

(2014) 06 MAD CK 0220
In the Madras High Court
Case No : O.P. No. 651 of 2000

Meera Bai

APPELLANT

Vs

Sri Kandaswamy Temple and Sri Muthukumaraswamy
Devasthanam

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 6(13)
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 108, 32,
34, 6(16), 6(17)
Trusts Act, 1882 — Section 34

Citation : (2014) 4 CTC 785 : (2014) 4 LW 518

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Judgement

R.S. Ramanathan, J.—The Petitioners filed the above Petition under Section 34 of the Indian Trust Act seeking permission to sell the property bearing New Door No. 13, Kulandai Street, Peedunaickenpet, Chennai-600 003 to a prospective purchaser for the marketable price and demarcate a portion of the sale proceeds of the said property for performing Kathiri Utsavam in Chithrai month every year in Sri Kandasamy Temple belonging to Sri Muthukumarasamy Devasthanam at Rasappa Chetty Street, Park Town, Madras-600 003 and deposit the said amount into the credit of the said Temple to perform Kathiri Utsavam every year out of the annual interest accrued on the said deposit. The aforesaid property originally belonged to Rajammal wife of late Palaverkadu Rajagopala Chettiar, who purchased the same under a registered Sale Deed dated 31.3.1935. She settled the said property in favour of her grand son, T.K. Balasubramania Chettiar, under a registered Settlement Deed dated 30.9.1935 and as per the Settlement Deed, the settlor directed the settlee to take charge of the property as owner and Trustee and discharge the debt due by the settlor to Ramachandra Tarwadi amounting to Rs. 700/- from and out of the said property and perform Kathiri

Utsavam in the month of Chithrai, every year, for the deity, Sri Kandasamy in Sri Muthukumarasamy Devasthanam from the net income of the property or the proceeds thereof after payment of the aforesaid debt. As per the Settlement Deed, the settlor granted, assigned and conveyed the Suit property to and in favour of the settlee and the settlee was also given full power to convert the Suit property into any form which might be beneficial and conducive for the purposes mentioned in the Settlement Deed and the settlee was the sole heir of the settlor. Therefore, according to the Petitioners, absolute title and interest in the said property was conveyed in favour of the settlee, T.K. Ramachandra Chettiar, and possession was also given to the settlee. The settlee discharged the debt as per the direction given in the Settlement Deed and was performing Kathiri Utsavam in Chithrai month out of the income derived from the rents from the said property and the First Respondent-Devasthanam was also issuing receipts. The property is a very old building and is fetching very small monthly income and the property has been leased out to the Second Respondent and he is doing lodging business in the Suit property. The settlee, T.K. Balasubramania Chettiar, died intestate on 24.12.1987 leaving his widow, Thirupurammal, and his daughters, Petitioners 1 to 5 and also grand daughters, Petitioners 6 to 9 through the predeceased daughter. After the death of the settlee, his widow, Thirupurammal was performing the charity and thereafter, the Petitioners inherited the property. It is stated by the Petitioners that the income from the Suit property is hardly sufficient to meet the maintenance charges and to pay the taxes in respect of the property.

2. Further, according to the Petitioners, no endowment was created in favour of any Religious Charity and the settlee was only directed to perform charity, from and out of the income derived from the said property, and if the property is sold, it will fetch a good sum and the sum can be deposited in a Nationalised Bank in the name of Sri Kandasamy Temple and Sri Muthukumarsamy Devasthanam so as to enable the Trustees to withdraw the annual interest accrued on the deposit for performing Kathiri Utsavan and therefore, filed the above Petition seeking permission of this Court to sell the property as aforesaid.

3. The First Respondent-Temple filed a Counter stating that the Petition under Section 34 of the Indian Trust Act is not maintainable for the reason that the property was specifically endowed for the purpose of Religious Charity and therefore, the Petitioners have to seek remedy under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short, "HR & CE Act") for granting permission to sell the property and that exclusive jurisdiction is vested with the Commissioner of HR & CE, to consider sanction to alienate the property of religious endowment. It is further stated that the settlor Rajammal, absolutely endowed the house under the Settlement Deed dated 30.9.1935 for the performance of Kathiri Utsavam every year in Sri Kandasamy Temple at Sri Muthukumarasamy Devasthanam and utilise the rental income from the said property for the aforesaid Religious Charity and T.K. Balasubramania Chettiar, settlee, was the sole Trustee in the management of the Trust and the HR & CE

Board was demanding contributions as the property was specifically endowed for the performance of Religious Charity. It is further stated that the settler/sole Trustee, T.K. Balasubramania Chettiar, filed a Suit for ejecting the Tenant contending that the property belongs to a Public Religious Institution and therefore, exempted from the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and obtained Decree. It is further stated that the Settlement Deed does not provide any beneficial interest in favour of T.K. Balasubramania Chettiar and the Trustees are bound to utilise the income for the Religious Charity and performance of Kathiri Utsavam, and they were not given any power to enjoy the rental income for their own benefit and the property was not transferred in the name of T.K. Balasubramania Chettiar in his individual capacity. It is further stated that the Petitioners have no beneficial interest in the property and from the rental income and they are bound to perform Religious Charity and therefore, without getting permission from the Commissioner under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, they cannot sell the property and therefore, the Petition filed under the provisions of Indian Trust Act is not maintainable.

4. The Second Respondent, who was impleaded has also taken the very same stand taken by the First Respondent and contended that the property is solely dedicated and endowed to religious purpose and it is a Public Religious Charitable Trust and the Petitioners are keen to sell the property for their personal benefit which is not permissible under law. He also stated that a Specific Endowment has been created under the deed of the year 1935 and therefore, under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, only the Commissioner has got jurisdiction and the Civil Court has no jurisdiction. Therefore, the Petition filed under Section 34 of the Indian Trust Act is not maintainable.

5. The Petitioners filed a reply statement stating that the property was not endowed to the trust and the property was settled on T.K. Balasubramania Chettiar with absolute right with power of alienation at any point of time, and the HR & CE Board did not demand any contribution or levy in respect of the property alleging that the property was specifically endowed for performance of Religious Charity and as no Specific Endowment has been created under the Deed dated 30.9.1935, there is no need to seek redress under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and therefore, the Petition filed under the provisions of the Indian Trust Act is maintainable.

6. On the side of the Petitioners, two witnesses were examined and 16 exhibits were marked.

7. On the basis of the above pleadings, the following points for consideration arise in this Petition:

(i) Whether any Specific Endowment has been created under Ex. P1-Settlement

Deed dated 30.9.1935?

(ii) Whether the Petition filed under Section 34 of the Indian Trust Act is maintainable?

(iii) Whether Civil Court has no jurisdiction to entertain the Petition with regard to Sections 34 & 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959?

8. Mr. J.R.K. Bhavanantham, learned Counsel for the Petitioners, submitted that a reading of the Settlement Deed-Ex. P1 would make it clear that there was no endowment in favour of any Religious Charity or Temple and the property has been settled on T.K. Balasubramania Chettiar, who also happened to be the sole Legal Heir of the settlor and that was also mentioned in the Settlement Deed and he was directed to perform certain charities from and out of the annual income and was also directed to discharge debt, and therefore, only a charge has been created for the purpose of performing certain Religious Charities and there was no absolute or partial dedication of any property in favour of religious purpose and therefore, the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, has no application and as a Trustee, the Petitioners wanted to sell the property and deposit the sale proceeds in the name of the Temple for the performance of Kathiri Utsavam and therefore, the Petition is maintainable. He also relied upon the following Judgments in support of his contentions:

(i) V. Kannadasan and others v. A. Malik & others, 2007 (4) LW 435; and

(ii) Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co.,

9. Mr. J.R.K. Bhavanantham, learned Counsel for the Petitioners, submitted that earlier, an attempt was made by the First Respondent to exercise jurisdiction over the property by treating the property as Specific Endowment and also filed an Application under Section 63(c) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in O.A. No. 110 of 1966 and that Application was contested by the settlee, T.K. Balasubramania Chettiar and that Application was dismissed on the basis of the Memo of Compromise filed by both parties and the settlee was permitted to perform Kathiri Utsavam and the settlee was also directed to pay a sum of Rs. 250/- by way of donation to the Temple and the Kathiri Utsavam was permitted to be performed at a cost of Rs. 250/- in the Temple administered by the First Respondent in the month of chithrai from and out of the rental collections from the property and the dismissal of the Application would also prove that the property was not specifically endowed for any purpose and the property continued to be the private property of the Petitioners and only a charge was created. He also submitted that the Property Tax is levied in the individual name of the Petitioners as evidenced by Ex. P13 and Water and Sewerage Board also recognised the Petitioners as the owner of the property and that would also prove that there was no endowment in favour of any Religious Charity. He also contended that the Second Respondent obtained

lease of the property from the widow of T.K. Balasubramania Chettiar as the owner of the property, and therefore, it is not open to the Second Respondent to contend that the property has been endowed specifically for the performance of Religious Charity.

10. On the other hand, Mrs. V.J. Latha, learned Counsel for the First Respondent, contended that as per the Settlement Deed-Ex. P1, absolute dedication was made in favour of Religious Charity and having regard to the definition of Religious Charity, Specific Endowment, under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the property has been specifically endowed for the performance of specific service and therefore, it falls within the meaning of Specific Endowment as per Section 6(19) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and hence, the Petition under Section 34 of the Indian Trust Act is not maintainable and the Petitioners have to seek remedy only under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

11. In support of her contention, the learned Counsel for the First Respondent relied upon the following Judgments:

(i) Menakuru Dasaratharami Reddi Vs. Duddukuru Subba Rao,

(ii) Vagesa Mudaliar (Dead), Sikkavalam Chatram Trust (Family Trust), Jegathambal, V. Srinivasan and V. Ramdoss Vs. Dakshinamurthy Mudaliar, Kalyanasundara Mudaliar, Shanmugha Mudaliar, Vaithiyalinga Mudaliar, Gopalakrishna Mudaliar, Santhana Mudaliar, Subramaniam, Rajappa, Tiruvengadam, Neelathanni (Dead), Baskarathanni, Renganayagi, Jayaraman, Balakrishnan, Jayanambhu Sultan Bivi, Bhanumathi, Vadivazhaghi, Jayalakshmi, Anjammal, S. Kasthuri, Thangaraju, V. Sethuraman, U. Kathan, Shonamuthu, Govindasamy, Velu, Kathan, Rathnam, Sukkaravelu, Pakriswamy, Anbalaghan, Anjan, Ramalingam, Venkatarama Naidu, Murugan, Periyyan, Jagannathan, Swamiappan, Nagamuthu, Rasappan, Velayan, Durairaj, Haja Allauddin, Arumugham and Rathinam,

(iii) Pratapsinhji N. Desai Vs. Deputy Charity Commissioner, Gujarat and Others, ; and

(iv) Shriomani Gurudwara Prabandhak Committee, Amritsar Vs. Shri Som Nath Dass and Others,

12. Mr. N. Jothi, for Mr. M.C. Govindan, learned Counsel appearing for the Second Respondent, submitted that no charge has been created and the entire property has been dedicated for the performance of charity and that was also made clear by reading the entire recitals in Ex. P1-Settlement Deed and therefore, the Petition under Section 34 of the Indian Trust Act is not maintainable. He also submitted that though in O.A. No. 110 of 1966, a compromise was entered into and, as per the Compromise Memo, parties agreed for allowing the Petition filed by the First Respondent. Admittedly, the First Respondent filed O.A. No. 110 of

1966 for declaration declaring that a Specific Endowment has been created under the Settlement Deed and the contention of the First Respondent was accepted and hence, it is not open to the Petitioners now to contend that there was no dedication and the property was settled in favour of T.K. Balasubramania Chettiar. He further submitted that the settlee, T.K. Balasubramania Chettiar, was not given any right to enjoy the usufruct or the income from the property and he was also declared as owner and Trustee and he was given permission to sell the property only for the purpose of performing the charities mentioned in the deed and that would only prove that the entire property has been dedicated for the Religious Charity and therefore, it amounts to Specific Endowment. In support of his contention, he relied on the following Judgments:

- (i) M. Radhakrishna Gade Rao Sahib Vs. State of Madras,
- (ii) Commissioner, Madras Hindu Religious and Charitable Endowments Vs. Narayana Ayyangar and Others,
- (iii) S. Subramanian Vs. Commissioner, Hindu Religious and Charitable Endowments Board,
- (iv) Sri Singam Chetty Attendrooloo and Others Vs. The State of Tamil Nadu and Others, ; and
- (v) Assistant Commissioner, HR & CE, Admn., Department, Pudukottai and another v. K.V. Ramanujam, President of Kulithalai Naidu Mahajana Sangam, Kulithalai and another, 2010 (5) MLJ 360.

13. Points-1, 2 & 3:

(i) To decide whether any Specific Endowment has been created in favour of any Religious Charity or the property was absolutely settled on T.K. Balasubramania Chettiar under Ex. P1-Settlement Deed and therefore, T.K. Balasubramania Chettiar became absolute owner of the property burdened with an obligation to perform certain charities, we will have to read the Settlement Deed-Ex. P1. Ex. P1 reads as follows:

"Whereas the Settlor out of her own Stridhanam monies to which she is absolutely entitled, purchased House and Ground No. 1, Kulandai Street, Peddu Naickenpet, Madras of the value of Rs. 3700/- and more particularly described in the Schedule hereto by a Deed of Sale dated the 31st Day of March, 1935 and whereas the Settlor is desirous of providing for certain charities and whereas she is requested the Settlee to take charge of the property as Owner and Trustee and pay the debts due by the Settlor to Ramachandra Tarvadi, amounting to Rs. 700/- from out of the said property and also perform the Kathiri (ortsavam) utsavam (for Sree Kandaswamy) every year in Sri Muthukumarasami Temple Devasthanam in Rasappa Chetty Street from the net income of the property or the proceeds thereof after payment of the aforesaid debt which has to be performed in or about the month of Chittrai every year and whereas the Settlee to take the property and pay the debts and perform the said Utsavam annually.

This Deed of Settlement witnesseth that in consideration of the Settlee undertaking to discharge the debt and perform the utsavam as aforesaid the Settlor doth hereby grant assign and convey the said property more particularly described in the Schedule hereto to and in favour of the Settlee. The Settlee shall be entitled in his discretion to convey the property into any form which may be beneficial and conducive for the purposes mentioned in the settlement. The Settlee is the Grandson of the Settlor and Sole heir...."

(ii) It is a cardinal principle that the document must be read as a whole to find out the real intention of the executor. If the document Ex. P1 is read as a whole, I am of the opinion, a Specific Endowment has been created for the performance of any Religious Charity. It is stated in the said document that the settlor was desirous of providing for certain charities and requested the settlor to take charge of the property as owner and Trustee. The settlor did not confer absolute right over the settlee and that was conveyed by describing the settlee as owner and trustee. Further, the settlee was directed to discharge debt of Rs. 700/- and also perform Kathiri Utsavam in Sri Kandasamy Temple in Sri Muthukumarasamy Devasthanam from the income of the property after paying the debt. It is further stated that the settlor has also granted, assigned or conveyed the Suit property in favour of the settlee and the settlee was also entitled in his discretion to convert the property into any form which may be beneficial and conducive for the purposes mentioned in the settlement. The settlee was also the grand son of the settlor and her sole Legal Heir. Had it been the intention of the settlor that the settlee must be benefited, she would have stated specifically that after discharging the loan and after performing the charities, the settlee would be entitled to appropriate the rest of the income for his personal purposes but that was not the intention of the settlor and the settlor made it very clear that the income shall be used for the purpose of charity. Therefore, the settlor intended to spend the entire income for the charity and no beneficial interest was given to the settlee to appropriate the income for his personal benefit. Though the settlee was given discretion to sell the property or convert the property into any form that was also with the qualification that such conversion must be only for the beneficial and conducive for the purposes mentioned in the Settlement Deed. Therefore, no absolute discretion was given to the settlee under the Settlement Deed to convert the property for any purposes of his choice. These aspects would only lead to the conclusion that the settlee was not given any absolute right over the property and the property was dedicated or endowed for doing certain religious charities and therefore, it comes within the definition of "charity" as per Section 6(18) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

(iii) To appreciate the meaning of the "Religious Charity", "Religious Endowment", "Religious Institution" and "Specific Endowment", as per the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the definition of the same are extracted hereunder:

"Section 6(16) "Religious Charity" means a public charity associated with Hindu festival or observance of a religious character, whether it be connected with a Math or Temple or not;

Section 6(17) "Religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other Religious Charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a Religious Institution;

Explanation.--(1) Any in am granted to an Archaka, service holder or other employee of a Religious Institution for the performance of any service or charity in or connected with a Religious Institution shall not be deemed to be a personal gift to the Archaka, service holder or employee but shall be deemed to be a religious endowment.

Explanation.--(2) All property which belonged to, or was given or endowed for the support of a Religious Institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other Religious Charity shall be deemed to be a "Religious Endowment" or "endowment" within the meaning of this definition, notwithstanding that, before or after the date of the commencement of this Act, the Religious Institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed:

Provided that this Explanation shall not be deemed to apply in respect of any property which vested in any person before the 30th September 1951, by the operation of the law of limitation;

Section 6(18) "Religious Institution" means a math, temple or Specific Endowment and includes:

(i) a Samadhi or Brindhavan; or

any other institution established or maintained for a religious purpose.

Explanation.--For the purpose of this clause--

"Samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship;

"Brindhavan " means a place established or maintained in memory of a guru, Sadhu or Saint and used as a place of public religious worship, but does not include samadhi;

Section 6(19) "Specific Endowment" means any property or money endowed for the performance of any specific service or charity in a Math or Temple or for the performance of any other Religious Charity, but does not include an in am of the

nature described in Explanation (1) to Clause (17);

Explanation.--(1) Two or more endowments of the nature specified in this clause, the administration of which is vested in a common Trustee, or which are managed under a common scheme settled or deemed to have been settled under this Act, shall be construed as a single Specific Endowment for the purposes of this Act;

Explanation.--(2) Where a Specific Endowment attached to a Math or Temple is situated partly within the State and partly outside the State, control shall be exercised in accordance with the provisions of this Act over the part of the Specific Endowment situated within the State."

(iv) As per Section 6(19) of the above said Act, when any property is endowed for the purpose of any specific service or charity in a Math or Temple or for purpose of any other Religious Charity, it becomes a Specific Endowment. As per Section 6(16), when a Public Charity associated with a Hindu festival or observance of a religious character, whether it be connected with a Math or Temple or not, it becomes a Religious Charity. As per Section 6(18), a Specific Endowment also comes under the definition of Religious Institution.

(v) A reading of Ex. P1-Settlement Deed would make it clear that the settlee was directed to perform Kathiri Utsavam for Sri Kandasamy every year in Sri Muthukumarasamy Devasthanam from the net income of the property and therefore, as per the definition of Specific Endowment, the property was endowed for the purpose of any specific service or charge in a Temple. Further, as per the definition of Religious Charity, any public charity associated with Hindu festival or observance of religious character becomes Religious Charity and any property endowed for the performance of any other Religious Charity, becomes Specific Endowment under Section 6(19) of the Act. Therefore, having regard to the recitals in Ex. P1, by reason of directing the settlee to perform certain specific service in connection with Hindu festival and property was dedicated for that purpose, a Specific Endowment has been created under Ex. P1.

14. Learned Counsel for the Petitioners, Mr. J.R.K. Bhavanantham, relied upon the Judgment reported in V. Kannadasan and others v. A. Malik & others, 2007 (4) LW 435, cited supra and contended that the settlee was directed to perform the charity from and out of the income from the property and therefore, no endowment was created in favour of any charity and also contended that the very same recitals in Ex. P1 was considered in the aforesaid Judgment and therefore, the grant was personal and no charity was created for the performance of any Kattalai and there was no dedication. In the aforesaid Judgment, having regard to the recitals in the document, the learned Single Judge of this Court held that there was no dedication. A reading of the recitals in the document in that case makes it clear that the property was given absolutely to Chidambaram and Ponnambalam as Legal Heirs and they were directed to perform certain religious charities without any power of alienation. The learned

Single Judge relied upon the Judgment reported in M.S. Dharma Raja and Others Vs. M.K. Rama Ammal and Another, , wherein it was held that where there was no real dedication of property but only a creation of perpetuity in favour of one's own descendants, it is void and to constitute a valid endowment, executant should divest himself of his property and there must be a transfer of the ownership from the donar to donee. The learned Single Judge also relied upon the Judgment reported in Menakuru Dasaratharami Reddi Vs. Duddukuru Subba Rao, , wherein the Hon"ble Supreme Court held as follows:

"In this case, even though various charities are mentioned to be performed, how much amount has to be spent for those charities is not specified. Naturally that depends upon the discretion of the person in possession of the properties from time to time. There is no statement as to what has to be done with the surplus income. One thing is clear. All the amounts will have to be spent out of the income and that the charities could be performed from the income which may be derived from the properties. If for any reason, any of the parties is incapacitated in performing the charities, there is no statement in Ex. A1 regarding the consequence".

Therefore, the learned Counsel submitted that in this case also, there is no direction regarding the surplus income and all the amounts have to be spent for the charities and as decided by the Hon"ble Supreme Court, in these circumstances, there was no dedication of property for any charity and hence the Petition is maintainable. The other Judgment relied upon by the learned Counsel for the Petitioners, namely, reported in Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co., , cannot be applied to the facts of the case as the Judgment dealt with under the provisions of Order 23, Rule 1 of C.P.C.

15. In the Judgment reported in Menakuru Dasaratharami Reddi and another v. Duddukudru Subbu Rao and others, AIR 1957 SC 797, cited supra, it is held as follows:

"Dedication of property to religious or charitable purpose may be either complete or partial. If the dedication is complete, a trust in favour of public Religious Charity is created. If the dedication is partial a trust in favour of charity is not created but a charge in favour of the charity is attached to and follows, the property which retains its original private and secular character.

Whether or not dedication is complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document. In such cases, it is always a matter of ascertaining the true intention of the parties, it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The use of the word "Trust" or "Trustee" is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as decisive of the matter. The answer to the questions whether the private title over the property was intended to be completely extinguished or whether the title in regard to the property was

intended to be completely transferred to the charity can be found not by concentrating on the significance of the use of the word "Trustee" or "Trust" alone but by gathering the true intent of the document considered as whole."

Having regard to the recitals in the document, the Hon''ble Supreme Court held that there was no complete dedication and the party was only burdened with obligation to perform charities in question.

16. In the Judgment reported in Vagesa Mudaliar (Dead), Sikkavalam Chatram Trust (Family Trust), Jegathambal, V. Srinivasan and V. Ramdoss Vs. Dakshinamurthy Mudaliar, Kalyanasundara Mudaliar, Shanmugha Mudaliar, Vaithiyalinga Mudaliar, Gopalakrishna Mudaliar, Santhana Mudaliar, Subramaniam, Rajappa, Tiruvengadam, Neelathanni (Dead), Baskarathanni, Renganayagi, Jayaraman, Balakrishnan, Jayanambhu Sultan Bivi, Bhanumathi, Vadivazhaghi, Jayalakshmi, Anjammal, S. Kasthuri, Thangaraju, V. Sethuraman, U. Kathan, Shonamuthu, Govindasamy, Velu, Kathan, Rathnam, Sukkaravelu, Pakriswamy, Anbalaghan, Anjan, Ramalingam, Venkatarama Naidu, Murugan, Periyyan, Jagannathan, Swamiappan, Nagamuthu, Rasappan, Velayan, Durairaj, Haja Allauddin, Arumugham and Rathinam, , following the Judgment reported in Menakuru Dasaratharami Reddi Vs. Duddukuru Subba Rao, , wherein the Hon''ble Supreme Court held that if the income of the property is substantially intended to be used for the purpose of the charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the Manager, the dedication was complete, and on the other hand, a minor portion of the income was dedicated to be used for the purpose of any charity and substantial surplus was left in the hands of Manager for the private purposes, there was no question of complete dedication, it is held that there was complete dedication.

17. In the Judgment reported in M. Radhakrishna Gade Rao Sahib Vs. State of Madras, , recitals in the document, which was considered by the Supreme Court, is as follows:

".....the instrument provided that "in respect of the sum of Rs. 4,311.00 which has been set apart for the expenses of the aforesaid dharmams we have created a "charge" on the entire properties mentioned in the A Schedule herein."

The Hon''ble Supreme Court held that having regard to the recitals aforementioned, an endowment has been created under the document. Further, the Hon''ble Supreme Court has held as follows:

"4. There is no dispute that in order that there may be an endowment within the meaning of the Act, the settlor must divest himself of the property endowed. To create an endowment, he must give it and if he has given it, he of course has not retained it; he has then divested himself of it. Did the settlors then divest themselves of anything? We think they did. By the instrument the settlors, certainly divested themselves of the right to receive a certain part of the income derived from the properties in question. They deprived themselves of the right to

deal with the properties free of charge as absolute owners which they previously were. The instrument was a binding instrument. This indeed is not in dispute. The rights created by it were, therefore, enforceable in law. The charities could compel the payment to them of the amount provided in Schedule B, and, if necessary for that purpose, enforce the charge. This, of course, could not be if the properties had retained the right to the amount or remained full owners of the property as before the creation of the charge. It must, therefore, be held that the proprietors had divested themselves of that part of the income of the properties, which is mentioned in Schedule B. By providing that their liability to pay the amount would be a charge on the properties, the settlors emphasised that they were divesting themselves of the right to the income and the right to deal with the property as if it was unencumbered. By creating the charge they provided a security for the due performance by them of the liability which they undertook. Further Section 32 of the Act provides that where a Specific Endowment to a temple consists merely of a charge on property, the Trustees of the temple might require the person in possession of the properties charged to pay the expenses in respect of which the charge was created. This Section undoubtedly shows that the Act contemplates a charge as an endowment.

5. Mr. Sastri for the Appellant said that a charge would be an endowment only where it had first been created in favour of a person, who made an endowment in respect of it, that is to say, transferred his rights under the charge in favour of the charities. We see no reason for holding that an endowment was contemplated as consisting of a charge only in cases like that. We, therefore, think that the High Court was right in its view that the instrument had created a Specific Endowment."

18. In the Judgment reported in Commissioner, Madras Hindu Religious and Charitable Endowments Vs. Narayana Ayyangar and Others, , it is held as follows:

"Where the primary purpose of the charity is to feed Brahmin pilgrims attending the Rathotsavam in the local shrine, the public charity has a real connection with the Rathotsavam which is a Hindu festival of a religious character and therefore, it is a Religious Charity within the meaning of Section 6(13) of Madras Hindu Religious and Charitable Endowments Act XIX of 1951. It was not suggested that the fund is not a Religious Charity by reason of the utilisation of the surplus fund in Vanabhojanam in the month of Karthigai and on the day following Vaikunta Ekadasi."

19. In the Judgment reported in S. Subramanian Vs. Commissioner, Hindu Religious and Charitable Endowments Board, , it is held that though the settlee was given no right to encumber or alienate the property, when the property was given for the purpose of feeding poor and parades is, religious endowment has been created. In this case also, though a discretion was given to the settlee to convert the property, that discretion was not an unqualified discretion and the settlee was entitled to convert the property only for the purpose as stated in the settlement which means for the performance of Kathiri Utsavam in the Temple.

20. In the Judgment reported in Sri Singam Chetty Attendrooloo and Others Vs. The State of Tamil Nadu and Others, , similar recitals in the Settlement Deed was considered by the Supreme Court and held that Religious Endowment has been created.

21. In the Judgment reported in Vasudeva Rao Vs. C.K. Rangai Gounder, Managing Trustee of Sri Koniyyamman Devasthanam and Others, , a Division Bench of this Court held that "an appropriation of property for a specific religious or charitable purpose is all that is necessary for a valid dedication. When there was no surplus income to be enjoyed by the legatees or heirs of the testator, the only inference that is possible is that the entire property is dedicated as a Trust.

22. In the Judgment reported in G. Duraikannu Vs. A. Natesa Pillai and Others, , the Judgment reported in Menakuru Dasaratharami Reddi Vs. Duddukuru Subba Rao, was considered, wherein the Hon''ble Supreme Court held as follows:

"The Principles of Hindu law applicable to the consideration of questions of dedication of property to charity are well settled. Dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication to charity. On the other hand, in many cases Courts have to deal with grants or gifts showing dedication of property to charity. Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of Public Religious Charity is created. If the dedication is partial, a Trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document. In such cases it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The use of the word "Trust" or "Trustee" is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as decisive of the matter. Is the private title over the property intended to be completely extinguished? Is the title in regard to the property intended to be completely transferred to the charity? The answer to these questions can be found not by concentrating on the significance of the use of the word "Trustee" or "Trust" alone but by gathering the true intent of the document considered as a whole. In some cases where documents purport to dedicate property in favour of Public Charity, provision is made for the maintenance of the worshipper, who may be a member of the family of the original owner of the property himself and in such cases the question often arises whether the provision for the maintenance of the manager or the worshipper from the income of the property indicates an intention that the property should retain its original character and should merely be burdened with

an obligation in favour of the charity. If the income of the property is substantially intended to be used for the purpose of the charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of Public Charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the Manager or worshipper for his own private purposes, it would be difficult to accept the Theory of Complete Dedication. It is naturally difficult to lay down a general rule for the solution of the problem. Each case must be considered on its facts and the intention of the parties must be determined on reading the document as a whole."

The Division Bench of this Court considering the above Judgment summarised the legal position as follows:

"The legal position that emerges is that to ascertain whether the dedication is partial or absolute, we have to take the instrument as a whole. The intention of the author of the document has to be gathered and that has to be done only from the words used. Where, as here, the document speaks only of the income, the intention has to be ascertained from the disposal of the income. If for the maintenance of public charity a minor portion of the income is required to be used and substantial surplus is left in the hands of the manager for his own private purposes, there would not be a complete dedication. But if the charity is given a substantial part of the income, then, the dedication would be a complete one. The document before us does not contemplate any surplus being left in the hands of the person in charge of the properties. The purpose contemplated is that the charity is to be done in accordance with the status of the family. The expenditure is thus bound to be elastic, so that when the income increases, the obligation to pay for the charity also expands. It is not as if any specific amount alone was contemplated to be spent so as to leave a balance. Further, there are no words of disposal with reference to the balance, if any, of the income from the said properties. It is, therefore, manifest that the reservation for these purpose was absolute and not partial."

23. Therefore, considering the Judgments aforementioned and recitals in Ex. P1-Settlement Deed, I am of the opinion that a Specific Endowment has been created under Ex. P1 and therefore, the Petitioners have to apply only under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and they cannot apply by invoking the provisions of the Indian Trust Act.

24. The Petitioners are also aware of the same and the same is evident from the prayer in the Petition. As stated supra, the Petitioners prayed for the permission to sell the property and deposit the sale proceeds in the name of Sri Kandasamy Temple and they did not claim any right over the sale proceeds. The prayer in the Petition is as follows:

"15. It is therefore prayed that this Hon"ble Court may be pleased to grant

permission to seal the property bearing Old No. ... New No. 13, Kulandai Street, Peedunaickenpet, Chennai-600 003 morefully described in the Schedule hereunder to the prospective purchaser for the marketable price and demarcate a portion of the sale proceeds of the said property for performing Kathiri in Chittrai month every year in Sri Kandasamy Temple belonging to Sri Muthukumarasamy Devasthanam at Rasappa Cherry Street, Park Town, Madras-600 003 and deposit the said amount into the credit of the said temple to perform Kathiri Utsavam every year out of the annual interest accrued on the said deposit and render justice."

In the prayer, no direction was sought for about the balance amount of the sale proceeds after demarcating a portion of the sale proceeds for performing Religious Charity and as per the recitals in Ex. P1, property can be converted only for the purpose of charities as mentioned in Ex. P1 and hence, the dedication is absolute and the contention of the learned Counsel for the Petitioners that only charity has been created and there was no dedication cannot be accepted.

25. As per Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purposes of, any Religious Institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution. I have already held that a Specific Endowment has been created under Ex. P1 and therefore, the Commissioner is the Competent Authority to grant permission to sell the property.

26. As per Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, no Suit or other legal proceeding in respect of the administration or management of a Religious Institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under and in conformity with, the provisions of this Act. Religious Institution includes Specific Endowment and therefore, the Petitioners have to approach the Commissioner for the sale of the property and hence, the Petition filed under Section 34 is not maintainable. I, therefore, hold that a Specific Endowment has been created under Ex. P1-Settlement Deed and the Civil Court has no jurisdiction and the Petitioners have to approach the Commissioner of the Tamil Nadu Hindu Religious and Charitable Endowments Department. The points for consideration are all answered against the Petitioners and the Petition is dismissed. No order as to costs.