(1922) 04 MAD CK 0025

In the Madras High Court

Manicka Vachaka Desika Gyana Sambanda Pandara Sannadhi APPELLANT

Vs

A. Vaithilinga Mudaliar and Others RESPONDENT

Date of Decision : 18-04-1922

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 92

Citation : 74 Ind. Cas. 115 : (1923) 18 LW 247

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

Bench : Division Bench

Judgement

1. These appeals arise out of a suit u/s 92 of the CPC for framing a scheme with regard to the administration of the temple of Sri Thyagarajaswami at Tiruvalur in the Tanjore District. There are various trusts instituted for the purpose of either supporting the services in the temple or of carrying on charities in the name of the deity, known as Katlais. Each Katlai has its own trustee and separate properties are endowed in connection with each Katlai. There are thirteen of them now and a list of these is given in Schedule A of the plaint. The most important of these are the first four viz., (1) Ulthurai, (2) Abisheka, (3) Annadhana, and (4) Rajan. The fifth and sixth are practically identical with the fourth. The trustees of the first, (Ulthurai) are defendants Nos. 1 to 3. The trusteeship of the second (Abisheka) and the third (Annadhana) is vested in the head of the Vellukurichi Mutt (in the Tinnevelly District) for the time being, now the 12th defendant. Similarly, that of the fourth (Rajankatlai)(with which go the fifth and sixth) is in the head of the Dharmapuram Mutt (in the Tanjore District) for the time being (now the 14th defendant). These heads of the Mutts discharge the duties of trustee of their Katlais by means of local agents. The 14th defendant is the appellant in Appeal Suit No. 136 of 1920, the 12th defendant in Appeal Suit No. 195 of 1920; the plaintiffs in Appeal Suit No. 167 of 1920 appeal in respect of the seventh (Palayee) Katlaiand the defendants Nos. 15 to 17 filed Appeal Suit No. 196 of 1920 in respect of the nth (Ardhajamam) Katlai.

2. It may be observed that though, technically speaking, the temple has no

income of its own, and has to depend for all its services on the proper performance of the trusts connected with the Katlais still, for all practical purposes, the Ulthurai (internal or central) Katlai represents the temple proper, its object being the internal management of the temple. It has an income of Rs. 8,000 as a Mohini allowance from the Government and some lands (6 Velies and odd). Other Katlais contribute their share of services or things in the various stages of the daily worship and the various festivals of the temple (see paragraph 52 of the Sub-Judge''s judgment). I he extent of their liability is determined by usage and is ascertained from the dittam or scale prepared by each Katlai, in connection with the daily worshp and festivals. It is said for the plaintiffs that the chief item of expense in connection with the Ulthurai Katlai is that of the Car Festival and it has been found difficult to carry on this festival with the income of the Ulthurai Katlai on account of the rise in wages. Whatever the true cause may be, the fact remains that the Ulttturai Katlai has became hopelessly indebted. Its debt on 16th September 1917 was more than Rs. 31,000 of which Rs. 17000 was due to the first plaintiff and Rs. 14,000 to the third defendant, one of its trustees, it is suggested for the contesting defendant the object of this suit is to proper the Ulthurai Katlai at the expense of the other Katlais and that the suit is the result of collusion between plaintiffs and third defendant. It is frankly admitted by the third defendant that he and first plaintiff in are friends, that he co-operated with the first plaintiff in connection with the institution of this suit and he is also spending money along with the first plaintiff for this litigation (Vide pages 690 and 692 of the deposition). At the same time, it must be admitted that there has been" gross mismanagement of the affairs of the temple and some scheme for the co-ordination of the various Katlais and for some control over the various Katlais in so far as it may ensure the harmonious harmonious working of the Katlais, wherever they have to co-operate, is necessary.

3. An objection was taken by the defendants (Nos. 4 to 11) that the Katlais were distinct trusts and the suit as originally framed was fad for misjoinder of parties and causes of action. Issues Nos. 1 and 2 were framed with reference to this contention, and the arguments were heard on them in 1913. The Subordinate Judge who heard them held that as the Katlaidars are different and as each of them is in possession of a distinct Katlai charged with a distinct duty and separate accusations of misconduct are made against the several Katlais, the suit was bad for misjoinder of B parties and causes of action (Order dated 13th October 1913). He, however, gave o leave to amend the plaint, which was accordingly done. The plaint as it now stands e in the printed papers is the amended plaint. The prayer for the removal of unfit trustees s and the appointment of other trustees in their places has been omitted. Having regard to the amended plaint, the Sub ordinate Judge who finally tried the case excluded evidence as to any acts constituting misfeasance, or malfeasance affecting the competency, conduct or character of the defendants individually (paragraph 16 of the judgment), (but he adds in paragraph 38: "Though the 19th issue directly dealt with the misconduct of the individuals and it has been deleted, I had to

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reluctantly admit the evidence having regard to the fact that, if the past management was unsatisfactory irrespective of any reference to any individuals, a scheme might be necessary to place the administration on a sound basis."

4. The scheme framed by the Subordinate Judge appoints a Board of Trustees and directs that the various Katlaidars shall deliver over charge to the manager and treasurer after the appointment. No provision has been made for separating the accounts of the Katlais. This arrangement destroys the individual character of the various Katlais and has the effect, in some cases, of removing the trustees and in others, of adding other trustees to the existing sole trustee of each Katlai. This is inconsistent with the basis of the order of the First Subordinate Judge on 13th October 1913. We have, therefore, to ascertain, at the outset, the nature of the various Katlais and see how far the scheme of the lower Court can be justified in this respect.

5. It is admitted that the several Katlais came into existence at different times and have been managed separately for a long time, probably for centuries. Certain copper plate grants by which Some of the lands of the Rajan Katlai were endowed (Exhibits XLI, XLI a (1740), XLI c (1751), XLI b (1754 are available and Exhibit LXTII (1759} is the document by which the Ardhajamam Katlai lands were endowed. But, beyond these, we have no evidence the original endowments and usage is our only guide. The trustees of some Katlais have added to the original endowed lands by further purchases out of the savings from their income (some of LII series, XXXIV and LXIV, being such sale deeds). In 1810, the Government assumed tanagement of the temple (Exhibit 000). The supervision of the Government was exercised through a Panchayat" (by which the person was apparently meant and not body of persons) who was countersigning the accounts of each Katlai (Vide Extibits G, T, GG, AAAm, H, BBB, D, N, O, SS, F, S, Z, CC, 2, WW, E, EE, NN, GGG, P).

6. The Pandarams representing the Abisheka and Raj an Katlais executed documents in 1820 in favour of Government binding themselves to certain details in he performance of the duties connected with the respective Katlais RRR, and FFF. The Takids issued by the officers of the Government dealt with the Katlais separately (see BBBB, TTTT, PPPP, 0000, SSS, CCCC, B, JJJJJ). In 1841, by Exhibit LXIII, the Collector) Tanjore reported to the Board of Revenue on the Pagodas of the District and in the statement enclosed with t, the Rajan Katlai was referred to as a separate item and the Abisheka and Annadhana Katlais together were referred to as another item. They were described as ''Athinam'' in paragraph 8 of the report on the ground that the right of appointment of local managers belonged to certain Mutts or Colleges of Ta birans. This was followed by similar documents in 1842, when Government divested themselves of the management of Hindu temples--Exhibit. LIV for Rajan Katlais and LXXI for the Abhisheka and Annadhana Katlais (see also Exhibit LXXIII). The Exhibits LXVII, LIV a, LXXIV, LVI, LVII, and TTT, EEEE, DDDD, LXVII and LXXVII, relate to the handing over charge of these Katlais. Exhibits MX, LXII, LXII-a, relate to the

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appointment of a Pandaram or local agent at Tiruvalur on behalf of the Velnkurichi Mutt and LV to the appointment of a similar local agent for the Pharampuram Mutt. In 1847 the Government obtained MitchUikas from the several Katlaidars to insure the due performance of the trusts see Exhibits HHHHH, TTTTT. WW, EFEF, MMMMM, QQQQQ. RRRRRR, TTTTT MMMMM,). These Muchilikas were taken by the Government" "on grounds of expediency" and do not show that the Government had any right in particular over the Katlais see Ramiengar v. Gnansambanda Pandarasannada 5 M.H.C.R. 53 . Following the last mentioned decision, it was held in 1868 (see Exhibit LIII) that the other Katlais were not subject to the superintendence of the Ulthurai Katlai, and that they were not dependent trusts. The plaintiffs in that case did not press their claim against the Katlais under the Mutts (see paragraph 34 of Exhibit LIII). This judgment was affirmed by the High Court in Venkatabalakrishna Chettiyar v. Kaliyanaramaiyangar 5 M.H.C.R. 48.

. In 1882, three persons were appointed as panchayats for the superintendence of the Ulthurai Katlai (Exhibit QQQQQQ). The present defendants Nos. 1 to 3 are their representatives. It is not necessary to discuss in this case whether these trustees are hereditary. It is clear from the history of the temple from 1870 to 1882, above set forth that the Katlais are independent institutions and that the other trustees are not subject to the control of the Ulthurai trustees, the common bond between them all being that they are supposed to exist for the glorification of the deity (Thyagarajasawmi) either directly by services rendered within the temple--or indirectly by charities carried on outside the temple in the name of the deity. We do not agree with the remarks of the Subordinate Judge at the end of paragraph 32 which imply that the Ulthurai trustees have some right of supervision over the other Katlais It cannot be said that the income of the various Katlais belongs to Thyagarajaswam (the idol), or can be mixed up and utilised for all the purposes of the temple indiscriminately. These trusts are some what analogous to Temple Service Inams. Just as the latter are different from inams, properly belonging to a temple, being granted to office holders on condition of rendering services in a temple and do not belong to the idol, though the idol may be interested in the rendering of the services, similarly the incomes of the Katlais do not belong to the idol, though the idol is interested in the proper performance of the distinct duties attached to each Katlai. The remarks of Muthusami Iyer, J. in Vythilinga Pandara Sannadhi v. Somasundara Mudaliar 17 M. 199 : 6 Ind. Dec. 137 are instructive" in this connection as the decision related to this very temple. After describing two senses of the term Katlai the learned Judge says: "The term Katalai is used in the present suit in this sense" referring to the second sense he had previously described, viz., "a distinct endowment under a separate trustee to which specific items of expenditure are assigned as legitimate charges to be paid there from." That suit was a suit by the Ulthurai Katlai against the Abhisheka and Rajan Katlais for contribution for repairs. At page. 203, the learned Judge says: "The Muchilikas which these executed on that occasion contain a distinct acknowledgment that the Katalai

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lands were originally granted to Sri Thyagarajaswami and an undertaking to apply the income derived therefrom to the said temple. This is significant as showing that the repair of the temple was a trust to which the surplus income had to be devoted according to the original grant." The decision then was to the e effect that the Rajan and Abhisheka Katlais were liable to effect repairs from the surplus funds of their Katlais. It is now admitted that the duty of repairing the temple is one intimately connected with these two Katlais and that they are liable to contribute funds for that purpose. The learned Judge did not make any observation which is capable of being literally construed to mean that all the funds of the Katlais attached to this temple were then vested in the temple and at the disposal of the Ulthurai Katlaidars for any purpose whatsoever.

8. Some of the Katlais have now to be separately considered. We have already referred to the admission made by the trustees of the Rajan Katlai and Abhisheka Katlai that their surplus funds are liable for the repairs of the temple. The matter, however, is different as to Annadhanam and other Katlais. In the case of the Annadhanam Katlai the trustee argued (in Appeal No. 195 of 1920) that there are other temples which were the indirect object of the Katlais and the income cannot be solely spent for the benefit (direct or indirect) of the Thyagarajaswami. This point was not raised far the written statement and cannot be considered here. In Exhibit YYYY the Collector, acting as agent to the Court of Wards on behalf of the third defendant''s estate, described the duties or the Annadhanam Katlai in paragraph 3 as consisting of (1) shelter to pilgrims (2) distribution, of food, (3) water pandol, (4) lights (5) Pagoda service. The details of the last have to be ascertained from the ''Dittam'' or customary list of contributions. In the face of paragraph 3, no weight can be attached to the general and sweeping statement in paragraph 3 that the Anuadhana Katlai Chattaram is a minor branch of the great temple of Thyagarajaswami. It must be remembered that there was always a tendency on the part of the Ulthurai Katlai bars to claim power of supervision over the Katlais. The judgment of 1866. (Exhibit LIII) this document (Exhibit YYYY) and now the present suit illustrate this. We are of opinion that the surplus income of Annadhana Katlai cannot be utilized for the repairs, or other expenses of connection with the temple. The income of the Katlai can only be spent for the purposes mentioned in Exhibit YYYY--all of them being carried on to the name of Thyagarajaswami and in this way exalting the glory of the idol. The solitary instance appearing from Exhibit KKKKKK-5 of a portion of the expenses of raising the image of the goddess from the river being debited to the Annadhan Katlai cannot be taken as establishing a usages Similar conclusions apply to Ardhajama Katlai. It may be that only the temple of Thyagaraja and subordinate shrines are the temples indirectly (or directly) intended to be benefited by the Mosakulam lands of the said Katlai (vide Exhibits MMMMM and KKKKK-1). At the same time, too much weight ought not to be given to the Muchillikas (as already pointed out) and the income cannot be appropriated for the purpose of the temple indiscriminately. Only the customary services have to be met out of it. Exhibit JJJJJJ refer to the Dittam of the Katlai.

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The same remarks also apply to Palayee Katlai (seventh) the subject of Appeal No. 167 of 1920.

9. A scheme has now to be framed which will ensure the harmonious working of the Katlais, when they have to co-operate in the Pagoda service, and to prevent the embezzlement of the funds of the Katlais or their diversion by the trustees Contracting debts as has happened in the case pi the Ulthurai and other Katlais. The scheme as framed by the lower Court obliterates the individuality of the various Katlais, pools their resources in one large fund, and makes the Board of Trustees practically a hand of the Court by the direction in paragraphs 4 and 11 that it shall exercise its powers of administration subject to the directions of the Court. As the Katlaidars are themselves the trustees of the various trusts, it is inappropriate that the supervising body should be described as a Board of Trustees, although the trustees are by the scheme eligible for appointment to the Board.

10. It is very necessary that the scheme should contain stringent prohibitions against the borrowing or lending of money by the trustees from or to the trust funds or from one Katlai to another Katlai, seeing that the 12th defendant in paragraph 12 of his written statement treats borrowing (sic) a necessary incident to the management of the trust and claims a right to do what he pleases with any surplus that may remain over. The preparation of a budget the proper keeping of accounts in which the income and expenditure of each of the Katlais may be separately shown, and the periodical audit of these accounts are matters most essentially to be provided for in the Regulations in order to fix the trustees with responsibility for the due performance of their trusts and to avoid waste and indebtedness. The need for supervision and co-ordination by a controlling and inspecting body is also apparent. The past history of the suit Katlais shows that a panchayat, or a panchayatdar, once existed for the purpose during Government management. In Ramiengar v. Gnanasambanda Pandarasannada 5 M.H.C.R. 53 , the appointment of panchayatdars is stated to have been simply a coercive act for more effectual supervision. Exhibit A shows that there were five panchayatdars tin 1842 and Exhibit QQQQQQ1 shows that in 1882 the District Judge appointed three panchayatdars to supervise the Ulthurai Katlai. It is argued that defendants Nos. 2 and 3 and defendants Nos. 12 and 14 should not have a seat on the Board of supervision, the former as they have already an interest as trustees of the Ulthurai Katlai and the latter as they are the trustees of the Abbisheka, Annadhana and Rajan Katlais and on account of the misconduct of their predecessors. We think that the Subordinate Judge was right in including them. The second and third defendants are well-to-do mirasidars, living in the locality who have always shown an interest in due performance of the religious worship in the temple and are descendants of two of the former panchayatdars. Tie 12th and 14th defendants have succeeded to their offices during the pendency of the suit and have had no opportunity of showing whether they are personally fitted or unfitted for the conduct of a religious trust. As remarked by the learned Judge, there is always the probability that persons

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residing in other parts of the District may not take sufficient interest to attend the meetings of the Board. The proposals made in the course of the arguments (1) that there should be two treasurers (2), that we should appoint a "visitor" to inspect the temple from time to time and to make recommendations regarding the Katlais do not commend themselves to us, as it is not shown that there will be more work for the treasurer than one man can manage to do and as a splitting of the post would probably imply a division of responsibility fatal to good management; and, secondly, we do not consider that a visitor acting singly would, however well intentioned, exercise an effectual authority in the prevention and cure of abuses of the trust.

11. We have modified the scheme as drawn up by the lower Court in such a manner as, in our opinion, will have the effect of maintaining the individuality of the Katlias and not interfering with the essential character of the Adhinam (independent) trusts; while, at the same time, providing that the time of the Court shall not be taken up by constant references to it on minor matters of administration and management. The plaintiffs will get their costs in appeal from the funds of the Devastanam. All the other parties will bear their own costs in these appeals. The lower Court''s order as to costs will stand. This judgment disposes of the memorandam of objections in Appeal No. 167.

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