

**(1960) 12 MAD CK 0025**

**In the Madras High Court**

**Case No : Appeal No. 370 of 1957**

State of Madras

APPELLANT

Vs

Thuthukudi Kozhumbu Vyaparikalin Thuthukudi Sri  
Subramaniaswami Mahimai Paripalana Sangam

RESPONDENT

**Date of Decision : 20-12-1960**

**Acts Referred:**

**Citation : (1960) 12 MAD CK 0025**

**Hon'ble Judges : Ramachandra Iyer, J;Kunhamed Kutti, J**

**Bench : Division Bench**

**Advocate : R. Desikan, for the Appellant; S.V. Rama Iyengar, for the Respondent**

## **Judgement**

Ramachandra Iyer, J.—This is an appeal against the decree of the Sub-Court Tuticorin, in O.S. No. 39 of 1956 setting aside the order of the Commissioner, Hindu Religious and Charitable Endowments declaring that the plaint properties are not dedicated to any specific purpose and issuing an injunction restraining the appellant from interfering with the respondent's management of them.

2. The properties in dispute are comprised in three schedules, the first two being house sites with buildings thereon the third being a nandavanam. Certain merchants in Tuticorin who were engaged in the export of onion to Ceylon formed themselves into an association called Thuthukudi Kozhumbu Vyaparikalin Thuthukudi Sri Subramaniaswami Mahimai Paripalana Sangam. At its inception and for a long time thereafter till 1930, the association was an unregistered one. The association collected from its members some Mahimai contributions at a particular rate for consignments of onions made by them to Ceylon. A Mahimai is a donation for charity consisting of a fixed percentage on the sales or profits on commercial transactions done by the donor. The association performed a number of festivals and charities from out of the collections. Ex. B-8, which shows at a glance the particulars of expenses incurred from the years 1943 to 1953 indicates that out of the contributions festivals were performed in various temples, for example, Sankarameswarar Bagampiriyal temple, Sri

Subramaniaswami temple, a sub-shrine within the precincts of the former temple the Vishnu temple of the place, certain festivals for Sri Vinayagar, and miscellaneous charities by way of donations for education and for the maintenance of a Thevara Patasalai.

3. On 22-11-1906 the properties covered under Sch. I to the plaint were purchased by the Sangam under Ex. B-1. The document states that the properties set out in the schedule hereunder consisting of a site, house etc. are sold to you for the purpose of Sri Subramaniaswami. The part of the document which contains the conveyance further stated that hereafter the trustees of the mahimai for the benefit of Sri Subramaniaswami shall enjoy absolutely the properties hereinafter mentioned. On 12-10-1926 the Sangam purchased the IIInd schedule properties under Ex. B-2 from the Official Receiver of Tirunelveli. That document does not refer to the Sri Subramaniaswami temple as such; the vendee was described as the member of Tuticorin Onion Godown Subramaniaswami Mahimai. In the operative portion of the document it is stated that the vendees shall enjoy the properties conveyed absolutely for the purpose of the mahimai. The third schedule property which is a nandavanam was acquired by the Sangam sometime in 1927 under a darkhast grant made by the Government. The actual grant has not been filed. There is no evidence before the court either primary or secondary as to the conditions in which that grant was made. In the order of the Commissioner, Ex. A-1 it is merely stated that the re-settlement register showed that the land in S. No. 652/A-2 measuring about 60 cents was originally in patta Rs. 200/- Perumal, and it was not known when and how the Sangam came into possession of the land, and acquired title to it and that it had been registered in accounts as Government dry patta lands.

4. The income from all the properties were systematically brought into its general account by the Sangam and was expended in performing various charities and festivals which have been indicated above.

5. In the year 1930 the Sangam was registered under the provisions of the Societies Registration Act. The memorandum stated that the objects of the Sangam were the performance of puja to Sri Subramaniaswami and the Siva temple in Tuticorin on festival and special occasions, as well as kainkaryams and paditharam as had been performed before that date, taking into consideration the benefit to the merchants and the general public and also for the performance of certain worship in Sri Sundara Pandiya Vinayagar temple and Sri Vishnu temple at the said place and the carrying on paditharam festivals pujas, neivedyams, etc. After the registration the Society has been continuing to perform out of the contributions it received from its members as also from the income of the properties various charities and festivals in connection with the temples that have been mentioned above.

6. While matters stood thus, the Area Committee having jurisdiction over Tuticorin began to interfere with the management by the Sangam of the properties set out in the schedule to the plaint claiming that they formed part of

a specific endowment in favour of Sri Subramaniaswami sub shrine which itself is a part of the Siva temple. The Sangam then filed O.A. No. 100 of 1954 before the Deputy Commissioner, Tanjore, under S. 57 of the Act for a declaration that the properties and the income of the Sangam were not specific or religious endowments, and that therefore the department would have no jurisdiction to interfere with the sangam's affairs in the matter of the management of the various charities and festivals. The Deputy Commissioner by his order dated 31-10-1955 rejected the claim and held that properties were endowed for the services in Sri Subramaniaswami temple, and that they thereby constituted a specific endowment under S. 6(16) of Madras Act XIX of 1951. Aggrieved by the order of the Deputy Commissioner, the Sangam preferred an appeal to the Commissioner but that met with no success. Thereafter the suit out of which this appeal arises was instituted under the provisions of S. 62 of the Act.

7. The learned Subordinate Judge held that there has been no valid dedication of the properties in favour of the Sri Subramaniaswami temple, and in that view set aside the order of the Commissioner of the Hindu Religious and Charitable Endowments. It is the correctness of this decree that is challenged in this appeal by the State.

8. The case for the appellant is that the properties in Sch. I to III formed part of a specific endowment for Sri Subramaniaswami. The term "specific endowment" has been defined in S. 6(16) of the Act as meaning,

Any property or money endowed for the performance of any specific service or charity in a math or temple, or for the performance of any other religious charity, but does not include an inam of the nature described in explanation (1) to clause (14).

The substantial question for consideration in the present case is whether a valid endowment of the properties has been created in favour of Sri Subramaniaswami. It will be noticed that the name of the Society itself is Thuthukudi Kozhumbu Vyaparikalai Thuthukudi Sri Subramaniaswami Mahimai Paripalana Sangam. That is merely the name of the society. The name cannot by itself import the idea that the sangam was the lawful trustee of the funds belonging to the temple. The reference in the name to the Mahimai for Sri Subramaniaswami cannot be dissociated from the rest of the name so as to imply that there was a trust to Sri Subramaniaswami temple. A society is an association consisting of individuals. Whether the funds collected by them was for general charitable purposes or for specific purposes of puja in any particular temple is to be ascertained irrespective of the consideration what the name adopted by the Society would suggest. Generally where subscriptions are collected from others for a specific charity or for a specific religious purpose, there would be no doubt a trust created for that purpose. The intention of the various donors in such cases would obviously have been to benefit that particular object of the trust. But where subscriptions are collected, not for a specific purpose, but for general religious or charitable purposes, the individual donors

leave the object of the charity to be determined by the persons collecting. The only condition will be that they should be devoted to the charity and not devoted to other purposes. The persons collecting the monies would be the trustees for the charity. That cannot by itself mean that any specific endowment is created in favour of a single institution or beneficiary.

In the present case there is no evidence to show that the donors made their contributions for any particular purpose or for any particular religious institution. On the other hand there is sufficient evidence to indicate that the institution was dealing with the amounts collected as its property, no doubt for religious and charitable purposes, the temple or other charity getting what the Sangam in its discretion thought fit to give from time to time. As we indicated earlier, there is nothing to show that the Sangam itself was formed to administer any endowment made to Sri Subramaniaswami temple. The object of the Sangam as disclosed in the memorandum filed with the Registrar of Societies which can in the absence of other evidence be taken as indicating the intention with which it was found, and also its conduct all these years, show that it is not a mere trustee for administration of a kattalai in Subramaniaswami temple, but was entrusted with the management of the Mahimai collections which was presumably intended for various unspecified religious or charitable purposes. It would therefore follow that contributions collected by the Sangam and properties purchased by it in its own name cannot ipso facto in the absence of any dedication by the Sangam itself become the property of any temple. It may no doubt happen that the Sangam itself might have so set apart or dedicated the properties in favour of a particular temple or charity in such a way as would amount to a specific endowment for the temple. In such a case the property so found would cease to belong to the society but would be vested for the specific purpose designated. Has there been such an endowment in this case?

9. In order to constitute a valid endowment it is necessary that the donor should divest himself of the property. What is essential is that there should be an unambiguous expression of an intention to divest and an actual divestment for the benefit of the beneficiary, for example the temple or the particular purpose specified. Such divestiture can be proved by a written document. But as dedication to God or to a charity is not a transaction inter partes the provisions of the Transfer of Property Act will not apply and dedication can be effectuated orally without any necessity for a written instrument. So also a trust for a public purpose. In either case, that is making of an endowment or creating a public trust, the fact of dedication can be established by evidence. Such evidence may consist of contemporaneous statements or merely of subsequent conduct of the trustee. In either case there should be a clear and cogent evidence to show that there was an intention to dedicate the property for the particular purpose followed by an actual divestment or appropriation of the property to the specific object.

10. It is not an uncommon practice for the commercial community in this part of

the country to make credit entries in the books in the names of various charities or for religious objects. Sometimes these allotments in accounts are made more as a matter of convenience of the individual person setting apart the money without any intention to vest the fund or charity straightaway in any charity or temple. A mere credit entry in an account book of the donor will not be sufficient to create a trust. But the case will be different where the amounts are actually set apart and appropriated towards the specific object. The law on this subject has been stated, it we may say so with respect, succinctly in *Ramanathan Chettiar v. Palaniappa Chettiar*, 1945-2 Mad LJ 164 : (AIR 1945 Mad 473). The learned Judges in that case held that an allocation of specific property or fund to charities is essential both for effecting an endowment and for creating a valid trust and a mere credit entry in the donor's account books without setting aside and appropriating the sum credited is not sufficient to create a valid trust. A case more or less similar to the one we are considering came up for decision before the learned Chief Justice and Venkatarama Iyer, J. in *Commr. for Hindu Religious Endowments Board, Madras Vs. Vinayakar Arudra Tiruppani Sabha*, . There an unregistered society, which was subsequently registered, purchased a property from moneys collected by way of subscriptions from the members of the society. One of the objects of the society was to perform the Arudhra festival in a temple. The learned Judges held that in the circumstances of the case it could not be said that there was any specific endowment of the entire or part of the income of the property for a specific religious charity as there was no divesting of the ownership even as regards the income and that it was open to the society to change its objects.

11. It has next to be considered whether there has been a specific endowment of the suit properties in the present case in favour of Sri Subramaniaswami temple. As we said earlier the properties set out in schedule I was purchased by the Sangam in its name but the terms of the document clearly show that the property was purchased specifically for the benefit of the temple. It may be that the moneys which went in for the purchase belonged to the Sangam itself. But the Sangam can set apart its property or provide its money for the purchase of property for the benefit of the temple. From the terms of Ex. B. 1 it is clear that it was the intention of the society to purchase the property for the benefit of the temple, it being expressly stated that the property was purchased for the benefit of Sri Subrahmaniaswami.

12. In AIR 1938 73 (Privy Council) the owner of a certain property constituted a committee for the management of school for which he endowed considerable properties. One of the properties which was transferred in favour of the Committee was a mortgage document. The consideration was to be paid by the donor and the document was to be taken in favour of the Committee. The document said, "We have mortgaged, without possession, the aforesaid land to the High School Indaura.....started in the name of.....residents of Indaura.....for Rs. 6,000....." The Privy Council held that that constituted a clear dedication of the mortgagees' rights to the school with the consequent

vesting in the Committee. There can be no doubt that in the present case when the document was taken for the specific purpose of Sri Subramaniaswami, it constituted an endowment for the temple.

13. The same cannot be stated with regard to the properties in Sch. II and Sch. III. Sch. II has been purchased by the Sangam under Ex. B-2. Independent of what one can speculate from the name of the sangam itself, there is nothing in the document to indicate that the property was intended for any specific purpose in connection with the Sri Subramaniaswami temple or of any temple for the matter of that. In the circumstances the property can only, constitute the property of the sangam. So far as this item is concerned the facts are more or less analogous to the facts in Commr. for Hindu Religious Endowments Board, Madras Vs. Vinayakar Arudra Tiruppani Sabha, ). Following that decision it must be held that there has been no dedication of this property to the Sri Subramaniaswami temple. As regards Sch. III we have already stated that there is no evidence in the case to show dedication thereof to Sri Subramaniaswami temple. The only evidence in the case is the conduct of the sangam itself. That as we stated earlier did not treat any property as specifically devoted to any particular institution but instead the income from all the properties were brought into the general account of the sangam and spent upon various religious festivals and charities, which the Managing Committee of the Sangam chose to perform from time to time.

14. The learned Government Pleader contended that there was an admission made by the sangam before the Deputy Commissioner, which would show that the Sch. III belonged to the temple. But unfortunately the order of the Deputy Commissioner has not been exhibited in the case; it is not possible for us to ascertain what the admission was and whether such an admission proved any unequivocal expression of an intention to dedicate the property to Sri Subramaniaswami temple. Having regard to the conduct of the sangam itself, it must be held that there is no proof of any such dedication. The sangam has been performing festivals and paying for the services in various temples. It is impossible to say from the conduct of the sangam that any one of the two items in Sch. II or Sch. II has been dedicated to the temple. We are therefore of opinion that the decree of the learned Subordinate Judge has to be modified by declaring that the properties in Sch. I do constitute a specific endowment for Sri Subramaniaswami temple. In regard to the other two schedules we are in agreement with the learned Subordinate Judge that it has not been proved that there was any specific endowment in respect of these properties.

15. The appeal will therefore be partly allowed by declaring that Sch. I properties constitute a specific endowment within the meaning of Sec. 6(16) of the Act for Sri Subramaniaswami temple. This does not however mean that the general trustee of the temple would be entitled to take charge of the properties. Being a specific endowment the trustees will be the respondent sangam itself.

16. There will be no order as to costs in either of the courts.