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**(1949) 04 MAD CK 0041**  
**In the Madras High Court**

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

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**Date of Decision :** 06-04-1949

**Acts Referred:**

**Citation :** (1950) ILR (Mad) 451 : (1949) 2 MLJ 75

**Hon'ble Judges :** Subba Rao, J

**Bench :** Division Bench

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### **Judgement**

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

meaning of Act XVIII 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, Gopala charyulu, was the hereditary archaka of Sri Madanagopalaswami Varu, enshrined in the village of

Podagatlapalli and of Sri Venkateswaraswami Varu and Sri Kothandaramaswami Varu enshrined in the village of Veditreswaram. An extent of 32

acres and 75 cents comprised in items 2 to 10 of a schedule annexed to the plaint was in the enjoyment of the said Gopalacharyulu as Archaka

service inam. Gopalacharyulu died on 1st January, 1940. The first defendant is his undivided son and the second defendant is the undivided son of

the first defendant. On the death of Gopalacharyulu the first defendant has been enjoying the said archaka service inam and rendering archakatvam

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 No. 1 in A schedule and other items mentioned in schedules B and G. The plaintiff, widow of

Gopalacharyulu, and the step-mother of the first defendant, 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 A schedule 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 A schedule properties and to a share in the

houses and sites described in the B schedule properties and also in the C schedule moveables. He awarded maintenance at the rate claimed by the

plaintiff both in regard to arrears of maintenance as well as future maintenance. The first defendant 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 item No. 2 to 10 of A schedule

would not be property within the meaning of Act XVIII 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 the first defendant. The relevant provisions of Sub-section (1) of Section 3 of Act XVIII of 1937, read as

follows:

When a Hindu governed by the Dayabhaga 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 (2) of Section 3 is as follows:

When a Hindu governed by any school of Hindu Law other than the Dayabhaga 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 charge 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 Vs. Ammakka Hengsu and Others, . 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 Subramaniam v. Srivaikuntam Kailasanathaswami Koil (1933) 39 L.W. 389, 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-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 A schedule 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 of 1937 succession to the property will 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 Bin Hiraganga v. Kapa

Bhat Bin Mahal Bhat 6 Bom. H.C.R. 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 Strange H.L. 363, Mr. Colebrooke says, that if 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." " Colebrook in his Digest (Volume I,

page 375, Madras edition, 1863) describes the position of Purohita and Agraharica priests, and says they are considered hereditary offices, while

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

In Annayya Tanlri v. Ammakka Hengsu (1908) 35 M.L.J. 196 : ILR 41 Mad 886, 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; page 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 inarm 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 Neti Anjaneyalu Vs. Sri Venugopal Rice Mill (Limited), 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 of 1937.

5. Mr. Somasundaram in support of his argument relied upon a decision reported in *Umayal v. Lakshmi* (1944) 1 M.L.J. 70 : ILR 1944 Mad.

556. 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 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 *Umayal Achi v. Lakshmi Achi* (1945) 1 M.L.J. 108 : ILR 1945

Kar. 39 : (1945) F.L.J. 8 (F.C.) observed that Act XVIII of 1937 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 Act XVIII 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 of 1937 it would still be property under Hindu Law, and succession to

it is, therefore, regulated by Hindu Law.

7. In *Bhabatarini Debi v. Ashalsta Debi* (1943) 2 M.L.J. 70 (P.C.) the Judicial Committee held that Shebaiti 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 *Nagadeva Venkatasubbamma v. Nagadeva Venkateswarlu* (1935) 43 L.W. 718 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 of 1895, (Madras) and Regulation VI 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 page 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 of 1937, and that,

even apart from the provisions, of Act XVIII 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.