

(1909) 08 MAD CK 0023
In the Madras High Court

Sri Sethuramaswamiar and Others

APPELLANT

Vs

Sri Meruswamiar and Others

RESPONDENT

Date of Decision : 18-08-1909

Acts Referred:

Citation : (1911) ILR (Mad) 470 : (1910) 20 MLJ 108

Hon'ble Judges : Wallis, J;Sankaran-Nair, J

Bench : Division Bench

Judgement

1. Plaintiff sues for partition and delivery to him of one-third of the properties annexed to the plaint which are claimed to be the properties of the

joint family consisting of himself and of the first and second defendants. He also prays for the settlement of a scheme for the management of the

charitable and religious endowments mentioned in Part III of the second schedule.

2. The defence of the first defendant is that the properties are impartible. His contention is that he and his ancestors were the hereditary gurus of

the family of the Maharajas of Tanjore and that these properties appertain to the office of guru as such. He further contends that his ancestor who

was brought to Tanjore as his guru by the then Maharaja was also the head of a mutt and that these properties appertain to that mutt.

3. The Subordinate Judge has found that the parties formed an ordinary Hindu family and has decreed partition. This is an appeal against that decision,

4. Most of the properties specified in Parts I and II of schedule II were given by the then Maharaja of Tanjore to one Sri Sethu-bavaswami stated

to be a disciple of the Meruswamy Mutt in Mannargudi. He had an only son Sri

Ramasethuswami who left an adopted, son Sri Sethuramaswamy who died in 1854. His adopted son, Sriramasethuswami, died in April 1886 leaving three sons, the plaintiff and the first and second defendants and two daughters. From the date of the gift there was no occasion for partition. That gift seems to have been made by the Maharaja to Sethubhavasami, as the latter was accepted by the Raja as his guru. Till the extinction of the Raj, the ancestors of the first defendant continued to be the gurus and after the resumption of the Raj, by the British Government, the first defendant's father and after him the first defendant, continued to be recognized as the gurus of the Royal Family. It is the case of the first defendant, appellant, that the gift was made to his ancestor on account of his being the Raja's guru and those properties together with the rest which form an accretion to that estate are attached to that office of Raja Guru, cannot be separated therefrom and are therefore impartible.

5. Sethubhavasami, it is said, also established a mutt, and it is contended these properties appertain to that mutt. Mutts are usually associations of Sanyasis, or celibates, devoted to divine worship, who give upadesam or instruction to deserving candidates. There are also matams of which the members are allowed to marry. The house in which they live is also called mutt. The office of the Raja guru and the headship of the mutt are attained at the same time.

6. The first defendant's predecessors were all married men when they became Raja gurus. His father is not alleged to have become a sanyasi. His grandfather and great grandfather became sanyasis in their last momenta. The disciples do not live with the first defendant. There is no doubt the residence of the first defendant is generally called a mutt. It is however also called "Aramani" by some and "house" by others.

7. In support of his contention that there is an office of guru of the Tanjore Maharaja's family the appellant relies upon the ceremonies which were performed at the time when, on the death of one guru, the eldest son succeeded to the office. Evidence has been given in this case of the ceremonies that were performed at the time of the first defendant's installation. It appears that a few days before his father's death in the presence of the heads of certain other mutts, the first defendant was taught Rama Mantram by his father and a few days after his death he was installed as

the head of the mutt. Various persons were invited to attend the said ceremony. The first defendant was made to wear a dress made of kashaya

cloth which the head of the mutt should wear. He was made to sit on what is called an "adhistanapalaki" which consists of two wooden planks--

one to sit on and the other to lean against. The head of Meruswami Mutt, who is said to be the guru hereditarily of the first defendant's mutt placed

the first defendant on that seat. Then his disciples made obeisance to him and he gave upadesam to one or two of the disciples. The representative

of the Maharaja's family then placed him on what is called the " Gadi " which is a raised seat with a mattress on it. He had the Dhandam (stick)

given him. After that he started on a procession from his house, went to the Hanuman temple and as far as the Raja's palace and after receiving

alms from the palace he came back,

8. It is said that no other person is entitled to sit on the gadi and the right to sit on the gadi is supposed to have been conferred upon the first

defendant and his predecessors as they were the gurus of the royal family of Tanjore.

9. It is also alleged and proved that a flag is raised on the new year's day on the mutt and that the anniversaries of all the predecessors of the firsts

defendant are also performed, The sandals used by the predecessors of the first defendant are worshipped on the respective anniversary days.

10. The first defendant and his predecessors, in addition to their ordinary names, have also got spiritual name?, the first defendant being called

Chitgnana Brahman, his father was called Sachit Sakhananda Brahman, his grandfather Ananda Brahman, and his grandfather's father Vimala

Brahman, and his father, the first guru, Taraka Brahman.

11. The first defendant's predecessors except his father who were gurus had also samadhis. These facts are no doubt clearly proved and they

show, undoubtedly, that the family is one of great importance in that locality. They have been called Raja gurus no doubt from their having been the

gurus of the Maharajas of Tanjore. It is also clear from the evidence that the first defendant and his predecessors were also called

Madhathipathies,

12. The question for our consideration is, however, whether there are properties attached to this office or belong to the mutt as such and for that

reason whether they are impartible.

13. In order to decide this question we have to consider the documentary evidence adduced. Exhibit 0 series are apparently the sanads by which

the Maharajas of Tanjore granted the properties in part II of the second schedule as well as the properties shown in part III of the said schedule,

which are admittedly devoted to charitable purposes, to the predecessor in title of the first defendant. The earliest of them exhibit 03 is of 1739,

and the latest of them is about 1760. Exhibit C3 purports to be a grant made by the Maharaja of Tanjore to Rajasri Setu Goswami Baba. It is not

stated to have been given to him for the maintenance of the office, nor was it given to him as the head of the mutt. In fact he is not referred to in

these documents as the Rajah's guru or even as the head of the mutt. His spiritual name also is not given. The sanad itself is in the form of an order

issued to his officials by the Maharaja reciting that these grants have been made to Sri Sathu Babaswami with the exception of exhibit C3 where he

is styled Goswami, There is also a direction in the sanad which is translated thus: ""Let it be conducted from sons to grandsons in succession. Let

not the objection of a renewed document itself be taken every year.

14. The appellants' pleader relies upon these words to show that this "sanad" cannot be treated as evidence of an absolute personal gift since the

obligation is laid upon the revenue officials to see that the injunctions of the Maharaja are carried out and it could therefore only refer to the

performance of the duties by Sethu Babaswarni of his office or as the head of the mutt. We are unable to accept this construction in the absence of

anything in the body of the document itself to show that it appertained to the office, or the mutt, It may probably be intended to show that any

further sanad was unnecessary every year or in case of succession on the grantee's death.

15. In the case of the properties which were granted for charitable and religious p reference the purpose is recited in the sanad itself (exhibit 02)

and there is a specific direction ""let the charity be conducted perpetually."" On a comparison of these two recitals it appears to us to be clear that

these were only directions to the officials by the Maharaja to see that in the case of the charities they were properly performed and in the case of

the other properties the descendants of the grantee enjoyed them. After these "

sanads" by the Tanjore Rajah, the only other sanad that we have is exhibit II which purports to be a grant of a village by the then Governor of the Madras Presidency in exchange for some salt pan which the Government seems to have taken up for public purpose. This was in 1808. In that, the grantee is described as the domestic priest to the Maharaja of Tanjore.

16. Of course the property newly granted possesses the same incidents as the one resumed. In the absence of any recital in exhibit II itself to show that these properties were either attached to the office or they were granted to the Madhathipathi, we must assume that they were held on the same tenure as the properties of the grantee under the C series were held.

17. The Tanjore Raj was resumed by the British Government about 1855. The grandfather of the first defendant died in the year 1854; and in

1856 his widow presented a petition to the Board of Revenue in which, after referring to her husband's death and his adoption, before his death,

of the first defendant's father, she stated that his installation ceremony including procession was not performed either by her husband or the

Maharaja ""to qualify him for my husband's adhinam and the"" Maharaja's priesthood,"" and she stated that until the abhishekam is performed he is

ineligible for the priesthood. And she also stated that in collusion with the subordinate revenue officials, the first defendant's father without her own

consent and without the permission of the Rajah of Tanjore had performed the abhishekam and the procession and taken possession of the

properties. She alleged that till then the property was in her possession. But the Board of Revenue referred her to the officiating Resident. There

are statements made by the widow about her husband's atheenam and the necessity of an installation which support the first defendant. But her

claim to hold the properties is against him. The properties, however, seem to have been placed under attachment, a report called for, and the

matter in dispute appears to have been finally disposed of by an order which is exhibit Z in the case. That order was mainly based upon a report by

the then Commissioner of Tanjore. The Commissioner referred to the death of the Swami in 1854. He also said that the adoption was perfectly

legal and conferred on the adoptee the first defendant's father all the rights of the deceased Swami. With reference to the properties which were

called " Swami inams " he was of opinion that the inams would necessarily fall into the hands of the adopted son. He further pointed out that it was

the practice of the Tanjore Rajahs themselves to appoint as managers of the estates persona for whom the Rajahs entertained feelings of regard;

and that in the case of this family the agent of the Rajah's estates had, for some time after 1826, been also looking after the affairs of the inams but

that the inam proceeds never reached the servants of Rajah as such and that ""the revenue derived from the inams as well as the inams themselves

were in nowise interfered with by the Rajah and the Swami was quite free to hoard or dissipate their produce as to him seemed best."" No

accounts were rendered to the Rajah himself or to any one about his durbar or person.

18. If the Rajah was interested in those properties, it is scarcely likely that the Rajah's officials would have refrained from any such interference,

more especially when we take into consideration the fact that the native Rajahs in ancient days actively interfered in the management of religious

institutions.

19. Then, in finally passing orders, the Government observed that the lands could in no way be treated as service lands or endowments attached to

the priestly office conferred for the performance of duty but that they were simple personal grants unconditionally bestowed from favour and

affection, and the properties were accordingly made over be the first defendant's father. Those assigned for the maintenance of chattrams and

charities were charged with the support of the institutions for which they were granted. This is undoubtedly strong evidence against the first

defendant's contention.

20. In the subsequent enquiry by the Inam Commissioner, that officer seems to have acted on the same view. Exhibit L series are extracts from

Inam Registers and exhibits D series are the inam title-deeds. The title deeds of the lands which were granted for charitable purposes, those in part

II of the plaint schedule, were granted to the first defendant's father, as the manager for the time being and his successors so long as the charity

and the religious institutions are properly maintained. The lands which were treated by the Government as personal inams were confirmed to the

grantee and his heirs as personal inams. If these lands were attached to the

office it was probably open to the Government to have them resumed.

If they were properties belonging to the mutt, they would certainly have been so treated, The conduct of the first defendant's father after obtaining

possession of the properties also is only consistent with the same view as was adopted by the Government and the Inam Commissioner. In 1867

he sold certain properties for a sum! of Rs. 5,000. In 1875 he made a gift of certain properties to his foster daughter and in 1877 he sold certain

other items of property for Rs. 14,000. In 1878 he mortgaged certain other properties for a large sum of Rs, 60,000. In all these, the properties

were treated by him as his own; and a security bond (exhibit A-3) executed by him contemplates the possibility of a suit for partition. But there is

no suggestion anywhere of the properties appertaining to either the office or to the mutt,

21. When he appointed an agent in 1878 he specified certain properties as chattram properties and the other properties he treated as his own, The

first defendant's father died in the year 1885, when he (the first defendant) was a minor. The Court of Wards seems to have taken possession of

the property, and managed it till 1889. They managed the property not only on behalf of the first defendant but on behalf of the first defendant and

his brothers (see exhibits T, T1, and 02): and they never attempted to dispute the validity of any of the alienations made by the first defendant's

father on the ground that he had only a life interest in the property, and that they appertained to the office of Guru or that they belonged to the mutt.

22. The first defendant seems to have succeeded to the management in 1890. He also recognised his father's alienations and undertook (see

exhibit A9) to discharge the balance of what remained due of the debt of Rs, 60,000 under exhibit A4. On that occasion (exhibit A9) he treated

the property as family property, neither the office nor the mutt being referred to. Suits were brought not against the first defendant solely but against

the first defendant and. his brothers with reference to these properties by third parties and in the written statement filed by the first defendant and

his brothers and in the Razi that followed (see exhibits O and 03) the properties were treated as joint family properties and then a decree for

specific performance was passed against the first defendant and also against his brothers--not against him alone (see exhibit 04). Similarly he filed

suits with his brothers as co-plaintiffs. On one occasion he seems to have protested on the ground that he alone is entitled to sue and that it was

unnecessary to make others parties to the suit as he was in exclusive possession of the estate on that occasion. The Sub-Collected out that ho

originally sued as the managing member of an undivided family and refused his prayer After the estate was delivered to the first defendant by the

Court of Wards in 1890, pattas were granted by him in the capacity of the manager of an undivided family (exhibit E).

23. Mortgages were taken in the name not only of the first defendant but also of his brothers and the discharge was also signed by them all. All this

evidence can lead only to one conclusion and no document has been referred to before the date of this plaint in which the first defendant ever

asserted his exclusive title as against the other members of the family.

24. Assuming that the defendant's predecessors were holders of an office or heads of a mutt, they were also competent to acquire property for the

benefit of themselves and descendants, including the female members of the family, and there is no presumption feat properties acquired by them

were acquired for the office or mutt and not for their own use and benefit. Other members of the family also may have acquired properties. The

properties referred to in exhibit LI4 included in this suit are alleged to have been acquired by a lady who is a member of this family. It would

require strong evidence to show that these properties also were devoted to the office or mutt.

25. There is nothing in the account books to show that those were treated as trust property.

26. For these reasons the appellant's contention must be disallowed.

27. It was further contended that the management of the family properties devoted to charitable or religious uses descended according to the rule

of primogeniture and that the plaintiff as a junior member is not entitled on partition to any share therein. We are unable to accept this contention. It

is now well settled that the right of management ordinarily descends to the natural heirs of the donee (Mayne 439) and there is nothing to take the

present case out of the rule. The authorities are collected by Bhashyam Ayyangar, J. in Ramanathan Chetty v. Murugappa Chetty ILR (1901)

Mad. 192. The way in which the right of management is enjoyed is stated by the

learned Judges as follows:

Except in the few cases in which the hereditary office may be descendible only to a single heir, the usage and custom generally is that along with

oilier properties the office"" (of manager) ""is divided also in the sense that it is agreed to be held and the duties thereof discharged in rotation by

each member or branch of the family, the duration of their turns being proportionate to their shares in the family property. Even in cases in which

recourse is had to a suit for the partition of the family property the Courts give effect to the usage and custom referred to by providing for the

management of religious and charitable institution by different members or branches of the family in rotation on the above principles,"" There can be

no doubt that these statements are correct. The case of *Nub Kissen Mitter v. Hurritschunder Mitter* 2 Morley's "Digest, 295 appears to show that

the usage and custom were well established as far back as the year 1818, and it is now too late to question them. It will be observed that the

enjoyment is stated to be divided between the different members or branches of the divided family, and this is in accordance with the recent

decision of this Court in *Thandavaroya Pillai v. Shunmugam Pillai* ILR (1909) Mad 167 that the managing member of an undivided family has the

right to manage the family charities and that the other members of the family have no right to participate in the management so long as they continue

undivided,

28. We therefore dismiss the appeal with costs.