

(1949) 04 MAD CK 0020
In the Madras High Court
Case No : Appeal No. 63 of 1946

Panangipalli Suryanarayanacharyulu and Another	APPELLANT
Vs	
Panagipalli Seshamma (died) and Another	RESPONDENT

Date of Decision : 06-04-1949

Acts Referred:

Hindu Womens Right to Property Act, 1937 — Section 3

Citation : AIR 1950 Mad 103 : (1949) 62 LW 469

Hon'ble Judges : Subba Rao, J;Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : P. Somasundarm and P. Suryanarayana, for the Appellant; K. Bhimsankaram and G. Venkatarama Sastri, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—This appeal raises an interesting point of law, namely whether the right to Archakatyam service is property within the

meaning of Act XVIII [18] of 1937 and whether from and out of the family income of such property a maintenance holder is entitled to be

maintained. The plaintiff's husband, one Gopalacharyulu, was the hereditary archaka of Sri Madanagopalaswami Varu, enshrined in the village of

Podagatlapalli and of Sri Venkateswaraswami Varu and Sri Kothandaraswami Varu enshrined in the village of Veditreswarim. An extent of 32

acres and 15 cents comprised in items 2 to 10 of Schedule A annexed to the plaint was in the enjoyment of the said Gopalacharyulu as Archaka

service inam. Gopalacharyulu died on 1st January 1940. Defendant 1 is his undivided son and defendant 2 is the undivided son of defendant 1. On

the death of Gopalacharyulu, defendant 1 has been enjoying the said archaka service inam and rendering archakatyam service personally in the

temples of Venkateswaraswami and Kothandaramaswami and, through a deputy, in the temple of Madanagopalaswami Varu. In addition he also died possessed of item 1 in Schedule A and other items mentioned in Schedules B and C. The plaintiff, widow of Gopalacharyulu, and the stepmother of defendant I filed O. S. NO. 34 of 1945 on the file of the Court of the Subordinate Judge, Amalapuram, in forma pauperis, and though she asserted her rights to claim partition in items 2 to 10 of Schedule A properties, she confined her relief only to maintenance from and out of the income of the family properties. She claimed maintenance at the rate of Rs. 200 per year for arrears for the period from 1st January 1940 to 1st January 1944 and future maintenance at the rate of Rs. 300 a year in addition to incidental reliefs. The learned Subordinate Judge held that she was entitled to maintenance from the income of the entire Schedule A properties and to a share in the houses and sites described in the Schedule B properties and also in the Schedule C movables. He awarded maintenance at the rate claimed by the plaintiff both in regard to arrears of maintenance as well as future maintenance. Defendant 1 preferred an appeal against the decree and judgment of the lower Court. Pending appeal the plaintiff died and the legatee under the will was brought on record. In view of the supervening event the only question that remains to be considered is the right of the plaintiff to arrears of maintenance.

2. The contention of the learned counsel for the appellant is that the archakatvam service inams comprised in items 2 to 10 of Schedule A would not be property within the meaning of Act XVIII [18] of 1937, and that, therefore, the plaintiff would not be entitled to a share in them under the said Act. She would not also be entitled to any maintenance from and out of the income of the said properties as the income was not the family income but only the personal income of defendant 1. The relevant provisions of Sub-section (1) of Section 3 of Act XVIII [18] of 1937 read as follows :

When a Hindu governed by the Dayabhag School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu Law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow all his widows together, shall, subject to the provisions of Sub-section (3), be entitled in respect

of property in respect of which he dies intestate to the same share as a son.

Sub-section (a) of Section 3 is as follows :

When a Hindu governed by any school of Hindu Law other than the Dayabhag school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, Subject to the provisions of Sub-section (3), have in the property the same interest as he himself had.

Under these provisions a widow would inherit the separate property of the husband and also the interest of her husband in the joint family property. In either case under Sub-section (3) the interest inherited by her shall be the limited interest known as a Hindu woman's estate though she would be entitled to claim partition in regard to her share. The question is whether archakatvam service is property within the meaning of the section.

3. The argument of Mr. Somasundaram, the learned counsel for the appellant, ignores the nature of the service tenure and the character of the grant. The origin of the archakatvam service inams is lost in antiquity. A brief history of the origin of this archakatvam service and its incidents was given by Seshagiri Aiyar J. in his referring judgment to the Full Bench case reported in *Annaya Tantri v. Ammakka Hengsu*, 41 Mad. 886 : A. I. R.

1919 Mad. 598, In his view this archaka service grants had their origin in the time of Puranas when temples came into existence. Citing slokas from the writing of Vaidyanatha Dikshitar the learned Judge pointed out the inferior status of the archakas who were looked down upon and considered to be a very inferior class of Brahmins Saathathapa says :

A vipra (Brahmin) who performs pooja for the sake of money is known as the Devalaka ; such a person becomes incompetent to participate in the usual Havya and Kavya rites enjoined on Brahmins.

In another stanza he expresses that "a vipra, who, though he may be well versed in the four Vedas is desirous of getting money, and who performs the worship of the Gods for the sake of another will be considered equal to a chandala.

As they were looked down upon in the above manner naturally great

inducements had to be offered by liberal grants of land and by the promise of perquisites. That is how the archaka office came to be founded. Large endowments, were given by generous donors for the due and regular performance of the services. This right to archakatvam service ordinarily continued to be in the same family for generations and the properties pertaining to the same were being enjoyed by the members of the families for generations. In recent years Courts have introduced the three pronged classification in regard to the said grants. In *Subramania Odayar v. Kailasanathaswami Koil*, 39 M. L. W. 389 : A. I. R. 1934 Mad. 258,

Venkatasubba Rao J. observed :

There are three possible views that may be taken of grants of this kind ; first that the land was granted to the institution ; secondly that it was intended to be attached to a particular office ; and thirdly, that it was granted to a named individual, burdened with service, the person so named, happening to be the office-holder at the time of the grant.

As observed by another learned Judge these nice short quilllets of law are of comparatively recent origin and are modern innovations. But it is too

late in the day to wipe out these distinctions or ignore the classifications. Even so the question arises whether the archaka office to which

perquisites are attached is property within the meaning of Act XVIII [18] of 1937. If the lands were granted to the archakas burdened with service

no difficulty would arise as the property is that of the grantee just like any other property but in the case of archaka service inams the nature of the

income from the lands depends upon the office. In this case no evidence has been placed before the lower Court in regard to the nature of the

grant but a perusal of the pleadings show that both the parties assumed that items 2 to 10 of schedule A are not lands burdened with service but

only service inams. We shall proceed to consider the question raised in the appeal on that assumption. If the office is property within the meaning

of Act XVIII [18] of 1937 succession to the will property be governed by the provisions of the Act in which case the plaintiff would be entitled to

succeed to the property in the manner prescribed by the Act.

4. A learned exposition of the office of the hereditary priest of a temple is found in the decision reported in *Krishna Bhat v. Kapa Bhat*, 6 Bom. H.

C. A. C. 137. On a consideration of the text books on Hindu law and other

treatises the learned Judges came to the conclusion that the office of the hereditary priest in a temple is immovable property within the meaning of Clause 12 of Section 1 of Act XIV of 1869. The following extracts

from relevant text book are found in that decision :

In Elberling on "Inheritance", Section 206, it is said that the right of performing the religious ceremonies of certain classes of people as purohit, is

by custom considered analogous to real property; and in 2 Str H. L. 363 Mr. Colebrooke says, that it an office in a family be hereditary, the dues

or profits appertaining to it must be subject to be shared ; but in such case it classes with immovables.

Colebrooke in his Digest (Vol. I, p. 375 Madras Edn. 1863) describes the position of Purohita and Agraharica priests, and says they are

considered hereditary offices, while Elberling (p. 96, Sections 206 and 207) states that by custom these offices are considered analogous to real

property.

In Annayya Tantri v. Ammakka Hengsu, 41 Mad. 886 : A. I. R. 1919 Mad. 598 the Full Bench held (Sadasiva Aiyar J. dissenting), that according

to the practice and precedents obtaining in the Madras Presidency, a Hindu female is not incompetent by reason of her sex to succeed to the office

of Archaka, in a temple and to the emoluments attached thereto. At p. 898 Wallis C. J. says,

It is not disputed that in this part of India the user in the case of temple archakas is that the office is hereditary and descends in the ordinary course

of succession to women, who are not themselves competent to perform the duties of the office by ministering in the temple and perform them by

deputy." It was held that succession to the office is regulated by Hindu law. It is also not disputed that in the case of hereditary archaka inams the

office is held by the heirs jointly, and by mutual arrangement they perform services by rotation or convenient turns. It is also a well-known incident

of these grants whether sanctioned by custom or otherwise, that the members of the family partition the properties between themselves and such

partitions are recognised by Courts so long as services for which grants are made are regularly performed. No doubt, the alienation of such inams

was held to be invalid on the ground of public policy. In Anjaneyalu v. Sri Venugopala Rice Mills Ltd., 45 Mad. 620 : A. I. R. 1922 Mad. 197 a

Full Bench of this Court held that Swastivachakam service tenure is inalienable on the grounds of public policy and the principle of that decision will

equally apply to an alienation of archakatvam service inam. It will, therefore, be seen that archakatvam office is heritable property governed by

Hindu law of succession.

The office is jointly enjoyed by all the heirs and for convenience it is performed by turns. The property pertaining to the office can be partitioned

among the office-holders so long as the services are duly performed. Only the alienation of the property is prohibited. We, therefore, hold that the

right to archakatvam service of the office of archaka is heritable property and therefore governed by the provisions of Act XVIII [18] Of 1937.

5. Mr. Somasundaram in support of his argument relied upon a decision reported in RM. AR. AR. RM. AR. AR. Umayal Achi Vs. Lakshmi Achi

and Others, . The learned Judges, there, held that the right to trusteeship is not property within the meaning of Sub-section (3) of Section 3 of the

Act XVIII [18] of 1937. In the learned Judges' view the Act applies only to property which belonged to the deceased person in his own right. The

Federal Court in appeal against that judgment accepted that view, and Varadachariar J. in AIR 1945 25 (Federal Court) was intended to apply

only to property beneficially owned by the propositus and not to anything in the nature of a trusteeship though the learned Judge recognised that

Hindu law regarded trusteeship as property for certain purposes. The learned Judge held on a consideration of the relevant provisions of the Act

XVIII [18] of 1937 that succession to such property is not governed by the Act. Though the observations of the learned Judge are wide, the

decision proceeded only on the main ground that the Act governs succession to property beneficially owned by the propositus. In this case of

archakatvam service, the office-holder or holders for the time being are beneficially entitled to enjoy the income of the property, and, therefore,

that decision does not directly affect the question to be decided in the present case.

6. Assuming that the office is not property within the meaning of Act XVIII [18] of 1937 it would still be property under Hindu law, and

succession to it is, therefore, regulated by Hindu law.

7. In AIR 1943 89 (Privy Council) the Judicial Committee held that Sebaiti is

property and is heritable property and succession to it is governed

by Hindu law. Its logical consequence would be that the heir or heirs would succeed to the estate just like to any other assets and would be liable

to meet the legal obligations from and out of the perquisites of that asset. If so, persons who would be entitled to be maintained from and out of the

income from the assets devolving on the heir or heirs would equally be entitled to be maintained out of the perquisites.

8. Mr. Somasundaram relied upon a decision in (Nagadevam) Venkatasubbamma Vs. Nagadeva Venkateswaralu and Another, in support of his

contention that the plaintiff is not entitled to maintenance out of the income from the archakatvam service inams. In that case, the widow of a

coparcener filed a suit for maintenance against the surviving coparceners. Some of the properties in the hands of the defendants were purohit

service inam lands. The widow contended that income from purohit service inam lands should be taken into consideration for arriving at the

quantum of her maintenance. The learned Judge, mainly relying upon the provisions of Act III [3] of 1895 (Madras) and Regn. VI [6] of 1831,

held that the emoluments enjoyed by the office-holder for the time being would be separate property as salary for the services rendered by him and

that this income could not be deemed to be joint family property. That decision, turning upon the statutory provisions, cannot conceivably be

applied to a case of archakatvam service inam which, under the law and custom, has been recognised to be property heritable and partible

between the members of the family.

9. In N. Adinarayana Chetty Vs. T.T.K.K. Appan Srirangachariar and Others, the learned Judges, at p. 224, make the following observations

which may usefully be extracted here:

The law relating to village service inams is moreover to be found in special laws such as Madras Hereditary Village Offices Act, 1895, and it

would not be justifiable to import those laws when dealing with temple service inams in which the grantee or the holder of the inam is a Hindu joint

family and alienation is prohibited on the ground that it is opposed to public policy and contrary to the nature of the interest effected by the

transfer.

We, therefore, hold that the right to perform archakatvam service carrying

perquisites in whatever shape it may be for the due performance of the said services is property within the meaning of Act XVIII [18] of 1937, and that, even apart from the provisions of Act XVIII [18] of 1937, the plaintiff would be entitled to maintenance from and out of the income of the service inam lands.

10. The plaintiff, though she is entitled to claim a share in the property, has confined her relief only to maintenance. The lower Court has awarded her maintenance at the rate of Rs. 200 per year towards past arrears and at Rs. 300 per year for future maintenance. As the plaintiff died pending appeal, Mr. Somasundaram did not press his appeal in regard to future maintenance and has confined himself only to past arrears.

In the view we have taken, we are of opinion that the lower Court's finding with regard to the rate of maintenance is correct. The appeal is dismissed with costs.