

(2000) 03 MAD CK 0060
In the Madras High Court
Case No : Appeal No. 654 of 1986

S. Subramanian

APPELLANT

Vs

Commissioner, Hindu Religious and Charitable Endowments
Board

RESPONDENT

Date of Decision : 01-03-2000

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(17)

Citation : AIR 2000 Mad 422

Hon'ble Judges : I. David Christian, J

Bench : Single Bench

Advocate : M. Arulselvam, for the Appellant; R. Balasubramanian, Spl. Govt. Pleader (HR and CE), for the Respondent

Final Decision : Dismissed

Judgement

I. David Christian, J.—Appeal against the judgment and decree made in O.S. No. 46 of 1982 on the file of the Subordinate Judge,

Pattukkottai dated 30-4-1983.

2. Plaintiff is the appellant.

3. The plaintiff filed a suit alleging that the suit property originally belonged to the plaintiffs father that the plaintiffs father was a Saivitie, that he

executed a settlement deed dated 11-5-1938 as per which he has directed that from out of income realised from the suit property, poor persons

and paradesis are to be fed on a Saturday in the month of Purattasi, that after the demise of the plaintiffs father, the plaintiff, the eldest son is to

continue poor feeding, that it is obvious from the recitals in the documents that no religious endowment or charity has been created under the deed

of settlement, that the direction given by the settlor does not create an

endowment or a religious institution, that the poor feeding is to be done in the name of Lord Venkateswara, but this alone will not create an endowment or public charity, that while so, the defendant, the Commissioner Hindu Religious and Charitable Endowment Board. Madras has demanded contribution from the plaintiff treating that the settlement deed of Samiyya Pillai has created a religious institution, that the plaintiff therefore filed an application before the Deputy Commissioner, Hindu Religious and Charitable Endowment Department, Thanjavur for declaration that no religious institution or a public endowment has been created under the settlement deed dated 11-5-1938, that the application was numbered as O. A. No. 3 of 1978, that the application filed by the plaintiff was dismissed, that the plaintiff preferred an appeal in A.P. No. 61 of 1969 before the Commissioner, Hindu Religious and Charitable Endowment, Madras, that the appeal was also dismissed holding that a Charitable Endowment has been created as per the settlement made by the father of the plaintiff, that therefore, u/s 70 of the Hindu Religious and Charitable Endowment Act the plaintiff has filed a suit to set aside the order passed by the defendant, that the order passed by the defendant is erroneous, that no religious institution has been created, that the poor feeding is only an act borne out of philanthropy of the father, that therefore the Hindu Religious and Charitable Endowment Department has no application to the suit property and that therefore the suit is filed for declaration that there is no religious institution in respect of the property described in the suit schedule, that it is not a religious institution within the meaning of the Tamil Nadu Hindu Religious and Charitable Endowment Act. 1959 (hereinafter referred to as "The Act") and also for setting aside the order passed by the defendant dated 17-12-1981 in A. P. No. 61 of 1979.

Hence the suit.

4. The defendant filed a written statement contesting the claim of the plaintiff by contending that it false to state that no religious endowment or charity had been created by the father of the plaintiff as per the settlement deed dated 11-5-1938, that the father has created religious charity and endowment, that the instructions of the settlor must be taken into consideration, that the words used in the settlement deed would make it clear that endowment and charity has been created, that the settlor has made a specific

endowment which is religious institution, that the plaintiff has no right to act against the intention of the settlor, that the orders passed by the Deputy Commissioner, Hindu Religious and Charitable Endowment Board, Thanjavur and the Commissioner, Hindu Religious and Charitable Endowment Board, Madras are correct and that there is no necessity to interfere with the orders passed by them.

5. On the above pleadings, learned Subordinate Judge has framed issues as to (1) Whether the settlement deed dated 11-5-1938 has not created any religious endowment or charity, (2) whether the orders passed by the Deputy Commissioner, Hindu Religious and Charitable Endowment and the Commissioner, Hindu Religious and Charitable Endowment are liable to be set aside ?

6. The plaintiff has examined himself as P.W. 1 and the document Exs. A1 to A7 were marked. On the side of the defendant, no witness was examined, but documents Exs, B1 and B2 were marked.

7. On a consideration of evidence, oral and documentary, learned subordinate Judge, Pattukkottai held that a charitable religious endowment has been created by the father of the plaintiff as per Ex. A1 settlement deed dated 11-5-1938, that the Act is applicable to the present case and that therefore dismissed the suit declining to interfere with the orders passed by the defendant.

8. Aggrieved at the findings of the Judgment and decree granted by the lower Court, the plaintiff has come with this appeal. The point for consideration in the appeal is as to whether the order passed by the defendant in A.P. No. 61 of 1979 dated 17-12-1981 is liable to be set aside for all or any of reasons submitted on behalf of the plaintiff ?

9. Points : The plaintiffs father one Samiya Filial was the original owner of the property comprised in survey No. 486 of Kattalkadu village in Mannargudi Taluk in Thanjavur District. The land has got an extent of 81 cents. The father of the plaintiff has executed Ex. A1 settlement deed dated 11-5-1938 stating that the entire income of the suit property after the payment of the Government tax shall be spent exclusively for feeding poor persons and paradesis on a Saturday in the month of Purattasi every year.

10. The exact recitals in Ex. A1 document read as follows :--

(Matter in vernacular omitted--Ed.) The words above quoted would show that the original owner namely the father of the plaintiff has dedicated

the property with this specific object of utilising the income therefrom for the purpose of feeding the poor people and paradisis on a Saturday in

the month of Purattasi every year.

11. P.W. 1 also would admit that about 20 Karems of paddy is the annual income from the suit property and the entire income is spent for the

performance of the abovesaid charity. The father namely the settlor has created the endowment and the property has been dedicated for the

performance of this charity and power to alienate the property has been taken away specifically. It is on account of this recitals, the Deputy

Commissioner, Hindu Religious and Charitable Endowment, Thanjavur Issued a notice to the plaintiff calling upon him to give contribution treating

the settlement deed as having created a Charitable Endowment within the meaning of the Act. A contribution of Rs. 5/- was demanded and this has

been objected to by the plaintiff who filed a petition before the Deputy Commissioner Hindu Religious and Charitable Endowment, Thanjavur.

Subsequently an appeal was filed before the defendant for declaration that under Ex. A1 settlement deed, the settlor has not created any religious

institution or any charitable endowment within the meaning of the said Act. Since both the authorities have rejected the claim made by the

petitioner, he filed the suit and the trial Court also dismissed the suit.

12. To find out as to whether a religious institution or religious charitable endowment is created by the settlor has to be considered, with reference

to the definition of the Act 22 of 1959. Section 1(3) of the Act reads as follows :--

It is applicable to all Hindu Public religious institutions and endowments including the incorporated Dewaswoms and Unincorporated

Dewaswoms.

13. Section 6 of the Act is the definition section and Charitable Endowment has been defined as follows :--

Charitable Endowments"" means ali property given or endowed for the benefit of, or used as of right by, the Hindu or the Jain community or any

section thereof, for the support or maintenance of object of utility to the said community or section, such as rest-houses, choultries, patasalas,

schools and colleges, houses for feeding the poor and institutions for the

advancement of education, medical relief and public health or other objects of a like nature and includes the institution concerned,

14. Section 6(16) of the Act reads as follows :--

""Religious charity"" means a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math or temple or not.

15. Section 6(17) of the Act reads as follows :--

""religious endowment"" or ""endowment"" means all property belongs to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service charity of a public nature connected therewith 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 employee of a religious institution.

16. As per Section 6(16) and (17) of the Act, if the property is endowed or given or dedicated for the performance of any service charity, it will

attract the provisions of the Act. The settlement deed recitals which are referred to above would make it very clear that the settlor namely Samiya

Pillai has dedicated or endowed the property for the purpose of feeding the poor people and paradesis on a Purattasi Saturday, it has also been

specifically stated by the settlor that the entire income derived from the suit property after paying the tax to the Government shall be only spent for

the performance of the said charity and no person has got any right in the said property or income therein.

17. Therefore, what the donor or settlor intended to create by executing the above settlement deed is to set apart the property to be used only/or

the purpose of feeding the poor and paradesis and no person including the settlor himself has got any right to encumber or alienate the property.

Therefore what has been created under Ex. A1 settlement deed is a religious endowment or a endowment within the meaning of the Act and

therefore the Authorities under the Act will have jurisdiction to supervise the endowment and also ask for contribution.

18. No doubt, the settlor Samiya Piliyai and after him, the present plaintiff alone have to administer the endowment and in possession of the

property and so long as they are doing it in the proper manner faithfully carrying out the wishes of the settlor, there can be no interference from the

Tamil Nadu Hindu Religious and Charitable Endowment Department. The only power given to the Department is to ask for contribution for the

purpose of rendering services by way of supervision and nothing more. The plaintiffs right to administer the endowment is not disputed by the

defendant and he cannot also dispute his right to be in possession of the property and perform the charities contemplated under Ex. A1 and so long

as the income from the property is spent exclusively for the said charity, the Hindu religious and Charitable Endowment Department has no right to

interfere with the administration of the present plaintiff. The Department also does not contend that the administration of the property by the plaintiff

is not in accordance with the scheme contemplated by the settlor.

19. In fact, there is a report by the Inspector attached to the Hindu Religious and Charitable Endowment Department to the effect that the plaintiff

is performing the charity every year in the month of Purattasi on a Saturday and annadanams is given to the persons who are poor and paradesis.

But since the settlor has created a endowment within the meaning of Section 6(17) of the Act, the defendant will have the right to ask for

contribution as provided under the Act itself. It cannot be said that the settlor has not created a endowment. The income of the property has to be

spent only for feeding poor people and paradesis and this has to be done in the month of Purattasi on a Saturday every year and the charity is to

be done in the name of Lord Venkateswara.

20. It is also seen from the statement given by the plaintiff itself before the Inspector attached to the Hindu Religious and Charitable Endowment

Department, Pattukkottai that the poor feeding is done on a Saturday in every Purattasi for about 200 persons and the said poor people are given

thaligai which is prepared from the Varadharajar temple in the village along with the food supplied to the poor and paradesis.

21. Therefore learned subordinate Judge was correct in holding that under Ex. A1 settlement deed, a religious endowment has been created within

the meaning of the Act 22 of 1959. Therefore, the defendant is correct in demanding contribution of Rs. 5/-. The defendant-department does not

question the right of the plaintiff for administering the Institution in accordance

with the settlement deed. There is no merit in the appeal.

22. In the result the appeal fails and the same is dismissed, however, without costs.