
(1923) 01 MAD CK 0038
In the Madras High Court

Mathoor Graman Rama Pattar's son Ramasami Pattar and
Others

APPELLANT

Vs

Manukurisi Variath Lakshmi Kuarassiar and Another

RESPONDENT

Date of Decision : 17-01-1923

Acts Referred:

Citation : 72 Ind. Cas. 627 : (1923) 17 LW 514

Hon'ble Judges : William Ayling, J; Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The suit was brought to recover certain lands, known as Kunnathupadam lands on the ground that they belong in jenm to the

Kurichimalai Deva-swom represented by the first plaintiff ; that they were granted to the first defendant on condition of rendering Kazhagam

service in the temple; that he has ceased to render Kazhagam service and hence the lands are liable to be resumed; that the first defendant's right in

the lands was sold in execution of a decree (Original Suit No. 25 of 1915) and purchased by the second and third defendants, and that the first

defendant though called upon to surrender the lands failed to do so.

2. The defendants plead that the lands were not held on condition of rendering Kazhagam service and were not resumable.

3. I win now refer to the previous litigations bearing on the tenure under which the suit lands were held. In 1851 the predecessor-in-title of the first

plaintiff sued the predecessor-in-title of the first defendant for possession of the same lands on practically the same allegations; but the suit was

compromised, Exhibit B was the petition of compromise in which it was stated that ""the lands and paramba involved in the above suit had been

given away long time back as offering (Vazhipaddu) and as Uruliyilvadakam for the Kurichimala Thevar (deity) to the Kurichimala Variyam of the

first and third to sixth defendants who are the Karaima Kazhagam holders of the temple." It then proceeds to state that first plaintiff executed a

deed of consent "to the effect that the said properties may be held and enjoyed on Saswatham right after conducting the offerings (Vazhipadu) in

future." "The deed referred to in this petition is Exhibit A, the operative words in which are, "you are to hold the said properties for ever as

Swastham as in the past and to enjoy the same conducting Vazhipadu to the deity." In my opinion the tenure on which the suit-lands are held

depends on a construction of Exhibit A. In Original Suit No. 501 of 1890, the present first defendant and other members of his tarwad obtained a

decree against the then karnavan of the plaintiff's tarwad for wages for Kazhagam service and Original Suit No. 152 of 1892 was filed by the

junior members of the plaintiff's tarwad for declaring that as the defendants held the present suit-lands as wages for Kazhagam-service, the

decree in Original Suit No. 501 of 1890 was improperly obtained. It was found that the present suit-lands were not held as wages for Kazhagam

service but for utilising the income for the nivadyam in the temple. The Courts below, relying on the latter part of this finding and considering that

nivadyam is a kind of Kazhagam held that the suit-land is held on condition of performing Kazhagam service and decreed the plaintiff's suit as the

first defendants has ceased to perform the services.

4. In the first place, it is clear that as the real issue in Original Suit No. 152 of 1892 was whether the decree in Original Suit No. 501 of 1890 was

properly obtained and the nature of the tenure of the suit-lands arose only incidentally, therefore, the decree in Original Suit No. 152 of 1892 is not

res judicata against the plaintiff on the question whether the suit-lands were held for Kazhagam service or not. Still less is it res judicata against

defendants on the question whether they were held for any other service. The proper view is thus not to regard the observations in the judgment of

Original Suit No. 152 of 1892 as finally deciding anything regarding the tenure of the suit lands.

5. One point is obvious from the history of the suit-lands as set forth above, viz., that whatever the defendant had to do in connection with the suit-

lands was certainly not Kazhagam. From 1851 onwards, the defendants always denied that the lands had anything to do with Kazhagam service

and they always succeeded in this plea. It is significant that neither Exhibit A, or B connects the lands with Kazhagam. Having regard to the terms

of Exhibit A (1): ""you are to enjoy the same conducting Vazhipadu to the deity"" and to the meaning of the term Vazhipadu in Gundart's Dictionary-

-""Offereing of rice and of which the greater part returns to the donor."" It seems to me that the grant was not at all a service grant. The obligation to

make the show of an offering being a nominal obligation seems to be a merely moral one. The burden of proving a resumable tenure is on the

grantor: Lakkamgavda v. Keshav Annaji 28 B. 305 : 6 Bom. L.R. 364 and the words in Exhibit A(1) are too vague to connote a condition on

breach of which the lands could be resumed. On a construction of Exhibit A(1) the third issue ought to be found against the plaintiff. The second

appeal must be allowed, and plaintiff's suit dismissed with costs of appellants throughout.

William Ayling, J.

6. I agree.