

(1934) 08 MAD CK 0013
In the Madras High Court

Sri Mahant Prayag Doss Jee Varu and Others	APPELLANT
Vs	
Archakam Bokkasam Govindacharlu and Others	RESPONDENT

Date of Decision : 07-08-1934

Acts Referred:

Citation : AIR 1935 Mad 220 : 157 Ind. Cas. 547 : (1935) 41 LW 63 : (1935) 68 MLJ 295

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—These appeals arise out of disputes between certain archakas of the Tiruchanur Temple and Sri Mahant of Tirupathi as

the Vicharanakarthas of the said temple. To follow the evidence and appreciate the contentions in the case a preliminary narrative may be helpful.

2. The Tiruchanur Temple has long been associated not merely in the popular mind but also in respect of its management with the temples at

Tirumalai (on the hills), and Tirupathi (at the foot), and all the three and a number of other temples in the neighbourhood have generally come to be

known as the Tirumalai Tirupathi, etc., Devasthanams. When the Government divested themselves of the management of Hindu Temples, this

group was handed over to the then Mahant of the Hatiramji Mutt at Tirupathi, and they have ever since continued under a common management.

3. In the Tiruchanur temple the principal shrine is that of the Goddess Sri Padmavathi (referred to as Thayar or Amr'n'avaru). But in the same

temple there has long been also a shrine of Sri Krishna. The Archaka miras in the Padmavathi shrine is admittedly hereditary, and in the course of

the proceedings in the Court below, it was practically admitted that the Archakas of the Padmavathi shrine were hereditarily entitled to the

Archaka miras in the Sri Krishna Shrine as well. In 1905 a separate building was consecrated within the temple precincts as a shrine of Sri

Sundararajaswami, and to this building the utsava idol of Sri Sundararaja, which therefore had been kept and worshipped in the Padmavathi shrine

itself, was removed, and a new Moola Vighraha was installed in this new building. One of the questions argued in this case relates to the claim of the

Archakas of the Padmavathi shrine to miras or hereditary right in respect of the Sundararajaswami Temple.

4. As to the Archakaship in the Padmavathi temple, it would appear from Ex. II that in 1818 three persons, namely Vyasa Narasimhachari and his

father Seshiah and another Ramaswami, son of Rangachari, were miras Archakas of that shrine with shares in the proportion of 3, 1 and 2. It is

however clear that from and after 1827, the branch of the first two held a half share and the branch of Ramaswami was entitled" to the other half

share. Ramaswami would appear to have died somewhere about 1841, leaving, a widow Narasamma, and she applied by Ex. XI to be registered

as mirasidar and to be permitted to discharge her duties through her brother-in-law Venkatacharlu. This was apparently permitted. Troubles seem

to have arisen shortly afterwards on account of disputes between these two, and Narasimhachar of the other branch seems to have been asked to

do duty for her turn as well. But matters seem to have settled down by the date of Ex. A, (1849), and one Cuddapah Ramacharlu was arranged

by her to attend to her duties. About 1852 she brought one Devallapalli Srinivasachari on the scene, and this led to new troubles which however

need not now be referred to in detail. Later on, she adopted one Krishnamacharlu who enjoyed this half share in the archaka miras till his death in 1911.

5. On 2nd September, 1911 (the day of his death) Krishnamacharlu executed a will, (Ex. O.), whereby he authorised his wife to adopt,

bequeathed a moiety of his half share to the son to be adopted, and bequeathed the other half to his sister"s son Narasimhacharlu. The documents

marked P series in the case show that, in due course, the title of Narasimhacharlu under the will was recognised by the Mahant. In May, 1917, the

widow adopted one Govindacharlu, and the documentary evidence shows that this adoption was also brought to the knowledge of and recognised

by the Mahant. Things went on smoothly enough between the parties till 1921. Two other matters must be adverted to, to understand the origin of the subsequent disputes.

6. The Tiruchanur temple seems to have no permanent endowment of any value, and the expenses of the services and worship in the temple have to be met from offerings made by pilgrims. It would appear from Ex. I that the archakas held some Inam lands, but, for whatever reason it may be, such inams have long ago ceased to be in their possession. Thus they too have to maintain themselves from out of what the pilgrims may give. Exs.

I and II show that even before 1818, a system had come into vogue by which offerings described as "" Kanukas "" were divided into two classes,

namely those less in value than 5 varahas(Rs. 13-2-0) and those above, the former being taken by the archakas and the latter going to the temple.

Subject to this provision, Ex. II states generally that the three archakas therein named shall enjoy the income received in the temple of the Goddess

and render services. The services to be rendered by them are set out in the same document in elaborate detail. It is sufficient to observe that the

scheme has nearly all along been, that the archakas themselves supply the daily paditharams and other regular items required for the daily worship,

and also perform several Utsavams. At the beginning of the Government administration some officer seems to have imagined that the income

derived by the archakas from the offerings might be considerable and for a time he got all the collections directly made as if in Amani, but when it

was found that the income derived by the archakas from all sources was practically equal to the expenditure incurred thereout, the old system was

allowed to be continued. The only other interruption for sometime between 1820 and 1830 seems rather to have been a punitive measure taken on

account of Rama-swami's misconduct. It is in view of the long and undoubted prevalence of the arrangement above set out, that the written

statement suggests that the archakas must have come to collect the offerings under some kind of lease arrangement between them and the temple

authorities. This raises one of the principal issues in the case and will be dealt with in the proper place.

7. When the collections made by the archakas increased, attempts were now and then made either to add to the services to be rendered by them

or to collect contributions from them, on the ground that their income had increased by reason of improvements effected to the temple and the worship therein at the Devasthanam expense. This system of annual lump contributions began in or about 1876 and has in one form or another continued down to the date of suit. In Ex. J (September, 1898) it is stated that contributions were claimed from the archakas on the ground that the temple had been improved and that they had been getting a larger income, that for sometime they had been making a lump payment of Rs. 250, that they had latterly been paying varying amounts for the expenses of certain new festivals, that they preferred to have a fixed contribution to make, and that the same was accordingly fixed at Rs. 500 per annum. This is certainly more in accordance with the hypothesis that with their growing income the archakas were not unwilling to make decent contributions to the institution which was the cause of all their prosperity.

8. While things were going on on the basis of this arrangement of 1898, a Devasthanam Inspector raised one or two conundrums in 1921 as to the way in which the principle of the division of Kanukas between the archakas and the temple was to be applied in the illustrations given by him in Ex.

XXXIII(b). The result of the consequent correspondence was that pending final settlement, such items were directed to be placed in deposit in the temple. Sometime before this, the other branch of the archakas ceased to have any male members, by reason of the death of Chakrapani

Bhattachari and his son Krishnaswami Bhattar in 1914, and the turn of that branch was taken under Amani by the Devasthanam. Ex. XXVIII(O)

shows that when that turn was let out in auction, there was keen competition, and the highest bidder agreed to pay as much as Rs. 2,574 to the

Devasthanam for a year's turn. It is therefore no wonder that the Devasthanam authorities imagined that in view of the large income that the

archakas were making, the temple might reasonably claim a larger share for the Devasthanam. A convenient opportunity was available on

Chakrapani's death when that branch was represented by a minor widow (Chellammal). In a communication from the Devasthanam, she was

charged that she was taking away several heads of income which must properly go to the Devasthanam, and was informed that a system of tickets

for archana and harathi was introduced, and that pending settlement of the question whether the income derived from archana and harathi should

go to the archaka or to the temple, the collection would be kept separate in the Devasthanam treasury (See Ex. W). It was added that, as regards

Sri Krishna's shrine, it was clear from the records that the entire income by way of gifts for archana and harathi should go to the Devasthanam

alone. A copy of Ex. W was also forwarded to Narayanacharlu and Govindacharlu the persons who were entitled to the other half share in the

archaka miras, and on receipt thereof, they sent up the representation Ex. XXIII.

9. It will be convenient at this stage to refer to another point of dispute in the present litigation, as that is also referred to in Ex. XXIII. There are

certain duties to be performed at Tirumalai(shrine on the hills) grouped under the heading "" Bokkasam "". In Ex. II "" Bokkasam "" is explained as

taking care of the clothes and giving them to the God whenever necessary. It is there stated that this duty was to be performed by Ramaswami,

one of three persons mentioned as being the Tiruchanur archakas, and by another "" Bokkasam "" Narayanappa. The record furnishes no

information as to who this Narayanappa was; but it would appear from Ex. III that he had nothing to do with the Tiruchanur temple. Nor does the

record show any reason why, or how it came about, that Ramaswamy alone out of the three Tiruchanur archakas had to do the "" Bokkasam "" duty

on the hills. These two circumstances are strongly relied on by the archakas in support of their plea that there is no connection whatever between

the Tiruchanur archakaship as such and the ""Bokkasam"" service on Tirumalai and that though Ramaswami was doing the ""Bokkasam"" service till

his death, it was not in his capacity as an archaka of the Tiruchanur temple. We shall deal with this contention in due course. It is sufficient to add

here that it is admitted that from about 1852, none from amongst the Tiruchanur archakas, not even from Ramaswami's branch, performed this

service on Thirumalai. It was in this state of things that in 1921, the Vicharanakartha claimed that the archakas of Tiruchanur should either perform

the Bokkasam kainkariam at Tirumalai or pay a certain sum of money to him, to enable him to meet the expenses of getting the service performed

by other persons. In Ex. XXIII, both Narayanacharlu and Govindacharlu protested against their liability to perform the ""Bokkasam"" service on the

hills, and also against the claim of the Devasthanam to the archana and harathi fees in the Tiruchanur temple. It winds up in a curious way. ""If you

have the intention of getting money from out of our income "" they say that their contribution may be fixed at Rs. 2,000 per year on certain conditions.

10. About this time Narayanacharlu's turn of duty in the Padmavati shrine was approaching, and he applied that a muchilika and security bond

might, as usual, be taken from him and he might be permitted to perform his duty. Though his rights have undoubtedly been recognised by the

Devasthanam from 1912, questions are put in Ex. EE, to explain his rights. This appears rather disingenuous and gives room to think that the object

apparently was to compel him to come to terms on the matters raised in Exs. W and XXIII. As stated in the endorsements on Ex. XXIII(b), a

draft was prepared embodying the best that could be got from him in the circumstances, ""after considerable cogitation and mediation"". Ex.

XXIII(b) contains a recital that records have been filed, that ""Bokkasam"" service in the Tirumalai Devasthanam should be performed by the

archakas of Tiruchanur Devasthanam. The present record shows that this is true only in a very qualified sense. On the assumption stated in Ex.

XXIII(b) Narayanacharlu thereby agrees to pay Rs. 1,500 in a lump sum for a period of one year, to be relieved of that service. As regards the

harathi and archana fees in the Tiruchanur temple, he agrees to pay a lump sum of Rs. 1,500 for a period of one year. When Ex. XXIII(b) was sent

up to the Vicharanakartha he raised some difficulty about this last provision; and within a week of Ex. XXIII(b), Narayanacharlu sent a lawyer's

notice(Ex. T) on the 7th November, 1921, repudiating even Ex. XXIII(b), and instituted this suit on 14th November, 1921. A.S. No. 347 of 1927

arises out of this suit, which was transferred to the Sub-Court to be tried along with the other suit and renumbered in the Sub-Court as O.S. No. 1

of 1924.

11. Besides the points of dispute already indicated, the Vicharanakartha, by his written statement in this suit, questioned the title of

Narayanacharlu, contending that as a matter of law a transfer of the archaka office was invalid.

12. While Narayanacharlu's suit was pending in the Munsif's Court, Govindacharlu (the adopted son of Krishnamacharlu) attained majority, and

as his turn of duty in the Tiruchanur temple was to commence from the 1st

November, 1923, he applied by Ex. CC, that a muchilika and security bond must be taken from him as usual and he be permitted to attend to his duty. His adoptive mother sent CC-1 supporting that application. On receipt of this application the Devasthanam raises questions whose necessity is by no means apparent, in view of what the Devasthanam already knew. In disgust, if not in despair, the lady's vakil wrote on the 17th October, 1923, that if the Mahant had any objection to allowing the adopted son to do the duty, the widow at least might be permitted to enter upon them as his guardian. This brought forth the reply CC-6, and when the lady's vakil sent another strongly worded letter CC-7, the Vicharanakarthas sent a reply CC-8 on the 12th November, 1923, wherein he said he would allow the lady to do the duty in her capacity as widow, provided that she agreed unconditionally to execute a kararnama for doing Thirumalai Bokkasam Kainkariam, or in the alternative to pay the commuted rate of lease for Tirumalai Bokkasam as well as Arjitam revenue of the Padmavathi Amman temple, amounting in all to a sum of Rs. 3,500 for the vantu (turn) year. This left the widow and the adopted son no alternative but to institute a suit, which they did on the 27th November, 1923 and it is out of this suit (O.S. No. 54 of 1923) that A.S. No. 210 of 1927 arises.

13. By his written statement in this suit, the Vicharanakarthas disputed the genuineness of Krishnamacharlu's will and the validity of Govindacharlu's adoption. For the very purpose of avoiding defeat or delay on this ground the widow had, as a matter of precaution, joined in the suit as second plaintiff and the parties prayed that, should the Court hold against the adoption, the widow might be given a decree on the strength of her undoubted title. The Court below found in favour of the will and of the adoption, and as these findings have not been attacked in the course of the argument before us, our judgment proceeds on the footing that Govindacharlu (the first respondent in A.S. No. 210), is the validly adopted son of the deceased Krishnamacharlu.

14. From what has been stated above, it will be seen that the main questions in the two appeals relate

(1) to the obligation of the plaintiffs as archakas of the Tiruchanur temple to arrange for the discharge of the Bokkasam duty on the Tirumalai, and

(2) to the respective rights of the parties to the various receipts in the Tiruchanur temple under the heads of Kanukas, archana and harathi. The

objection to the claim of hereditary mirasi right of archakaship in the Sundararajaswami shrine has also been pressed before us.

15. Before dealing with these questions which are common to both the appeals, it will be convenient to dispute of the objection raised in A.S. No.

347 to the validity of Narayanacharlu's title to the office by devise. The will Ex. O recites that Narayanacharlu was the testator's sister's son who

had lost his father while yet a boy, and was accordingly brought up by the testator and got married to his brother's daughter. No objection has

been raised to the personal fitness of the devisee to perform the duties of the office, nor can it be disputed that he is one in the line of heirs to the

testator. It is only as a matter of law, that Mr. Ramadoss, on behalf of the Devasthanam, contends that an office like that of an archaka cannot

validly be transferred or bequeathed. The learned Subordinate Judge overruled this objection on the ground that such a transfer is permissible in

law where it is in favour of a person in the line of heirs, and also on the ground that a custom permitting such transfers has been made out in the

case. Mr. Ramadoss has attacked both these steps in the learned Judge's reasoning. The transfer in this case is not one for consideration or for the

pecuniary benefit of the transferor; and in view of that fact. Mr. Ramadoss has not gone the length of contending that even if a custom in support of

the transfer is made out, it should not be upheld. But he maintains that the custom if any must be one relating to this particular institution and that no

such custom has been made out in this case.

16. Most of the reported decisions dealing with this question arose out of alienations for value; and considerations of "public policy" (1876) L.R. 4

I.A. 76 (Privy Council) P.C. the Privy Council also refer to the doctrine of delegatus non potest delegare, and the possibility that the recognition

of a right of transfer may defeat the presumed intentions of the founder of the Endowment. These two considerations have greater relevancy to

cases where the trustee's office is sought to be alienated than to transfers of archakaship: indeed, in the case of archakas, the right of delegation

has been expressly recognised by permitting the system of proxies. There is again no question here of the alienation being intended or calculated to

alter the form of worship Venkatarayar v. Srinivasa Aiyangar (1872) 7 M.H.C.R. 32 or effecting anything repugnant to or inconsistent with the

very nature and purpose of the endowment, (1917) L.R. 44 I.A. 147 (Privy Council) their Lordships refer to what may be termed the "common

law of India". Whether their Lordships meant to assume the existence of a rule of "common law" with reference to all offices, or to all religious

offices, or only with reference to trusteeship, is not very clear. Again when they refer to "custom" it is not clear whether they meant to lay down

that custom may give a right of alienation where in the nature of things none could otherwise exist, or the effect of custom was merely to remove

objections based on presumed intentions of the founder.

17. When and in so far as emphasis is laid on the spiritual duties relating to certain offices, Nagendra Nath Palit v. Rabindra Nath Deb I.L.R.

(1925) 53 Cal. 132 or on the fundamental idea that in the case of these offices, the duties are the substance of the office and the emoluments are

only subsidiary or appurtenant, per Sadasiva Aiyar, J., in Sundarambal Ammal v. Yogavanagurakkal I.L.R.(1914) 38 Mad. 850 : 26 M.L.J. 315

the argument against alienability is indeed very strong. And it is also true to say that such offices should not be assimilated to ordinary private

property, Narayana v. Ranga I.L.R.(1891) Mad. 183 : 2 M.L.J. 19. But once the principle of appointment or selection was ignored and hereditary

rights (including those of woman) were recognised, the next step was to bring in the practice of partition. It is interesting to note the difference of

opinion on this point between Colebrooke and Ellis as early as 1808,(see Strange's Hindu Law, Second Vol., pages 363 and 364). Sir Thomas

Strange remarked (Vol. 1, p. 209) that the doubts of Mr. Ellis rest upon "no solid foundation", and preferred the view that except in special cases

heritability involved the right to partition amongst co-heirs. The conception developed in the Smritis and commentaries, that a hereditary office was

under the Hindu Law assimilated to "immovable property", (see (1873) L.R. 1 I.A. 34 (Privy Council) , naturally led on to alienability as one of the

incidents of property, and the numerous reported cases on the point certainly testify to the prevalent practice of alienation. In Rajaram v. Ganesh

I.L.R.(1898) 13 Bom. 131 Ranade, J., observed that in the Madras Presidency sentiment is very strong against the alienation of temple offices, but

that in other parts of India, the restrictions are less strictly enforced, especially when the alienee is a nearly related member of the family. Even in

the Madras Presidency the objection would seem to have prevailed in the Courts rather than in the sentiments of the people. On p. 137, the

learned Judge states, that ""by force of custom a limited right of partition and alienation might be established."" This observation would suggest that

custom must be invoked to justify alienation; and the issue sent down to the lower Court in that case was framed on that footing. But in

Mancharam v. Pranshankar ILR (1882) 6 Bom. 298 the learned Judges deal with the rule of inalienability even in such cases as a restriction ""upon

the exercise of the ordinary rights of property"". In both these cases, reasons are given justifying a differentiation between involuntary sales and

private alienations, and between alienations to strangers and alienations to members of the family or those in the line of heirs.

18. In this state of the authorities, we think that in the circumstances of this case, our decision may be rested on a narrow ground. The facts here

are almost ad idem with those in Mancharam v. Pranshankar I.L.R.(1882) 6 Bom. 298 and we have not been, referred to any reported case

where that decision has been; dissented from on similar facts. The distinction made by Maclean, C.J., in Rajeshwar Mullick v. Gopeshwar Mullick

ILR (1907) 35 Cal. 226,. between transfers inter vivos and transfers by will, may have force when the transfer relates to an office in the nature of a

bare trusteeship, which seems to have been, the case before the learned Judge. Cases where the hereditary office involves considerable beneficial

interest cannot be put on the same footing as bare trusts for all purposes. In Nirad Mohini Dassi v. Shibadas Pal Dewasin ILR (1909) 36 Cal. 975

the learned Judges followed the principle laid down in the Mancharam v. Psanshankar I.L.R.(1882) 6 Bom. 298,. though in view of the Full Bench

judgment in Rajeshzvar Mullick v. Gopeshwar Mullick ILR (1907) 35 Cal. 226 they emphasise that the case before them was one of gift inter

vivos and not by will. In Kuppa Gurakal v. Doraiswami Gurukal ILR (1882) 6 Mad. 76, Narayana v. Ranga I.L.R.(1891) 15 Mad. 183 : 2

M.L.J. 19, Alagappa Mudaliar v. Sivdramasundara Mudaliar I.L.R.(1895) 19 Mad. 211,Sundarambal Ammal v. Yogavanagurukkal ILR (1914)

38 Mad. 850 : 26 M.L.J. 315 and Rajam, Bhattar v. Singarammal (1918) 36 M.L.J. 355 this Court merely refused to apply the principle of the

Mancharam v. Pranshankar I.L.R.(1882) 6 Bom. 298 to transfers for value or to transfers in favour of strangers. This does not seem to require or

justify our refusing to follow the decision in Mancharam v. Pranshankar I.L.R. (1882) 6 Bom. 298 even when the alienation is to one in the line of

heirs, is not for consideration, and is not in any way opposed to or inconsistent with the interests of the institution.

19. In this view it is not necessary to deal with the question of custom at much length. Exs. XXXIV(g) of the year 1862 and A-2 of the year 1852

undoubtedly furnish instances relating to this temple itself. And as already stated Narayanacharlu the present plaintiff was himself recognised in

1912 as entitled to perform the duties on the strength of the will Ex. O. Instances of this kind, when confined to each particular temple, can in the

nature of things be only a few. But taken along with the fact that on none of these occasions did the Devasthanam authorities raise any objection on

the ground of principle, they may reasonably be held sufficient to establish a custom in support of such transfers. We accordingly affirm the finding

of the Court below in favour of the title of Narayanacharlu.

20. On the question of the plaintiffs' liability to render Bokkasam service on the hills, we are in agreement with the Court below and the matter

may therefore be briefly disposed of. As already indicated, the inclusion of Narayanappa in Ex. II in connection with this service, taken along with

the exclusion of Vyasa Narasimhacharlu's branch, certainly lends support to the archakas' contention dissociating the Bokkasam duty from the

archaka miras. Mr. Ramdoss relied upon Ex. XIV, as suggesting that Vyasa Narasimhacharlu must also have been doing Bokkasam duty. One

Lakshamma there recites that her husband has been performing Bokkasam service, and reading Ex. XIV with Ex. A-4 he tried to make out that

Lakshamma the petitioner under Ex. XIV was the same as Lakshamma who is described in A-4, as the widow of Vyasa Narasimhacharlu. The

learned Subordinate Judge thought that Lakshamma of Ex. XIV might be the widow of Bokkasam Narayanappa. The contents of Ex. XIV lead

us to think that she was probably the widow of Devallapalli Srinivasachari who had been introduced by Narasamma as her gumastha sometime

after the death of her husband Ramaswami.(See Ex. A-2 and Ex. XVII). The second paragraph of A-3 shows that Srinivasacharlu's widow's

name was Lakshmamma, and reading A-3 in the light of Ex. XIII it would appear that she finally preferred to abandon the claims that she put

forward in the right of her husband Srinivasacharlu. But Ex. XIV was written before she agreed to do so, as it shows that she proposed to bring

her brother-in-law from Devallapalli to do the duty.

21. From Exs. XIII and A-3 it would appear that Ramaswami's widow had entrusted all her husband's duties, both at Trichanur and on the hills,

to this Srinivasachari; and on his death disputes arose, as a result whereof the duties at Tiruchanur were taken over by Ramaswami's widow with

the help of another gumastha. What happened to the duties at Tirumalai we do not know. But it is not disputed that from this date onwards, the

ajrchakas at Tiruchanur never performed Bokkasam duty on the hills. We agree with the Court below that in the circumstances it is a fair and

reasonable inference that some arrangement must have taken place at or about this time, whereby even Ramaswami's branch must have been

relieved of the Bokkasam duty on the hills. The mere fact that we are not at this distance of time able to ascertain the details of this arrangement

will not justify us in holding that no such arrangement could have been validly entered into, nor enable the Vicharanakarthas to throw on the

Tiruchanur archakas the responsibility for the discharge of this duty.

22. In this view it is not necessary to notice at length the argument urged by Mr. Ramdoss on the strength of some of the early documents, that

when Ramaswami or his widow was in default, in respect of the Bokkasam duty, the temple authorities took under amani even their archakas turn at

Tiruchanur. This was apparently a punitive measure, and is sufficiently explained by the fact that both the temples were under one and the same

management. It must also be remembered [as pointed out in *Srimat Paramahansa Parivrajakacharya Peria Koil Kelu Appan Satagopa Ramanuja*

Pedda Jiyangar Varu, deceased, *Dharmakarta of Tirumalai and Others Vs. Prayaga Dossji Varu*, disciple and representative of Ramakishore

Dossji Varu, Mahant of *Sree Hathiramji Mutt* and the *Vicharanakarthas Tirumalai and Another*, that in the administration of temples in those days,

the Government exercised not merely the powers of a trustee but also those of a sovereign power. The references to Bokkasam miras by

Chakrapani and his son in Exs. XXI and XXXVI respectively are of very little

value, when there is nothing else to show that their branch had ever been discharging these duties, and they had admittedly not performed these duties since 1854.

23. As regards Sri Sundararajaswarm's shrine, the evidence stands as follows: - The Utsava idol of this Swami, which had theretofore been kept

and worshipped in Sri Padmavathi shrine, was installed as an object of independent worship in a new shrine in June 1905.(See AA). The

Prathishta ceremony was performed by the father of D.W. 7, and for sometime after Mandalabishekam he seems to have done the archaka work

in the new shrine. Thereafter D.W. 7 did the duty for a year or more on a salary of Rs. 10 or 15 per mensem. There is no doubt on the evidence

that offerings and all other sources of income received in this shrine have all along gone to the Devasthanam and the archaka, whoever he was, has

been paid a fixed monthly salary. There is nothing to support the suggestion that in doing duties as archakas at the new shrine, D.W. 7 and his

father merely acted as deputies for the archakas of Sri Padmavathi shrine. Ex. AA-1, dated the 9th September, 1905 refers to the salary system at

the new shrine. It makes reference to Chakrapani Bhattacharlu in this connection, though it is not clear how, in the face of D.W. 7's evidence,

Chakrapani could have been doing duty at the new shrine on the date of AA-1. Anyhow, that document itself makes it clear, that the

Vicharanakarthas preferred the salary system for the new shrine, and would not accede to the suggestion that the archakas might take the

collections. The plaintiff in the suit of 1921, examined as P.W. 1 admits that, for sometime after the prathishta, puja was got done by some persons

who were strangers to the mirasi families, that he himself took over the archakaship on a kind of lease from the Devasthanam for a period of five

years, that when he applied again for a further lease, it has been refused and a contract given to somebody else. It would thus appear that such

service as the Tiruchanur archakas have so far done in the new shrine was performed by them only as paid servants of the Vicharanakarthas, or

under one or other of the lessees from the Devasthanam, and their claim to take the collections at this temple has been uniformly denied by the

Vicharanakarthas. No kararnama of the usual kind has been executed by the archaka in respect of this shrine; and it is noteworthy that Ex. O, while

referring to both the shrines, speaks of a miras right only in respect of Sri Padmavathi Shrine. P.W. 3, P.W. 4, and P.W. 5 do not suggest anything

like the recognition of a right, when read; in the light of the above facts and Ex. XXXII(a) clearly suggests the contrary; so also, the request in Ex.

XXIII that on certain terms the Devasthanam of Sri Sundararajaswami may be given to the petitioners. It is also significant that no claim was made

in the plaint in the earlier suit, i.e., P.W. 1's suit of 1921(A.S. No. 347) in respect of this temple. The learned Subordinate Judge explains this

away by saying that at the date when that suit was filed "there had yet been no dispute" with regard to this temple. But he has failed to realise that

the absence of a dispute was due to the fact that the archakas had not till then put forward any mirasi right in respect of this temple.

24. The learned Subordinate Judge has laid stress upon the circumstance that, prior to the removal to the new shrine, the utsava idol was

worshipped by the old archakas in the padmavathi shrine. But he ignores the fact that during that period this idol was not the subject of

independent worship or a separate source of income. It is common knowledge, and the evidence also shows, that when a principal deity is

worshipped at a shrine, a number of other idols are placed there and have the benefit of that worship. But it has not been usual to regard them as

objects of independent mirasi rights of worship. Taking it however that that circumstance could have given the old archakas some justification for

claiming rights in the new shrine as well, the whole course of subsequent conduct on both sides has been inconsistent with such a claim. The

decision in *Narayanan Chetty v. Elayaperumal* (1922) 73 I.C. 381 is not really analogous to the present case. It was there held that the mere

shifting of a family idol from one place to another will not constitute it a new endowment so as to vary the rights of the family. No question arose

there, as to how the position would stand when a new institution comes into existence while the old one also continues to exist. At best, the old

state of things can only give rise to a presumption in favour of the old archakas, which as already stated has in the present case been amply

rebutted by the evidence as to subsequent conduct. For these reasons, we are unable to accept the finding of the lower Court on this question.

25. It remains to consider the respective rights of the parties to the collections made in the shrines of Sri Padmavathi and Sri Krishnaswami, under

the heads of Kanukas, Archana and Harathi. On behalf of the Devasthanam it has been contended that all these offerings prima facie belong to the deity, that the archakas are only entitled to a reasonable remuneration for their services, that the existing arrangement is and must at any rate be deemed to be only a temporary one subject to revision by the Vicharanakartha from time to time and that, if, regarded as permanent, it will not be binding on the temple. In support of this contention Mr. Ramadoss strongly relied on the judgment of the Division Bench reported in Kalyana Venkatarani v. Aiyangar v. Kasturiranga Aiyangar I.L.R.(1916) 40 Mad. 212 : 31 M.L.J. 777 In the view we take as to the effect of the evidence in this case, we are unable to accede to this contention. In Kalyana Venkatarani v. Aiyangar v. Kasturiranga Aiyangar ILR (1916) 40 Ma. 212 : 31 M.L.J. 777 the suit was brought to set aside what purported in terms to be a perpetual lease granted by the Devasthanam committee to the archakas in 1893; and though the learned Judges refer to the older practice, they proceed on the footing that the transaction amounted to a permanent assignment or appropriation of trust property by a trustee. It is not for us to canvass the correctness of that assumption, with reference to the evidence in that case or consider whether the transaction could not have been viewed in a different light. Taking that particular view of the transaction, the learned Judges held that as a matter of law, it was beyond the powers of a trustee. On the evidence in the case before us, we are unable to hold that the existing arrangement must be viewed as an "alienation" of trust property, nor is it even possible to say that it was entered into by a person with the limited powers of a trustee. Even so early as in 1818, it is referred to as a "mamool" arrangement and for aught we know, it might have come into vogue when the State was exercising sovereign powers and not merely the limited powers of a trustee over this institution. The arrangement is certainly not in the nature of a "lease" because the collection is made by the temple authorities themselves and only a portion thereof is handed over to the archakas. Nor is it intended to provide only for their remuneration, because out of these receipts, the archakas meet the expenses of the daily paditharam in the temple and also perform certain specified festivals. In circumstances like these, it would be unsafe to base a conclusion on the primary connotation of the words "Kanukas" or "Archana offerings" and hold that the archakas must be deemed to be

only in the position of alienees of trust property. The relevant decisions take care to make an express reservation in favour of "usages" in each

temple; and unless there, is anything clearly opposed to public policy, Courts will not be justified in setting aside an arrangement which has been in

vogue for more than a hundred years. An arrangement by which archakas are remunerated by share of the offerings is quite a well-known practice

in this country,(e.g., for instance the facts in *Bahaiji Thakur v. Jharula Das* (1914) L.R. 41 I.A 267 : ILR 42 Cal. 244 : 27 M.L.J. 100 , and not

by any means necessarily detrimental to the interests of the institution.

26. Even in the case of alienations of trust property, the Judicial Committee have not laid down a rule of absolute prohibition. In 34 CWN 462

(Privy Council) ,. their Lordships recognise the propriety of applying the rule relating to presumption of a legal origin, even to such transactions,

where they are ancient, provided of course such a legal origin is practicable and ""reasonably capable of being presumed without doing violence to

the probabilities of the case"" : 34 CWN 462 (Privy Council) . We are unable to agree with Mr. Ramdoss that a legal origin is impossible to think of

in this case. In this view, it is unnecessary to consider whether by reason of the terms of C and C-1,. under which the Government transferred the

management to the Vicharanakartha, the latter is precluded from raising even a legal objection of this kind.

27. As a question of fact, Mr. Ramdoss tried to contend that on the evidence, the existing arrangement was not, and was not intended to be,

permanent or unalterable. He relied (i) on the fact that since A-2, the Dhanurmasa Kainkaryam has been added to the list of items of which the

expenses had to be defrayed by the archakas, and that since A-12, a daily desantri taligai and the Rathasapthami Utsavam have been similarly

added, and (ii) on the fact that since 1876, lump contributions have annually been levied from the archakas (cf. Ex. A-4, 26 and Ex. J). It must be

said in answer, that the very documents under which these additional liabilities are undertaken by them assert their "mamool" right, and state that

these liabilities are to be met out of the share of the income belonging to them. The recitals made in A-14, 26 and J to explain and justify the

Vicharanakartha's claim for contribution are also very significant. And we cannot accept the extreme contention of Mr. Ramdoss that the

execution of annual muchilikas by the Turn-Archakas shows that the arrangement is only a renewable annual arrangement. We know from the evidence, and the muchilikas definitely say, that the right is a mamool right. The annual muchilikas are taken only to facilitate the execution of security bonds each time when an archaka enters upon his turn of office.

28. We are unable to accept the contention that moneys paid for Archana or Harathi should go to the Devasthanam. No such reservation is made

in any of the muchilikas nor is the claim supported by the accounts. We are unable to award this claim to the temple, on the strength of the

evidence of a few of the D.W.'s who say that such was their secret intention when they made payments for Archana or Harathi. The only claim

which the documents show was made in the past relates to cases where the same man made payments or gifts both under the head of "Kanuka"

and for Archana and Harathi and the total amount or value exceeded 5 varahas(cf. Ex. XXXIII(a) of 1897). We shall deal with this matter when

dealing with the connected CM. As. But, subject to the limitations to be indicated in the CM. As. we agree with the conclusion of the learned

Subordinate Judge as to the relative rights of the archakas and the Devasthanam in respect of Kanukas. As regards payments for Archana or

Harathi, they shall go to the archakas except when the same person making such payment also makes payment for Kanukas and the aggregate of

these payments exceeds Rs. 13-2-0.

29. Mr. Ramdoss drew our attention to the fact that the decree of the lower Court does not even provide for the annual contribution of Rs. 500 by

the archakas as per the terms of Ex. J, though this payment has never been objected to. We do not know if this was intentional or merely due to

oversight. There is no justification for disallowing a contribution which the archakas have without objection been making for a long time; but we

need not discuss this matter at length as the archakas have agreed before us to be bound by the terms of Ex. J in this respect. The same remark

applies to the additional services and festivals like Dhanurmasa Kainkaryam, Desantri Taligai and Ratasaptami Utsavam which they have

undoubtedly been performing for a long time. These two matters will be made clear by a specific reference thereto in the decree.

30. Referring to the form of the injunction given by the lower Court, Mr. Ramdoss

asked

(i) that the decree must make the injunction conditional on the execution of muchilikas and security bonds by the archakas as usual, and

(ii) that an express reservation should be made in respect of any disciplinary powers that the Vicharanakarthas may have over the archakas. It does

not seem to us necessary or desirable to incorporate these in the decree. The decree is only meant to declare the normal rights of the parties and it

is sufficient to state here that it is not intended either to abrogate the undoubted practice as to the execution of muchilikas and security bonds or to

interfere with any disciplinary powers which the Devasthanam authorities may have in special circumstances.

31. As to the direction for payment of mesne profits, the parties agree by a consent memo filed before us that in A.S. No. 210 the following may

be substituted for the direction in respect of mesne profits in the last para, of the lower Court's decree.

The decree as to mesne profits of 1923-1934 granted by the lower Court is set aside and, in lieu thereof, it is decreed that the first plaintiff--first

respondent--will be entitled to (1) the actual sum collected by the Vicharanakarthas (first defendant) in the temples of Sri Padmavathi Ammavaru

and Sri Krishnaswami Varu for archana and harathi fees from 1st November, 1923 to 31st October, 1924, and (2) the Kanukas to which the

archakas are entitled as per this decree which were collected by the Vicharanakarthas (first defendant) during the same period and which may not

have been paid over to the plaintiffs minus (1) the sum of Rs. 500, payable by the plaintiffs for 1923-1924 and (2) the sums expended actually by

the first defendant for the Kainkaryams, etc., which the plaintiffs, as declared by this decree, have to do (but not for salary of persons employed by

D-1 for doing archaka Kainkaryam only) during the period in that year for which the plaintiffs were not allowed to do service. The appellant will

also be entitled to credit in respect of the sums paid by the Vicharanakarthas (first defendant) to the plaintiffs during the pendency of the suit in

pursuance of the consent order of February, 1924, in M. P. No. 250 of 1923 in O.S. No. 54 of 1923 on the file of the lower Court, and also the

sum of Rs. 6,000, deposited by the first defendant and drawn out by the plaintiffs on security as per this Hon'ble Court's order on C.M.P. No.

2544 of 1927. The balance in whichever party's favour shall be payable to that party by the other party with interest at 6 per cent, per annum from

the date on which Rs. 6,000, was deposited into the lower Court by first defendant as per order of this Court on C.M.P. No. 2544 of 1927.

32. In regard to the subsequent two turns of first plaintiff before this date, namely 1st November, 1927 to 31st October, 1928 and 1st November,

1931 to 31st October, 1932, the following order is made:

The first plaintiff having been given as per para. 3(a) of the order of this Court, dated 7th December, 1927, in C.M.P. Nos. 3968 and 5052 of

1927 some of the kanukas to which he is entitled as per the declaration in this decree, and the sum of Rs. 5,000, having been also paid as per

para. 3(b) of the same order, the first plaintiff will be entitled to receive from the appellant the balance of the amounts collected as kanukas and

Archana and Harathi fees in the temples of Sri Padmavathi Ammavaru and Sri Krishnaswami Varu for the said two years, on accounts taken as

per the declarations herein, after deducting therefrom at the rate of Rs. 500 per annum for the said two years. The sums so due to the first plaintiff-

-first respondent--from the appellant for the said two years will carry interest from 1st November, 1928 and 1st October, 1932, respectively till

realisation at the rate earned by fixed deposits referred to in paragraph 3(c) of the order in C.M.P. Nos. 3968 and 5052 of 1927 aforesaid.

33. The parties also agree that in the decrees in both the appeals, the words "jewels and gold and silver articles other than vessels", may be

substituted for the words "gold and silver articles and jewels" in the second paragraph of the lower Court's decree. The reference to archana and

harathi fees in the said para, will be qualified in the manner indicated above.

34. As to costs, we think that A.S. No. 347 of 1927 should be dismissed with costs of the plaintiff-respondent, because the respondent there did

not assert a claim of hereditary archaka right, in respect of Sri Sundararajaswami temple and this is the only point on which we have reversed the

lower Court's conclusion. Even in A.S. No. 210 of 1927 this is only a point of subordinate importance and we think it proper to dismiss that

appeal also with costs of the first plaintiff respondent one--but with a direction that out of the taxed costs payable to the first respondent the

appellant may retain a sum of Rupees one hundred as costs on the claim

disallowed to the plaintiffs.