(1927) 01 MAD CK 0009

In the Madras High Court

Tangella Narasimhaswami, Dharmakartha of Sri Kodanda Ramachandra Moorthy — APPELLANT

Vs

Iamidi Venkatalingam and Others — RESPONDENT

Date of Decision : 20-01-1927

Acts Referred:
Trusts Act, 1882 — Section 5

Citation : AIR 1927 Mad 636 : (1927) ILR (Mad) 687 : 103 Ind. Cas. 302 : (1927) 25 LW 806 : (1927) 53 MLJ 203

Hon'ble Judges : Reilly, J;Kumaraswami Sastri, J

Bench : Full Bench

Judgement

Kumaraswami Sastri, J.—This appeal arises out of a suit to set aside an order passed against the plaintiff who attached the properties in

execution of a decree which he obtained against the 2nd defendant. A claim was preferred by the 1st defendant alleging that the land was

dedicated by the 2nd defendant to Sri Kodanda Ramachandra Moorthy Varu and that possession was given to him as Dharma-kartha. The

District Munsif dismissed the plaintiff''s suit on the ground that the property passed to the temple but this decree was reversed by the Subordinate

Judge on the ground that Ex. I which is produced as evidence of the dedication requires registration and as it was not registered no title passed to

the idol. It is contended in Second Appeal by the appellant that the document does not require registration as (1) it is a document constituting a

religious trust and neither Section 5 of the Trusts Act nor Section 123 of the Transfer of Property Act applies, (2) that the dedication to the temple

was made before the date of the instrument, and the document merely records what happened, (3) that the document should be treated as an agreement to transfer the property to the trustee whenever he required a conveyance and that such a transaction is covered by the proviso to

Section 17 of the Registration Act, and (4) that subsequent to Ex. I a registered document was executed as provided in the agreement and that

although the registered document was after the attachment it is not invalid as it was executed in pursuance of a prior arrangement.

2. The following facts are not disputed. The 2nd defendant became ill about 8 years before the date of Ex. I and in pursuance of a vow then made

he built a temple and installed the idol of Sri Kodanda Ramachandra Moorthy there. He wanted to endow land for the worship of the idol and

obtained a sale deed of the land which is now in dispute in 1913. In 1916 Ex. I was executed. Ex. I purports to be merely an agreement between

the 1st and 2nd defendants. The material portion runs as follows:

I have constituted you as Dharmakartha to Sri Kodanda Ramachandra Moorthy Varu consecrated by me in the aforesaid village and to arrange

for the performance of daily offerings of lighting, dhoopam and Naivedyam, etc., and also for the Kalyana Uthsavams to be performed every year

and for paying wages to the Archaka, musicians, etc., the servants of the temple, and I have this day granted the inam land worth Rs. 3,000 with

fruit trees, etc., as gift to Sri Kodanda Ramachandra Moorthy towards the expenses of lighting, dhoopam and Naivedyam ""or Kalyana Uthsavams,

etc. Therefore whenever you want I would execute on proper stamp paper on any day from this date as desired by you at my cost. With the

aforesaid stipulations, this agreement is executed stipulating that I should deliver possession of the said land on the very day I execute the gift deed,

that I should tender proper accounts "" for the money that I might realise by renting out the said land. I made you believe that I did not alienate the

said property before this either by sale or mortgage, etc., and I execute this agreement.

3. Then follows the description of the property. I think the effect of the document is to recite the fact that the 2nd defendant constituted the 1st

defendant as Dharmakartha, conferring on him the trusteeship in respect of the land dedicated to the idol and promising to grant a conveyance to

the 1st defendant as Dharmakartha whenever he required it. The document specially states that it is an agreement between the parties. It does not state that the constitution of the Dharmakartha or the gift was to be by virtue of that document but it refers to the two acts having been already

done, and states that the 2nd defendant would execute the deed and deliver possession of the property to the Dharmakartha whenever he wants it,

he the 2nd defendant being in the meantime accountable. In deciding whether a document requires registration or not one has to take the document

as a whole and construe it with reference to the terms and not as to what might have been the intention. In Rajangam Aiyar v. Rajtngam Aiyar ILR

(1922) M 373 : 44 MLJ 745 it has been held by their Lordships of the Privy Council that a document which does not by itself convey property but

merely gives a right to call for another document does not require registration. I may pointout in this connection that if Ex. I was really a deed which

appointed the 1st defendant as Dharmakartha and which transferred the property to the temple there was no necessity for the important clause that

the 2nd defendant would, whenever the 1st defendant wanted, execute on a proper stamp paper a formal deed of conveyance or why he should

reserve possession till the execution of such a deed but in the meantime hold himself accountable for the rents and profits. A trust is in effect the gift

of property or an interest in property to a person or institution by or through the intervention of a trustee and this document evidences such a

transaction. In this view it is clear that the document comes within the saving clause of Section 1 of the Trusts Act and Section 5 which relates to

the creation of trusts and which requires registration of deeds of trust relating to Immovable property does not apply. If the document is merely one

which records a past transaction and gives another party a right to call for a formal document it is exempted under the Registration Act. In any

view the document, in my opinion, does not require registration.

4. It has been argued that a gift to an idol of lands worth over Rs. 100 requires registration and that a mere recital in another document of a gift

which had been made would not pass property. It has been held that dedication of property to God by a Hindu does not require any document

and that property can be validly dedicated without any registered instrument. It should be noted that in the present case the deed Ex, I states that

the property was ""granted to God Sri Kodanda Ramachandra Moorthy"". It is a gift not to a specified idol but to the Almighty Sri Kodanda

Ramachandra Moorthy. This distinguishes the present case from the case where the grant is made to a particular idol installed in a particular

temple. In Pallayya and Others and Mallayya Vs. Ramavadhanulu, it was held by Benson and Bhashyam Aiyangar, JJ., that a declaration of trust in

relation to Immovable property for a public religious purpose is not governed by the Indian Trusts Act, which by Section 1 declares it inapplicable

to religious trusts. It was also held that Section 123 of the Transfer of Property Act has no application to dedication of land to the public as the

section only applied to cases when the donee is an ascertained or ascertainable person by whom or on whose behalf a gift can be accepted or

refused. There seems to be a slight verbal error in this report. I think that having regard to the document set out in the beginning of the report the

words in the judgment should be ""the gift of land to the idol and dedication of the temple to the public"" instead of ""dedication of the idol and land to

the public"". Otherwise there will be the inconsistency pointed out by the Chief Justice in the referring order.

5. In Ramalinga Chetti v. Sivachidambara Chetty ILR (1918) M 440 : 1918 36 MLJ 575 it was held by Seshagiri Aiyar and Phillips, JJ., that the

dedication of property to an idol of a temple is not required by law to be in writing and may be made orally. In Tammi Reddi v. Gangi Reddi ILR

(1921) M 281 : 42 MLJ 570, Spencer, J., and myself agreed with the view taken in Ramalinga Chetti v. Sivachidambara Chetty ILR (1918) M

440 : 1918 36 MLJ 575 and held that no document was necessary for the dedication of property to charity.

6. We have not been referred to any case where it has been held that an oral gift for a religious purpose requires registration. In this connection 1

may point out that Section 123 of the Transfer of Property Act only applies to transfers by one living person to another. Section 5 of the Act runs

as follows:

In the following sections ''transfer of property'' means an act by which a living person conveys property, in present or in future, to one or more

other living persons, or to himself and one or more other living persons; and ''to transfer property'' is to perform such act.

7. It is difficult to see how a gift to God Sri Kodanda Ramachandra Moorthy can be a gift to a living person.

8. It has been argued for the respondent that an idol is in law recognised to be a juristic person capable of holding property and it must be held that

a gift to an idol is a gift to a living person. A juristic person is not necessarily a living person, and the fact that for some purposes the law by a fiction

invests non-animate bodies with the rights of persons would not make juristic persons living persons for all purposes. It is unnecessary to pursue

this point further as the document is not a gift to an idol but to Sri Kodanda Ramachandra Moorthy the Almighty, and by no stretch of imagination,

legal or otherwise, can it be said that the Almighty is a living person within the meaning of the Transfer of Property Act. I see no reason to differ

from the Madras cases cited above where the law has been settled for several years. I think the principle of stare decisis should be applied unless

there are strong reasons to the contrary as otherwise it would unsettle many titles.

9. I am of opinion that Ex. I does not require registration even if it confers any present title as it is a religious trust exempted by Section 1 of the

Trusts Act. If it is treated only as referring to a past gift, the Transfer of Property Act has no application to the gift as it is a gift in favour of the

Almighty and could be validly created without any document.

10. Although the case for the plaintiff was that the transaction was in fraud of creditors, no attempt was made to prove it before the District Munsif

who finds that the gift was a perfectly bona fide one. This finding is not disputed before us. 1 am of opinion that the appeal should be allowed and

the decision of the Subordinate Judge reversed and that of the District Munsif restored with costs throughout.

11. In this judgment the Chief Justice concurs.

Reilly, J.

12. I agree that the suit should be dismissed with costs throughout and that Ex. I does not require registration either as an instrument of trust or as a

gift deed. The trust to which it relates is a religious trust. The gift to which it refers appears to have been made otherwise than by Ex. I; and, if it

were intended to be made by Ex. I, then as it was not a gift to a ''living person'' within the meaning of Section 5 of the Transfer of Property Act, the

document would not require registration.

