

(1929) 08 MAD CK 0030
In the Madras High Court

Srinivasa Ayyangar and Others

APPELLANT

Vs

S. Ramalinga Iyer and Others

RESPONDENT

Date of Decision : 13-08-1929

Acts Referred:

Religious Endowments Act, 1863 — Section 69

Citation : AIR 1931 Mad 78

Hon'ble Judges : Ramesam, J; Jackson, J

Bench : Full Bench

Judgement

Ramesam, J.—These appeals arise out of a suit for a scheme and consequential reliefs u/s 69, Madras Act 1 of 1925 (The Religious

Endowments Act) in respect of the endowments of a temple dedicated to Sri Varadaraja Perumal Swami in the village of Mullipallam, Nilakottai

Taluk, Madura District. The plaintiffs' case is that the lands which were constituted as an endowment were originally granted as an inam by the

ancient Carnatic rulers of the country to the diety. The defendants belong to the family of the archakas of the temple. They pleaded that the

archakas were in occupation of the lands from time out of memory. They also, say that they bona fide believe that the grant of the inam was to the

service holder burdened with the obligation of the service of doing puja and putting light in the nights, and the allegation in the plaint that the inam

was an inam to the deity was denied. Issue 5 in the case is whether the grant was to the temple itself or to the archaka burdened with service to the

idol and Issue 4 is whether the plaint lands themselves constitute the inam or only the teerva thereof (the word "teerva" being used synonymous

with assessment). The District Judge found that the grant was to the temple itself and not to the archaka and that the lands themselves constituted

the inam. He gave a decree removing defendant 1 from the position of the trustee and he left it to the Religious Endowments Board to frame a scheme and appoint a fresh trustee. Meanwhile he directed that the receiver appointed by the Court should continue in possession. Both the parties appeal. The defendants are agreed that defendant 1 is the only person who was doing the work of the do facto trustee, that is, that he only was managing the temple and that the other defendants had nothing to do with the management of the temple.

2. The first question that arises in the case is the subject of Issue 5. The earliest document we have is Ex 7 being an extract from the jamabandi chitta of the village of Mullipallam for fasli 1210. It refers to "" Devadayam Sudha inam, and lower down refers to ""Perumal"" temple sudha inam"".

The next document we have is Ex. A (same as Ex. 7-A) an extract from the inam jamabandi account for fasli 1212 (that is the year 1802-1803).

The document begins by referring to Devadayam inam. Then the heading of Col. 3 is given as Perumalkoil inam. As pointed out by me in

Vadlamannaty Bala Tripura Sundaramma Vs. Secretary of State and Others, the word ""devadayam"" itself may not be conclusive but the use of

the word ""Perumalkovil inam"" tends to show that the inam was regarded as inam belonging to the temple. Davaraja Battar the ancestor of the

defendants living at the time, was shown as cultivator. He was not mentioned even as the archaka of the temple. For fasli 1215 we have got Ex. 7-

B which refers to Perumal inam cultivated by Devaraja Ayyangar. The next document we have got is Ex. B-I the inam statement and Ex. B the

inam register. In Col. 2 of the inam register the inam was described as ""devadayam."" I have already observed this may not be conclusive but in the

inam statement in Cols. 4 and 5 also the word devadayarn"" is mentioned under the headings ""relationship between the original grantee of sannad

and the person in enjoyment at present"" and particulars of family."" Though the use of word ""devadayam"" in Col. 2 of the register may not signify

very much it seems to me that the use of word in Cols. 4 and 5 of the inam statement is unusual and goes to some extent against the contentions of

the appellants (by which term I will throughout refer to the appellants in A.S. No. 233). In Col. 1 of the inam statement the entry is:

Entered in fasli 1212 Devaraja Ayyangar, Varadarajaperumal maniam, enjoyment at present by Lakshmana Ayyangar archaka performing puja to

the said Swami,

the heading being ""name of Inamdar entered in dowl and the name of the person enjoying at present."" The reference is obviously to Ex. A, and

while Devaraja Ayyangar's name is there, we have also the words ""Varadarajaperumal maniam."" The mention of enjoyment by Lakshmana

Ayyangar does not add very much. In Col. 2 the age given is apparently the age of Lakshmana Ayyangar. Under Col. 3, ""residence"", we have

Varadaraja Perumalkovil in Mullipallam Tillage."" Under the heading " particulars of enjoyment,"" the entry is enjoyed by

Varadarajaswamiperumal."" Then we have got this note under the statement:

The said land has been in the enjoyment of Varadarajaperumal Swami for a long time. It was granted by the Rajahs of Carnatic for the puja and

naivedyam for the said Swami. From that time my ancestors and myself have been enjoying hereditarily. There is no document.

3. Then follows the seal of Varadarajaperumal Swami and then the signature of Lakshmana Ayyangar, inamdar. The appellants contend that the

heading of the document is ambiguous. Assuming that this is so the whole document shows that Lakshmana Ayyangar regarded the land as land

belonging to the deity. In the inam register under Col. 14 the person entered in the register prepared according to Regulation 31 of 1802, both in,

faslis 1212 and 1217 is shown as Perunal. In Col. 15 also the name entered in the survey or in the subsequent ac-counts in fasli 125S, is shown as

Varadaraja Perumal. In Cols. 16 and 17 the entry is ""Mullipalam Varadaraja Perumal, worshipper Lakshmana Ayyangar."" Col. 21 shows that the

Deputy Collector recommended the inam to be confirmed free of quit-rent. The title deed was not exhibited in the suit but it seems to have been

filed in connexion with the application for the appointment of a receiver and it purports to be issued to the manager for the time being of the temple.

In our opinion Ex. B does not at all help the appellants. On the other hand both Exs. B and B-I show that the then archaka regarded the inam as

belonging to the temple. Ex. 5 is the Sivajama patta granted for fasli 1276 for water cess issued to Lakshmana Ayyangar as pattadar. There is

nothing in this to help the defendants. In 1871 Lakshmana Ayyangar executed an othi deed of thunduvaram for a sum of Rs. 17-8-0, for three

years: Ex. 3. Having regard to the term and the amount taken, it may be

regarded practically as a lease.

4. In the document the land was described as Mullipallam Perumal temple manyam. It does not show any desire on the part of Lakshmana

Ayyangar to assert his own title. Ex. 3-A is a usufructuary mortgage of thunduvaram dated 13th July 1883. Lakshmana Ayyangar was succeeded

by his daughter's son Muthuvenkatachalam Ayyangar the father of defendant 1; and the tenant executed the document in favour of

Muthuvenkatachalam Ayyangar. Here also the land was described as the manibhum of Varadaraja Perumal temple. Rs. 66 was the amount taken

under the document and it was to run for five years. The same remarks apply to Ex. 3-A as to Ex. 3. The next document is Ex. 3-B. This is for

Rs. 100 consisting of Rs. 17-8-0 taken under Ex. 3, Rs. 40 taken under another document dated 15th June 1877 and Rs. 42-8-0 received in

cash. Under the terms of this document one-half of the produce was to be taken by Muthuvenkatachalam Ayyangar as melvaram and the other half

by the tenant as ploughvaram and thunduvaram. The term fixed is five years. The land is described as Varadaraja Perumal maniam. Then we have

got a series of documents beginning with Ex. 3-O dated 2nd July 1885 up to 2nd March 1911, Ex. 3-J, all executed by Muthuvenkatachalam

Ayyangar. In these documents the description of the land as Varadaraja Perumal man-yam was dropped and changed into : "which belongs to me

having accrued from my maternal grandfather which was enjoyed before this by my maternal grandfather Lakshmana Ayyangar with patta entered

ancestrally in his name and which is now being enjoyed, by me with patta entered in my name.

5. Except two items Rs. 45 borrowed for reclamation under Ex. 3-H and another item of Rs. 250 borrowed for expenses of a litigation, all the

other items of these mortgages relate to private family expenses of defendant 1's father. The documents themselves show it and the District Judge

also finds it. Though interest was being paid off by mortgage of thunduvaram the principal under these documents was practically never discharged.

The debt went on mounting up until by Ex. 3-J it amounted to Rs. 450. Then Muthuvenkatachalam Ayyangar died. Ex. 3-K is the first document

executed by defendant for Rs. 500 consisting of Rs. 450 due under Ex.3-J and a fresh loan of Rs. 50 for family expenses. This was renewed by

Ex. J which was executed for Rs. 500 due under Ex. 3-K. and an additional sum of Rs. 500 borrowed for the expenses of the family and for

marriage expenses. The next document is Ex. M under which the amount due was Rs. 700, and under it another item (other than the one

mortgaged under Ex. J) was mortgaged. Then we have got Ex. J-I which was intended to be a continuation of Ex. J for Rs. 450. Ex. H is a renewal

of Ex. M in 1924 for Rs. 700. Thus it is clear that defendant 1 and his father were enjoying the land as if it was their private property and they

were mortgaging it for their own private purposes. This of course is improper conduct on the part of defendant 1 and justifies his removal from the

trusteeship unless it can be said that the conduct was bona fide. It may be said that defendant 1 was misled by the conduct of his father

Muthuvenkatachalam Ayyangar and he did not particularly study the inam statement and the inam register or take legal advice in the matter. The

matter then came on before the Religious Endowments Board. Defendant 1 filed a statement before them, which is now filed as Ex. O. Prior to that

he had given another statement before the Revenue Inspector, Ex. O-1. In Ex. O-1 he described the suit lands as ""the manibham lands of the said

temple."" In Ex. C he said in para. 2:

the temple of Varadarajaperumal is a village temple of Mullipallam with a grant of 7 acres and 86 cents

and in para. 3:

The balance of any of the proceeds of the endowed property is intended for the maintenance and remuneration of the archaka in whom all the

services of the temple are vested.

6. In para. 12 he said:

According to the ancient custom of this country the hereditary archaka of the village temple has the right to appropriate to himself and maintain

himself and all his family out of all the surplus of the temple pooja etc., according to the mamool thittam.

7. Thus the attitude of the defendants in Ex. C and Ex. C-I was to admit that the land belongs to the temple and that he was entitled to the surplus

proceeds only as remuneration of a temple servant. Having made those statements in Ex. C and Ex. C1, he changes his attitude in the written

statement in the suit and pressed his contentions therein not only in the Court

below but also before us in the High Court. We think there is no justification for this conduct of defendant 1 and we do not see any reason to differ from the conclusion of the District Judge that he ought to be removed. In *Srinivasacharyulu v. Pratyanga Rao* AIR 1921 Mad. 467 the conclusion was against the archakas but no opinion was expressed on the question whether the defendants acted in good faith and the matter was left for further investigation. This decision does not help the appellants. In *Hussain Bibi v. Sayad Nur Hussain Shah* AIR 1928 P.C. 106 it was said that the setting up by a trustee of title in himself may not be a sufficient ground for the removal of the trustee in a case in which there was a mistaken impression as to right. It is also observed that such a case would be a unique case requiring very special proof. We have found that defendant 1 was not under any mistaken impression in 1925 but chose to raise those contentions in the suit. This decision does not therefore help the appellants. We therefore confirm the order of the District Judge removing defendant 1 from trusteeship. This of course does not prevent him from continuing as an archaka.

8. The only question that remains is whether we should frame a scheme in the terms of Section 69, Religious Endowments Act. I think we should do so. The following scheme will be framed:

(1) The temple will be managed by three trustees consisting of a member of the defendant's family and two other villagers. The first trustees will be defendant 4, plaintiff 4 and Ramaswam Chettiar. One of the trustees will vacate office at the end of three years by lots and the remaining trustees will co-opt another trustee. At the end of another three years another of the original two trustees will vacate by lots and another person will be co-opted. Afterwards at the end of every three years, the remaining original trustee will vacate office and a fresh trustee will be co-opted as before. In the case of a vacancy by death the other two trustees will co-opt. If the co-opting trustees do not agree, the Endowment Board will nominate the trustee. 2. One-third of the net income of the temple inam lands will be set apart as remuneration for the services of the archakas. This clause will be operative from the time the defendants are deprived of possession. They will give credit for any payments received in the meanwhile and get any expenses incurred by them. 3. The trustees will keep proper accounts and

manage the affairs of the temple under the directions of the Religious Endowments Board.

9. In A.S. No. 233 of 1927, the appellants will bear the respondents' costs. No order as to costs in A.S. No. 396 of 1927.

Jackson, J.

10. I agree. I may observe that the heading to the statement Ex.B-1 appears to me to be correctly translated and clearly indicates

Varadarajaperumal to be the inamdar.