.A.No.128 of 1991 has been filed by Thiru Ramalingam challenging the judgment and decree dated 28.1.1991 passed in A.S.No. 661 of 1979 on the ground that the conclusion of the learned Judge for framing a fresh claim was totally uncalled for. However at the time of hearing of the above appeals, Thiru Srinivasa Raghavan, the learned counsel appearing for the appellant submits that inasmuch as the approved draft scheme in the decree dated 24.4.1992 has now been put into operation and being successful, the appellant is not pressing his claims in the above L.P.A.No.128 of 1991. Inasmuch as the learned Senior counsel for the appellants has made it clear that the scheme has already been put into operation and the parties are satisfied with the operation of the scheme, we do not propose to analyse that part of the judgment of the learned Single Judge relating to the approval of the draft scheme.

19. The whole scope of these appeals has thus been narrowed down to the limited extent of considering the question as to how far the late Thiru L.P.Lakshmanan Chettiar was legally justified in bequeathing his share of eight months trusteeship and poojariship of the suit temple and its properties in favour of his younger son Chellam alias Subbaiah Chettiar. As could be gathered from the various factors mentioned above, the right of the trusteeship and poojariship has been retained by the family members of late Palanichami Chettiar right from the beginning, the said right has been restricted to the male descendents of the late Palanichami Chettiar. After the life time of the late PalaniChami chettiar, as he had two sons namely L.P.Lakshmananchami Chettiar and P.L.Shanmugam alias Palanichami Chettiar, the right of trusteeship and poojariship was shared between those two branches by agreeing to and enjoy the said right in turn of two years each.

20. In the case on hand, the right of trusteeship and poojariship was crystalised into written covenants for the first time through the preliminary scheme decree formulated in O.S.No. 9 of 1943 dated 31.3.1944. A perusal of I the said decree would show that the said suit was laid by of Tangam alias Palanichami Chettiar who was the grand son through Palanichami Chettiar's younger son Shanmugam alias Palanichami Chettiar. The said suit: was filed for partition and separate possession of the plaintiffs 1/4th share in the plaint A and B schedule properties apart from the right for the management of C schedule temple and the properties belonging to it, in turns and also for accounts of the income of the said C schedule temple and its properties since 9.2.1932. and for investment of the same in proper security. A reading of Clause (iii) and (iv) of the said preliminary decree only postulates the management of the C schedule properties, namely the temple and his properties in between the plaintiffs and the second defendant on the one hand, for a period of two years and defendants 1 and 3 to 9 on the other hand for the next two years and so on. Therefore that preliminary decree passed in O.S.No. 9 of 1943 on 31.3.1944 has to be taken as the origin of codified. trusteeship and poojariship of the suit temple and its properties. It is significant to note that both the branches of late L.Palanichami Chettiar were very much alive on the date when the preliminary decree was passed in O.S.No.

9 of 1943 namely 31.3.1944. It is also significant to note that apart from the rule of management for each branch for a period of two years in turns, there was no other stipulation or condition attached to the said preliminary decree, restricting the right of the parties with reference to the manner in which they could deal with their right of trusteeship and poojariship. When that he so, the partition deed dated 4.7.1956 cannot be said to place any embargo on the rights of the parties with reference to the disposition of the trusteeship and poojariship of the suit temple. To put it differently, when the preliminary decree dated 31.3.1944 made in O.S.No. 9 of 1943 merely enabled the two branches of late L.Palanichami Chettiar to enjoy the trusteeship and poojariship in turn for two years each, it only meant that exercise of the said right by each branch could be carried out independent of and without any interference from the other branch. In other words, each branch, of late Palanichami Chettiar were entitled to exercise the right of trusteeship and poojariship in respect of the suit temple and its properties independently during the respective period of management without any hindrance from the members of the other branch. The whole question is while exercising the said right independently during the relevant period of management allowed under the decree, so long as such management was carried on by the descendents of each branch, whether any member of a branch could question the transfer of the said right in favour of another heir within the branch itself. To be more specific, the point is whether the enjoyment of the right of trusteeship and poojariship of the temple by each branch, in the absence of any restriction in any of the terms of the preliminary decree passed in O.S.No. 9 of 1943, dated 31.3.1944, can still be stated to be a restricted one without any right to transfer the enjoyment of trusteeship and poojariship of the suit temple in favour of any one of its descendents in the manner known to law or could it otherwise be held that the members of each branch are entitled to deal with their right of trusteeship and poojariship by way of transfer within the branch itself to any other member or members of the branch for reasons best known to them. In such circumstances would it be open to the other members within the branch to question such transfer effected by one of its other members. In our opinion on a conspicuous reading of the whole material placed before us and the reading of the various pronouncements, and the principles set out under the Hindu Law, exercises of such right by any one member within the branch would be unquestionable.

21. We shall now refer to the judgment of Privy Council reported in AIR 1943 89 (Privy Council) in the case of in which, a passage from the judgment reported in 22 C.L.J. 404 has been extracted. The said passage reads as under;

"To me it seems that both the elements of office and property, of duties and personal interest, are mixed up and blended together in the conception of shebaitiship. One of the elements cannot be detached from the other. The entire rights remain with the grantor when a diety is founded and it is open to him to dispose of these rights in any way he likes. If there is no disposition, shebaitiship remains like any other heritable property in the line of the founder and each

succeeding shebait succeeds to the rights by virtue of his being an heir to his immediate predecessor and not to the original grantor. If it is disposed of completely and absolutely in favour of another person, there remains nothing in the grantor except the possibility of a reverter when there is a failure or extinction of the line of shebaites indicated by him. If, on the other hand, the founder has parted with his rights only in a partial manner for the lifetime of the grantee the residue still remains in him and his heirs, and on the death of the grantee, the heir of the founder living at the time is entitled to the shebaitship. If the grantee in such cases happens to be the sole heir of the founder upon whom the residuary right devolves at the same time and he becomes the shebait under law as well, then, whether or not we invoke the technical doctrine of merger or coalescence of the particular estate with the residue, his position in my opinion is that of an absolute shebait whose rights devolve upon his heirs and not upon the heirs of the founder at his death. If there was no grant in his favour he would have been entitled to an estate of inheritance under law as regards the shebaitee, and the fact that there is a grant in his favour of a limited right cannot make his position worse, and take away from him the higher rights which he had irrespective of the grant. It would be opposed to all principles of law to require that in such cases on the death of the shebait who was himself the heir of the grantor, the successor can come in only to use the technical phrase *per formam doni*."

Ultimately their Lordships of the Privy Council at the end of the judgment approved the ratio propounded by His Lordship Mr. Justice Mukherjea in the judgment reported in 22 C.L.J. 404 in the following lines:

"Applied to the facts of the particular case before the Board, the argument for the appellants though presented with great clearness and ability by Mr. Pringle remains unattractive. Panchanan, Sital's only son, survived him. Sital's only valid disposition of the shebaiti was in favour of Panchanan. His attempts to confer any interest to take effect after Panchanan's death were illegal and ineffective. Yet the interest given to Panchanan is said to defeat his heritable right and to exclude his heirs.

Their Lordships cannot accept such doctrine, which they regard as correctly refuted by the passage which they have cited from the judgment of Mukherjea J. They will humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the respondents' costs. 22. Yet another judgment which can be usefully referred to is the one reported in *Angurbala Mullick Vs. Debabrata Mullick*, and the relevant passage is at page 296, which reads as under:

The exact legal position of a shebait may not be capable of precise definition but its implications are fairly well established. It is settled by the pronouncement of the Judicial Committee in *Vidya Varuti v. Balusami*, 48 I.A.302 that the relation of a Shebait in regard to debutter property is not that of a trustee to trust property under the English law. In English law the legal estate in the trust property vests in the trustee who holds it for the benefit of *cestui que trust*. In a Hindu religious

endowment on the other hand the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person and the shebait or mahiant is a mere manager. But though a shebait is a manager and not a trustee in the technical sense, it would not be correct to describe the shebaitship as mere office. The shebait has not only duties to discharge in connection with the endowment, but he has a beneficial interest in the debutter property. As the Judicial Committee observed in the above case, in almost all such endowments the Shebait has a share in the usufruct of the debutter property which depends upon the terms of the grant or upon custom or usage. Even where no emoluments are attached to the office of the Shebait, he enjoys some sort of right or interest in the endowed property which partially at least has the character of a proprietary right. Thus, in the conception of Shebaiti both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other. It is the presence of this personal or beneficial interest in the endowed property which invests shebaitship with the character of proprietary rights and attaches to it the legal incidents of property. This was elaborately discussed by a F.B. of the Calcutta H.C. in *Manohar Mukherji v. Bhupendra Nath*, 60 Cal. 452 and this decision of the F.B. was approved of by the Judicial Committee in *Ganesh Chunder Dhur v. Lal Behary*, 63 I.A. 448 and again in *Bhabatarini v. Ashalata*, 70 I.A.57. The effect of the first two decisions, as the P.C. pointed out in the last case, was to emphasize the proprietary element in the shebaiti right, and to show that though in some respects anomalous, it was an anomaly to be accepted as having been admitted into Hindu Law from an early date. "According to Hindu Law", observed Lord Hobhouse in *Gossamee Sree Greedharreejee v. Rumanlolljee Gossamee*, 16 I.A. 137:

"When the worship of a Thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution"

Unless, therefore, the founder has disposed of the shebaitship in any particular manner- and this right of disposition is inherent in founder or except when usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder"

23. In the case on hand as stated earlier, the origin of trusteeship and poojariship of the suit temple is to be traced back to the preliminary decree dated 31.3.1944 passed in O.S.No. 9 of 1943. NO material was placed before Court as to any other mode of dedication made by the late L.Palanichami Chettiar when the suit temple along with its properties were founded. Therefore in the case on hand, we are not having any other terms of dedication so as to draw succour as to the manner in which the temple or its properties should be managed or administered by any one acting as trustee or poojari. The only source is the preliminary decree dated 31.3.1944 passed in O.S.No. 9 of 1943.

The language employed in the said decree in so far as the trusteeship and poojariship of the suit temple as contained in Clause (iii) and (iv) are clear and simple. A reading of Clause (iii) would show that the two branches of late L.Palanichami Chettiar, who were entitled to have the trusteeship and poojariship in turns for a period of two years. By the principles enunciated in the various judgments referred to above and the passage referred to in Para 419 of Mullah's Hindu Law, it is made clear that trusteeship and poojariship which is also known as shebaitiship has in itself all the incidence of property and thus inheritable. If that be so, if father holds the right of the person, who owns the property absolutely would be entitled to dispose of the same in any manner he likes. Applying the above principle to the facts of this case it cannot be said that the will executed by the late L.P.Lakshmanan Chettiar was neither legal nor valid.

24. The other contention of the learned counsel for the cross objectors in Cross Objection No.106 of 1995 is that the partition deed Ex.B34 dated 4.7.1956 puts an embargo in the alienation of the trusteeship and poojariship of the suit temple as per the extracted portion from the partition deed. In the earlier paragraphs, we find that on a reading of the said portion, in the first instance, it does not give an impression that the said recitals totally prohibit the transfer of the trusteeship or the poojariship of any member of the branch to any other member or male descendants of the late L.Palanichami Chettiar. In our opinion, the recitals relating to "C" schedule property in Ex.B34 does not fetter the right of poojariship of any particular member from effecting any transfer within his male descendants.

In our view the words,

can at best be construed to mean that the right is not alienable to any outsider and thereby present any prejudicial interest being created and not otherwise.

25. Therefore in our considered view, those recitals at best can be said to have placed an embargo on the members of either branch not to alienate their right of trusteeship or poojariship to any stranger totally outside the family members of the late L. Palanichami Chettiar. The word in the context in which it has been used by applying the Principle of "ejusdem generies" can only be said to have been used in the sense that the trusteeship and poojariship of the suit temple should not be alienated to anyone outside the family members of either branch in our opinion, the whole idea of the parties to the partition deed seems to be that under no circumstances, the right of the trusteeship and poojariship should be transferred in favour of any other 3rd party, which would have the effect of totally demolishing whole character of the dedication, which was created exclusively to be enjoyed by the male members of the family of the Late L.Palanichami Chettiar.

26. As far. as we could see, the cardinal principle behind the dedication seems to be that the male members of the family of late L.Palanichami Chettiar should administer and maintain the suit temple by carrying on the task of trusteeship or

poojariship, and so long as the heart of the principle behind the dedication namely, the male descendants of the late L. Palanichami Chettiar continue to carry out the said task or trusteeship or poojariship of the suit temple, and retain it absolutely. It cannot be held that the transfer of a right of such trusteeship or poojariship of a member of a particular branch In favour of one of its other descendent as contrary to the terms of dedication. On The above staged position, we find that the late L.P. Lakshmanan Chettiar cannot be, stated to have caused any violation to the terms of the partition deed dated 4.7.56 by executing the will dated 24.5.62 in favour of his younger son transferring his right of trusteeship and poojariship of eight months having regard to the fact that the younger son looked after the said Late L.P.Lakshmanan Chettiar in his old age. The P.L.Shanmugam alias Palanichami Chettiar and Chellam alias Subbiah being the two sons of the L.P.Lakshmanan Chettiar, the L.P.Lakshmanan Chettiar was free to dispose of his right of trusteeship for eight months in favour of any one of his male descendents for certain valid reasons. The late L.P.Lakshmanan Chettiar appeared to have bequeathed his turn of eight months period of trusteeship and poojariship of the suit temple in favour of his younger son Chellam alias Subbiah and after the demise of the said Chellamalai, his only son L.S.Mariappan, whose, paternity having been found to be fully established is legally entitled to inherit the said period of trusteeship for eight months of his grandfather the Late L.P.Lakshmanan Chettiar through his father Chellamalai Subbiah. We find that the said action of Late L.P.Lakshmanan Chettiar cannot be held to be invalid or contrary to the terms of dedication by the founder of the temple, nor in violation of the terms of the preliminary decree dated 31.3.44 formulated in O.S.No.9 of 1943 nor to the recitals of the partition deed dated 4.7.56 in Ex.B34.

27. Having reached to the said conclusion, we are obliged to declare that the appellant in L.P.A.Nos.61 and 62 of 1991 is legally entitled to retain the management of trusteeship and poojariship in respect of the suit temple for a continuous period of 16 months: 8 months by virtue of his right inherited through his her, the Late Chellam alias Subbiah Chettiar and the other 8 months by virtue of bequest made under the will dated 24.5.62 by the late L.P.Lakshmanan Chettiar in favour of his younger son Chellam alias Subbiah and through him, the appellant herein. Be that as it may one other question that arises for consideration, at this juncture, is as to when the draft scheme as approved by the learned single judge has already been put into operation and that the same is said to have been successfully being worked out as submitted by the learned counsel for the appellants in L.P.A.Nos.61 and 62 of 1991 as well as in L.P.A.128 of 1981: Would it be advisable to tinker with the writing of the said scheme, at this stage, which would be like putting spokes in the wheel and disturb the successful working of the scheme. We are not inclined to interfere with the scheme formulated under the final decree proceedings. However having regard to our conclusion that the will dated 25.5.1962 executed by the late L.P.Lakshmana Chettiar bequeathing it is turn of his eight months period of Poojariship and trusteeship of the suit temple in favour of his younger son

Chellam alias Subbaiah was legally valid and after the demise of the said Chellam alias Subbaiah, his only son L.S.Mariappan the appellant herein is legally entitled to inherit the said period of trusteeship of his late grandfather L.P.Lakshmana Chettiar, the said L.S.Mariappan, the appellant herein will be entitled for eight more months of trusteeship and poojariship of the suit temple. Therefore to that extent clause (iv) of the scheme decree is modified to the following extent:-

"the second defendant i.e. second branch shall have the right of the management of the suit temple and exercise poojariship and trusteeship for a period of two years. After expiration of the period of management by the second defendant, the third defendant (fifth respondent) shall take over and exercise the right of management for sixteen months and after the expiry of the said sixteen months, the plaintiffs shall take over and be in management for a period of eight months and after completion of said eight months, the second defendant shall get into management and that the scheme of turn management shall be on the above rotation"

28. Having regard to the above said conclusions reached by us, L.P.A. No.62 of 1991 is allowed and Cross Objection No.106 of 1995 is dismissed. L.P.A.Nos.61 of 1991 and 128 of 1991 challenging the judgment and decree dated 28.1.1991 passed in A.S.No.661 of 1979 so far as relating to the framing of fresh scheme of management are also dismissed. The parties are directed to bear their respective costs.