(1910) 10 MAD CK 0014

In the Madras High Court

Sreemuth Devasikamoney Pandarasannadhi alias Nataraja Desikar — APPELLANT

Vs

K.P.L.S. Palaniappa Chettiar and Another — RESPONDENT

Date of Decision : 18-10-1910

Acts Referred:

Citation : (1911) ILR (Mad) 535

Hon'ble Judges : Walls, J;Krishnaswami Ayyar, J

Bench : Division Bench

Judgement

Krishnaswami Ayyar, J.—The question is raised whether a permanent lease by the trustee of a temple of a building site belonging to the

temple for a nuzzer or a premium is valid. It is argued for the appellant that such a lease constitutes a breach of trust and is therefore invalid. The

Subordinate Judge in appeal has upheld the Iease on the ground that it was made in the proper and reasonable exercise of the powers of the

trustee and in accordance with local usage and was therefore an act of prudent management on his part. Assuming that local usage would at all

events be an element in the determination of the question whether the lease was an act of prudent management, it is difficult to uphold the finding: in

its favour, as the earliest instance on record of such a lease was as late as 1870 and the other instances in evidence are only a few in number and

not all of them permanent tenures. We are unable to hold that the evidence is sufficient to support a custom. That the alienation in question was in

favour of a charitabla institution or for the supposed good of the public is in our judgment no ground for upholding it if it is otherwise not in

accordance with law. Putting aside then these considerations as irrelevant, we are face to face with the problem whether an alienation of temple property on a permanent lease at an unvarying rent or a fixed premium is sustainable because it is a house-site and was not producing any income

before the date of the alienation. The question must be answered in the negative in the light of the definite pronouncements of the Privy Council in

(Maharanee Shibessouree Debia v. Mothooranath Acharjo (1869) 13 M.I.A. 270, Mayandi Chettiar v. Chokkalingam Pillai ILR (1904) Mad.

291 and Abhiram Goswami v. Shyama Charan Nandi ILR (1909) Cal. 1003. In the first of these cases where a permanent lease by a Shebait was

in question the Judicial Committee observed '''' in the exercise of that office, she the Shebait) could not alienate the property, though she might

create proper derivative tenures and estates conformable to usage,"" Page 273, Again at page 275 their Lordships said ""there is no satisfactory

proof in the cause that these Jummas were even held at a fixed invariable rent, One important element in this enquiry has been wholly lost sight of,

viz., the nature of the shebait title, and its legal inability to be the source of such a derivative title. To create a new and fixed rent for all time, though

adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent, from time to time, would be a breach of duty

in a shebait, and is not, therefore, presumable, What follows from the above is not that a permanent lease is under all circumstances absolutely

invalid but that it is prima facie in excess of the powers of a shebait, See Prannath Saraswati''s Tagore Lectures on the Hindu Law of

Endowment''s, page 146. In the next case which dealt with the creation of a permanent right of occupancy Mayandi, Chettiyar v. Chokkalingam

Pillai ILR (1904) Mad. 291, the Privy Council observed at page 295, quoting the decision in Maharanee Shibessouree Debia v. Mothoornath

Acharjo (1869) 13 M.I.A. 270, ""the creation of a new and fixed rent for all time .... would be a breach of duty in the trustee unless there were

special circumstances of necessity to justify it."" In their latest pronouncement already referred to, their Lordships of the Privy Council say (Abhiram

Goswami v. Shyama Charan Nandi ILR (1909) Cal. 1003, that the general rule as regards a trustee''s power to alienate debutter property is that

laid down in Maharanee Shibessouree Debia v. Mothooranath Acharjo (1869) 13 M.I.A. 270"" and held that a Mokurari or permanent patta by a

shebait was invalid. It has also been held in this Court, following the decisions of the Privy Council, that a permanent lease at a fixed rent is invalid, and that a trustee has no power to create a perpetual tenure except on special grounds or circumstances of necessity, Mahomed Meera Usain

Rowthen v. Nieurali Sahib (1908) 19 M.L.J. 208, and Narasimha Chari v. Gopala Ayyangar ILR (1905) Mad. 391. The fact that in the present

case the property leased is a building site does not appear to be any justification for leasing the property at an unvarying rent. Building sites of all

lands are particularly susceptible of a continuous rise in value where the locality increases in prosperity or there are increased facilities of

communication or there is an increase in population. The foregoing observations are sufficient for the disposal of this case. They lead to the

conclusion that the lease in question in the present case cannot be upheld.

2. The question, however, has been argued as regards the limits of the power of a trustee of a temple property, Mr. S. Srinivasa Ayyangar in his

able argument contended for the broad proposition that a permanent alienation or the creation of a permanent tenure is under alls circumstances

invalid, and he relied on the decision of Subramania Ayyar, Officiating Chief Justice, and Russell, J, in Nallayappa Pillian v. Ambalavana Pandara

Sannadhi ILR (1904) Mad. 465, and on the observation of Subramania Ayyar and Bhashyam Ayyangar, JJ. in Vidyapurna Tirtha Swami v.

Vidyanidhi Tirtha Swami ILR (1904) Mad. 436. The former of these cases proceeds upon the Privy Council decision in Maharanee Shibessuree

Debia v. Mothooranath Acharjo (1869) 13 M.I.A. 270, and on the decision of the Bombay High Court in Narayan v. Chinta-man ILR (1881)

Bom. 393, and The Collector of Thana v. Hari Sita Ram ILR (1882) Bom. 546. There are observations in all these cises which go far to support

the appellant''s contention. Sir Subramania Ayyar observes in Nallayappa Pillian v. Ambalavana Pandara Sannadhi ILR (1904) Mad. 465,

according to the Indian common law relating to Hindu religious institution such as the present, the landed endowments thereof are inalienable.

Though proper derivative tenures conformable to custom may be created with reference to such endowments they cannot be transferred by way of

permanent lease at a fixed rent, nor can they be sold or mortgaged. The revenue thereof may alone be pledged for the necessities of the

institutions."" Chief Justice Westropp makes use of similar language in Narayan v. Chintaman ILR (1881) Bom. 393. He says at page 396

''''Religious endowments in this country are not alienable, though the annual revenues of such endowments as distinguished from the corpus, may,

for purposes essential to the temple or other institution endowed, be occasionally pledged."" The lands dealt with in that case had been dedicated

for the support of a temple and not for a mere family idol. But nothing in that judgment appears to have turned on that distinction. The same

eminent Judge says in The Collector of Thana v. Hari Sita Ram (I.L.R. 1882) Bom. 546, ""A Hindu religious endowment cannot be sold, or

permanently alienated, though its income may be temporarily pledged for necessary purposes, such as the repair, etc, of the temple."" Observations

to the same effect are to be found in the judgment of Sir V. Bhashyam Ayyangar, J., at pages 450 and 451 in Vidyapurna Tirtha Swami v.

Vidyanidhi Tirtha Swami ILR (1904) Mad. 435, With all respect to these very learned Judges it appears to me that the language employed in these

cases is a little too wide. I know no text of the Hindu Law that absolutely prohibits the alienation of the corpus of the temple property where there

are sufficient circumstances of necessity requiring it. What would amount to such necessity may be a question not easy of solution in the

circumstances of each case. But if a proper necessity is made out, I feel no doubt that the alienation ought to be upheld. It seams to ran that the

authority of the Privy Council is distinctly in favour of the view that the alienation should be upheld if the necessity is made out. There appears to be

no distinction in this matter as shown by Mr. Justice West in his very learned judgment in Manohar Ganesh Tambekar v. Lahshmiram Govindram

ILR (1888) Bom. 247, between a religious institution like a temple dedicated to an idol and a charitable foundation. In the most recent case on the

subject to which reference has already been made, the Privy Council likened the power of the shebait of an idol to that of the manager of an infant

heir. See Abhiram Goswami v. Shyama Charan Nandi ILR (1909) Cal. 1003. In Proattnno Kumari Debya v. Golab Chand Baboo (1875) 2 I.A.

145, also which appears to have been somewhat misunderstood their Lordships made the same observation that the authority of the shebait of an

idol''s estate was analogous to that of the manager of an infant heir and cited Lord Justice Knight BRUCE in Hanooman Persaud''s case (1856) 6

M.I.A. 393 as regards a manager''s powers of alienation, The remarks of their Lordships in that case, which was one to set aside a prior decree against the preceding trustee, that that decree had been rightly made against the rents and profits of debubter lands (see page 153) and that no

question was raised whether the lands themselves could be sold under the decree, have been taken to imply that a decree could not be passed

against the corpus of the temple property. I cannot agree that there is any warrants for placing such a construction on the decision of their

Lordships in the face of the express statement that the powers of a shebait were those ot the manager of an infant heir which undoubtedly extend to

the alienation of the corpus and the quotation from Hanooman Persaud''s case (1856) 6 M.I.A. 393 of the passage which upholds the validity of

an alienation in favour of a bond fide lender after due enquiry notwithstanding the manager''s wrong application of the money borrowed. Their

Lordships expressly assert (p. 152)"" it would seem to follow that the persons so entrusted must of necessity be empowered to do whatever may

be required for the service of the idol, and for the benefit and preservation of its propertyi at least in as great a degree as the manager of an infant

heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued, for want of the necessary funds to

preserve and maintain them."" Language more precise it is difficult to employ to define the powers of the trustee of a temple or the shebait of an

idol. See also Prannath Saraswati''s Tagore lectures on the Hindu Law of Endowments, p. 152. Their Lordships commented the prior decree

against rants and profits only as proper, because necessity, which may be sufficient for the charging of the rents and profits is not sufficient for the

alienation of the corpus. If there should still be any possibility of a misconception of their Lordships'' view of the limits of a trustee''s powers of

alienation, that is completely removed by the decision in Konwur Doorganath Roy v. Ram Chunder Sen (1876) 4 I.A. 52. In that ease also dealing

with the powers of the shebait of an idol their Lordships at p. 63 repeat the analogy of a manager of an infant heir and cite the well-known

observations in Hanuman Persaud''s case The question there related to the sale of debutter property. At page 56 they say"" she (the shebait) had,

as the manager of the estate, power, if it were debutter dedicated to the idol, to alienate so much of it as was necessary to heap up the temple and

worship of the idol."" At page 63 they repeat ""she as the manager of this estate, had the same right or an analogous right to that of the imnager of an infant heir."" Their Lordships indeed proceeded so far as to hold the alienation justifiable on the ground of bond fide inquiry by the purchaser and a

representation by the alienor that the sale was made for the purpose of the repair of the temple, It is unnecessary to point out that the manager of

an infant heir may ""absolutely alienate his property in a case of need or of benefit to the estate,"" that in a case of honest inquiry by the alliance ""the

real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and that under

such circumstances he is not bound to see to the application of the money."" The Privy Council spoke of the need and necessity referred to in

Hanooinan Persaud''s case as legitimate family purposes in Suraj Bunsi Koer v. Sheo Proshad Singh (1879) 6 I.A. 88; of course in the case of an

idol the inherent difference in its character from a human infant'' must create differences in the circumstances constituting necesity sufficient to

validate the alienation. The physical and moral requirements of a human infant are of course different from the requirements of an idol or an object

of public worship suited to the faith, and rituals and religious traditions of the community for whose spiritual ministration it has been set up. The

requirements of daily worship, of buildings suitable for the carrying on of such worship and even of the essential festivals intended to cultivate the

religious emotions of the section of the public for whose benefit the temple is dedicated may afford grounds for the alienations of part of the corpus

of the property of the temple. That such alienations ought only to be resorted to as extreme measures in the absence of other reasonable moans of

providing for the needs of the temple may well be accepted as the canon of judgment in regard to the validity of particular alienations. I have

thought it necessary to make these observations to guard us from being supposed to accept without qualifications some of the language employed

in Nallayappa Pillian v. Ambalavana Pandara Sannadhi ILR (1904) Mad. 465 and Vidya Purna Tirtha Swami v. Vidyanidhi Tirtha Swami ILR

(1904) Mad. 436,

3. Certain English cases were referred to in the course of the argument. The law in England is at the present day embodied in statutes. Before their

enactment it will be found that a similar best has bean laid down in England with regard to the validity of alienations of charity property. See

Tudor''s ''Charitable Trusts,'' IV edition, pp. 271, 272, also the decision in William, Charles Quinn v. Thomas William Hungerford 6 Eng. Rep.

1189 and the cases cited by the Lord Chancellor in his judgment and by the eminent counsel who argued the case on both sides. There seems to

be no doubt that in the actual application of the rule as to necessity the English courts have been very stringent. A permanent lease at an unvarying

rent would have little chance of approval by them. It is unnecessary however to pursue this matter.

4. As regards the present case we must on the authority of the Privy Council oases cited in the earlier part of this judgment set aside the decree of

the Subordinate Judge and restore that of the munsif. No claim was made in the written statement for the value of improvements and no issue was

raised as to whether the defendants were entitled to it. We must decline to allow the defendants to raise it now. They will pay the plaintiff''s costs in

this and in the lower Appellate Court,

Wallis, J.

5. I agree.

