
(1910) 04 MAD CK 0053
In the Madras High Court

Muthu Nadan

APPELLANT

Vs

Shunmoogatha Pillai and Others

RESPONDENT

Date of Decision : 18-04-1910

Acts Referred:

Citation : 7 Ind. Cas. 79

Hon'ble Judges : Munro, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. Both the lower Courts seem not to have understood the difference between property dedicated to a charity and property burdened with a charge in respect of a charity. We must, therefore, ask the District Judge to find on the evidence on record whether the property was dedicated to the charity or merely burdened with a charge in favour of the charity in question.

2. The finding should be submitted within six weeks, and seven days will be allowed for filing objections.

3. In compliance with the above order the District Judge of Tanjore submitted the following

FINDING.

1. The issue remanded is whether the property was dedicated to the charity or merely burdened with a charge in its favour. The order of remand makes no reference to the findings of fact in this Court's judgment. One such finding was (at page 12, line 40 printed book) that the plaint properties are burdened with a charge in favour of the charity and that plaintiff's family had a beneficial interest in the surplus income. In the absence of a trust-deed or other direct evidence as to the founder's intention, this conclusion was based on the available evidence of the conduct of those concerned, weight being given to the acquisition of the property by plaintiff's family for consideration consistently with their being entitled to personal profit from it and to the separate enjoyment by individual sharers as against the general description as charitable property in Exhibits B,

III, IV. The only fresh point made on this part of the case on remand has been that Exhibit D, 2nd defendant's petition, asserts no claim to the corpus of the trust property; the answer is that the revenue authorities had no power to give effect to his right to it. It is necessary for the purpose of the present finding to emphasise the fact that the property is private property subject to a charge, not trust property. This conclusion is supported by the origin of plaintiff's own title, by purchase, and also by their method of enjoyment.

2. The judgment under appeal agreed with that of the Court of first instance to this extent. The latter then decided that the existence of a mere charge for the execution of the trust did not affect the charitable character of the property ; the former that it did so on the ground that a trust imported personal confidence reposed in the trustee appointed by the founder and his lineal successors with which alienability would be irreconcilable. That is that in any case and without reference to the finding on the second issue, on which I have concurred with the lower Court, the fact that the property is charged for the benefit of a trust would make it inalienable.

On farther argument this view appears inapplicable to the circumstances. In *Bishen Chand Basawat v. Nadir Hossein* 15 C. 329 : 15 I.A. 1, the decision was against alienability, though the trustee was held entitled to the surplus, if any; but though some considerations arising from the religious character of the trust are referred to, the general ground of personal confidence is not; and the case can be distinguished, as it has been in *Mayne's Hindu Law and Usage*, 7th Edition, page 584, because the whole property was devoted to religious purposes. On the other hand, *Futto v. Bhurrit* 10 W.R. 299 and *Basoo Dhul v. Kishen Chundergir Gossain* 13 W.R. 200 authorise alienation in the case of property subject to a charge such as that now in question.

In *Mahomed Ahsanullah Chowdhry v. Amerchand Kundu* 17 I.A. 28 : 17 C. 498 such property was held liable to sale in execution of a decree against its owner.

3. In these circumstances the finding is that the property is merely burdened with a charge in favour of the charity and can, therefore, be alienated subject to it.

4. This second appeal coming on for final hearing after the return of the finding of the lower appellate Court: the Court delivered the following

5. Accepting the finding of the District Judge, we set aside the decree of the District Judge and restore the decree of the District Munsif with costs in this and the lower appellate Court.