

(1939) 02 MAD CK 0051
In the Madras High Court

Nallasivan Pillai and Others

APPELLANT

Vs

Ganapathi Mudaliar and Another

RESPONDENT

Date of Decision : 13-02-1939

Acts Referred:

Citation : AIR 1940 Mad 633 : (1940) 51 LW 381

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—Defendants 2 and 3 are the appellants in this second appeal. The suit was filed by the plaintiff for establishing that he is the lawfully appointed dharma-kartha and entitled to manage and to be in possession of the property dedicated for certain charities. By two documents, Exs. A and B dated 27th November 1910 and 10th August 1911 respectively, the founder dedicated certain properties for the charities mentioned in the two documents and directed that after her lifetime "Ammaiyappa Mudaliar Avergal and after his lifetime his heirs should be the hereditary hukdars." The documents also stated that the founder had no right whatever to cancel or alter this deed of settlement during the lifetime of the settlor. The present suit was filed after the settlor's death which took place on 10th August 1931. The plaintiff states that he is an heir of Ammaiyyappa Mudaliar and therefore a hereditary dharma-kartha according to the express terms of Exs. A and B. This claim is defended on the ground that after Ammaiyyappa Mudaliar's death in 1918, it was competent to the founder to make a new provision for the devolution of the trusteeship and that Ex. II in the case was executed in exercise of such a power by the founder in the year 1925. If Ex. II is to prevail, then the defendants are entitled to succeed.

2. The main question therefore is whether the settlor had any right after Ammaiyyappa Mudaliar's death to make a new provision as regards devolution of the trusteeship. Another contention is also raised that the provision in favour of Ammaiyyappa Mudaliar and his heirs became inoperative by reason of the death of Ammaiyyappa Mudaliar taking place during the lifetime of the founder. The

latter contention might first be disposed of. On the language of the two documents, namely Exs. A and B, I do not think that the provision in favour of Ammaiyappa Mudaliar and his heirs as hereditary hukdars is a contingent one and that it will lapse if Ammaiyappa Mudaliar predeceased the founder. The language leaves no room for doubt that it was a hereditary trusteeship that was conferred upon Ammaiyappa Mudaliar subject to a life estate in favour of the settlor herself. The provision in favour of Ammaiyappa Mudaliar was a vested one though it came into operation only after the death of the life tenant, namely the settlor herself. This contention therefore fails. The other contention that even if the provision in favour of Ammaiyappa Mudaliar was a vested one and therefore did not lapse on the death of Ammaiyappa Mudaliar, the settlor had a right to make a fresh provision regarding the devolution of the trusteeship is, in my opinion, devoid of any authority. On the other hand, the authorities are all clear that once a founder prescribes a line of devolution as regards the trusteeship in the document creating the trust, the founder has no right to alter the line of devolution of the trusteeship unless he had reserved such a power in the original document itself. The decisions in Gouri Kumari Dasi Vs. Srimati Ranimoyi Dasi and Others, , Narayan Chandra Dutt and Others Vs. Sm. Bhuvan Mohini Basu Mallik, and Manorama Dasi and Another Vs. Dharendra Nath Busu and Others, lay down this proposition. See also the passage in Mr. P.R. Ganapathi Aiyar's Book on Religious Endowments at page 715.

3. The learned Counsel for the appellants has drawn my attention to the decision in Sripati Chatterjee and Others Vs. Khudiram Banerjee and Others, , where there are certain remarks which are in favour of the appellants. But as pointed out in the later decisions of the Calcutta High Court, there was in that case an express provision against the settlor changing the devolution of the trusteeship, and the actual decision in the case was that the settlor had no right to change the devolution as there was such an express prohibition. The remarks of the learned Judges on the general question must therefore be taken to be mere obiter. I am not able to see what the peculiar circumstances of the facts before those Judges were from the report in Sripati Chatterjee and Others Vs. Khudiram Banerjee and Others, and if the decision proceeded upon the peculiar" circumstances which the learned Judges referred to on page 29 of the report, then it is a decision on the facts of that case and would be of no assistance to us in this case. But if the remarks go further and are of general application, then I respectfully disagree and I hold following the other decisions, which seem to me to be in conformity with the reason of the rule, that the settlor has no right to alter the devolution of the trusteeship unless such a right had been expressly reserved in the document creating the trust. Another question raised by Mr. Balasubramania Aiyer is that the dedication in this case was not of the properties themselves and that there was only a trust created in favour of the charities. What is contended is that the properties mentioned in Exs. A and B were subjected to a trust in favour of the charities and that therefore the properties themselves are not the trust properties. This argument is evidently advanced

because it was expected that there might be a surplus after performing the charities mentioned in the two documents.

4. In the first place, there is an express finding of the lower Appellate Court that the income of the properties does not exhaust the charities mentioned in the two trust deeds. That is a finding of fact which is binding upon me. Next, I do not find any warrant for the Subordinate Judge's treatment of the provisions in Exs. A and B in para. 7 of his judgment. He apparently takes it that for each of the charities only the amounts mentioned as against each should be spent. On reading the two documents carefully, I do not think that that is the intendment of the two documents. The charities themselves are mentioned and the amount mentioned as against each was only a rough estimate made by the settlor at that time. It is the performance of the charities that is directed and if the performance of the charities directed in the two documents requires more than the amounts mentioned as against each, I do not see any reason why the trustee should not spend the amount required. Anyway, there being a finding that the income of the properties is not proved to be exhausted by the charities, the question argued by Mr. Balasubramania Aiyer does not arise. Further, the express language of the two documents Exs. A and B leaves no room for doubt that it is the properties themselves that are dedicated and it is not a case of the properties being burdened with the performance of the charities mentioned in the two documents. The appeal fails and is dismissed with costs. Leave to appeal refused.