

(1977) 02 MAD CK 0045

In the Madras High Court

Case No : App. No. 256, 341, 686 of 1972 and 378 of 1974

R.M.AR.AR.RM.AR. Ramanathan Chettiar

APPELLANT

Vs

The Commissioner for Hindu Religious and Charitable
Endowments, Madras and others

RESPONDENT

Date of Decision : 03-02-1977

Acts Referred:

Citation : (1977) 02 MAD CK 0045

Hon'ble Judges : Ratnavel Pandian, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : R. Krishnamurthi and A.R. Lakshmanan, for the Appellant; G.R. Lakshmanan, for the Respondent

Judgement

Ramaprasada Rao, J.—The above four appeals are against the judgment of the learned Subordinate Judge of Devakottai in which the relief sought was to set aside the order of the Commissioner, Hindu Religious and Charitable Endowments, Madras dated 7th February 1969. A.S. No. 256 of 1972 is against the judgment of the Subordinate Judge of Devakottai in O.S. No. 46 of 1969, which was filed to set aside the order of the Commissioner, Hindu Religious and Charitable Endowments, in Appeal case No. 38 of 1963, and A.S. 686 of 1972 is against the judgment in O.S. No. 47 of 1969, which was filed to set aside the order in Appeal case No. 44 of 1963 on the file of the Commissioner, Hindu Religious and Charitable Endowments, Madras. A.S. 341 of 1972 and 378 of 1974 are against the judgment of Subordinate Judge, Devakottai in O.S. No. 48 of 1969, which was filed to set aside the order in A.C. No. 58 of 1963. We shall now take up A.S. 256 and 686 of 1972. The common facts which arise for consideration may be stated thus Late RM. AR. AR. RM. Arunachala Chettiar, a native of Devakottai, was religious and charitable minded. According to the plaintiff, he created endowments purely of a private character for the spiritual benefit of himself, his descendants, To the members of his family and his close relatives and friends. He died on 23rd February, 1938, leaving behind him surviving his two widows and a widowed daughter-in-law, the wife of a

predeceased son, who was also childless. Each of the two widows and the widowed daughter-in-law adopted a son in accordance with the custom of the Nattukottai Chettiar community. The plaintiff and the second defendant are the adopted sons of late Arunachalam Chettiar and the third defendant is his adopted grandson. Consequent upon certain internal disputes in the family a suit for administration and partition of the estate of late Arunachalam Chettiar was filed, and it was numbered as O.S. No. 93 of 1938 on the file of the Sub Court, Devakottai. In that suit properties privately endowed by late Chettiar were also the subject-matter. Two joint receivers were appointed in that suit which ended in a compromise. In the said compromise the private character of the endowment was recognised and a scheme was framed thereto under which the trust should be maintained in rotation by the plaintiff and defendants 2 and 3 each for one year. Subsequently, in another family litigation, O.S. 35 of 1966 Sub Court, Devakottai, the plaintiff has been recognised as the trustee to be in charge of the endowed properties. It is in that capacity and after due sanction the plaintiff has instituted the three suits referred to above in the circumstances to be stated hereafter.

2. The plaintiff has traced the history of the endowments thus--Late Arunachalam Chettiar was doing worship in many saivite temples. He did many charities some of which were religious in character and some secular. He used to set apart moneys in the course of his business for the aforesaid purposes. Considerable amounts so set apart got accumulated. Late Arunachalam Chettiar, therefore, had to execute trust-deeds and at one particular point of time was called upon to confirm such trust before the Income tax authorities. Ex. A.4 is one such affidavit filed by him before the taxing authorities affirming the nature of the trust created by him. The trusts were being performed by turn trustees in accordance with the intentions of the author of the trust. There was no interference by the Hindu Religious and Charitable Endowments department till the death of the founder of the trust. At one time there was an attempt by the Department to interfere and levy fees under Act 19 of 1951, as if the endowments were of a public nature. The aggrieved persons filed successfully writ petitions before the High Court and prevented such a levy. But in the above proceedings the question whether the endowments created by late Arunachalam Chettiar was of a public nature or whether it is a religious endowment coming within the provisions of Act 19 of 1951 was left open to be decided under the provisions of the Act itself. As the Deputy Commissioner for Hindu Religious and Charitable endowments, Thanjavur, initiated punitive proceedings against the plaintiff and defendants 2 and 3 under S.45 of Act 19 of 1951, hereinafter referred to as the Act the plaintiff and defendants 2 and 3 applied under S. 57 of the Act for a due determination of the matter in issue whether the endowments created by late Arunachalam Chettiar were of a public or a private character. Accordingly, five applications were filed. The Deputy Commissioner after due enquiry was of the view that some endowments covered by the trust deed which we shall presently refer, as also the affidavit Ex. A.4 are secular, some religious

and some specific endowments. Appeals were, therefore filed before the Commissioner, Hindu Religious and Charitable Endowments against the orders of the Deputy Commissioner. The Commissioner by his order dated 7th February 1969 agreed with the orders of the Deputy Commissioner. Out of the five applications and five appeals dealt with by the statutory authorities, one of them is not the subject matter of these four suits, and therefore, the four appeals before us. The Commissioner was of the view that a certain fund was constituted by the author of the trust for public charitable and religious purposes. The plaintiff in the plaint in each of these suits objected to the view taken by the Commissioner. As it would be necessary for us to set out in detail the various submissions of the plaintiff and defendants 2 and 3 in these (sic) actions, it is unnecessary to set them out at this stage. Suffice it however to say that the main contention of the plaintiff is that neither of the trust deeds in question nor the affidavit made before the taxing authorities by the author of the trust would indicate that there was a specific endowment or religious endowment as contended and they sought for the setting aside of the order of the Commissioner dated 7th February 1969 in each of these cases. The learned Subordinate Judge after setting out the pleadings, mainly was concerned with the finding whether the suit funds do not constitute a religious or a specific endowment within the meaning of the Act or whether they constitute only a private family trust. Two witnesses were examined on the side of the plaintiff, and on one was examined on the side of the defendants. The learned Judge after summarising the pleadings and the oral evidence let in came to the conclusion that the Deputy Commissioner as well as the Commissioner were right in holding that the suit trust is a religious endowment and not a private trust. It is out of these judgments and decrees of the learned Judge, these appeals arise. It would suffice if we trace the history of this trust with reference to the trust deeds and the other documentary evidence let in which formed the basis of the bone of contentions between the parties.

3. We shall now take up A.S. 256 of 1972. Strong reliance is placed upon Ex. A 4 which is an affidavit filed by the late Arunachalam Chettiar before the Incometax authorities. It runs as follows: --

I. RM. AR. AR. RM. Arunachalam Chettiar, son of Ramanathan Chettiar and a saivite, Hindu of the Nattukottai Chetti Vaisya caste of about 43 years of age Zamindar status, residing at Devakottai, Ramnad Dt. do hereby solemnly and sincerely affirm as follows:

1. I have been doing Mahasivarathri Abishekam every year in almost all famous Siva temples of India.
2. I have been allotting money every year for the purpose.
3. Any savings effected in any year or number of years have been allowed to accumulate with interest such accumulations being devoted entirely for the same purpose.

4. Considerable sums of money also from others have passed through my hands and are being spent by me for the purpose.

5. The net accumulation both from my own contributions and also from contributions by others amount to Rs. 2,20,951-3-0, as per Aiyanthogai of 18th Panguni sukla invested with others as detailed in the schedule attached hereto.

6. I affirm further that any charity done in our family out of any fund earmarked for that purpose for a number of years is to be continued and the funds of that charity should not be diverted for other purposes as per the traditions of the family.

7. Agreeably to that tradition I also affirm I have no intention of diverting the funds for any non-charitable purpose.

To this affidavit a schedule is attached showing the names of the firms wherein Sivarathri contributions were invested. The case of the department is that the endowments are not vague and its objects are set out clearly in the document itself. According to them there has been a divestiture of ownership of the moneys and no control has been retained over it. It is said that the beneficiaries are not only the donors of the endowment and the persons related and connected with them but also other members of the public. They are in the nature of specific trusts or Kattalais. As considerable sums of money were apparently collected by late Arunachala Chettiar from others for the purpose of abishekams on Mahasivarathri day in the famous Siva temples in India and as such funds should not be diverted for other purposes, it should be held that the public also did contribute to the said fund and in consequence the abishekam performed on the Mahasivarathri day would enure to public benefit and the said endowments would come within the definition of S.6(17) of Madras Act 22 of 1959.

4. Before considering the only question of law which arises in this appeal, we shall now set out the important features of Ex. A.4, which is the sheet anchor in this case, for the purpose of finding whether there has been a specific endowment or an endowment as such under the Act.

5. Firstly, we see that in this affidavit there is a pious publication of Arunachala Chettiar's conduct in doing Mahasivarathri abishekam every year in almost all famous Siva temples of India. That such was his intention or particular course of conduct has not been communicated to any outside authority or to anyone in charge of the administration of a Siva temple in India or to any other citizen as such. Secondly, the so-called intention expressed by the donor is vague. Thirdly, there is a discretion vested in the family to spend for such abishekams and the choice is obviously with them to choose any particular Siva temple in any part of our country. Abishekam, therefore, was to be performed only at the behest of the donor for his family members. Ex facie and intrinsically it is not possible for any member of the public including the person in authority or in charge of a particular temple to compel the trustees for the time being in charge of the fund to denote funds. Fourthly, the public are not aware of the transmission of any

benefit to them by reason of the expenditure incurred by the trustees for the time being, who administered the funds. What is contemplated in Ex.A.4 is that the donor or his successors-in-interest should do abhishekam which is obviously for the benefit of the family members themselves and it is with this main objective that the funds have been created. Fifthly, in the absence of any express recitals in the affidavit which could mandate the performance of the abishekam, there is no element of public interest or public nature in the performance of the service. Sixthly, the ownership of the fund has always been retained by the trustees for the time being and there is no divestiture of such ownership at any time. In fact, the schedule attached to Ex.A.4 is a pointer to the effect that the fund always remained with the donor and his family members and they had the discretion to invest it in a manner deemed fit and feasible by them. As no property has been set apart to ensure the continued performance of such worship in a particular temple and as the donor and the members of his family kept for themselves the power to make annual donations to various unnamed Siva temples in the country for the performance of abishekams, the element of a public endowment appears to be absent. Seventhly, it is common knowledge that at the time of public worship such as the performance of abishekams many private citizens also contribute and participate in such abishekams and that by itself would not make it a public endowment. Eighthly, merely because private worship is intended to be done on the occasion of a public worship along with or separately from the public worship, it cannot convert the private worship or offering into a public endowment. Ninthly, the abishekam is a ritual which is performed to the deity almost every day with various materials, like honey ghee, oil, milk, rose water, etc. For the performance of such a ritual either the moneys of the temple are utilised or kattalais endowed for the performance form the source of expenditure. In all such cases, an element of service in the temple is involved. But in the case of a private individual adding to the weight and quantum of the materials required for abishekam without any compulsion from the temple authorities and without disclosing to the public that the money emanated from a classified and notified endowment, it would be still a worship by a private individual or a group of individuals. It would not make it a public service as is legally and popularly understood. Tenthly, even if such offering of materials for Abishekam is integrated with that spent from the temple funds or the Kattalai funds, it would still not be the public funds. Eleventhly, there is nothing in Ex. A-4 to suggest a regularity in the matter of supply of materials for Abishekam or for the matter that the authorities of a particular Siva temple can compel the donor or the trustees for the time being to contribute for such funds willy nilly.

6. Thus, in the absence of any outside agency having a right to insist on the performance of Abishekam in a named Siva temple in the country, the intention of the donor remains only as a bare declaration and the funds set apart for the performance of Abishekam retains the character of a private fund. The reference to the contribution from others for which there is no independent evidence

excepting for the recital in Ex. A-4 would not make it a public fund, as such contributions from others have become merged in the private funds, and such contributors placed absolute reliance upon the donor's integrity and accepted that he would also utilise that fund while performing Abhishekams in the Siva temples at the appropriate time and at his discretion. The donor should be deemed to have acted as the agent of the contributor. This is clear from Ex. A-5 series. In these letters the contributor while sending a small amount for the purpose of Abhishekam to the turn trustee demands accounts regarding the expenditure incurred for the stated purpose. The turn trustee, therefore, is merely constituted as an agent for the performance of Abhishekam in a temple of the choice of the turn trustee. The turn trustee as is seen from Ex. A. 8 sends various sums of money to various Siva temples once again of his own choice requesting his own people to see to the perfect performance of the ritual such as Abhishekam, and asks from him the Vibhuthi Prasadam, etc., in return therefor. The person nominated to see the performance of the Abhishekam replies as is seen from Ex. A-9 that such abhishekam was done to the deity, and he in turn sends account of the expenditure. Such statements sent under similar circumstances are marked as Ex.A.11 and A.15. Ex. A. 12, A. 13, and A. 14 do speak to the fact that Abhishekam has been performed in the name of the donor or one or the other of the members of the family. These exhibits clearly establish that the family had always the control not only over the corpus of the fund, but was always checking the manner in which the amounts have been expended by each of their delegates to whom they send moneys from time to time for the performance of Abhishekam in the Siva temple of their choice.

7. Nextly, the mere fact that some friends and relations took advantage of the convenient arrangement which the donor and the turn trustees were making for the purpose of Abhishekam in the Siva temples in the country is not to be equated as public donations to an endowed fund for the purpose of a public ritual which is for the benefit of the public at large.

8. After having traced the main features of Ex. A. 4 which looms large in this case, we shall now deal with the oral evidence. No one on behalf of the Commissioner for Hindu Religious and Charitable Endowments was examined. P.W.1, speaks to the fact that the Abhishekam was performed for the personal benefit of the donor and the members of his family. He also refers to the practise of sending various sums of money to various delegates of theirs stationed in various Siva temples for the purpose of such Abhishekam and how they used to demand accounts from each of such delegates in respect of the amounts sent to them. He proves the various accounts and lays particular accent upon the fact that the family had complete control over the entire fund, and if at all, they were rendering some private services to their friends and relations who requisitioned their services in the matter of the performance of Abhishekams on the Mahasivarathri day to the deity. He speaks to the fact that the fund is named as Maha Sivarathri Abhishekam account. He also speaks to the collections from others who send moneys to them and in turn also refers to the various statement

of accounts sent back to the contributors with the Vibhudi prasadam given at the temple precincts after the Abhishekam is over. He would say that all the funds are mixed up and sent to various temples of the choice of the turn trustee and only one Abhishekam is performed in each temple in the name of the donor or the members of the family. The so-called contributions given by others are accounted for loyally but credited to the original fund by the author of the trust and kept under his control. He also refers to the fact that the turn trustee used to send moneys to the Chettiars (friends or relations) in the various Siva temples scattered over our country and they had been ordained to see to the regular performance of the ritual. He reiterates that the Abhishekam was done in the name of the Natchathiram (star) of the late Arunachalam Chettiar or his successors. He would say that Arunachalam Chettiar and his sons bear the same Natchathiram. In the absence of any contrary evidence by the Department it has to be taken that the Abhishekams performed for the benefit of the donor and the members of his family. If really there was a public endowment as was claimed by the department it would not have been difficult for them to let in evidence to show that such Abhishekam was performed for public benefit and not for private interest. We believe P.W.1; and this is so because the documentary evidence already let in also supports our view.

9. In the light of such documentary and oral evidence, which remained uncontradicted, the learned trial Judge was of the view that as Mahasivarathri day is one of the festival days of the Hindus, the public can be expected to be present and participate in the abhishekam performed out of the income from the suit funds and having regard to that he upheld the order of the Deputy Commissioner and the Commissioner. Besides this, there is no reasoning at all. We are unable to agree with this cryptic finding of the trial court.

10. A religious endowment or endowment is defined in S. 6, clause 17 of Madras Act 22 of 1959, which is not far different from the definition in the earlier 1951 Act as well. It reads as follows--

17. "religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected there with or of any other religious charity and includes the institution concerned and also the premises thereof; but does not include gifts of property made as personal gifts to the archaka, service holder or other employees of a religious institution.

A "specific endowment" is defined thus in Sec. 6 clause 19--

(19) "specific endowment" means any property or money endowed for the performance of any specific service or charity in a math or temple, or the performance of any other religious charity, but does not include an inam of the nature described in Explanation (1) to clause (17).

From the above definitions it is seen that every endowment made by a donor may not squarely come within its meaning. It should be clear either by express

dedication or by necessary implication that a particular property has been given for the performance of any service of a public nature connected with a temple. Such giving or endowing the property for the performance of any service or charity in a temple, etc., should be apparent from the evidence let in a particular case. It cannot be a matter of assumption or presumption unless by a course of conduct for years such inference is possible. Further, the property should have been given for the performance of any service of a public nature connected with the temple. In the instant case, the evidence is that the endowment is not to any particular temple. It is for the performance of abhishekam in the Siva temples in the country. Obviously therefore, it bristles with vagueness. The choice is left to the trustees for the time being of the endowment to choose the temple. The temple authorities are not even informed of such a performance of service. The fund is controlled by the trustees and the abishekam is performed in the name and Jenma Nakshathiram of the donor and the members of their family. The temple authorities cannot enforce the performance of the service because they are unaware of the fact whether in one particular temple such abishekam is going to be performed at all during the Mahasivarathri day. We have already summarised the modus operandi adopted by the trustees. Even contributions collected by them are credited in their books of account and it became merged with the personal fund. Even otherwise the contributions according to Ex. A-4 must have been done years ago. There is no evidence that such contributions are flowing into the fund continuously year after year. The fund is identifiable in the light of the evidence as the fund of the author of the trust. Not only the trustees have control over the fund, they do not part with the possession of either the corpus or the income. They send various amounts to persons known to them, for the performance of abishekam and archanai in a Siva temple of their choice and the Archanai is performed in the name of the Chettiar and Vibudhi prasadam was received only by the representative of the trustee. Thereafter the prasadam is distributed to persons who are known to Arunachalam Chettiar and related to him. The person, who is deputed to perform the Abhishekam has to render an account. All these features which formed the foundation of the so-called endowments clearly indicate that it is a private endowment in the sense that it is a fund created by late Arunachala Chettiar and administered by his successors according to their choice and whim without being controlled by any extraneous authority.

11. The decision in *Ramanatha v. Palaniappa*, AIR 1945 Mad 473=68 L.W. 656 (D.B.) is authority for the proposition that mere credit entries in one's account books in favour of the trust without allocation of such sums does not amount to dedication. Even though the funds have been separated, yet as the administration of the said fund and the manner and method by which it could be utilised is vested in the members of the donor's family, it cannot even be presumed that there has been a giving or constructive delivery of the fund, for the purpose of the endowment.

12. A case arose in the Madras High Court under Act 2 of 1927. There, the

question was whether the income from a particular immoveable property was to be held as a specific endowment for the purpose of conducting the Arudhra festival in the temple of Sri Vinaitheertha Vinayagar in Kosapet, Madras. A society was formed and registered under the Societies Registration Act. One of the objects of the Society was to conduct certain services in connection with the Arudhra festival in the temple of Sri Vinaitheertha Vinayagar. At the time when the society was started, it had no property. But from the subscription collected and the contributions made the festival was being conducted. In course of time an immoveable property bearing No.22 Vinaitheertha Vinayagar Koil Street was acquired. Though the sale deed was in the name of one of the members of the society, it was not disputed that the property belonged to the society. Under the deed of purchase, no endowment was effected and the house was not dedicated as trust property under the instrument. When the Society got registered, it specified one of its objects thus--

To perform Arudhra Archanai, Abhishekam and Thirupavadam every year on or about the month of December or January in which the Arudhra Dharisanam falls.

Where these festivals were to be conducted were not specified. The department's contention was that as the association was called Sri Vinaitheertha Vinayagar Arudhra Sabha, it should mean that the services were in connection with Sri Vinaitheertha Vinayagar temple. One other clause provided that the objects of the Sabha should be achieved by spending from the rental proceeds of the above immovable property belonging to the Sabha. Later, there was an amendment of the main object of the Sabha to the following effect--

to provide for the celebration of the Arudhra festival and the festivities connected therewith in any temple within the City of Madras or elsewhere, as the members of the Sabha by a majority should decide year after year.

Rajagopalan, J. in the above case (O.P. 275 of 1949--Sri Vinayagar Arudhra Thirupavadam Sabha v. Board of Commissioners for Hindu Religious Endowments), and in the light of the above facts observed as follows--

Possibly it was the income from the property that was the main source from which the expenses of conducting the festival at the Vinaitheertha Vinayagar temple were met all these years. But that by itself is not enough to constitute proof of endowment of the income. As I have already pointed out, at the time the property was acquired there was no endowment either of the property or of the income. The subsequent course of conduct by itself, even if there had been conclusive proof that the entire income or even any portion of the income was utilised for the performance of the Arudhra festival in the Sri Vinaitheertha Vinayagar temple may not conclude the question whether there was an endowment within the meaning of clause 11-a.....The Society unmistakably showed that it intended to keep full control over the income from the property as well.....In the absence of proof of endowment of the income from the property it cannot be said there was a specific endowment. The property vested in the

society. The society could deal with the income as it pleased because no portion of it was held in trust. The Society was competent to change its objects and change its rules. That they did in 1947. Merely because for nearly 40 years they utilised a major portion of their resources in conducting a festival in one given temple, it cannot mean that there was any specific endowment for the conduct of any festival in that temple.

This went up in appeal and the division Bench consisting of Rajamannar, C.J. and Venkatarama Iyer, J. in Commr. for Hindu Religious Endowments Board, Madras Vs. Vinayakar Arudra Tiruppani Sabha, approved of Rajagopalan, J.'s observations and after strongly pointing out that they had no hesitation in agreeing with Rajagopalan, J. laid down the rule in the following terms--

There cannot be an endowment unless there is a clear divesting of ownership by the owner in favour of a third party as trustee or by a declaration constituting the owner himself as trustee. Where property of the Sabha and likewise the income also has been treated to be at the unfettered disposal of the Sabha, because of the fact that by a common agreement, they provided as one of its objects for the conduct of the festival in the Vinayagar temple at a cost of not less than Rs. 150, the income cannot be called an endowment" within the meaning of the Act. The Sabha which is registered under Act 21 of 1860, is entitled to change its objects. There is no divesting of ownership which is essential to constitute an endowment in such a case.

13. It is, therefore, seen that acceptable and cogent material evidencing the intention to dedicate property for the particular purpose followed by an actual divestment or appropriation of the property to the specific object is an essential sine qua non to create an endowment.

14. In State of Madras v. SS. M. Paripalana Sangam, AIR 1962 Mad. 48 a Division Bench of our High Court reiterated the following proposition:--

In order to constitute a valid endowment it is necessary that the donor should divest himself of the property. What is essential is that there should be an unambiguous expression of an intention to divest and an actual divestment for the benefit of the beneficiary, for example, the temple or the particular purpose specified.

No such evidence is forthcoming in the instant case.

15. One other distinction which was pointed out by the Supreme Court in Ramsaroop Dassji v. V.P. Sahi, AIR 1959 S.C. 961 between a public and a private religious endowment has also to be borne in mind. The Supreme Court said--

The essential distinction in Hindu law between religious endowments which are public and those which are private is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private trust the beneficiaries are definite and ascertained individuals or who

within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust.

From the documentary evidence let in, which as we said remains uncontradicted, we gather the impression that the persons to administer the trust are definite and ascertained individuals belonging to the family of the donor and they are vested with the discretion to utilise the fund for performing the Abhishekam in any Siva temple of their choice. This solitary element would not make it a public endowment. The endowment in question examined through lens of Hindu notion certainly revolves round a religious ceremony. Who are the beneficiaries of the service is the question. It is not uncommon for Hindus to be present at the time of Abishekam in a temple, though they have nothing to do with it in the sense that they did not provide any material for the purpose of the Abhishekam. It is equally not uncommon for individual donors performing such Abhishekam for their personal benefit. Even such Abishekams are witnessed by the public along with the donor or his representative. Such a participation by the public in the course of the performance of a private service in a public temple would not make the service or the fund which prompts the making of such service a religious endowment or a specific endowment. In the light of the above decisions, we are unable to accept the unexplained verdict of the learned Subordinate Judge that the said trust is a religious endowment and not a private trust.

16. In consequence, the judgment and decree of the learned Subordinate Judge are set aside and A.S. No. 256 of 1972 is allowed with costs.

17. App. 686 of 1972:--This appeal is against the judgment and decree of the learned Subordinate Judge, Devakottai again to set aside an order of the Commissioner of the Hindu Religious and Charitable Endowments made on 7th February 1969. Plaintiff and defendants 2 and 3 in this case are the same as in the other suit which is the subject matter of A.S. 256 of 1972. Their case is that their father late Arunachala Chettiar created a large number of endowments purely for a private character for the spiritual benefit of himself and his descendants and members of his family and that after his death an administration suit was filed which ended in a compromise and in which a private character of the endowments was recognised and a scheme was framed for the management of the endowed property. Thereafter in O.S.35 of 1966 on the file of the same Sub Court, the plaintiff was appointed receiver to manage the trust properties and it is in that capacity the plaintiff instituted the suit. The case of the plaintiff is that the Hindu Religious and Charitable Endowments department interfered with the management of the private endowments and that they had to question the same in writ proceedings. Though they obtained temporary relief in such proceedings, they had to file independent applications to obtain a declaration that certain endowments made by their father are private

endowments and not religious or specific endowments within the meaning of Act 19 of 1951. They were not successful before the Deputy Commissioner and the Commissioner, Hindu Religious and Charitable Endowments, Madurai. The statutory authorities declared that a fund to the tune of 168446--6--6 referred to in Ex. A.3 constituted religious endowment as defined in the Act. Thereafter, they filed the present suit.

18. The plaintiff's case can be summarised thus. His case is that he, the second and third defendants are the successors-in-interest by adoption of one late Arunachalam Chettiar. We have already noticed in the earlier appeal that the administration suit filed between the family members ended in a compromise, and therein the private character of the endowment in question was recognised and a scheme was framed for its management. The administration was entrusted by turns to the plaintiff and the second and third defendants. Thereafter, the second defendant filed an independent suit to frame a new scheme, and in O.S. 35 of 1966, the plaintiff was appointed as receiver to manage the trust properties. This it seen from Ex. A.7 dated 19th July 1967. After obtaining permission from court to institute the present action, vide: Ex. A.8, dated 23rd April 1969 the plaintiff has filed the suit. Ex. A.3, dated 16th January 1928 is a deed of trust wherein late Arunachalam Chettiar made certain declarations and created certain endorsements. In the said document he has stated that 47 villages in Tiruvadanaï Mitta were taken on lease by the members of his family and that the lease was for the specific purpose of doing kaingariams in the Siva temple at Tiruvadanaï, Pidaranendal, Thiruthervalai and Theerthandathanam and Perumal temple at Alambadi. Under the lease deed itself, it was ordained that the income from the lease should be spent only for the above temples. It is common ground that the income accrued from time to time from the above lease together with the accumulated interest increased to a sum of Rs. 68,447-6 annas and 6 pies. Arunachalam Chettiar specifically declared in the said deed that the sum has never been his private property and he was affirming the said character of the fund and that it should be utilised for the various charities specified therein. Ex. A.4 and A.5 are the lease deeds which were the source of this endowment. The case of the plaintiff is that though a charitable intention was expressed in the deed of trust, no amount was particularly earmarked for any definite religious or charitable purpose and that, therefore, the endowment has lost its integrity. In fact, the Raja of Ramnad, who was the lessor of the particular village under which the leases were given, filed a suit against the predecessors-in-interest of the plaintiff and defendants 2 and 3 for rendition of accounts. This suit was also compromised. A new service was to be performed every year. The case of the plaintiff and defendants 2 and 3 is that in view of the change effected in the compromise decree in O.S. 53 of 1945 (Ex. A.6. dated 12th April 1947) on the file of the court of the Subordinate Judge, Devakottai, the endowments were no longer public endowments.

19. On the other hand, the contention of the first defendant, namely, the Commissioner, Hindu Religious and Charitable Endowments, is that the

endowments are not of a private character nor could it be said that they are for the spiritual benefit of the late Arunachalam Chettiar, his descendants and the members of their family. The trust deed executed by Arunachalam Chettiar cannot be lightly ignored by the plaintiff. Having regard to the origin of this trust, the contention is that his order it liable to be set aside.

20. It is common ground that the endowed fund which is the subject matter of this appeal is the result of accumulation of the income and the interest therefrom from the lease of the 47 villages taken from Raja of Ramnad. It can, therefore, safely be assumed that this origin of this endowment is traceable to Ex. A.4 and Ex. A.5 which are the lease deeds executed by Raja of Ramnad. The express stipulation in the said leases was for the purpose of utilising the income therefrom for the charities and kattalais enumerated therein. Even the trust deed, Ex.A.3 executed by Arunachalam Chettiar recites as follows:--

This apart, the compromise memo Ex. A.6 which resulted in a decree in O.S. No. 53 of 1945 on the file of the same Sub Court, provided that the following endowments had to be performed from and out of the endowed funds--

Uchikala Kattalai in Sri Sarvatheerthaswarar temple at Thieerthandadhanam; one Manavangiri village had been declared to be an endowment for this Kattalai and it has been directed to be in the management of RM. AR. AR. RM. family as kattalai trustees who are to perform the kattalai from the income thereof. Sri Arthajama kattalai and Mangadapadi in each of the two main annual festivals of Sri Adirateneswarar temple at Tiruvadanai. The half share of Thannmakeni, Thannankadu and Vannakoni cocoanut estates in (sic) belonging to RM. AR. AR. RM. family has been declared as endowment for the said kattalai and mandagapadi. It has been directed in the said compromise that the said endowed property should be managed by RM. AR. AR. RM. family as kattalai trustees and the income therefrom or from any other fund or investment into which the said endowed kattalai property might be converted to be utilised for the said kattalai. Thiruvadanai Thirupani fund : the available amounts in the Thiruvadanai Mitta lease income account as well as in the Uhiruvadanai Thiruppani trusts in Thiruvandani Mitta account lease income account whether in cash or deposits in banks or in other kinds of investments and the properties in Burma had been constituted as fund for performing the Tiruppani for the five temples in the Tiruvadanai mitta Devasthanam -- Thiruppani includes also Nandavanam Construction of Thirukkulam making necessary jewels and vahanams and institution of pooja and paditharam.

21. P.W.1 who was examined on the side of the plaintiff refers to the earlier partition which took place between the heirs of late Arunachalam Chettiar and also to the trust deed, Ex. A.3 executed by him (Arunachalam Chettiar) in respect of the sum of 1.68,447--6--6. He concedes that the interest and income from the said amount was to be utilised for Thiruppani, Thiruvabaram, Nandavanam, deepam, tairukkulan vahanam and poojai paditharam in the named five temples in the trust deed. He also refers to the compromise decree in

O.S. No. 53 of 1945 on the file of the trial court. He had to admit in cross-examination that the five temples are to be temples in Ramnad Samastanam and Arunachalam Chettiar agreed to perform Kaingaryam as a consideration for the lease granted and it was in that capacity they were in charge of that fund as trustees. He admits that a specific reference is made to this fund as having been set apart for the purpose of Thiruppani, etc., already referred to.

22. The point for consideration is whether this amount has been specifically set apart for purposes of endowment within the meaning of Sec.6(17) of the Act. No doubt, the trustees have the discretion of deciding the purpose and nature of the kaingaryam and the amount to be spent therefor. We have already extracted the definition of a religious endowment or endowment. From the recitals in Ex. A.3, and from the conduct of the parties, it cannot be said that the specific fund has not been given or endowed for the purpose of a service or charity of a public nature connected with a public temple. The learned Judge was of the view that since the trustees had the discretion of deciding the purpose amongst the named purposes and the amount of kaingaryam it would be a private family trust. This is not the test to decide whether it is a religious endowment or an endowment. A sizable amount has been specifically set apart for the performance of specified kattalais and kaingaryams in public temples. It has been earmarked and stamped with a mandate as a public obligation. A mere custody of that fund by a private individual would not make it a private endowment which would not come within the meaning of the "religious endowment" under the Act. The endowment is not vague. The temples in which such services had to be performed are named. The fund has been dedicated for the said public purpose. It is not even whispered that these kattalais and kaingaryams are done for the benefit of the donor and his family members.

23. One other angle from which the subject could be viewed is whether it is possible for the members of the family of Arunachala Chettiar to put an end to the endowment. Admittedly, it cannot be done. The words used in the compromise decree such as Uchikala Kattalai in Savatheertheswarar temple, etc., provided sufficient indicia to hold that the fund has been constituted for a specific religious endowment or an endowment, within the meaning of S. 6(17) read with S. 6(19) of the Act. We are unable to agree with the learned Judge that on the only ground that the trustees had the discretion to decide the quantum of expenses to be spent on one or the other of the kaingaryam kattalais it ceased to be a public trust. Having regard to the decision already noted by us in the earlier case, the judgment and the decree of the learned Subordinate Judge of Devakottai have to be set aside. The appeal, A.S. No. 686 of 1972, is, therefore, allowed but in the circumstances, there will be no order as to costs.

24. App. No. 341 of 1972 and 378 of-1974--Ratnavel Pandian, J:--These two appeals arise out of a judgment rendered by the Subordinate Judge, Devakottai, in O.S. No. 48 of 1969. A.S. 341 of 1972 is preferred by the plaintiff in the above suit and A.S. 378 of 1974 is preferred by the first defendant. The plaintiff who is

the appellant in A.S. 341 of 1972, filed the suit to set aside the order of the Commissioner, Hindu Religious and Charitable endowments, d. 7th February 1969 in A.C. 58 of 1963 on his file, in so far as it is against the interest of the plaintiff and for recovery of costs.

25. It may be mentioned here that the facts leading to the suit out of which these two appeals have arisen are the same as the facts which led to the institution of O.S. 46 of 1969 out of which A.S. 256 and 686 of 1972 arose. Therefore, we feel that it is unnecessary for us to reiterate the entire history of the litigation once again and that it would suffice if the facts and contentions most relevant to these two appeals are briefly stated.

X X X

[Discussion relating to facts omitted--Ed.]

26. Now, we shall take up the various items individually and discuss the position in respect thereof, in the light of our discussions in A.S. No. 256 and 686 of 1972.

Item 1 (item 1 in Ex. A. 6) Making Thiruvabharanam (jewels) to Sri Kabaleeswarar temple, Mylapore--A sum of Rs. 223-8-6 had been credited in the account. The Deputy Commissioner, finding that the said temple is a public temple, held that this endowment is a specific endowment as it was made for a specific purpose. This finding has been confirmed by the Commissioner and also by the lower court. Mr. Krishnamurthi would contend that no discussion has been made by the lower court to come to the conclusion that it is a specific endowment. He would urge that the said finding is totally misconceived. In view of our discussions in the other two appeals, the finding of the lower court cannot be challenged. In this connection, it may also be noted that in *President, Board of Commissioners for Hindu Religious Endowments v. Nagarathina Mudaliar* 68 M.L.J. 549=41 L.W. 454 it has been held by a Bench of this court that a kattalai is a religious endowment within the meaning of S. 9(11) of the 1927 Act. Similarly, another Bench of this court, consisting of Ramesam, O.C.J. and Venkatasubba Rao, J. in *Vaidyalinga Pandora Sannadhi v. Ramalinga Mudaliar* 66 M.L.J. 98=39 L.W. 205 took such a view. In a separate judgment, Ramesam, O.C.J. held that the word "kattalai" was used in two senses. In the strict sense it was a religious endowment, the subject in which is the performance of such kind of religious duty in the temple for the spiritual benefit of some other individual. In the lesser sense, the temple itself was the beneficiary and the kattalais are only a number of separate trusts. If the kattalai in question was a kattalai in the strict sense, the suit would not be maintainable in respect of its administration or management under S. 73 of the Act. Having regard to the above decisions and our discussions in the other two appeals, the finding of the lower court has to be confirmed and this item has been set apart for making the jewels in a public temple and endowed in its favour for a specific purpose. Hence, we dismiss A.S. No. 341 of 1972.

[The discussion is omitted:]

X X X

27. From the above discussion, we hold that suit items 1, 3, 6, 13, 15, 16, 20, 23, 24, 27, 28, 29, 30, 31, 36, 37, 39, 41, 43, 47 and 52 in respect of which Ap. N. 341 of 1972 has been preferred are specific endowments and accordingly dismiss the said appeal.

28. As regards A.S. No. 37 of 1974, we allow the said appeal in respect of suit items 3, 8, 66, 11, 13, 18, 19, 25, 26, 32, 35, 37, 40, 50 and 53, holding that the above said items are specific endowments, as indicated above. But, we dismiss this appeal in respect of suit items 9, 10, 21, 33, 34, 45, 46, 48 and 51, holding that they are not specific endowments.

29. As no appeal has been preferred in respect of suit items 2, 5, 12, 17, 22, 41, 44 and 49 we confirm the finding of the lower court in respect of these items. Taking into consideration the nature of the suit and the circumstances, we direct the parties to bear their respective costs in both the appeals.