courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 15/09/2026

(2004) 02 AP CK 0032

In the Andhra Pradesh High Court

Case No : Appeal No. 762 of 1984

Purnam Ramachandram — APPELLANT

Vs

State of Andhra Pradesh and Others — RESPONDENT

Date of Decision : 19-02-2004

Acts Referred:
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 144, 16, 34

Citation : (2004) 4 ALD 821

Hon'ble Judges : Gopala Krishna Tamada, J;Bilal Nazki, J

Bench : Division Bench

Advocate : B.V. Bakshi, for the Appellant; Government Pleader, for Appeals, Government Pleader, for Endowments and Additional-A.G., for Respondent No. 1., E.S. Ramchandra Murthy, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J

1.This appeal has been filed by Plaintiff No. 3 in O.S. No. 1 of 1977 on the file of the District Judge at Karimnagar. Plaintiff No. 2 died before the judgment in the suit. His legal representatives were not brought on record as it was a suit under Order 1 Rule VIII of the CPC in the representative capacity. Plaintiff No. 1 did not join the appellant in filing the appeal. He has been arrayed as a respondent. The parties shall be referred to as plaintiffs and defendants.

2. Suit was filed for a declaration and injunction, by the plaintiffs against the defendants and the suit was filed in a representative capacity on behalf of the plaintiffs and other 128 Agraharikas of Vemulawada attached to the temple Shri Raja Rajeswara Swamy Vemulawada, Taluka Sircilla, District Karimnagar. It was contended by plaintiffs that a temple of Shri Raja Rajeswara Swamy was in existence from times immemorial. In the recent past King Raja Raj Narendra renovated the temple and the form in which it exists now was given to it by the said Raja Raj Narendra. The ancestors of plaintiffs and other Agraharikas had

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-...

been managing the temple, performing the Puja and handling the income derived from the offerings of the devotees. This was an ancient custom throughout the temples in India. Till recently, the Purohit used to perform the Puja, manage the temple and enjoy the usufruct of the temple which came in the shape of offerings and Dakshinas presented by the devotees.

3. The plaintiffs further contended that in 1816 A.D. (1225 Fasli), the Nizam of Hyderabad issued a Firman and granted the village of Vemulawada with all its lands, gardens, Abkari, customs, weavers taxes, Jatra Levi, Dabbi and all income of the temple along with the entire village revenue as Service Inam to the Brahmins of Vemulawada. The exact number of the Brahmins who were the original grantees under the Firman is not known now. But according to plaintiffs, the 128 families are the descendants of the original grantees. Although the Dabbi and Lingam given by devotees were not granted by the Ruler but in exercise of the sovereign power, the then Ruler included this income also in the grant in favour of the Brahmins. In 1917 (1326 Fasli), the Nizam of Hyderabad issued another Firman by which he confirmed the earlier grant in favour of the Deity and constituted the Brahmins of Vemulawada as Hereditary Trustees, Archakas, managers and beneficiaries. By that time, the number of Brahmins in Vemulawada had increased and it had become impracticable for all of them to sit in a committee and manage the affairs therefore, Nizam directed five capable persons should be selected out of them to constitute the managing committee. For more than 30 years everything was done in accordance with the directions of the Nizam. The temple affairs were solely managed by the Brahmins and the entire income of the temple was utilized by them in performance of Puja, maintenance and arrangements of Jatra and for their maintenance. Immediately after abolition of Jagirs in 1949-50, the Hyderabad Endowment Rules were applied to the temple. Vemulawada was situated in the Jagir of Maharaja Kishan Pershad Bahadur till then. The Government authorities considered that there was mismanagement in the temple affairs therefore, they appointed a Managing Committee of officials and non-officials for managing the affairs in 1951-52. In this Committee also two selected representatives of Agraharik Brahmins were taken as members. All Service Inam lands were converted into patta lands of the Agraharikas. Jagir commutation amounts also were paid to the Agraharikas. It was also decided that Dabbi and Lingam was not part of the Jagir but the Chief Minister at that time also decided that out of this money, the Brahmins, Agraharikas of Vemulawada would be entitled to 1/3rd as they were Mutawallis. This amount was being paid up to 1958. From 1958 to 1960, the Agraharikas were not paid anything.Ultimately in 1960, Rs. 45,000/- was fixed as their remuneration annually in the capacity of Agraharikas or Pujaris. The Brahmins went on protest against the denial of their rights by the Government. Subsequently this amount was raised to Rs. 60,000/- per annum on ad hoc basis subject to determination under the new Act of 1966. Ultimately in 1967, the Agraharikas were totally eliminated and the plaintiffs were not granted any relief. The plaintiffs filed Writ Petition No. 3891 of 1967 before the High Court,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-…

challenging the Government order. It was dismissed with a direction that plaintiffs must apply to the Deputy Commissioner, Endowments under the new Act for getting their rights determined. Accordingly plaintiffs filed petitions u/s 77(1) C.F. and G of the Act XVII of 1966 and u/s 78 were filed before the Deputy Commissioner, Endowments, Andhra Pradesh, Hyderabad. This petition was numbered as O.A. No. 29 of 1969, later on it was renumbered as O.A. No. 6 of 1974. It was dismissed by the Deputy Commissioner, Endowments on 19.8.1974. The case had been tried and heard in Hyderabad by the Deputy Commissioner but when he was transferred to Kurnool, the file was sent to him for disposal. Thereafter a notice was given to the State Government u/s 80 of the Code of Civil Procedure, which was served on them on 7.11.1974.

4. On the basis of these pleadings the plaintiffs sought relief that it be declared that 128 Brahmin Agraharikas of Vemulawada are Hereditary Trustees, Hereditary Archakas and the Hereditary beneficiaries of Sri Raja Rajeswara Swamy Temple, Vemulawada, Taluk Sircilla, District Karimnagar. They also sought a mandatory injunction directing the defendants to constitute a Board of Trustees for the temple by selecting five capable persons from out of the Agraharika Brahmins.

5. Written Statement was filed by the 1st defendant and also separately by Defendant No. 2. It was denied by Defendant No. 1 that the affairs of the temple were solely managed by Brahmins and the entire amounts were utilized by them till the abolition of Jagirs. It was also contended that the administration and management of the temple was never vested in the Brahmins. It always vested in the Jagir Administration as the entire village was a Jagir village. In the year 1338 Hijri, Government proposed for constitution of a committee for administration of Vemulawada Agrahar. The Peshkari of the Estate of the Jagirdar objected to the constitution of such a committee and thereafter issued a Firman on the 26th Jamadiulsani 1338 Hijri approving the appointment of a committee under the supervision of Peshkari Estate of the Jagirdar. Subsequently on 12th Rajjeb 1365 Hijri, another Firman was issued entrusting the supervision of the administration of the committee to the Collector, Karimnagar District. The above Firman and other records clearly establish that the administration and management of the temple was never vested in the Brahmins and it always remained vested in the Government and the Jagirdar.

6. After the abolition of Jagirs in 1358 Fasli (1948 A.D.), the administration and management of temple was vested in the Government and therefore the administration and management was being made as per the provisions of the Hyderabad Endowment Rules and the Regulations of 1349 Fasli. Under the provisions of said Regulation, the nature of the Mash relating to Vemulawada fell under the definition of ''Mash Mashruthul Kidmat'' and not that of an ''Endowment'' and the records of the temple clearly establish that there was no office of Trusteeship. It was not known as to who was the founder of the temple and it was also not known if the founder had endowed any property in favour of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-…

the Brahmins of Vemulawada Village. The Government or the Jagirdar were not the founders of the temple. The temple has been in existence from immemorial times. The grant made by the Government was only ''Mash Mushruthul Kidmat'' and the temple was administered by the Government under Chapter 81 read with Chapters 45 and 46 of Endowment Rules. In favour of plaintiffs or the Brahmins of the Vemulawada temple no rights of trusteeship and beneficiaries were ever created. Even the rights of the Brahmins as Archakas to receive the 1/3rd share in the income was denied and negatived by the, Government by its order G.O. Ms. No. 763 dated 7.4.1960. However, considering the fact that Brahmins had no source of income, the Government directed by the said order that an amount of Rs. 45,000/-shall be payable in lump sum annually on the condition that Archakas shall perform services regularly. Subsequently by G.O. Ms. No. 665, dated 11.4.1967, the Government directed payment of Rs. 60,000/- pending final fixation of the annual remuneration of the Archakas u/s 37(2) of Act No. 17 of 1966. In pursuance of Government Order dated 7.4.1960, all Archakas executed an agreement on 20.5.1960 and have been receiving the annual remuneration as Archakas.

7. The Government further contended that the plaintiffs or the other Agraharika Brahmins are not the Hereditary Trustees or Hereditary Archakas or beneficiaries. The order passed by the Deputy Commissioner u/s 77(1) of Act No. 17 of 1966 was binding on the plaintiffs and other Brahmins. No property from the Jagir village was ever endowed to anyone. The rights under the grant which was made by the Firman of the Nizam were conditional and even these rights came to an end by abolition of Jagirs Act, 1948. The entire village of Vemulawada got vested in the State Government consequent to abolition of Jagirs in 1948. After the village was got vested in the State, the State did not make any fresh grant. In the meantime because of the provisions of Act 17 of 1966, the administration and management of the temple got vested in the Trust Board.

8. The Defendant No. 2 in addition to what had been contented by Defendant No. 1, submitted that though a reference was made to Firman of Nizam allegedly granted in 1225 Fasli, it was not filed before the Deputy Commissioner and was not also filed before the Trial Court therefore, the allegations that an Agrahar village was granted, was denied. The donations and offerings called Dabbi and Lingam were also not granted to the plaintiffs and other Brahmins by the Ruler. The Nizam also did not make any grant of the income of Sri Raja Rajeswara Swamy Temple. The offerings to the temple cannot be claimed by the plaintiffs or the Brahmins. The allegations contained in Para 4 of the Plaint that the Nizam of Hyderabad confirmed the earlier grant in favour of the Deity and he constituted the Brahmins as the Hereditary Trustees of the temple, was also denied. But it was stated that by the Firman dated 26th Shaban 1335 Hijri, the Nizam of Hyderabad confirmed the right in favour of the Deity Sri Raja Rajeswara Swamy. The subject of grant was Agrahar village Vemulawada consisting of all lands situated therein and other sources of income and not the income of the temple derived from offerings which rests with the Deity. The grant of Agrahar village

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-…

was made conditional on rendering the services to the temple. It was ordered by the Nizam that out of the Brahmins rendering services in the temple, five capable and efficient persons be nominated as Mutasaddies, who, in addition to making arrangements for rendering services in the temple, will collect the income of the Mash and will distribute that income for the expenses of temple and payment of shares among the shareholders on the analogy Darga Khuldabad. It was contended that the said Firman did not confer any right in favour of Brahmins rendering services in the temple. On the other hand, a part of the income from the village was directed to be spent for the expenses of the temple and the remaining income of the village was directed to be shared by the Brahmins. The Firman relates only to the income of Mash i.e., the income of the Agrahar and not the income of temple consisting of offerings of the devotees to the Deity. The grant of Agrahar village as per the Firman dated 26th Shaban 1335 Hijri was abolished by Jagir Abolition Regulation, 1949. All the rights which accrued under the said grant stood abolished and commutation amount was determined in lieu of rights of the grantees. As the grantee in this case was Deity itself, a share of commutation amount was being paid by the Government to the temple. The share of the Agraharikas in the commutation amount has already been paid to the Agraharikas. The patta of the lands of the village also transferred in favour of Agraharikas by creating ownership rights in their favour. Thus, the rights if any, claimed in the suit stood abolished in the year 1949.

9. On the basis of these pleadings, the following issues were framed by the Trial Court:

"1. Whether the suit is maintainable ?

2. Whether the order of the Deputy Commissioner in O.A. No. 6/1974 passed u/s 77 of the Andhra Pradesh Charitable and Hindu Religious Endowments Act, 1966 is final and is a bar to maintainability of the suit ?

3. Whether the plaintiffs are entitled to the relief of declaration that 128 Brahmin Agraharikas are the Hereditary trustees, Hereditary Archakas and Hereditary beneficiaries of Shri Raja Rajeswar Swamy Temple, Vemulawada ?

4. Whether the plaintiffs are entitled to a mandatory injunction of directing the defendants to constitute a Board of Trustees to the Temple by selecting five capable persons from out of the Agraharika Brahmins of Vemulawada ?

5. Whether the Court fee paid is correct?

6. To what relief?"

10. The Issue No. 3 was the pivotal issue and the Trial Court held that plaintiffs were not Hereditary beneficiaries. We have heard the learned Counsel for the parties and gone through the record.

11. Controversy revolves round the claim that the plaintiffs and 128 Brahmin Agraharikas were the Hereditary Trustees, Hereditary Archakas and Hereditary

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-…

beneficiaries of Shri Raja Rajeswar Swamy Temple, Vemulawada. On the basis of the evidence both oral and documentary, the Trial Court came to the conclusion that plaintiffs were not able to prove that they were Hereditary Trustees/ Archakas/beneficiaries of the temple. The plaintiffs based their claim on a Firman issued by the Nizam in 1225 Fasli. They also filed documents Exs.A-1 to A-5 to prove their claim. They relied on Exs.A-6 to A-9 in this connection. They also claimed that the Government had accepted the system even after independence. These documents and also the statements made by the witnesses on behalf of the plaintiffs will have to be looked into.

12. PW-1 is one of the Agraharikas. He stated that about 128 families of the Agraharikas are connected with the temple. He himself was aged 72 years when he deposed in the Court. He stated that the temple was an ancient temple, His ancestors were managing and maintaining the temple. They were the Pujaris in the temple. The Brahmins enjoy the amounts that remained after maintaining the temple from its income. This became hereditary from the times of their ancestors. They were the Hereditary Trustees, Archakas and beneficiaries of the said temple. The Nizam issued Firman in 1225 Fasli whereby he directed that the yield from the land shall be enjoyed by the Brahmins after maintaining the temple. The extent of the land was not demarcated but the entire land belonging to village Vemulawada was granted. The same Firman also laid down that the Brahmins should spend the income for maintaining the temple. He exhibited Exs.A-1 to A-5 to substantiate his claim. He also exhibited Exs.A-6 to A-10. He stated that they were described as Mutawallies in Ex.A-10. They enjoyed 1/3rd of the amount till 1960. Thereafter, the Minister, Endowments ordered a lump sum payment of Rs. 45,000/- per year, subsequently it was raised to Rs. 65,000/-. Ex.A-12 was the order issued by the Jagir Administrator directing old tradition to be continued. Ex.A-13 was the order issued by Deputy Jagir Administrator reiterating that the Brahmins should get 1/3rd of the income. They filed a petition before the Deputy Commissioner, Endowments, Hyderabad, which was dismissed on 19.8.1974. O.A. No. 6 of 1974 and O.S. No. 1 of 1977 were filed for setting aside the order of the Deputy Commissioner, Endowments, Hyderabad i.e., Ex.A-14.

13. In his cross-examination he stated that Ex.B-2 was an agreement which bore his signature. He had to sign that agreement by pressure as the amount had been stopped for several years. He had deposed before the Deputy Commissioner, Endowments, Hyderabad. He had not stated before the Deputy Commissioner in his deposition as is contained in Ex.B-3. Before the Commissioner, Endowments, they filed a petition for enhancement without prejudice to their rights. They filed an appeal before the Government for enhancement of the amount. For the first time the grant was given to them by Nizam in 1230 Hijri. The temple was existing even before that. He has no idea as to who were the founders of the temple. All the Jagirs were abolished and taken by the Government in the year 1949. Pattas of lands were granted to them. They were not given any amount by way of commutation after the abolition of Jagir.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-…

He was not aware whether any commutation amount had been paid by the temple authorities.

14. PW-2 is Vice-President of the Darga known as "Committee Khuddamin Dargahjat Hadd-e-Kalan", Khuldabad. This Committee manages the affairs of the Darga. The Darga was 700 years old. There were eight Mutawallies for the Darga representing eight different families. The original eight families have multiplied to 3000 families and the present eight Mutawallies are the representatives of the families. The members of all these families elect eight Mutawallies by voice vote. The income was divided into three parts. One part was utilized for maintenance of Darga, the second part was for the maintenance of Mutawallies and the third part was for the maintenance of the 3000 families in equal proportions. The division was known as "Sulse Sulsan". This principle was followed from the inception of the Darga and the Wakf Board supervises, and they pay 6% of the entire income to the Wakf Board. Ex.A-16 was the certificate issued by the Secretary of the Committee reiterating the principle.

15. In his cross-examination he stated that for the last two years he was working as Vice-President. There was Wakf-Nama relating to Darga. He had seen only the photo copy of the said document. It was in Parsian language. The Nizam created the Wakf. The procedure for sharing the income was laid down in the said document. The main source of income of Darga was offerings by the devotees and the commutation amount that was given after abolition of Jagir. Except the Jagir which was abolished, there were no other properties. Every year the representatives of the Wakf Board would come to their office and inspect the accounts. The Darga maintains records. The Jagir prior to abolition, consisted of lands in seven villages. The amount of commutation they were getting was Rs. 5,000/- per year.

16. PW-3 is the first plaintiff. He also reiterated what had been said by PW-2. In his cross-examination however, he stated that the Inams granted to the Brahmins were burdened with services as a condition was imposed that service should be done in the temple. It was granted under Ex.A-2 which was in Urdu. He was asked as to who was Chandulal mentioned in Ex.A-2 and he replied that he was the Diwan of the Nizam.

17. From the oral evidence it can hardly be said that the plaintiffs were able to prove that they were Hereditary Trustees or Hereditary beneficiaries of the incomes of the temple therefore, a look at the documentary evidence will have to be made. The first document which will have to be looked at is Ex.A-4 which is a Firman issued by the Nizam on 26th Shaban 1335 Hijri. This Firman shows that as per the opinion of the Commissioner, Revenue and Finance, Mash referred in the submission be confirmed in favour of the said temple itself and out of the Brahmins rendering service in this temple, five competent and suitable persons be determined, who in the capacity of Muthasaddis of services, would in addition to rendering of services, collect the income from Mash and distribute it towards the expenses of the temple and towards the shares of the shareholders in the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-…

manner in which the Mash of Dargas of Khuldabad were distributed.

18. Ex.A-1 is a Munthakhab. It states, "Agrahar village Vemulawada confirmed on condition of service, dated 20th Zilya 1307 Hijri." It also says condition of grant and under this column, it states, "Towards expenses of Puja Nanda Deepand Utsavam and beating of drum and towards Sadabart etc., Sri Raja Rajeshwara Swamy Temple" Amount of Assessment of lands or cash, name of village and Pargana were also mentioned.

19. Ex.A-2 is supposed to be a Tamil Munthakhab and that was issued on 8th Farwardi 1300-F. It reads that the whole Agrahar village Vemulawada was given to the Brahmins performing Puja of the temple, according to the plaintiffs.

20. Ex.A-3 are the succession statements issued from time to time on the death of the members of the plaintiffs. These succession statements were issued, according to the plaintiffs, in terms of Exs.A2 and A-5.

21. The learned Additional Advocate-General, appearing for the respondents submits that these documents do not show anywhere that any Hereditary rights were vested on the Brahmins on the other hand, the village was granted to the Deity. We have seen Ex.A-4. This Firman was in two parts. The first part was that the recommendation of the Commissioner of Revenue and Finance Ministry was accepted by the Nizam that Mash be confirmed in favour of the temple itself. The second part was that out of the Brahmins rendering services in the temple, five competent and suitable persons be determined in the capacity of Muttasaddi of services. These persons were supposed to manage the temple and also collect the income from Mash and then distribute the expenses of the temple towards the share of shareholders in the manner in which the mash of Dargas of Khuldabad were distributed. Now we do not have any evidence as to how the Mash of the Darga of Khuldabad was distributed. Although PW2 was examined, he stated what was the procedure adopted for the Darga of Khuldabad but he did not produce any record or any Firman by which the division of the Mash was being done. Any orders passed after the Firman of the Nizam which is contained in Ex.A4, must be read in the context of the Firman itself. The Firman did not create any right in the Brahmins except for allowing them to render services through Five competent and suitable persons from their community and in lieu of services, a part of the offerings they were held entitled to. Whether in these circumstances any Hereditary rights were created or not, will have to be examined.

22. In this case, reliance has been placed on various judgments by the parties.

23. In the judgment reported in Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami ILR 27 Mad 435, according to the plaintiffs, the right to receive the part of offerings by trustees, is recognized. The judgment lays down:

"The religious foundations known as debuther, devastanams or temples are the most numerous in India and have the largest endowments, especially in the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-…

shape of lands, assignment of public revenue and jewellery. These institutions have been established for the spiritual benefit of the Hindu community in general or for that of particular sects or sections thereof. The management of these institutions is vested in one or more persons variously known in this Presidency as dharmakartas, panchayets, uralans, & c., but referred to in the Religious Endowments Act (XX of 1863) and in judicial decisions as trustees, managers or superintendents. Their office is either hereditary or for life and, as a general rule, they have beneficial interest in the endowments or their income. As already stated, the worshippers are beneficiaries only in a spiritual sense, and the endowments themselves are primarily intended for spiritual purposes, though indirectly and incidentally a good number of people derive material or pecuniary benefit therefrom as office-holders, servants or objects of charity."

The Trial Court, while considering that judgment, was of the view, "no doubt this judgment lays down that Archakas or the trustees would be entitled to part of the offerings." But in the present case, the plaintiffs had not proved that they were the hereditary trustees. We have seen the developments which happened in this matter; the origin of temple is unknown, by an Act of State 128 families of the village became entitled to part of the offerings in lieu of services offered through five representatives. This, in our view, does not make them hereditary trustees of the temple. The plaintiffs have further relied on judgments reported in Manohar Ganesh Tambekar and Ors. v. Lakshmiram Govindram and Ors. ILR 12 Bomb 247, and Pasupuleti Krishnamurti v. Annadasu Bapanayya and five Ors. 1955 (1) An.WR 308. These decisions merely lay-down as to how customary trusteeship of temples work in India and in what circumstances they are recognized. Thereafter they referred also to Jogendra Nath Naskar v. Commissioner of Income Tax, Calcutta, . This judgment does not throw much light on the controversy before us. This case before the Supreme Court was related to an assumption under Income Tax Act. One Ram Kristo Naskar left a Will by which he left certain properties as debuttar to two deities. He appointed his two adopted sons as the shebaits. Then, a controversy arose with regard to the payment of the taxes and ultimately the matter went to the High Court in reference by the Tribunal. The reference was:

"Whether on the facts and in the circumstances of the case, the assessments on the deities through the shebaits under the provisions of Section 41 of the Indian Income Tax Act were in accordance with law:"

When the matter reached the Supreme Court, it found that reference to Section 41 of Income Tax Act was superfluous therefore, they changed the question to the following :

"Whether on the facts and in the circumstances of the case, the assessments on the deities through the shebaits were in accordance with law?"

This was the question which was then decided by the Supreme Court. It relied on Pramatha Nath Mullick v. Pradyumnakumar Mullick where one of the learned

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-…

Judges had held:

"A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of law, a ''juristic entity''. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, by given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simple stated, is firmly established. It should however be remembered that the juristic person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the Pran Pratishta ceremony. It is not also correct that the supreme being of which the idol is a symbol or image is the recipient and owner of the dedicated property. This is clearly laid down in authoritative Sanskrit Texts." ....." Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a figurative sense (Gaunartha). The correct legal position is that the idol as representing and embodying the spiritual purpose of the donor is the juristic person recognized by law and in this juristic person the dedicated property vests."

We do feel that this judgment in any way help the plaintiffs to prove that they were hereditary trustees, though by an Act of the State at any particular point of time, they were given a part of the offerings.

24. The plaintiffs have also relied on Shriomani Gurudwara Prabandhak Committee, Amritsar Vs. Shri Som Nath Dass and Others, . But this judgment does not lead us to anywhere in order to come to a conclusion whether the plaintiffs were the hereditary trustees or not.

25. They have also relied on (1) Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others, , (2) Director of Endowments, Government of Hyderabad and Others Vs. Akram Ali, , and (3) State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala, . But we do not find that these judgments help the plaintiffs in order to establish that they had any hereditary rights in the offerings. At best, these judgments lay down that the offerings made to an idol should essentially be made to the idol and the deity and not to the priests unless there was a custom or an expressed declaration by the founder. Founder in this case is not known, expressed declaration even by the sovereign, has not come forward. The only thing that has come forward is that in lieu of services, they were entitled to part of the offerings. Even the Deputy Commissioner who decided the earlier matter, found that the plaintiffs were paid lump sum amount every year depending upon the income derived from the temple. He found in the budgets for the years from 1354 to 1357 Fasli, which were marked before him as Exs.B-8 to B-11 that lump sum amounts were provided every year whether it was 1/3rd or less or more. Thereafter G.O. Ms. No. 763 was issued on 7.4.1960, where an amount of more than Rupees two lakhs was sanctioned to the Pujaris of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-…

temple towards their arrears of the years 1957-58, 1958-59 and 1959-60. According to the learned Additional Advocate-General, even it is not proved that they were held entitled at any point of time, to 1/3rd share of the offerings. In 1960-61, they were paid Rs. 45,000/- as a lump sum amount.

26. On the other hand the learned Additional Advocate-General rightly pointed out that these judgments do not help the plaintiffs because even if one goes by the plaint, it had not even pleaded that the rights of the plaintiffs were based on a custom. He submits that the custom has specifically to be pleaded and proved. On the other hand the claim had been made on the basis of the grant and grant of the Nizam nowhere gives them the hereditary rights. Even Firman of 1816 which was pleaded, was not produced. The learned Additional Advocate-General also referred to the certificate with regard to the Khuldabad Dargahs and he submits even in this certificate, reference has not been given to any Firman, but even if it is taken to be result of some Firman, it shows that 1/3rd was given for maintenance and expense of the Wakf, 1/3rd was given for rendering services by the Muthasaddi and 1/3rd for distribution among the shareholders. That also was not creating any hereditary trusteeship.

27. Since it is not known nor it is proved as to who established the temple therefore, the devolution of trusteeship of the temple cannot be established. The only mode by which the plaintiffs could prove that they had the hereditary offerings in the temple was to prove it by establishing that there was a custom. On the other hand, even the custom was not pleaded. The plaintiffs however claimed their rights on the basis of the Firman, which we have already discussed hereinabove, but in our view, custom and Act of the State would not go together.

28. In this case, we are fortified in our view by the judgment of a Division Bench of Kerala High Court reported in Rev. Fr. Joseph Valamangalam and Others Vs. State of Kerala, . In Para 26 of the said judgment, the Kerala High Court held:

"Of the many legal concepts put forward as a foundation of their alleged title, the concept of customary right can be rejected straightaway. For, ''by its very definition, a customary right cannot be a creature of a written instrument....."

29. Although the Trial Court declared that the plaintiffs are the hereditary trustees, we are not in agreement with that. Prayer (b) and (c) in the plaint were rejected. Prayer (b) was:

"A Mandatory injunction be issued directing the defendants to constitute a Board of Trustees for the Temple by selecting five capable persons from out of the Agraharika: Brahmins of Vemulawada and give full effect of the Rule of three Divisions (Amal-Suls-Sulsan) in respect of the income of the Temple."

30. The learned Additional Advocate-General rightly pointed out that this direction could not have been granted and cannot be granted in view of the operation of law because the temples have to be managed in accordance with

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-…

the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act No. 30 of 1987). Since We are not even in agreement with the findings of the Trial Court with regard to the first prayer therefore, there is an added reason for not granting the decree sought for under prayer (b).

31. The appeal is accordingly dismissed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/purnam-ramachandram-appellant-…