

(1981) 07 MAD CK 0043
In the Madras High Court

Sri Thirupuranthakaswamy Devasthanam	APPELLANT
Vs	
V. Sundaresa Mudaliar and Others	RESPONDENT

Date of Decision : 28-07-1981

Acts Referred:

Citation : (1988) 1 MLJ 26

Hon'ble Judges : Sathiadev, J

Bench : Division Bench

Judgement

Sathiadev, J.

Plaintiff in O.S. No. 14 of 1979 on the file of Sub Court, Tiruvallur is the appellant, and the three defendants are respondents herein. The suit was laid for declaration, possession and for directing the trust defendant to account for the income of the plaint "A" Schedule properties and for mesne profits.

2. In the plaint, it is claimed as follows: Plaint "A" and "B" Schedule properties belong to the plaintiff Devasthanam and they have been endowed in favour of the temple, and they partake the character of the property held in trust by the person in management of them. Items 2, 3, 5, 6, 8 to 10, 12 and 13 of "A" schedule have been given to the temple for its upkeep and for Deepa Kainkariam. Items 4 and 11 were got in exchange of the properties belonging to the Devasthanam by the then trustees, and items 1 and 7 are temple properties (origin of the grant is not traceable). Items "B" schedule jewels belong to Devasthanam, and they have been endowed from time to time by various devotees. One Chockalinga Mudaliar and Sambanda Mudaliar were co-opted as trustees with the first defendant, who was functioning as the managing trustee of the Devasthanam from 1949 upto 1973, when Chockalingam became the managing trustee. Defendants 2 and 3 are the brothers of first defendant. They are respectively in possession of items 10 and 12 of Plaint A schedule and rest of the items are in the possession and enjoyment of the first defendant. Before first defendant, his uncle Doraiswamy Mudaliar was the managing trustee from 1933 to 1948, and before him, the management was by their family from 1884

onwards. Since most of the items have been gifted by their family, a very strict scrutiny was not made about the Devasthanam estate or its income and how it was spent. After the Executive Officer took charge, enquiries were made, and defalcations in the management were detected, and it resulted in first defendant being placed under suspension by order dated 30.11.1973 of the Assistant Commissioner, H.R. & C.E., Board. A register was maintained u/s 38 of the then Act regarding the properties belonging to the Devasthanam. Though patta was originally issued in the Joint names of Devasthanam and the managing trustee, but after the first defendant took over the management, clandestinely he had transferred the patta in his own name. His possession therefore could only be deemed to be possession on behalf of the Devasthanam. It is not open to him to prescribe title to the suit properties, and that the plaintiff Devasthanam is entitled to recover possession of "A" schedule properties. He has not accounted for the income derived from the properties, and therefore, he is bound to render accounts from 1949 to 1973. As for jewels described in "B" schedule, he has made entries in the records as if they belong to his cousin Thirvirkola Mudaliar, which is nothing but a falsification of accounts carried out with Mala Fide intention. He has not delivered the jewels nor the records, registers, account books, etc, of the Devasthanam. Chockalingam alone is entitled to be in possession of the A and B schedule properties on behalf of the Devasthanam, and hence, defendants are bound to deliver them, and therefore, the suit had been laid for the reliefs as claimed in para 16 of the plaint.

3. In the written statement of first defendant, it is stated as follows:

The allegations of falsification and defalcation are untrue. Plaint A schedule properties are not entered in Section 29 register, because they do not belong to the temple. All the kattalai properties inclusive of the suit lands were shown in the register, specifically as kattalai properties, which are in the possession of kattalaidars. He is not in custody of Section 38 register. It is not true to claim that the income from A schedule lands were accounted for by the previous trustee, because there was no need to account for the income from the kattalai properties and they need not be brought to the accounts of the Devasthanam. As for the order of suspension, it was passed hurriedly, violating principles of natural justice, and that an appeal had been filed, and it is pending. As for items in A schedule; item No. 5 is a Grama Manyam and they have been taken over by the Government under Minor Inams Abolition Act, and that ryotwari patta had been granted to him for items 5, 6, 8, 9 and 13, and therefore, they do not belong to the temple. Hence, plaintiff is not entitled to possession of these items. First defendant as Kattalaidar is bound only to perform the kattalais, as they were being done from the inception. As far as "B" schedule Items of properties, the paddy account book has nothing to do with the jewels, and they were made by Veerabadra Mudali, father's father of the first defendant. They are used for the festive occasions to adorn the deity at the will and desire of the first defendant's family. Except item No. 5, the other items can be worn by mortals. There is no liability existing on his part to account for any income from 1949 to 1973. Then

in dealing with the nature and character of various items in "A" schedule, in paragraphs 13 to 18, it is stated that income from the items was set apart for various kattalais, and the trustees of the kattalais have been performing them, spending large sums out of their pocket. First defendant has advanced a sum of Rs. 19,638 for day-to-day administration of the temple. As the Founder's family was the managing trustee and the kattalais trustee, all the kattalais are being carried out scrupulously. First defendant is a hereditary trustee of specific endowments in relation to the suit items, and therefore entitled to be in possession of them. The suit is barred u/s 108 of T.N. Act 22 of 1959. Plaintiff ought to have resorted to Section 63 of the Act, and therefore, the Civil Court has no jurisdiction to go into these question, and hence, the suit is liable to be dismissed.

4. Second defendant confined his objection only about item No. 10 of A schedule by stating that it was allowed by his father Vaiththi Mudaly in his favour in 1938, and that it being a kanam Inam, ryotwari patta had been granted to him under Minor Inams Abolition Act, and therefore, he is the absolute owner of it.

5. Third defendant claims to be a cultivating tenant of item No. 12, and therefore, he is entitled to protection under T.N. Act 25 of 1955, and hence, he cannot be dispossessed.

6. On the trial Court dismissing the suit, this appeal is preferred.

7. On the appeal being taken up for hearing, Mr. M.R. Narayanaswamy, learned Counsel for respondents, by relying upon Section 108 of T.N. Act 22 of 1959, raised a preliminary point that the suit itself was not maintainable in a Civil Court, and that the plaintiff ought to have sought for reliefs u/s 63 of the Act. The main point taken is that the suit properties have been endowed only for performance of certain kattalais in the temple and nothing more. Section 6(17) of the Act defines the "religious endowment" or "endowment" and Section 3(19) defines the "specific endowment". Therefore, when the nature of the endowment is the primary point to be decided, and in the event of success, possession could be secured by invoking Section 101 of the Act, the suit as laid is not maintainable in the light of the decision in N. Tirumalayappa Pillai alias N.T. Pannayar Vs. P. Ramasubramania Pillai and Others, . In dealing with the matter which arose under the Act, and considering the scope of Sections 63(I) and 108 of the Act, the learned Judge held that, it was not a case for setting aside razinama decree, but it was for declaring that the suit property was an endowed "kattalai" property for the performance of certain religious functions, and the plaintiffs therein were not parties to the earlier suit wherein razinama decree had been passed nor the suit was for setting aside the razinama decree. The suit was for a declaration that the suit properties are absolutely endowed kattalai properties for the performance of certain poojas, etc, and for directing delivery of possession of the properties and for mesne profits and hence it was not maintainable in a Civil Court, in view of the bar imposed u/s 108 of the Act. The learned Judge held that the primary relief sought for, was for declaring the suit

properties as absolutely endowed kattalai properties for the performance of certain religious functions, and therefore, u/s 63(c), plaintiff could get a decision from the Deputy Commissioner, as to whether the properties are "religious endowment" or not. The learned Judge had not anywhere taken into account the other relevant claims relating to possession and mesne profits, etc, but took into account only the kattalai aspect and treated it as primary relief sought for in the suit.

8. Mr. Raghavan, learned Counsel for the plaintiff, would rely upon three Division Bench decisions of this Court, and submit that the reasoning of the learned Judge above referred to, is not based on sound reasoning. The first of the decisions relied upon is S.N. Pachamuthu Nadir Vs. Tillaiyadi Pillar Temple Charity and Another, , in which it was held that the main relief was for recovery of possession of the properties from the alienee who is a stranger to the trust, and, therefore, the investigation of the trust character of the properties is only incidental to the main relief or recovery of possession. He would then refer to Sri Venkataramanaswamy Deity at Kothur Village Vs. Vadugammal, , in which it was held that the preponderance of judicial authority of this Court is that, a civil suit is not barred in respect of a relief which cannot be granted by the Deputy Commissioner, and that in such a suit, the Civil Court has jurisdiction to decide incidental issues which are within the jurisdiction of the Deputy Commissioner. A suit was filed for declaration of title, for possession, and for past and future mesne profits in respect of the properties claimed to belong to Sri Venkataramanaswamy Deity of Kothur. The defence was that, defendant had perfected title by adverse possession, and she had been in possession of the properties in her own right. The third decision of the Division Bench is Agasthiappa Mudali v. Manicka Goundan S.A. No. 117 of 1959, which takes the view that the true nature of the dispute could be only on an appreciation of the true basis on which it had been filed and the nature of the contentions raised therein. In the suit involved in that appeal, it was one filed for possession and the substantial issue was, whether the defendants were in lawful possession. A dispute was raised therein about title to the temple and its properties. As to whether second defendant was a hereditary trustee or only an ordinary trustee was held to be incidental in nature, merely because the Deputy Commissioner was authorised to decide regarding hereditary trusteeship, the jurisdiction of a Civil Court cannot be ousted, when the substantial relief of declaration of the invalidity of title and possession involved in that suit could only be granted by the Civil Court.

9. Apart from these decisions of the Division Bench, he would also rely upon the decision of the Supreme Court in Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy, , in which, while dealing with T.N. Act 19 of 1951 which had been repealed by T.N. Act 22 of 1959, regarding the bar of suit in respect of matters provided under the Act and which could be decided by a constituted named authority; it was held that, it being a suit filed for rendering accounts, it would not come within the ambit of chapter 7 of the Act, as it does

not provide for determining and deciding., disputes relating to rendition of accounts. It was further held that Section 93 of the said Act was not a bar to the maintainability of such a suit.

10. Mr. M.R. Narayanaswamy, learned Counsel for defendant, would, submit that, this decision was of no relevance in deciding the point raised in Sri Venkataramanaswamy Deity at Kothur Village Vs. Vadugammal, , which was a suit filed for declaration of the plaintiff's title to the suit properties, for possession, and for past and future mesne profits; and therefore, when another Division Bench of this Court had taken a contrary view in Tiruvengada Varadachariar and Others Vs. Srinivasa Iyengar and Others, , in view of the decision in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , this matter requires consideration by a larger Bench.

11. In Tiruvengada Varadachariar and Others Vs. Srinivasa Iyengar and Others, , plaintiff laid the suit for recovery of possession of the properties of the temple from defendants 1 and 2 and to direct them to render true and proper accounts of income from 1957 and for other reliefs. The Division Bench held that, even though plaintiffs have not in so many words asked for a declaration that they and defendants 3 and 4 are hereditary trustees, in view of the defence taken that the office is not hereditary, the form of relief is not the sole criterion to decide the question of maintainability of the suit, and on a reading of the plaint as a whole, it irresistably follows that if plaintiffs established that they and defendants 3 and 4 are hereditary trustees, then alone they could ask for, deciding the main issue, and express provision having been made u/s 63 of the Act about hereditary trusteeship, the trial Court had no jurisdiction to entertain the suit, which was barred by Section 108 of the Act. The fact that the Deputy Commissioner cannot grant the relief of possession was held to be no ground to hold that the suit was maintainable.

12. Mr. Raghavan, in his turn would point out that for finding out the nature of the suit, it is the plaint averments that could be looked into and not the nature of defence taken, and therefore, the decision of the later Division Bench in Sri Venkataramanaswamy Deity at Kothur Village Vs. Vadugammal, , which had referred to an earlier Division Bench in S.N. Pachamuthu Nadir Vs. Tillaiyadi Pillar Temple Charity and Another, and also the decision in Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy, , is correct in pointing out that the reasonings and conclusions of the earlier Division Bench was not in conformity with the decisions relied upon by it, and hence, under the facts and circumstances of this case, this Court should not rely upon any decision in Tiruvengada Varadachariar and Others Vs. Srinivasa Iyengar and Others, .

13. For the purpose of deciding the point relating to jurisdiction, this Court considers that, in the context of the preponderance of authorities as found in S.N. Pachamuthu Nadir Vs. Tillaiyadi Pillar Temple Charity and Another, . S.N. Pachamuthu Nadir Vs. Tillaiyadi Pillar Temple Charity and Another, , S.A. Nos. 1396 of 1948 and 117 of 1959, Sri Venkataramanaswamy Deity at Kothur Village

Vs. Vadugammal, and Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy, , there is no need to refer to a larger Bench. In Agasthiappa Mudaliar v. Manicka Goundan and Three Ors. S.A. NO. 117 of 1959, a Division Bench of this Court held that, when a suit is filed for a declaration of title and for possession, the relief of possession in the primary issue and the aspect of title is incidental. It was further held that in considering the issue relating to title and possession, it matters little whether the second defendant is a hereditary trustee or only an ordinary trustee, and it is a question which incidentally arises, and therefore, it cannot oust the jurisdiction of the Civil Court to decide such a suit, mainly because Deputy Commissioner is empowered under the Act to decide as to who is entitled to hereditary trusteeship. In a suit in which the substantial relief is for declaration of title and possession, such a suit is maintainable in a Civil Court, which would also go into the question of claims relating to hereditary trusteeship.

14. Yet another decision of the Division Bench which would be of considerable assistance in comprehending the scope of Section 108, is the one dealt with in Thayoth Puthiyapurayil Ayisomma Vs. Choolat Puthiyapurayil Kunhali and Others, , wherein it was stated as follows:

... I think that the dispute referred to in Section 84 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, and it is only thereafter that the District Judge is given the right to set aside or modify or confirm such decision....

This was followed in Ponniah Nadar and Others Vs. Chellian Nadar and Others, , but the Division Bench in Tiruvengada Varadachariar and Others Vs. Srinivasa Iyengar and Others, , has taken the view that in some matters which fall u/s 63, the Board may not be interested, and that there may be cases in which even though the Board is not impleaded as a party, still rival claims between the parties could be decided by the Deputy Commissioner u/s 63.

15. In Sri Vallaba Ganesar Devasthanam and Others Vs. A. Anandavadivelu Mudaliar and Others, , a learned single Judge of this Court has Stated.

...Notwithstanding Section 108 of the Act, where the dispute relating to a temple is only between two private parties and the Board is not directly concerned, the Civil Court has jurisdiction to try the suit.

In the present suit, the Board is not impleaded as one of the defendants relating to disputes which have arisen between private parties.

16. Mr. M.R. Narayanaswami, learned Counsel for defendants, would then refer to the definition of "religious endowments" or "endowments" in Section 6(17), which means all properties belonging to or given or endowed for the support of mutts or temples, etc., and hence, he states that in deciding whether any property or money is a "religious endowment", Deputy Commissioner will decide

as to whom it belongs, and hence the point relating to title will be decided by him. Then, he submits that, after such a declaration is made, possession could be obtained by invoking Section 101. He contends that in any event, ultimately when parties could come to Court u/s 70, it cannot be said that they would not have the benefit of a decision from a Civil Court on aspects which may be agitated before the Deputy Commissioner, and hence filing of a suit by incorporating one of the two reliefs which cannot be granted by Deputy Commissioner, would not change the real character of a suit. He submits that, this suit had been filed only for ascertaining, whether the endowment is a religious endowment or specific endowment, and to get possession as a consequential relief and for accounting and future profits which are incidental in nature. He refers to para 3 of the plaint, wherein a claim is made that the properties have been gifted/endowed to the temple, and this would be the main or primary aspect, which will have to be decided in the suit, and which is an aspect very much within the jurisdiction of the Deputy Commissioner.

17. More than one Division Bench decision of this Court above referred to, had proceeded on the basis that the entire plaint must be taken as a whole to find out the nature of the suit, and if substantial or main reliefs involved therein would not come within the ambit of powers of the Deputy Commissioner u/s 63, but if incidental issues or reliefs prayed for therein, fall within the scope of that section; then the Civil Court would have jurisdiction to try the suit, and also decide on these incidental aspects which could be otherwise canvassed before a Deputy Commissioner. It is not the nature of the words in the para dealing with reliefs prayed for in the plaint which will be determinative of the character of the suit, but the contents of the plaint in conjunction with the reliefs asked for have to be taken into account. The nature of defence put forth is immaterial. The Division Bench in Tiruvengada Varadachariar and Others Vs. Srinivasa Iyengar and Others, , had taken into account the defence taken in the written statement. As held in Agasthiappa Mudaliar v. Manicka Goundan and Three Ors. S.A. No. 117 of 1959, when the aspect of title and possession are involved relief of possession is a substantial relief. No doubt Section 101 could be invoked after a decision u/s 63. But as pointed out by the Division Bench, when such a suit is filed, the Civil Court would have jurisdiction to try the suit in spite of Section 108. Learned single Judge of this Court in N. Tirumalayappa Pillai alias N.T. Pannayar Vs. P. Ramasubramania Pillai and Others, , had not touched upon the aspects of possession and mesne profits asked for in the said suit, and therefore, the said decision cannot be pressed into service by defendants. Plaintiffs have not only asked for declaration of title and possession, but also for accounting and future profits. Last three of them cannot be granted by the Deputy Commissioner. When all these reliefs are taken together, in the suit the nature of endowment arises for consideration but it is an incidental aspect in the context of several other larger issues which come up for consideration and which cannot at all be considered by Deputy Commissioner.

18. In para 3 of the plaint, merely because plaintiff had stated that the

properties have been endowed/gifted, it would not mean that the suit is confined only for a declaration that the suit properties are "religious endowment" or "endowment" or "specific endowment" as the case may be. They have stated that the origin of the grant is not traceable and that some of the items have been gifted to the temple for the benefit of the Devasthanam, and certain items of the properties have later on been acquired by exchange of the properties belonging to the Devasthanam. Claims have been made relating to jewels belonging to it and of the manner in which first defendant had transferred patta in his name and now he had not maintained books, registers, accounts and that he is bound to deliver possession of the properties and also account for the income derived during the long period between 1949 and 1973. Therefore, on a careful reading of the contents in the plaint before the kinds of reliefs asked for could be granted, the mere fact that the Deputy Commissioner could decide about the nature of endowment, which is an incidental one and which would come up for consideration in the suit; it is not possible to hold that the Civil Court has no jurisdiction to try the suit, and hence the preliminary point, as raised is held as against the defendants.

19. The next point to be considered is "whether A and B schedule properties were endowed in favour of Plaintiff's temple as A schedule properties are only "kattalai properties".

20. On this point, Mr. Raghavan, learned Counsel for Plaintiff/Appellant, submits that all the suit properties have been endowed to the deity of Sri Thirupurandhakaswamy temple. Whereas defendants 1 to 3 represented by Mr. M.R. Narayanaswami, learned Counsel, would claim that these properties belong absolutely to those persons in whose names they stand, and that as "Kattalaidars", they are bound to perform only "kattalaidars" as were being done hitherto. Before considering as to the nature of 13 items of lands mentioned in A Schedule and B items of jewels in B Schedule, it would be useful to refer to the authoritative pronouncement of the Supreme Court, as to how to construe ancient documents relating to endowments and as to what are "kattalais" and how to decipher whether an endorsement made, was total or partial.

21. In Menakuru Dasaratharami Reddi Vs. Duddukuru Subba Rao, , it was held as follows:

The principles of Hindu Law applicable to. the consideration of questions of dedication of property to charity are well settled. Dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and it's complete dedication to charity. On the other hand, in many cases Courts have to deal with grants or gifts showing dedication of property to charity.

Now it is clear that dedication of a property for religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour

of public religious charity is created. If the dedication is partial, a trust in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document.

In each case it is always a matter of ascertaining the true intention of the parties, it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The use of the word "trust" or "trustee" is no doubt of some help to determining such intention, but the mere use of such words cannot be treated as decisive of the matter.

Is the private title over the property intended to be completely extinguished? Is the title in regard to the property intended to be completely transferred to the charity? The answer to these questions can be found not by concentrating on the significance of the use of the word "trustee" or "trust" alone, but by gathering the true intent of the document considered as a whole. In some cases where documents purport to dedicate property in favour of public charity, provision is made for the maintenance of the worshipper who may be a member of the family of the original owner of the property himself and in such cases the question often arises whether the provision for the maintenance of the manager or the worshipper from the income of the property indicates an intention that the property should retain its original character and should merely be burdened with an obligation in favour of the charity.

If the income of the property is substantially intended to be used for the purpose of the charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of public charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own private purposes, it would be difficult to accept the theory of complete dedication.

It is naturally difficult to lay down a general rule for the solution of the problem. Each case must be considered on its facts and the intention of the parties must be determined on reading the document as a whole. *Jadu Nath Singh v. Thakur Sita Ramji* L.R. 44 IndAp 187 : AIR 1917 P.C. 177, *Harnarayan v. Sarja Kunwari* L.R. 48 IndAp 143 : AIR 1921 P.C. 20, and AIR 1941 38 (Privy Council) , were referred to in the said decision. Following the decision in *M. Dasaratharami Reddy v. D. Subbarao* 1957 S.C.J. 835 in *D.S.S. Pillai v. K.S. Pillai* AIR 1972 S.C. 2068, it was made as follows:

The dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete a trust in favour of a charity is created. If the dedication is partial, trust in favour of a charity is not created but a charge in favour of the charity is attached to, and follows, the property which

retains its original private and secular character. Whether or not a dedication is complete is a question of fact to be determined in each case on the terms of the relevant document if the dedication was made under a document. In such a case it is always a matter of ascertaining the true intention of the parties. Such an intention must be gathered on a fair and reasonable construction of the document considered as a whole. If the income of the property is substantially intended to be used for the purpose of charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own private purposes, it would be difficult to accept the theory of complete dedication.

21. As to the "kattalais" created in *Shankara Narayana v. Board of Commissioner*, AIR 1948 PC 25, it was held:

The term "kattalai" as applied to temple endowments in Southern India signifies a special endowment for certain specific religious services in the temple. In this sense the word "kattalai" is used in contra-distinction to the endowment designed generally for the upkeep and maintenance of the temple itself. In the case of some important temples the sources of their income are classified into distinct endowments according to their importance and each endowment is placed under a special trustee and specific items of expenditures are assigned to it as legitimate charges to be paid therefrom. Each of such endowments is called a "kattalai" and the trustee who administers it is called a "kattalaigar". Where there was no deed or grant or any document throwing light on the nature or terms of the endowment the High Court was justified in relying upon other documentary evidence, for the purposes of determining what the true nature of the endowment was, such other documentary evidence consisting, *Inter Alia*, of Inam registers, title deeds, statements in survey and settlement registers, pattas and orders of various revenue authorities to their subordinates in connection with the endowment in question.

After reviewing the evidence, their Lordships agreed with the High Court that all the names were grants made to the kattalai and described as "Devadayam (gift to God)", that they were made by the Carnatic Rajas and not by the ancestors of the appellants, as was contended by them, that the endowment did not consist merely of a charge on the income of the property that the ancestors of the appellants were supervisors or managers of the endowment and were thus in a fiduciary position and could not claim any adverse title against the endowment and were not entitled to the surplus of the income left over after meeting the expenses.

22. As to how to construe old documents in *Sappani Mohamed Mohideen and Another Vs. R.V. Sethusubramania Pillai and Others*, , it was held:

In interpreting ancient documents Courts have to be cautious to guard against warping of the issue by reference to subsequent conduct of parties or their representatives which may vary for imponderable reasons Bona Fide or otherwise.

A dedication may be either absolute or partial. The property may be given out and out to the deity, or it may be subjected to a charge in favour of the deity.

Whether the endowment is absolute or partial, primarily depends on the terms of the grant. If there is an express endowment, there is no difficulty. If there is only an implied endowment, the intention had to be gathered on the construction of the document as a whole. If the words of the document are clear and unambiguous, the question of interpretation would not arise. If there be ambiguity, the intention of the founders has to be carefully gathered from the scheme and language of the grant. Even surrounding circumstances, subsequent dealing with the property, the conduct of the parties to the document and long usage of the property and other relevant factors may have to be considered in an appropriate cause.

23. As to how far the settlement registers could be looked into, in *Shankara Narayana v. Board of Commissioner*, AIR 1948 PC 25, it was held:

While the report of the Inam Commissioners does not displace actual and authentic evidence in individual cases, yet when such is not available, Courts cannot fail to attach the utmost importance, as part of the history of the property, to the information set forth in the inam register.

24. Mr. Raghavan, would refer extensively to several passages in the *Law of Hindu Religious and Charitable Endowments* by V.K. Varadachari (III Edition), beginning from pages 91 to 146. At page 96, it is stated:

A Hindu, who wishes to establish a religious or charitable institution, may according to his law, express his purpose and endow it. A trust is not required for that purpose. All that is necessary is that the religious or charitable purposes should be clearly specified, and that the property intended for the endowment should be set apart for or dedicated to those purposes. Even in the case of a dedication to an idol, which cannot itself physically hold lands, it is not necessary, though it is usual, to vest the lands in trustees. Nor it is necessary that there should be any express words of gift to the idol.

A dedication of property for a religious or a charitable purpose, can, according to Hindu Law, be validly made orally, and no writing is necessary to create an endowment except where it is created by a will, Cf. *Menakuru Dasaratharami Reddi Vs. Duddukuru Subba Rao*, . It can be made by a gift Inter Vivos or by a request or by a ceremonial relinquishment. An appropriation of property for specific religious or charitable purposes is all that is necessary for a valid dedication....

It is then pointed out therein that a religious endowment does not require acceptance, to complete a dedication. It is not necessary that the idol should

exist at the time when the gift was made. As held in *S.N. Pachamuthu Nadir Vs. Tillaiyadi Pillar Temple Charity and Another*, for a valid dedication, neither the form nor the form of trust need be employed, and all that is necessary is that, there should be a divestment which clearly specifies it and the property, should be set apart for that purpose; and that it is not necessary to vest a property in the trustees; and that when a property vests it is in the idol or in the charitable purpose, and therefore, there is no need for the intervention of trustees; and there is no legal provision which enjoins the registration of documents dedicating properties under the Registration Act; and that in order to constitute a valid endowment, it is necessary that the donor should divest himself of the property. What is essential is that, it should be an unambiguous expression of an intention to divest and an actual divestment for the benefit of the beneficiary of the temple or the particular purpose specified; and that such a divestiture can be proved by a written document and it can be effectuated orally without any necessity for a written instrument; and that one of the essentials of a valid dedication is the divestiture of ownership from the grant or and appropriation of the property to the object. Endowments are either public or private, and the essence of a public endowment consists in its being dedicated to the public. Whereas a private trust is for a limited period or for a limited purpose for the benefit of certain individuals, who are identified, and that when endowments are made, they are either religious or charitable, and when they are religious, they could either be private or public. Whereas charitable endowments are only public in nature; a religious endowment could be either partial or total. As to what is an endowment, it is then stated:

(1) Endowment is the dedication of property by gift or device to religious or charitable uses; (2) An endowment must be certain both as to the subject and the object; (3) A dedication of property to an endowment may be partial or complete; (4) It is partial when there is merely a charge or trust created; (5) It is complete when the property is dedicated absolutely and no person has any beneficial interest therein.

As to what is a religious and charitable endowment, it is then stated:

(1) A religious endowment is one which has for its object the establishment, maintenance or worship, of an idol or deity, or any object or purpose subservient to religion; (2) A charitable endowment is one which has for its object the benefit of the public or of mankind.

Then the following passage in *Ramkishore Lal Vs. Kamal Narain*, is referred to.

The golden rule of construction is to ascertain the intention of the parties to the instrument after considering all the words in their ordinary natural sense. To ascertain this intention the court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and training of the parties using the words have to be taken into consideration.

He would refer to the following passage in *Dasaratharami Reddy v. Subba Rao* 1957 S.C.J. 835 : AIR 1957 S.C. 797.

If the income of the property is substantially intended to be used for the purpose of the charity and if an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of public charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own private purposes, it would be difficult to accept the theory of complete dedication.

25. Plaintiff claims that all the A schedule items, 13 in number and which are wet lands, have been endowed to the temple, and that trustees were managing the properties for the benefit of the temple. Regarding the trusteeship of this temple, it is in evidence as found in Ex. A17, that Velappa Mudali was a trustee of the suit temple from 1884 to 1903, and his second son Sabapathy through his first wife was a trustee from 1904 to 1912. Then from 1913 to 1948 one Duraiswamy Mudali, son of Veerabadra Mudali was a trustee, and from 1949 to 1973, D.W.I, the first defendant had been a trustee. Defendants 2 and 3 being the brothers of the first defendant, have been impleaded, because item No. 10 is in the possession of second defendant, and item No. 12 is claimed by the third defendant as a cultivating tenant. All the other items are in the immediate possession and enjoyment of the first defendant. Along with P.W. 1 Chockalinga Mudaliar, one C. Sambandha Mudaliar was also co-opted as trustees, when the first defendant was a trustee during the period from 1949 to 1973. The suit having been laid by the Executive Officer of the Devasthanam, listing 13 items of landed properties in A Schedule which are wet lands, it has to be seen as to whether they have been dedicated to the temple partially or totally, or as claimed by defendants, only "kattalais" have been created, and whether the properties except item No. 10, belong absolutely to first defendant and item No. 10 to the second defendant. The trial Court for a convenient understanding of the various documents filed, had divided the properties into different groups. (26) Items 1 and 7 have been dealt with together, each one of them of an extent of 78 cents in S. No. 221/2 and 223/1 respectively in Pillayarkuppan Village. In the plaint, it is stated that the origin of these properties is not known. Whereas in the written statement, it is claimed that a specific endowment under a will dated 14-1-1914 had been made, but the will had not been marked in the suit. Defendants state that a specific endowment had been made by a will of Velappa Mudali dated 14-1-1914, but they have not filed the said will in the suit. It had been filed in O.A. No. 6 of 1974 before the Deputy Commissioner, H.R. & C.E., Madras, for enquiry. Having filed it in the proceedings under Exs. B3 to B6, as to what prevented defendants from filing a copy of it is not satisfactorily explained. It is unregistered will executed by a person who is not an ancestor of defendants. He was never a trustee of the temple. It being an unregistered will, Plaintiff could not have applied for a copy and filed, it, nor a copy of it was given when the

matter was pending in O.A. D.W. 1, the first defendant is admittedly a Village Munsif in Pillayar Kuppam. He admits that it was written therein that the property had been given for

Then he would state that Velappa Mudaliar was the son of Sankara Vedagiri Mudaliar, and that he was his grand-father's son-in-law. Therefore, on the admission made by him that the property had been given for the general maintenance of the temple, and having not put forth a claim that any residue of the income could be utilised by the legatee, and no evidence having been let in as to what was the income derived therefrom and how much alone had been spent on the maintenance of the temple; this is a property, which had not been inherited by defendants as of right by succession. When defendants have not filed any document, as held by the Privy Council, in *Shankara Narayana v. Board of Commissioner*, AIR 1948 PC 25, other documents can be looked into.

26. Petitioner Ex. A28 chitta, which is patta No.1, states that the property stands in the name of Sri Thirupurandhakaswamy and under the management of jagadeesa Mudaliar. Being a trustee at that time, his name is found therein. Ex. A30, adangal also mentions the name of the pattadar, as Sri Thirupurandhakaswamy. It was for fasli 1372. Exs. A32 and A39, the Sthalapuranam and Sivapujakramam also disclose that the property was endowed for the general maintenance of the temple. This was also entered in Ex. A33, a register maintained u/s 38 of Act 11 of 1927. For Faslis 1347 and 1345, kist had been paid in the name of the temple under Ex. A32. D.W. I had stated that the income from the property was being utilised for twice a month, from and out of the income derived from these items of properties. Having admitted that in the will the lands have been given for and the entire income being intended to be spent only for the said purpose; as pointed out in *Dasaratharami Reddy v. Subba Rao* 1957 S.C.J. 835 : AIR 1957 S.C. 797, the conduct of the parties in user of the property would show the extinction of the private secular character of the property and a complete dedication made to charity, and true intention is made out by the above said expression as extracted. As held in *S. Shanmugam Pillai and Others Vs. K. Shanmugam Pillai and Others*, , when entire income from the property is intended to be used for the purpose of charity, then the dedication is complete. The trial Court held that the non-production of the account books affects the case of plaintiff, but when for seven decades, first defendant and his ancestors have been managing the affairs of the temple as trustees, they are only responsible for the custody and proper handing over of account books, and therefore, on this score alone, ownership rights to these items could not have been recognised in first defendant when they belonged to third parties who had not stated as to why strangers are to get them. The unconvincing plea of kattalai having been created for "prathosham", runs counter to the admission of D.W.1 that it was for"

27. The intention under the will on the admission made by D.W.1, the purpose for which it is executed having been spoken by him, and its utilisation in full not

being disputed; all the necessary ingredients to make a total dedication exist followed by conduct of parties as could be made out in Exs. A28, A30, A32, A33 and A38. Hence it is held that the endowment was to the temple for its general maintenance, to be managed by the trustees in office. Hence, items 1 and 7 belong only to the temple.

28. Item No. 2 is S. No. 303 of an extent of 2.26 acres in the same village. In the plaint, it was claimed that it had been gifted for the upkeep of the temple and for Deepakaiyinkaryam. Whereas in the written statement by referring to a partition deed dated 9-12-1915, it was pleaded that a specific endowment had been created to perform "Margazhi Krithigai Ubhayam of Subramanyaswamy and Thirunakshathiram of Sambandar in Vaikasi and for Ubhayanisas Kayinkaryam". Admittedly this property did not belong to the family originally. Ex. A20 is the partition deed dated 9-12-1915 executed between Muthulinga Mudali and Chockalinga Mudali, the two sons of Velappa Mudali, regarding this item of property, it is stated-

Mr. Raghavan, would emphasise on the word and contend that there is a total divestation of interests in the property to the temple, and the purpose was for the general performance of management of the temple, and that the property had to be managed by two persons, of whom Veerabadra was a trustee at that time. Dharmakaiyinkarayam according to him, is only a general performance relating to the maintenance and the upkeep of the temple, and therefore, the entire income being intended to be used by the temple, and no heritability being contemplated therein, and when later partition deed having not referred to this item as belonging to the family, it tantamounts to a total dedication of property only to the temple.

29. Mr. Narayanaswami, learned Counsel for defendants, in his turn would submit that the title to the property continues in the family, and it having continued to be in the possession of the trustees, what was intended was the performance of Kattalai alone, and it had been performed by "kattalaidars", being the two persons mentioned therein and their successors. D.W.1 would state that it belonged to one Kuppammal, and that in the partition under Ex. A20, it was written that it was for and thereafter Muthulinga, Veerabadra were managing it, and thereafter, his father and after his lifetime, himself, Jagadeesan and Thiruneerkolam are managing the properties. They are doing Marghazhi and Karthigai Ubhayam, and in the Sambandar Thirunakshathiram in Vaikasi. In cross-examination, he would admit that in Ex. A20. it is mentioned as and that no "kattalais" have been mentioned therein; and in Ex. A33, the register, it is written as but only kattalai is done, and that in 20 Number patta, it is in the joint names of the temple and referred to as Kattalai, but it is not filed. Thus there is a clear-cut admission that there is no word "kattalai" in Ex. A20 and only mentioned; and as stated in relation to items 1 and 7 above, and more particularly in Ex. A20, when the word used are nothing but a total dedication to the temple, of the lands covered by item No. 2.

30. Items 3 and 4 are in S. Nos. 44 and 45 of an extent of 2.34 acres and 1.35 acres respectively in the same village. In the plaint, it was claimed that these properties have been gifted for the upkeep of the temple. Whereas in the written statement, it is claimed that they have been set apart for the temple. Plaintiff has relied upon Exs. A4, A21, A29 and A33, whereas defendants have relied on Exs. B12 and A21. Ex.A4 is an exchange deed dated 12.12.1927. Ex. A21 is a partition deed 5.7.1983 in which A Schedule property as mentioned in Ex. A4 had been given for the of the temple, and of themselves having been appointed as trustees and of the joint patta having been issued, and as it is far away and not yielding any income which prevents the being performed, they are being exchanged for the B schedule lands, and that the trustees who are taking the lands shall enjoy it from generation to generation, and that the trustees must carry out the. It is contended by Mr. Raghavan that, no such restriction as found in Ex. A4 was part of Ex. A21, the registered partition deed dated 5.7.1983; and therefore, the embellishment found in Ex. A4 cannot take away the original intention regarding dedication of the lands for the temple alone. In Ex. A4 it is stated that the lands earmarked therein bearing the character of the joint family were not being allotted to any member of the family, and that the said lands were being left for

Therefore, intention was to dedicated joint family property for maintenance of the flower garden, for the temple. Then trustee Veerabadra was to manage it, and the income shall not be used for any other purpose. Maintaining of a flower garden in a temple, is relatable to the general maintenance and upkeep of the temple. It is not a kattalai, for performing any religious function. When the garden gets attached to a particular property, there was no power conferred on the parties to Ex. A4 to change it character, and then claim that the property could be dealt with as a heritable property, by entering into an exchange deed. The nature of dedication cannot be altered by exchange of properties, "In none of the later partition deeds, the property originally dedicated, was ever dealt with as an item belonging to the family. In Ex. A29, the patta, Ex. A30 adangal, Ex. A33, the register maintained u/s 38, Ex. A32 account book; the nature of the pattadar is only that of the temple. Hence, here again, the intention the purpose, the income being earmarked only for the general upkeep of the temple having been proved, the exchanged properties become endowed properties for maintenance of flower garden and hence belong only to temple and not to the first defendant or to any of his ancestors or successors. It is necessary to point out that the lands came into their possession, only because the family members were in management of the properties of the temple as trustees As for the claim that the maintenance of flower garden is a kattalai, it belies the concept of "kattalai" as held in Shankara Narayana v. Board of Commissioner, AIR 1948 PC 25 , Here again, a spirited attempt was made by defendants to claim that D.W.1 had spoken about the expenses incurred regarding the repairs to the temple, whereas, P.W. J would assert that it was done only at the instance of the temple. As far as accounts are concerned, it was rather the defendants, who are

answerable and not the plaintiff, and herein again, the Trial Court had committed an error in insisting on the plaintiff's to produce accounts.

31. Items Nos. 5 and 6 are in the same village in S. Nos. 34/4 and 2/3 measuring 1.44 acres and 0.56 acres respectively. Plaintiff claims that these properties have been gifted to the temple, whereas defendants would state that only the income from the properties have been set apart for supply of flowers, and factually, they have been supplied to the temple and that the ryotwari patta had been granted to the first defendant as owner of the lands. In support of this claim of ownership, no document had been filed nor any evidence had been let in by defendants. Plaintiffs rely upon Ex. A1, a gift deed dated 6.8.1895, Ex. A2, a settlement deed dt.10.5.1897, Ex. A21, a partition deed dt.5.7.1893, Ex. A26, the settlement register and Ex. A33, a register maintained u/s 38. Defendants rely upon Ex. B13 dated 30.8.1895, the exchange deed. Ex. A1 is styled as and the purpose is further it is stated that for the said purpose, the lands have been and that the income derived from the lands shall be utilised only for the maintenance of the flower garden and not for any other purpose whatever. The entire income derived from the lands was thus ordained to be utilised only for the flower garden of the temple. Two persons were earmarked regarding maintenance of the garden, they being: Veerabadra, one of the trustees and Azhiyavara Mudali, a third party. Mr. Narayanaswami would state that, when the documents recite that for the management of the flower garden, then lands have been given to the said persons, by using the expression they were enjoying these lands subject to performance of "kattalai" of maintaining the flower garden. This contention is least impressive, when the document is styled as and the purpose is for and when it had been gifted with a specific direction that entire income shall be utilised only for the said purpose. A more categorical direction given is that, no part of its income shall be used for any other purpose. Hence all the requirements of a total dedication, is found in Ex. A1. The entire land is given. No heretability is contemplated therein. Trustees were enabled only to manage the property. If really the intention was to confer ownership on the first defendant's ancestors; then a third party could not have been included in the document. As a third party, he could not derive any interest. Likewise, in Ex. A2 also, two persons have been directed to maintain the lands for and this document relates to item No. 6. and here again, it is stated that Hence, the same reasonings for Ex. A1, would apply to Ex. A2, as well. In Ex. A26, the settlement register, the properties stand in the name of the temple. On this D.W.1 would claim that was being carried out and that an exchange had been effected, but in cross-examination he would admit that he was not maintaining accounts and that there are no vouchers.

32. But the trial Court by interpreting the relevant clauses in Exs. A1, A2 and A21, holds that, intention of the parties gatherable from the said documents, is not to gift away the properties to the temple, because in none of the documents, it is recited that the temple is the absolute owner of the property. As held by the Supreme Court, as above referred to, it is not necessary that the property should

stand in the name of an idol, and it would suffice if the real intention of the nature of dedication made, is derivable from a proper interpretation of the documents as a whole. The relevant expressions in the two documents have been already referred to, and when they clearly bring about the nature of the documents, the purpose behind them, and there being a complete prohibition imposed therein that no part of the income could be utilised for any other purpose, they make it abundantly clear that the declaration was total in favour of the temple, and that neither any of the ancestors of the first defendant nor himself could have claimed absolute rights in the said property. Another feature is that, a third party had also been associated with the trustee, and if so, himself and his heirs could also derive rights in the property. Though defendants had put forth a claim that ryotwari patta had been granted, this claim in the written statement could not be substantiated by production of any document or any other evidence adduced. Hence, here again, it has to be held that these items belong only to the temple.

33. Items Nos. 8, 9, 10 and 13 go together and they are in S. Nos. 57/2, 57/3, 57/1 and 189 in the same village of extents of 0.44 acre, 0.45 acre, 1.18 acres and 1.05 acres respectively. In the plaint, it was pleaded that these items were gifted to the temple. Whereas in the written statement, it was contended that the lands have been set apart in the partition deed dated 12.10.1923, for purpose of Nataraja Abhishekam in Purattasi, Sashti in Ayyappasi, supply of pachaikarpooram, camphor, sugar candy and sugared milk every day, and that Vaithi Mudali sold away the extent of 1.18 acre in Item No. 10 in 1938 to his son, the second defendant, and that ryotwari patta had been granted to first defendant. Plaintiffs have relied upon Ex. A3, dated 12.10.1923, the partition deed and Ex. A16, dated 26.7.1938, a sale deed. Defendants have relied upon Exs. B43 and B44, the antecedent title deeds. Mr. Raghavan, would at the outset point out that though defendants have filed O.A. No. 5 of 1974, claiming these items before the Deputy Commissioner, H.R. & C.E., they have withdrawn it, realising the untenability of their claim. In none of the documents, any heritability is contemplated, and Doraisamy being a trustee, the properties were managed for the benefit of the temple, and a claim for performance of "kattalai" is contrary to the intention behind these documents. In Ex. A3 partition deed, it is stated that the lands mentioned therein are given to and that Doraisamy, the then trustee will have to manage the properties. The purpose is for the general maintenance of the temple and the intention was to leave the lands to the temple. The expression is a total divestment of properties to the temple. It was recognised therein that Doraisamy was a trustee, and therefore, he was directed to manage the properties in his capacity as a trustee. Hence, he could have never claimed ownership, in the said property. As for sale of item No. 10 by Vaithi to his son, the second defendant under Ex. A16, dated 26.7.1938, it makes an interesting reading as to how a party entrusted with the affairs of the temple could appropriate the property to himself and in turn confer the benefits on his own kith and kin. In Ex. A16, reference is made to one Amirthammal and

Pattammal, having given away their lands for three Devasthanams. As a trustee, second defendant had asked for a property to be substituted, by asking his father to sell the lands, covered by Ex. A16. Evidently, the father has accommodated him. The sale effected by the father to his son was unjustified. What comes out is that, a father had found it convenient to enable his son to cover up a sale effected by him, in relation to another temple property. When the lands were admittedly dedicated by third parties to three devasthanams, it could never have been intended by them that the "lands had been gifted to trustees. Hence the two ladies intended that the land was given to the three Devasthanam and not to the trustees. The recital itself means that the lands have been dedicated only to the temples and not to the trustee. The claim of ownership made in the context of such specific recital, goes to show how the first defendant had appropriated the properties belonging to the temple and his attitude had been quite different from what his ancestors wanted to do for the temple. It is not the claim of the plaintiff that defendant's ancestors were not administering the temple properties. It is only during the course of the management of the first defendant, he had come forward to claim absolutely ownership. Even in respect of properties given by third parties like Pattammal and Amirthainmal; neither of them was indebted nor obliged to the then trustee. The document nowhere shows, as to why they should confer absolute ownership on the trustees.

34. Defendants have relied upon Ex. B43, a sale deed dated 2.8.1920 executed by Veerabadra Mudali, and Ex. B44, the sale deed executed by Nagasami in favour of Vaidi Mudali on 29.4.1921. But they do not help him to claim ownership right, in the context of the directives given in Ex. A3. Therefore, these properties could never be characterised as "Kattalai" properties, and hence they also belong only to the temple.

35. Items Nos. 11 and 12 are in S. Nos. 9/2 of an extent of 1.02 acres in Pinjivakkam village and in S.No 34/D of an extent of 1.12 acres in Kondoncheri village. In the Plaint it is stated that the first of these two items was got in exchange of properties belonging to Devasthanam, and as for the other, Plaintiff claimed that it was gifted for the upkeep of the temple. In the written statement, it is stated that the income was set apart for "Deepa Kainkariyam", which was being performed, by first defendant, and that one of the items had been exchanged, and that the other item is covered by a gift deed dated 17.11.1926. Ex. A22 is a gift deed dated 17.11.1926 executed by one Sabapathy Mudaliar to the trustee of for carrying out daily Deepa Kainkariyam. Defendants plead that the property having been gifted to the trustee, it belongs absolutely to him, and therefore, as a heir he would be entitled to it absolutely. This contention is contrary to the real intention behind the document, because it uses the expression. The property was gifted to temple and the purpose was to carry out and not stopping with this, it also states that the lands mentioned therein were to be managed and the trustee is being appointed for carrying out the said purpose. The relevant words are

Therefore, the word makes it crystal clear that the gift was not to the trustee in office, but to the temple i.e. The then trustees have also been authorised to sell the lands and purchase other lands, but in doing so, it has to be in favour of

On this guarantee given in the concluding portion of the document, it is crystal clear that the property had been dedicated only to the temple and not to the trustees. The interpretation put by the trial Court on Ex. A22 that it confers upon Doraisamy the rights to enjoy the property with absolute right of ownership, and that from and out of the income he should perform only shows to what extent it could misread into clear cut recitals as found therein. D.W.1 would state that item No. 11 belongs to Sabapathi Mudaliar, and Erulancheri lands have been exchanged, and the lands were intended only for and therefore, he is supplying 4 veezai of oil monthly. In cross-examination, he would state that item No. 11 had been exchanged by Doraisami, and both items have been earmarked for but he has no records to show that the kattalai was being performed. He has not maintained separate accounts. He filed an exchange deed, which is in the individual name, but not in the temple's name, and therefore, whatever exchange had been attempted, would not be binding upon the temple. Hence, these items also belong absolutely only to the temple. Hence the defence that the suit properties are the "kattalai" properties and not the properties of Plaintiff temple, has to be necessarily rejected, by holding that all A Schedule lands belong absolutely to the temple.

36. The next point involved is, "Whether "B" Schedule properties are the properties of plaintiff temple or belong to the first defendant?" In para 10 of the plaint, it is claimed that these jewels were endowed from time to time by devotees and they are detailed in the last page of the paddy account maintained by the first defendant, and having enjoyed the trusteeship over one fourth of the century first defendant had resorted to suppress the existence of jewels, and therefore, they are not the personal properties of any individual. This was refuted in para 10 of the written statement of first defendant by stating that plaintiff had not furnished any details regarding the names of the items, and the devotees who gave them and paddy account had nothing to do with the jewels; that the B Schedule jewels were made by Veerabadra Mudali, father's father of first defendant; and "they are used for the festive occasions to adorn the deity at the will and desire of first defendant's family" and that except item No. 5, the other items can be worn by mortals. It is significant to note that the plea of "kattalai", which was put forth in respect of "A" Schedule properties is not claimed for B Schedule jewels. Even this claim of "kattalai" for them, was never put forth earlier to the filing of the written statement. Therefore, when defendants have taken this stand, and admittedly, they being used for adorning the deity, the only limited aspect to be considered is whether they belong to the temple or to the first defendant and his ancestors. In the written statement it was claimed that they were made by Veerabadra Mudali. D.W.1 would state that the jewels belong to his family, and that during the past 50 years, they were kept in their house and between 1948 and 1973, they were in the custody of P.W. 1 and himself, and

that they were kept in the steel box kept in the koil chathram. He would further state-

In cross-examination, he stated that it had claimed in the written statement that the properties were made by Veerabadra, but he does not know the year in which it was made, and that items 3 and 5 can be worn even by outsiders, but he had never seen any of the 6 jewels worn by anybody, other than the deity. He admits that these items were never mentioned in any of the partition deeds in the family, and there is no recital anywhere in any of the documents, as to in whose custody they must be kept. After his father's lifetime, they have been in his custody. He claims that they were being handed over to the Koil Gurukkal and receipts were being issued and that jewels were kept in the store room where steel boxes are kept, and that one of the keys will be with the Ameena of the temple. Hence, he had admitted that the jewels were in the joint custody of himself and the Ameena, and without his presence, they cannot be taken out from the store room, wherein the steel boxes are kept. Having stated so, he had contradicted by claiming that the jewels were only in his family house. Though he would claim ownership right in them; D.W.2 whom he had chosen to examine, has spoken about the jewels and stated in chief-examination that they were the family jewels of Veerabadra but in cross-examination, he would state

P.W. 3. the Gurukkal, had stated that he had been working in the temple for nearly five decades, and

This is what precisely D.W.1 had admitted D.W.2 had stated that the jewels do not belong to his family. These statements by themselves would be enough to hold that the ownership of the jewels cannot be claimed by first defendant, and that they have been made for the temple by his ancestors and gifted to the temple. For nearly five decades, the jewels have been used only to decorate the deity on festival occasions. No member of the family of the trustees had ever worn them. D.W.2 had stated that they do not belong to the family any longer. They have been kept in the store of the temple and in charge of the trustee and the Ameena of the temple. It is surprising that for such jewels, a person, who claims to be a trustee, now claims ownership to them. This only shows that his long association with the temple properties could lead to avariciousness, leading to claiming ownership, which is opposed to the interests of the deity.

37. Plaintiffs have relied upon Exs. A10 and A18. The earlier one being a paddy account for Fasli 1356, and the items are captioned D.W.2 having disowned ownership to the jewels, and admitted that they belong to the temple; the entries in Ex. A10 strengthen the claim of the Plaintiff, irrespective of whatever be the caption given to those jewels. Ex. A18 is the temple account, which is acknowledged by Ramanatha Gurukkal and another; and P.W. 3 has proved the signatures of these two persons in these accounts. When confronted with Ex. A18, the only slippery answer D.W.1 gave was that, he does not know anything about the account book even though he was the managing trustee of the temple in 1954. Ex. A19 is the jewel register maintained u/s 29 of the earlier H.R. & C.E.

Act, and signed by first defendant. The entry marked in Ex. A40 relates to two items of jewels, but in the later register, these two items are missing. This only shows, what first defendant had been upto, relating to the jewels, and his attitude had been no different from what he had aimed at relating to A schedule immovable properties. He has acted highly prejudicial to the vital interests of the temple. Hence, the jewels described in B Schedule belong to the temple exclusively.

38. The next point involved is, whether the plaintiff is entitled to the relief of accounting, as prayed for?

Admittedly, first defendant was the managing trustee of the Plaintiff Devasthanam from 1948 to 1973, and therefore, he will have to render accounts for the income derived from A Schedule properties and therefore, preliminary decree is passed directing taking of accounts. As far as item No. 12 is concerned, the trial Court has held, that third defendant is not a cultivating tenant. As for item No. 10 is concerned, the sale in favour of the second defendant is not binding upon the temple, which is the absolute owner of the said item of property.

39. Hence, a decree declaring that A and B Schedule properties belong to the plaintiff Devasthanam, and directing the first defendant to deliver all the items of properties except item No. 10 of Plaintiff A Schedule, and as for the second defendant he has to deliver item No.10 of A Schedule to the Plaintiff, is hereby passed. A preliminary decree is passed for taking of accounts, as prayed for in para 16(e) of the plaint.

40. In the result, the appeal is allowed with costs throughout.