

(1985) 07 MAD CK 0018
In the Madras High Court

Pachaiammal (deceased) and Another APPELLANT

Vs

Sri Sarangapaniswami Devasthanam Kumbakonam and
Another RESPONDENT

Date of Decision : 05-07-1985

Acts Referred:

Citation : (1986) 99 LW 689 : (1986) 1 MLJ 101

Hon'ble Judges : K. Shanmukham, J;K. Shanmugham, J

Bench : Division Bench

Judgement

K. Shanmukham, J.—The only point that falls for determination in this Second appeal is whether the endowment made under Ex.A-1 is a

Hindu Charitable Endowment within the meaning of Section 3 of Act XXII of 1959.

2. The plaintiff in O.S.No. 14 of 1974 Sub Court, Kumbakonam, came forward with the said suit for setting aside the order of the Deputy

Commissioner, H.R. and C.E. Department dated 23.5.1967 in O.A. No. 9 of 1964 and for consequential relief of injunction restraining the

defendants viz., Sri Sarangapaniswami Devas-thanam and Commissioner H.R. and C.E. Department, from interfering with the rights of the plaintiff

in respect of the property referred to in Ex.A-1. On the ground that the endowment is a Hindu Charitable Endowment, the Deputy Commissioner,

H.R. and C.E. framed a scheme at the instance of the 1st respondent herein in O.A. No. 9 of 1964. It is unnecessary to refer to the particulars

therefore for the disposal of this second appeal. On the strength of the scheme so framed, an application was filed before the Magistrate concerned

for issuing a certificate for taking delivery of the properties in the possession of the plaintiff. The plaintiff rested his claim on two grounds, (i) under

the will of Vembu Naicker dated 17.10.1958 the plaintiff was appointed as the hereditary trustee and therefore he is entitled to be in management

of the properties and (ii) a reference to the charities mentioned in Ex.A-1 would show that there is no Hindu Charitable Endowment by the maker.

3. The principal defence is that under Ex.A-1, there is a Hindu Charitable Endowment, and that as the plaintiff had failed to resort to his remedy

provided under Tamil Nadu Act 22 of 1959, the present suit is not maintainable. The further defence of limitation was also urged on behalf of the

respondents. It may be useful to point out that Ex.A-1 was also executed by Vembu Naicker.

4. The trial Court found that the will propounded by the Plaintiff and said to have been executed by Vembu Naicker on 17.10.1958 is not true and

was not executed in a sound and disposing state of mind. It also held that the plaintiff has no locus standi to maintain the suit and that in any event,

the suit as framed is not maintainable. Consequently, the suit was dismissed.

5. Aggrieved against the said decision, the Plaintiff preferred an appeal, A.S. No. 39 of 1977 on the file of the District Judge, West Thanjavur;

pending the appeal, the plaintiff having died, his heirs were impleaded as appellants 2 and 3. The learned District Judge held that the charity is a

Hindu religious charity, that the order made in O.A.No. 9 of 1964 cannot be set aside, that the suit is out of time and also that the suit is not

maintainable because the plaintiff has no locus standi.

Hence, the present second appeal by the two appellants who were impleaded as the legal representatives of the deceased plaintiff.

6. The only contention made by the learned Counsel for the plaintiff is that the charities referred to in Ex.A-1 would not amount to Hindu

Charitable Endowments, that the Endowments cannot be governed by Tamil Nadu Act XXII of 1959, and that therefore the 2nd respondent had

no jurisdiction to frame any scheme.

7. Thus, the question turns on the construction of Ex.A-1. It is useful to state that the appellants do not dispute that the Endowment is a charitable

one, according to them, it is not a Hindu Charitable Endowment so as to attract the operation of Tamil Nadu Act XXII of 1959. It is enough

therefore to focus my attention on the items of charities as enumerated in Ex.A-1. The document is in Tamil. The particulars of charities are set out

in B Schedule to the said document and they are as follows:

The objects given in Ex.A-1 are as follows:

- 1) Every year on Panguni Uthiram day country fans, fruits, sugar candy, coconuts etc., should be given to all people in Sri Sarangapaniswami temple;
- 2) Sahasranama Archana should be performed in Perumal and Thayar Sannadhis;
- 3) Desanthris should be fed on that day; and
- 4) Water pandal should be maintained on that day for the people; buttermilk and panagam should be supplied to them.

The learned Counsel laid very great emphasis on the expression used in Ex.A-1. According to the learned Counsel, all people would include all

persons who have faith in different religions, but would not refer exclusively to Hindus. It is on the above construction, the learned Counsel

submitted that the Endowment created under Ex.A-1 cannot be said to be a Hindu Charitable Endowment.

8. It may be useful to notice that Tamil Nadu Act XXII of 1959 does not define what is a "Hindu Charitable Endowment. However, the Act

defines "Charitable Endowment" in Section 6(5) of the Act:

Charitable endowment means all property given or endowed for the benefit of, or used as of right by, the Hindu or the Jain community or any

section thereof, for the support or maintenance of objects of utility of the said community or section, such as rest-houses, choultries, patasalas,

schools and colleges, houses for feeding the poor and institutions for the advancement of education, medical relief and public health or other

objects of a like nature and includes the institution concerned.

Section 6(5) of Act XXII of 1959 is a mere reproduction of Section 6(4) of its predecessor. In *The State of Madras and Another Vs. The Urumu*

Seshachalam Chettiar Charities and Others, a Division Bench of this Court had ruled that:

The very definition of charitable endowment in Section 6(4) of the Madras Hindu Religious and Charitable Endowment Act (XIX of 1951)

postulates the test of exclusiveness. Unless the benefit of the endowment is confined wholly to Hindus it would not be a charitable endowment as

defined in that section. The prefix ""Hindu"" to expression ""public charitable

endowment"" in Section 3 emphasises this feature. Section 3 cannot be invoked unless the endowment is exclusively Hindu in character.

It is on the strength of the above principle so laid down by the Division Bench, the learned Counsel was emboldened to make the above

submission. It is needless to state that such an interpretation of Section 6(4) of the then Act is therefore binding on me.

9. The intention of the maker has to be ascertained from the document, the religion to which he professed to belong and the object with which he

created the endowment. In the instant case, it is very easy to conclude that he was a staunch Hindu. For, he was very particular that Sahasranama

Archana should be performed in Perumal and Thayar Sannadhis on Panguni Uthiram day. While giving a description of himself, the maker had

stated that he belonged to Saivait. My above conclusion is fortified from the following recital found in Ex.A-1.

(Purification of soul)

It is further found in Ex.A-1 that the charities referred to in Schedule D in the document were being performed by his forefathers and that the

maker was very particular in such charities being continued even after his lifetime. Secondly he had directed that distribution of country fans, fruits,

sugar candy, coconuts etc, should be given to all people on Panguni Uthiram day. Again, the maker had also directed that Desanthris should be fed

on Panguni Uthiram day. The word "Desanthiri" according to Tamil Lexicon means a who has no permanent place of living. The concept of

Desanthiri will indisputably refer to Hindu saints who had renounced all earthly possessions and are free from all passions. Items 1 and 3 in B

Schedule are thus intended exclusively for Hindus.

10. The only other consideration is whether items 1 and 4 in Schedule B in Ex.A-1 are charities exclusively for the benefit of Hindus or for the

benefit of general public irrespective of the religious faith to which they belong. In the first place, it has to be noticed that the maker is a staunch

Hindu. He was very particular that even items 1 and 4 shall be performed on Panguni Uthiram day. For a festival connected with a Hindu temple it

is reasonable to presume that all sections of Hindus would congregate. What therefore the maker meant by the expression in item 1 and in item 4 is

to make sure that the benefit should go to all sections of Hindu society. It is

significant to note that there are cases where there are Hindu charitable endowments to benefit a particular section of Hindus. If so I have no doubt that in item 1 and in item 4 was to emphasise that the charity is for the benefit of all sections of Hindus but not limited to a particular section. Further I must add that the items should be read conjunctively but not disjunctively. Such a reading of items 1 to 4 in Schedule B will clearly point out that the maker was providing these charities exclusively for Hindus. I am, therefore unable to agree with the learned Counsel for the appellants, that the said two expressions in Ex.A-1 would mean to entire public irrespective of the religious faith to which they belong. In my view therefore, the charitable endowment created under Ex.A-1 is only a Hindu Charitable Endowment within the meaning of Section 3 of Tamil Nadu Act XXII of 1959.

11. The learned Counsel also brought to my notice the decision reported in Gomathi Ammal v. Madasamy (1985)1 M.L.J. 360 and an unreported judgment of Mr. Justice Gokulakrishnan as he then was in W.P. No. 3947 of 1979. I must straightaway point out that none of these decisions will be of any assistance to the appellants. What was ruled by Mr. Justice Mohan in the first case is that--

In so far as charity is done in the chavady of a house which is purely private and there has been no dedication, it will not come within "religious charity" as defined in Section 6(16) of the Tamil Nadu Religious and Charitable Endowments Act. Merely because of Arunachalapuranam being read and feeding of those assembling in the chavady being done on a particular day it will not acquire the character of a public charity. The character of a trust having come to be established as private, it cannot be displaced in the absence of strong and cogent evidence to the contrary.

Again in the unreported decision, the observation is:

The charities comprised are of lighting the lights with oil in the memorial erected in memory of "the coronation of King George V. Emperor of India, to perform water pandal charity, in the month of Chitrai every year on the occasion of the Brahmothsavam of Sri Meenakshisundareswarar Temple in Vilathikulam and to perform such other charities as the Judge in his discretion decides.

It is in those circumstances, the learned judge held that it is not possible to say

that the charity is intended exclusively for the Hindus so as to attract

Section 3 of Tamil Nadu Act XXII of 1959. I am to reiterate that the recitals in the document in the instant case are entirely different.

12. Both the Courts below have held that the will propounded by the deceased plaintiff whose legal representatives are the present appellants, is

not true. It is a concurrent finding of fact and the learned Counsel for the plaintiff could not successfully assail such a concurrent finding. In such a

case, it would immediately follow that the plaintiff has no locus standi to maintain the suit, though as submitted by the learned Counsel for the

appellants, as a Hindu and disciple of Sri Sarangapaniswamy, he is entitled to challenge the jurisdiction of the authorities in exercising powers under

Tamil Nadu Act XXII of 1959. The result is, the second appeal fails and is dismissed but in the peculiar circumstances without costs.