

(1918) 11 MAD CK 0021
In the Madras High Court

Ramalinga Chetty and Others

APPELLANT

Vs

Sivachidambara Chetty and Others

RESPONDENT

Date of Decision : 15-11-1918

Acts Referred:

Transfer of Property Act, 1882 — Section 123

Citation : (1919) ILR (Mad) 440 : (1919) 19 LW 224 : (1919) 36 MLJ 575

Judgement

1. This is a suit to recover property. The father of defendants 1 to 3 gave about 40 cents of land to a temple in 1903 on the Sapandikaranam day

of his father's death. There was no writing to evidence it. The donor was himself a trustee of the temple. During his life-time he regarded himself as

a lessee on behalf of the temple and gave it the income from the land. After his death, the defendant refused either to give the income or to deliver

possession of the land.

2. There were two main defences. One is that as the gift was not in writing and registered, no title passed to the temple. The other is that it was not

competent to the donor who was a member of a joint Hindu family at the time of the gift to dispose of ancestral property in the way he did. The

courts below rejected these contentions.

3. In Second appeal, Mr. Ananthakrishna Aiyar relied strongly upon Mannu Lal v. Radhakishenji 36 Ind.Cas. 989 for the first contention. The

learned Judges of the Allahabad High Court do not discuss the question, nor do they refer to the decisions of the other High Courts bearing on it. It

is true that the exact point now raised was not decided before, but there are observations in the judgments of this Court and of the Calcutta High

Court which are not consistent with the view taken in Allahabad.

4. Before examining the cases, we shall consider the nature of a dedication as understood by Hindus and the few texts of Hindu Law bearing on it.

A dedication, offering, or oblation as it is called is generally made on the occasions of deaths or marriages in a Hindu family. The usual form is to

take a leaf of the Tulasi plant in hand and with water offer the property in the presence of the persons assembled. It is not usually done before the

temple, or in the presence of the trustee. The occasion is such that no writing will be thought of. We are not sure that a writing will not be regarded

as detracting from the sanctity of the proceeding. The question is whether such a process is ineffectual to pass property. In the Chandogya

Upanishad, this is what is stated regarding the persons who benefit by a religious offering:

vFk ; ,rnsoa fo}kufXugks=a tqgksfr rL; losZ""kq yksds""kq losZ""kq losZ""ok
elqgqra HkofrAA

;Fksg {kqf/krk ckyk ekrja i;Zqiklrs AA ,oa Wwa lokZf.k HkwrkU;fXugks=eqiklr

He who presents an oblation, has made an offering in all worlds in all beings, in all souls ""As in the world hungry infants press round their mother,

so do all beings await the holy oblations. They await the holy oblations."" The usual religious formula pronounced by every Hindu male or female, on

the occasion of any "offering or feeding is that it is made to God as ""He is watching within all beings.

lokZUr;kZeh Hkxoku~ Jhgfj% tuknZu% izh;rka

5. Consequently a dedication of the kind we have referred to is intended to benefit the public in whom the spirit of God is said to reside. It is to the

universal soul which pervades all beings. These offerings are not to any specific person, real or artificial. The learned Vakil for the appellant

referred to the observations in Jagadindra Nath Roy v. Hemanta Kumari Debt (1904) ILR 32 C 129 P.C where an idol was spoken of as a

juridical person. It was pointed out in Manohar Ganesh Tambekar v. Lakshmiram Govindram ILR (1887) B.247 and Bhupati Nath Smrithitirtha v.

Ram Lal Maitra ILR (1909) C. 128 that in an ideal sense, an idol is a person capable of owning property. A person can make a gift to the trustees

on behalf of an idol or he can make offerings in the temple to the idol. In these cases, the idol can and does own the property. But it does not

follow from it, that a dedication must be in the form prescribed by Section 123 of

the Transfer of Property Act. There are various modes of giving property to a temple. One is by giving it to the trustees. In that case, the provision of the Transfer of Property Act must be complied with. Another is by dedication to the idol itself. If this is in writing, it is open to argument that by virtue of the Registration Act, no title would pass unless the document is registered. The third mode is the one with which we are concerned and which is observed on occasions of marriage or death.

Although the donor may intend that the embodiment of the Universal Soul worshipped in a particular place should have the benefit of the dedication, the words employed by him and the object aimed at by him are what has been indicated in the Chandogya Upanishad and in the formula we have referred to. In these cases, the gift is not to any sentient being, real or artificial, so as to attract Section 5 of the Transfer of Property Act.

6. The property thus dedicated ceases to belong to the donor. That undoubtedly is the Hindu idea. After an elaborate review of the Hindu Texts,

Mr. Justice Mookerjee says in *Bhupati Nath Smrithitirtha v. Ram Lal Maitra* ILR (1887) B.247 "It is conclusively established from these

authorities that according to strict Hindu juridical notions there can be no gift in favour of the Gods We are not concerned now with the

philosophical reason for this position, and it is needless to enquire whether it is due to the fact that in the earliest time physical objects were defied,

and could not, therefore, be very well supposed to be capable of acceptance of a gift, or to the fact that the deity was conceived as a being to

whom a mortal could not aspire to make a gift, but could only content himself with a dedication of things for acceptance." In one of the early Texts

(*Vyavahara Mayuka*, Chap. IV Section 7, placitum 23) it is said, quoting *Katyayana* that wealth which has been assigned for religious purposes is

extra commencing. In the *Calcutta* case already referred to, the same learned Judge deals with this matter in these terms: "If, therefore, a dedication

is made in favour of the deity, what is the position? The owner is divested of his rights. The deity cannot accept. In whom does the property vest?

The answer is that the King is the custodian of all such property. This is sufficiently indicated by the following passages: *Vijnaneswara* in the

Mitakshara (*Vyavahara Adhyaya*, verse 186) lays it clown that one of the duties

of the King is the protection of the Devagriha; and Aparaditya and Mitramisra in their commentaries on the same subject lay down the rule in the same manner. In the Sukraneeti, Chap. IV verse 19 stress is laid upon this as one of the primary duties of Kings. The true Hindu conception of dedication for the establishment of the image of the deity, and for the maintenance thereof is that the owner divests himself of all rights in the property; the King as the ultimate protector of the state, undertakes the supervision of all endowments. There is no acceptance on the part of the deity, but from the dedication, religious merit and spiritual benefit accrue to the founder and material benefit accrues to the person in charge of the worship and to the creatures of God." See also West, J., in *Manohar Ganesh Tambekar v. Lakshmiram Govindram* ILR (1887) B. 247. This conception of the effect of dedication is common to many systems of jurisprudence. In the Roman Law property dedicated to religious purpose was *extra commercium*. See Ulpian's *Frag XXII* Section 6. In Mahomedan Law dedications of this kind are not uncommon. It seems to us therefore, that to hold that unless a donation for religious purposes conforms to the requirements of the Transfer of Property Act, it would be invalid, would be to introduce an idea foreign at least to Hindu notions of religious donation. Of course, if the statute law imposes such a restriction, it must be obeyed. But the Transfer of Property Act is not exhaustive of all modes of transfer, and as we pointed out if the true intent of a dedication is not to give property to a sentient being the chapter relating to gifts can have no application to gifts by dedication. This is substantially the idea that underlies the decision in *Pallayya and Others and Mallayya Vs. Ramavadhanulu*, . For these reasons we are of opinion that the dedication on the *Sapandikaranam* day divested the donor of his rights and conferred them on the temple.

7. On the second question reliance was placed by the learned vakil for the appellant on *Muthusami Pillai Vs. Dorasami Pillai*, . The occasion of the gift is not mentioned in the judgment. The learned Judges quote without disapproval *Raghunath Prasad v. Govinda Prasad* ILR (1885) A. 76. That judgment refers to *Gopal Chand Pandi v. Babu Kunwar Singh* (1813) 5 SDA 24 as authority. On turning to this latter decision, it is seen that the *Vyavastha* of the Pandit on which the conclusion was based refer to Hindu Texts

and Puranic Slokas for the broad proposition that a gift to Vishnu and other deities by the manager of the family is within his competence. In Mitakshara Ch. I.S. 1 placitum 28 it is stated: "" Even a single individual may conclude a donation, mortgage or sale, of Immovable property, during a season of distress for the sake of the family, and especially for pious purposes."" In Hanuman Prasad Pandey v. Mussamut Babooee Munraj Koonwaree (1856) 6 M.I.A. 407 this proposition is quoted with approval.

In placitum 29 the expression "pious purposes" is explained thus "" such as the obsequies of the father etc.,. "" That explanation would undoubtedly cover the present case. It was pointed out by a Full Bench of this Court in Baba v. Timma ILR (1883) M. 357 that if there is a special text of Hindu Law in favour of a disposition by a manager, courts are bound to give effect to it. In Hanmantappa v. Jivubai (1900) B. 547 the same principle was enunciated. Having regard to these authorities and to the text of Mitakshara it seems clear that at any rate in the performance of religious obsequies the manager of a Hindu family is competent to give property to a temple. In Bathnam v. Sivasubramania ILR (1892) M. 353 : 3 M.L.J 139 a silver vehicle was presented to the temple not on any occasion of death or marriage but as a present on an ordinary occasion. It is doubtful whether such an offering can be said to be one for religious purposes, and whether it would be covered by placita 28 and 29 of Chap. 1

Section 1 of Mitakshara. The present case is clearly within the rule enunciated in those texts. Other texts may be quoted in support of this view.

But it is not necessary to multiply citations. We hold that it is not beyond the competence of a Hindu manager to make a gift of the kind we are dealing with. For these reasons, the second appeal fails and must be dismissed with costs.