

(1923) 01 MAD CK 0010
In the Madras High Court

Sundaraja Chariar

APPELLANT

Vs

Ali Muhamad Ethibar Khan Sahib and Others

RESPONDENT

Date of Decision : 23-01-1923

Acts Referred:

Citation : (1923) 44 MLJ 649

Judgement

1. The suit was brought for an injunction restraining the defendants from interfering with the plaintiff's possession of the suit lands. The plaintiff alleged that he had been the Kudivaramdar of the suit lands prior to 1882 on condition of delivering waram to the landlord and that in 1882 the predecessor-in-title of the defendants executed Ex. A under which the waram was commuted into a fixed money rent and that the defendants claiming to revert to the waram rate, were interfering with the plaintiff, harvesting his crops. The defendants originally denied that plaintiff was the kudivaramdar and contended that as the inam was a charity inam, Ex. A was not binding on them. During the course of the trial, the plaintiff's right as kudivaramdar was conceded. The Subordinate Judge decided against the plaintiff and he appeals. The first question that arises for decision is the nature of the inam. Ex. II is the inam register. In column 8 it was described as Kyrati which means, according to Maclean's Glossary Vol. III, p. 415 a charity inam (Kheiranty)(See also Wilson's Glossary, Khairat). The suit inam was described in Wallace's Register as ""to the charity of Ithabar Khan"" (Fide Column 14, Ex. II). This is the earliest description of it now available. In Column 21 the Deputy Collector describes it as forming ""the grant for the support of" the charities of Muhammad Ithabar Khan consisting of a chatram, a water pandal and a mosque."" He then

mentions that a. former Collector and the Board of Revenue considered it as falling within the operation of Regulation VII of 1817 (The Madras

Endowments and Escheats Regulation, 1817) and concludes by proposing to "fix a Jodi of 23rds of the Regular Survey Assessment, which will

become the property of the charities to be applied to them by the managers for the time being." But in Column 22, the order of the Commissioner

was "confirmed for the support of the mosque, water pandal and chatram on the understanding that the whole village will be resumed unless 23rds

of the proceeds are appropriated to the support of the above purposes." It is clear that the inam Commissioner did not accept the recommendation

of the Deputy Collector. The entry in Column 2 as "personal" and in Column 9 "Free; Jodi now imposed Rs. 310" must Be regarded as embodying

the Deputy Collector's view and as not being adopted by the Commissioner. The fact that a third share of the proceeds is being appropriated by

the. inamdars for their private uses does not make it the less a charity inam See Ramanathan Chettiar v. Vava Lev-vai Marakayar 106 E. R. 873

(885). as the grant was only one and cannot be split up into two parts a personal grant of one-third and a charity grant of two-thirds of the inam. It

follows that Ex. A is not binding on the charity.

2. The next point argued is that the defendants are barred by limitation from repudiating the transaction of 1882. The plaintiff is a tenant and had

been a tenant of the suit land prior to 1882. It is impossible for him to prescribe for the estate of a tenant holding on more favourable terms as the

character of the tenant's possession continues and there can be no prescription. In this view, no question of limitation arises and it is unnecessary to

consider the effect of the decisions in Vidya Varnthi v. Baluswami Iyer (1810) 2 Camp. 506, Damodar Das v. Lakhan Das (1871) 17 W.R.Cr .15

, Narsaya Upada Vs. Venkataramana Bhatta, . and Gnana Sambanda Pandara Sannadhi v. Velu Pandaram ILR (1899) Mad 271.

3. Nor are the defendants estopped by their conduct from questioning Ex.A. In so doing, they do not act in their personal right but as trustees of

the institution which cannot suffer from their conduct See Yasim Sahib v. Ekambara Aiyar .

4. The result is there will be a declaration that the plaintiff is entitled to hold the suit lands as kudivaramdar on condition of paying the waram rate

prevailing prior to 1882. The decree will be modified accordingly. As Ex. A provides that, when the landlord wishes to revert to waram, he can do so only on returning the Rs. 3,000 borrowed by him from the plaintiff, our decision will not stand in the way of plaintiff, recovering such portion of the Rs. 3,000 as may be binding on the trust from the properties appertaining to the charity or the whole of the amount from the heirs of the executants of Ex. A, if so advised. As the plaintiff has substantially failed he will pay the defendant's costs.