
(1970) 01 MAD CK 0019
In the Madras High Court
Case No : Appeal No. 241 of 1961

S.N. Pachamuthu Nadir

APPELLANT

Vs

Tillaiyadi Pillar Temple Charity and Another

RESPONDENT

Date of Decision : 30-01-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, 92
Limitation Act, 1963 — Article 134, 134B
Madras Hindu Religious Endowments Act, 1926 — Section 20, 73, 73(1)
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 20, 84, 84(1), 93, 94

Citation : AIR 1971 Mad 253 : (1971) ILR (Mad) 840 : (1970) 83 LW 768

Hon'ble Judges : Ramanujam, J; Ramakrishnan, J

Bench : Division Bench

Judgement

Ramakrishnan, J.—The appellant is the defendant in O. S. No. 3 of 1961, on the file of the Court of the Subordinate Judge, Nagapattinam.

The respondent-plaintiff in the suit is the Thillayadi Pillayar Temple Charity by its Interim trustee, M. S. Pandian. The plaintiff filed the suit to

recover possession of the plaint schedule properties with Rs. 4000 as past profits, and future mesne profits. The plaint-allegations are these. The

suit properties originally belonged to one Rethinam Pillai. He executed a registered Will on 21-11-1918. bequeathing his properties to a charity

and to various legatees and appointing his widow Sundarambal Achi as executor and trustee. Shortly after his death, Velusami Pillai, claiming to be

his undivided brother, challenged the Will in the suit O. S. 70 of 1919 Sub-Court, Nagapattinam (which was subsequently numbered as O. S. 103

of 1921, after transfer and retransfer again to Sub-Court, Nagapattinam). There was a compromise in this suit and a decree was passed therein on

8-12-1921. This compromise decree is Ex. A-1. Clauses 5, 7 and 8 of this compromise decree are important and they are these:

5. We have settled that such of the moveables that are in the possession of the respective parties shall be taken by themselves respectively, that

the Immovable property mentioned in the C Schedule shall be set apart for charity, and that both shall recover the outstanding amounts and shall

take the same between themselves in equal shares.

7. We are agreed that the D Schedule village shall be sold and that (the sale proceeds) shall be taken in equal shares. Out of the sale proceeds

realised as aforesaid the plaintiff shall spend a sum of Rs. 2000 and build a Pilliar temple at Thillayadi.

8. The income derived from the C Schedule property is set apart for the daily pooja, the feeding of Brahmins and the Ekadasi and Krithikai

ubhayams in the Pilliar temple. Veluswami Pillai and his santhathis shall manage the aforesaid charities"".

2. Veluswami Pillai executed a will Ex. A-2 in favour of his wife Rajammal on 31-8-1927. The crucial recitals in that will can now be referred to:--

My wife, Rajammal, shall succeed with all absolute rights to the moveable and Immovable properties that I had got under the decree in O. S. 103

of 1921, on the file of the Sub-Court, Nagapattinam. with powers of alienation such as gift, exchange, sale etc..... The management of the charity

mentioned in the decree in O. S. 103 of 1921 aforesaid and being conducted permanently, shall be done by my wife, Rajammal, after my lifetime,

from out of the income derived from the property set apart by me for that purpose.

3. The next stage in the transactions is the sale deed Ex. A-3 executed by Rajammal in favour of the defendant conveying to him the property

mentioned in the C Schedule in the compromise decree. The relevant part of the sale-deed is this.

You withheld out of the sale consideration Rs. 2000 for the dharmam, according to the compromise decree in O. S. 103 of 1921. It is agreed that

I should purchase property for the said Rs. 2000 and offer it as security and then receive from you the said Rs. 2000. In the matter of my having

received cash from you for performing the remaining charitable acts for family expenses and to return the advance received from the tenants in the

building, the amount paid to me is Rs. 1555. Since in all for the aforesaid 8 items, I have received the total amount of Rs. 8000 (Rs. eight thousand only) from this day you shall be in enjoyment of the aforesaid building etc..... with powers of alienation such as gift, exchange, sale etc.....

4. Alleging that Rajammal was acting in breach of the trust, two persons who were permanent residents of Thillayadi and devotees of the temple

filed O. S. 4 of 1949 on the file of the District Court, Nagapattinam, directing the defendant to deliver the suit properties to the Trust after

declaring that the sale in his favour by Rajammal was not binding on the trust. The defendant contested the suit. The District Court by its judgment

dated 22-8-1950, decided that the suit properties and that the sale relied on by the defendant was invalid and did not confer any title on the

defendant. The court directed the defendant to deliver the suit properties to the trust along with mesne profits. The defendant appealed to the High

Court and the appeal was numbered as Appeal No. 610 of 1950 and it was finally disposed of on 8-8-1955. By that time, the defendant had

deposited in Court Rs. 5000 towards mesne profits.

The High Court in its judgment confirmed the District Judge's finding regarding the trust character of the suit properties and the invalidity of the sale

relied on by the defendant. But the High Court allowed the appeal and dismissed the suit on the ground that the suit was bad for want of prior

sanction u/s 73 of the Hindu Religious Endowments Act of 1927. The High Court also observed that the Commissioner of the Hindu Religious

Endowments should take immediate steps to recover the properties wrongfully alienated by Rajammal and see that the Pilliar temple was built as

contemplated under the terms of the compromise decree. The Commissioner of the Hindu Religious Endowments then appointed the plaintiff as an

interim trustee of the plaint charity and authorised him to take action to recover the suit properties with mesne profits. The present suit was filed

thereafter by the plaintiff for the reliefs mentioned above.

5. In his written statement, the defendant raised the following pleas. The compromise decree made it clear that the income from the C schedule

properties should be utilised only if the Pillaiyar temple was built in the village by Veluswami Pillai. But such a temple had not been built. Until it is

done, the terms of the compromise decree in regard to the C schedule properties

which are also the suit properties will not come into effect.

Secondly, it was urged that under the terms of the compromise decree, there was only a charge on the income from the suit properties in favour of

the religious and charitable purposes mentioned. But, since the temple was never built, the dedication of the suit properties or its income failed and

became void. Veluswami Pillai never accepted the trust character of the suit properties and never performed any charity. It is also alleged in the

written statement that though in his will Veluswami Pillai made a reference to certain charities which he was performing, he did not refer to the

plaint mentioned charity because the Pilliar temple had not been built.

The suit properties were bequeathed to Rajammal with absolute rights. She never accepted the office of trustee of the plaint trust, and she too

never performed the plaint mentioned charities at any time. The possession of the defendant was adverse to the trust and, in any event, the

defendant had perfected title to the suit properties by adverse possession. There was a further plea that under the terms of the compromise decree,

the trustees was removed or a scheme framed in accordance with the Hindu Religious Endowments Act, the Commissioner had no power to

appoint a trustee of his own will, Section 20 of the Act would not also validate the order of appointment of the plaintiff.

6. The learned Subordinate Judge of Nagapattinam found that there was a valid endowment of the suit properties. He also found that there was

absolute dedication to the trust of the properties and that the entire income from them was directed to be utilised for the Nithyapooja.

Neivedhyam, deeparadhana in a Pilliar temple to be constructed by Veluswami Pillai at a cost of Rs. 2000 for the Ekadasi and Krithigai ubhayams

and for feeding Brahmins. He observed that there was first of all a compromise to this effect between Veluswami Pillai and Sundarambal Achi on

7-7-1921 and these terms were subsequently embodied in the razinama decree dated 8-12-1921. The learned Judge, thereafter referred to the

several authorities and held that the direction that religious services were to be performed in a Pilliar temple to be built would not make it an invalid

bequest. He also referred to the earlier decision in O. S. 4 of 1949, which was confirmed by the High Court about there being a valid dedication of

the properties to the trust. The learned Judge found that both Veluswami Pillai

and Rajammal accepted the office of trusteeship and were trustees.

He found that the sale-deed relied on by the defendant was not valid and binding on the trust. He also found that the plaintiff had authority by

reason of his appointment as interim trustee. to maintain the suit for recovery of the suit properties.

He held that Section 20 of the Madras Hindu Religious and Charitable Endowments Act, 1951. authorised the Commissioner to make such

appointments for the purpose of administration of the religious endowments subject to his superintendence and control. In regard to the plea of

adverse possession. the learned Judge held that the relevant provision of the Limitation Act is Art. 134(b). that under that Article, a suit to recover

possession of properties which have been alienated by the previous manager can be filed within 12 years from the date of death of the alienating

manager. In this case Rajammal died in 1956. Therefore, notwithstanding that the alienation to the defendant was on 25-8-1944, under Art.

134(b) of the Limitation Act, adverse possession against the defendant will run only from 1956 and the suit filed in 1961 must, therefore, be

treated as in time.

7. There was a further plea in the additional written statement filed by the defendant that the question whether a valid trust or endowment was in

existence was one within the exclusive jurisdiction of the Deputy Commissioner of the Hindu Religious and Charitable Endowments to enquire into.

and a civil suit in respect of such a dispute was barred u/s 93 of Act XIX of 1951. The learned Judge held that the suit was not barred by the

above section.

8. In the result, the suit was decreed for recovery of possession. The mesne profits were directed to be ascertained in separate proceedings under

Order XX. Rule 12, C.P.C. The amount of Rs. 4000 in deposit was also decreed to the plaintiff.

9. The defendant has appealed against the above decision. Learned counsel Sri R. Gopalaswami Aiyangar appearing for the appellants has urged,

in the first place, that the deed of bequest will not come into operation as the Pilliar temple in which Nithya neivadhyam and Ekadasi and Krithigai

Ubhayams had to be performed and Brahmins had to be fed. had not been built at any time either by Veluswami Pillai or by Rajammal under the

compromise decree. According to him, the bequest in such circumstances, would be invalid and inoperative.

10. This contention of learned counsel is clearly opposed to the consistent line of authorities dealing with Hindu religious bequests Bhupatinath

Smrithi Thirtha v. Ramlal Maitra, ILR (1910) Cal 128 which is a classical decision on the point, has laid down--

The principle of Hindu law, which invalidates a gift other than to a sentiment being capable of accepting it, does not apply to a bequest to trustees

for the establishment of an image and the worship of a Hindu deity after the testator's death, nor does it make such a bequest void.

In Mukherjea's Hindu Law of Religious and Charitable Trust 2nd Edn. it is observed at page 147--

The view that no valid dedication of property can be made by a will to a deity the image of which is not in existence at the time of the death of the

testator is based upon a double fiction, namely, first that the Hindu deity is for all purposes a juridical person secondly that a dedication to the deity

has the same characteristics and is subject to the same restrictions as gift to a human being. The first of these propositions is too broadly stated and

the second is inconsistent with the first principles of Hindu Jurisprudence. The provisions of Hindu Law relating to secular gifts are therefore not

applicable when the dedication is to the idol..... Thus, a dedication to an idol is really a dedication to the deity who is ever present and ever

existent, the idol being no more than the visible image through which the deity is supposed specially to manifest itself by reason of the ceremony of

consecration.

11. Learned counsel for the appellant also referred to the decision of this court in Board of Commissioners for the Hindu Religious Endowments

and Others Vs. Sreemathi Rukmini alias Kunhikavu alias Kuthiravattath Kongasseri Puthukulangara Amma Neethiyar and Another, . where the

following observation is found:

The control of the Hindu Religious Endowments Board over the endowments of a temple is dependent on the temple being one to which the

Madras Hindu Religious Endowments Act applies and the Board has no jurisdiction over the endowments where the temple is clearly non-existent,

not temporarily but permanently, and there is no apparent intention of bringing it

into existence again.

This last cited decision must be confined to the fact of that case. The facts showed that the establishment of the temple which had previously

existed had completely disappeared and it ceased to be used as a place of public worship at a time long beyond living memory. On those facts, the

court observed that the place was incapable of being the subject of a dispute as to whether it was a temple to which the Act applied. and

consequently the Board had no jurisdiction to deal with the dispute u/s 84(1) of the Act. Here the question is not of a temple having ceased to exist

but the question is of dedication to a temple which had to be built for a deity as indicated in the deed of trust. and for services to be performed in

the temple. That case can, therefore, be clearly distinguished. It appears to us, therefore, that the direction to erect a Pilliar temple in Thillaiyadi

village and to perform certain religious and charitable services in connection with the temple will not be a ground for invalidating the bequest. In this

connection we may also note that the word used is ""Ubhayam"" which according to Tamil Lexicon, Volume I, Part 1, means "gift to a temple or a

monastery."

12. While dealing with the above broad proposition of law. we may also refer to the fact that there is some evidence in this case of temple having

actually come into existence. P.W. 2 is a permanent resident of Thillayadi village and is the Maniyam of the Sivan Koil in the village. He deposed

that there was a Pillaiyar Koil in the Oor Theru. It faced south. Now it faces east. He states--

Originally the temple was on the eastern side of the street facing south. It was a brick building in a dilapidated condition. The present building is in

the same street about 30 ft. away from the old building by the side of the road. Pilliar is now housed in coconut thatched shed. Veluswami Pillai

made a vow to build a pilliar temple. arranged Balalayam and removed the idol from the old building to the new shed. He demolished the old

building and laid the foundation for a new building. It was about 40 years ago. He did not proved with the construction further. The foundation still

exists. Pooja was performed by the temple at his expense.... Veluswami Pillai was also performing Ekadasi Ubhayams in Perumal temple on a

large scale and also the Thirukarthikai festival in the Sivan temple.

It is, therefore, possible as stated by the above witness that Veluswami Pillai had, during his lifetime. commenced the construction of the pilliar

temple and was also performing the services but was notable to complete the building of the temple. It is significant that in his will to his wife. he has

clearly referred to the compromise decree and to the fact of the management of the charity mentioned in the compromise decree was being

conducted permanently and that the charity should be done by his wife after his lifetime from the income derived from the property set apart for

that purpose. Even Rajammal, though she purported to make an alienation of the C schedule properties earmarked in the will for the religious

service has referred to the obligation to complete the Pilliar temple. For that purpose, the defendant withheld Rs. 2000 out of the sale

consideration. and Rajammal agreed to purpose some other property and offer it as security. This would show that even the defendant. who now

challenges the trust, was aware that there was a bequest for charity, in respect of the C schedule properties and that the terms of the bequest had

to be preserved.

But in making a provision for that purpose. both Rajammal and the defendant had acted contrary to the terms of the dedication. While the

compromise decree provided that Rs. 2000 for completing the temple should be found from the sale proceeds of the D schedule properties and

that the entire income from the C schedule properties should be utilised for the religious and charitable purposes, they altered the terms of the

bequest and effected the sale of the C Schedule properties outright,. thereby defeating the provisions of the trust. That a part of the sale

consideration was set apart for the purpose of meeting the expenses of the charity as mentioned in the second part of the sale deed would hardly

suffice to meet the requirements of the religious endowment. That endowment involved a complete dedication of the C schedule properties and the

utilisation of the entire income for religious and charitable purposes. But that direction was ignored and the C schedule properties were sold

outright.

13. We will now come to the next point raised by learned counsel for the appellant Sri R. Gopalaswami Iyengar about the jurisdiction of the civil

court. According to him, the question whether the suit properties are invested

with a trust character, is one which fails u/s 57(d) of the Hindu Religious and Charitable Endowments Act, and. u/s 93 of the Act the civil court will have no jurisdiction to entertain a suit of that kind. and that relief for that purpose should be obtained in the Statute itself. The short answer to this argument is that the present suit is not exclusively for a declaration that the plaint schedule properties are vested in trust. The main relief is recovery of possession of the properties of the trust from the alienee who is a stranger to the trust. The investigation of the trust character of the properties is only incidental to the main relief of recovery of possession. There is ample authority for the view that a suit for relief of such a kind is not barred. In Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy, their Lordships of the Supreme Court observed--

S. 93 will apply only to matters for which provision has been made in the Act. It does not bar suits under the general law which do not fall within the scope of any sections of the Act.

In an unreported decision of this court in S. A. No. 1396 of 1948 (Mad)--Choolah Puthiyapurail Kunhali v. Thayoth Puthiyapurail Ayyisomma,--Rajamannar C. J. observed--

I think that the dispute referred to in S. 94 is a dispute between the trustee of an institution on the one hand and the Board on the other. In such a case, the Act specially provides that the dispute shall be decided by the Board in the first instance..... There is nothing in this decision His Holiness Sinha Sri Vythilinga Pandara Sannadhi Avergal Vs. Sir T. Sadasiva Aiyar and Others, to countenance the view that even when the dispute is not with the Board, but there is a dispute between two private parties the ordinary civil court has no jurisdiction to decide the dispute, but it is only the Board which is competent to decide it. There is no such express or implied bar of the jurisdiction of the civil court in Section 84 of the Act.

In Vangipuram Venkatacharyulu Vs. Sri Rajah Vasireddi Harihara Prasad Bahadur Manne Sultan and Another, Varadachariar J. observed--

The bar u/s 73 Religious Endowments Act, is only in respect of suits relating to the administration or management of the trust i.e., proceedings against the trustee and not in respect of proceedings against the person who is wrongly in possession of the property in which the trust is

interested.

In Hazarimull Chandukchand (died) represented by Chuni Bai Vs. N.R. Vedachala Chettiar and Another, , a similar view was held by Beasley C.

J. and Cornish J.:--

As between a trustee of a temple and other trustees of the temple or as between the worshippers of a temple and the trustees of a temple and the

persons interested in the temple when questions of administration of the trust arise, those are matters which come within the scope of S. 73 of the

Act. But entirely different considerations apply where the parties are on the one hand trustees of a temple and on the other hand entire strangers

who claim to be alienees of property wrongly obtained by them through the maladministration of a trustee. The Madras Hindu Religious and

Charitable Endowments Act, particularly, S. 73 does not embrace any relief which could not formerly have been obtained under the procedure set

out in the Civil Procedure Code, Section 92, C. P. Code. Section 92 and the corresponding section of the old Code do not apply to suits between

trustees of a temple and alienees from a trustee of a temple of trust properties.

In N. Satyanarayana v. T. Nagiah AIR 1957 AP 498, it is observed--

If any of the reliefs specified in Section 73(1) is asked for against the trustee or a de facto trustee of a religious endowment, then the sanction of

the Board is essential, if, however, a trustee of a temple or of a Kattalai sues to recover a property belonging to the temple or money payable to

the temple by strangers, then consent of the Board is not required under S. 73(1). Such a suit should be maintained in the ordinary civil courts and

the jurisdiction of the courts to entertain such suits would be governed by the provisions of the Civil Procedure Code.

14. In Marrepu Venkata Ramana Murthi Vs. The Deity of Sri Rama Mandiram, the learned Judges of the Andhra Pradesh High Court held in a

case where the Religious Endowments Board assumed control of the suit temple, appointed the plaintiff as a trustee thereof removing the defendant

from the trusteeship and the plaintiff filed a suit for the recovery of the suit properties and the defendant contended that the Civil Court had no

jurisdiction to entertain the suit by virtue of the bar created by S. 93 of the Act, (sic) that the suit was not barred by S. 93 of the Act and that the

civil court had jurisdiction to entertain the suit.

15. The third point urged by learned counsel for the appellant is that the suit is barred by time and the defendant has perfected title by adverse

possession. In our opinion, the lower court is right in holding that Art. 134(b) of the Limitation Act will clearly apply and that the suit is in time. That

Article prescribes a period of 12 years for recovery of properties belonging to a Hindu Religious Endowment transferred to a third party. and the

time limit of 12 years is prescribed for recovery of the property from the date of death or removal from the office of the previous manager.

Learned counsel, Sri. R. Gopalaswami Iyengar. contended that that Articles could be relied upon. only if Veluswami Pillai never repudiated the

trust in his will. He specifically admitted it. Even when Rajammal was acting contrary to the terms of the trust by selling the C schedule properties.

she referred to the provisions of the trust in regard to the building of the Pilliar temple and to the performance of the other charities. That apart the

Supreme Court in Srinivasa Reddiar and Others Vs. N. Ramaswamy Reddiar and Another, has observed--

Art. 134-B does not permit any distinction to be made between transfers effected by a previous manager on the basis that the property

transferred belongs to the religious endowment and those made by him on the basis that the said property is his own private property. In either

case, the successor who challenges the alienation will have to prove that the property in fact belongs to the religious endowment. Once that is

proved, it is not necessary for him also to show that the transfer was made on the basis that the property belonged to the religious endowment.

Such a limitation cannot be read in the words used by the said Article. Art. 134-B applied to all cases where it is shown that the immovable

property was comprised in the endowment and that it has been transferred by a previous manager for a valuable consideration. The character of

the representation made by the previous manager in regard to his relation with the property which is the subject-matter of transfer is irrelevant for

the purpose of Art. 134-B. All transfers made would fall within Art. 134-B if the three essential facts are proved by the successor of the transferor

manager of the Hindu religious endowment.

16. We, therefore, overrule this objection from the point of view of limitation and hold that the suit is in time.

17. There was a final argument on behalf of the appellant that the plaintiff relying upon his appointment as interim trustee. This contention too appears, in our opinion, to be without substance. Under S. 20 of the Hindu Religious and Charitable Endowments Act, 1951, the Commissioner has general superintendence and control over religious endowments and such superintendence and control will include the power to pass nay orders which may be deemed necessary to ensure that the endowments are properly administered and their income duly appropriated for the purposes for which they were founded. The present is a clear case where the trust had been neglected and its properties misappropriated by a stranger. The present is a clear case where the trust had been neglected and its properties misappropriated by stranger. The High Court in its earlier judgment has directed the Commissioner to take proper steps for recovery of the properties of the trust. It was in accordance with the power conferred u/s 20 of the Act that the plaintiff was appointed as an interim trustee to take action to recover the suit properties and look after the management of the trust. So far as the present suit is concerned, there is no impediment, therefore, to the plaintiff being granted the reliefs asked for.

18. The appeal fails and is dismissed with costs of the first respondent. First respondent's advocate's fee Rs. 250 to be drawn out of the amount to the credit of the suit in the lower court.

19. The appellant claims to have paid a substantial consideration for the property. But unfortunately the sale to him has been set aside on the ground that it was trust property. The present prayer of the appellant is that on equitable considerations the property might be leased out to him by the trust on reasonable terms as to rent and so on. This is a matter, however, for the authorities of the Hindu Religious and charitable Endowments to consider. The appellant-petitioner herein may move the Board who may consider his request sympathetically, in view of the special circumstances mentioned above and the observations in the judgment.

20. Appeal dismissed.