

(1933) 02 MAD CK 0035
In the Madras High Court

Medarametla Kotayya

APPELLANT

Vs

Nidamanuru Yellamanda and Others

RESPONDENT

Date of Decision : 24-02-1933

Acts Referred:

Madras Hindu Religious Endowments Act, 1923 — Section 44

Citation : AIR 1933 Mad 549 : (1933) ILR (Mad) 731 : (1933) 38 LW 94 :
(1933) 65 MLJ 54

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—In the more recent of these two petitions the question has been raised whether Section 44 of the Madras Hindu Religious Endowments Act will enable the Court to make an order in respect of services to a temple which are remunerated by a service inam. In the earlier petition this point was not specifically raised, but if it has to be answered in the negative in the one, clearly I should not be justified in interfering with the learned Judge's order on the merits in the other. The facts alleged are that the respondents, who are temple pipers having service inams, refused to perform service from the year 1922 and that the trustee, who is the petitioner, was obliged to obtain and pay for the services of other pipers, and the sums so paid he wishes to recover u/s 44. The material part of Section 44 provides that where an endowment for the performance of a service connected with a temple consists merely of a charge on property and there is failure in the due performance of the service, the trustee may require the person in possession of the property to pay the expenses incurred in causing the service to be performed otherwise. With this has to be read the definition of "endowment" u/s 9(11) of the Act. An endowment includes, (I am going to quote only the relevant portion) "property given or endowed for the performance of any services connected with the temple". Ordinarily speaking the word "endowment," I think, is restricted to property, the title to which vests in the institution endowed. But this definition is very wide and I am not prepared to say that a service inam held by a temple servant would not

fall within it. But u/s 44 the endowment is to be of a peculiar nature, namely, merely charge on property. The learned District Judge has held that the endowment in the present case consists of something else than a mere charge on property. There undoubtedly exist instances in which the endowment is clearly in the nature of a charge and a charge only, that is to say, where otherwise ordinary land is made subject to such a charge, the proceeds of which are to be paid by the holder to the institution. In the present case no payment to the institution has to be made at all, and the land simply forms the emoluments of the person liable to perform the service. I think that the phrase "merely a charge on the property" necessarily connotes a liability to make a payment in some shape or form to the institution, and probably a payment the extent of which is more or less fixed or ascertainable. In the case of an inam land no such payment is in question, nor indeed does there exist any charge to secure it. I conclude therefore that, whatever other remedies may be open to the trustee, he cannot proceed u/s 44 of the Hindu Religious Endowments Act. In these circumstances I cannot revise the orders of the Lower Courts and I dismiss the revision petitions with costs, pleader's fee only in C.R.P. No. 693 of 1930.