

**(1921) 10 MAD CK 0016**  
**In the Madras High Court**

|                                                 |            |
|-------------------------------------------------|------------|
| T.S. Mahammad Hussain Saheb Bahadur and Another | APPELLANT  |
| Vs                                              |            |
| Mahammad Abdul Rahim Beg Sahib and Others       | RESPONDENT |

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**Date of Decision :** 06-10-1921

**Acts Referred:**

**Citation :** 67 Ind. Cas. 492 : (1922) 15 LW 241 : (1922) 42 MLJ 272

**Hon'ble Judges :** Spencer, J;Ramesam, J;Ramasam, J

**Bench :** Full Bench

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**Judgement**

Spencer, J.—This suit (O.S. No. 7 of 1917) was brought u/s 14 of Act XX of 1863, Religious Endowments Act, for (1) a declaration that

the properties in the schedules to the plaint belonged to the great Musjid at Guntur (2) the removal of the defendants from the trusteeship of the

Musjid and for appointing a new trustee in their place and (3) a direction that the defendants should account for the income of the trust property for

twelve years and other appropriate reliefs.

2. The District Judge found that this mosque was founded by Orders of the Sultan of Hyderabad, that Hajee Abdul Razak and his heirs were

appointed Muttawallis or trustees with the duties of Peish Imam and Khateeb attached and that they were to enjoy the lands and do the religious

services from generation to generation. He held further that so long as the defendants and their heirs performed the duties of that office, they had a

right to enjoy the produce of the lands and need not account for it. He came to the conclusion that the only breach of trust committed by the

defendants was that they allowed dwelling houses to be constructed in the mosque compound and for this he ordered that rent should be levied at

the rate prevailing in the Municipality in order to prevent a title being acquired by

the occupants of the houses adverse to the trust. The Judge found that the only act of malfeasance was that they divided up the lands attached to the offices among themselves and he directed that the lands should be restored to the combined office of Muttawalli, Peish Imam and Khateeb. Mr. Narasimachariar for the appellants argued that the grant in this case was a grant to the mosque, that the inam was a Davadayam Inam, that the whole income of the lands should be spent on purposes connected with the worship and that the defendants were bound to account for the manner in which they spent it.

3. The principal evidence produced on the plaintiffs' side consisted of certain Inam Registers which are Exhibits C, D, K (3) and K (4). On the defendants' side, certain Parwanas or grant deeds were produced and have been marked as Exs. I to IV. It appears from Ex. D that at the time of the Inam Settlement certain Dumbalas were produced which are not now forthcoming and that the Parwanas now exhibited were not produced at that time. Mr. Narasimachariar argued that Exhibits I to IV, even if conceded to be genuine, are not shown to relate to the suit property. He argued that there was no evidence that Pattipad village mentioned in Ex. I corresponded to Mallayapalem in the Inam Register Ex. C. In Ex, D the grantor is stated in column II to be Vasiredni Venkatadriyadu. The original grantee is given in column 13 as Khaji Rahitullakhan and the present owner is entered as Muzavar Davied Beg. Now we have ascertained from the District Manual of Kistna District that Vasireddi Venkatadriyadu ruled between 1778 and 1816 and that in 1710 the Subedar of the Deccan bestowed Kondavidu Sircar on the Vasireddi family. Rahitullakhan the original grantee's name must be a mistake for Rahitulla's mosque and Uavied Beg in column 16 was of Ex. D (as it appears from K-3) the grand-son of Abdul Razack in whose name the grant appears in Ex, I, In Ex. K (3), a statement given at the time of the Inam inquiry in Fasli 1269, Abdul Razack is mentioned as Sannaddar. In the Inam fair Register of Mallayapalem village (Ex. C.) the grantor is stated to be Bapulal Jung of Hyderabad in Fasli 1185. This is evidently a mistake for Basulat Jung of Hyderabad who is the grantor mentioned in Exs. II, III and IV. At the back of Ex. III there is a plan of the compound enclosing the mosque which shows the position of the buildings and this corresponds to the plan

filed by the parties in the case. On the whole, we are of opinion that from the name of the grantor Basulat Jung, the name of the grantee Abdul

Razack, the date which is 1155 Hijri, the extent which is 10 Kuchelas both in Ex. C and in IV a and the plan at the back of Ex. C, there can be no

doubt that Exs. 1. to IV as well as Exs. C, D, K-3 and K-4 relate to the suit mosque. It was not disputed at the trial that the defendants are the

heirs of the original grantee Abdul Razack. The result is that the District Judge's conclusion that the grant was made to the defendants' family for

the upkeep of the mosque and its buildings and for the performance of the services was correct. Exhibit K-4 contains a statement in the ""remarks

column that altogether there was an Inam of 500 acres for the performance of services of this mosque, and that it is in the possession of Davied

Beg.

4. Being Inam for the performance of religious services, it is not necessary that the service holder should strictly account for his disposal of the

produce of the lands attached to the charitable object. The lands are granted for his maintenance and the maintenance of his heirs subject to the

condition of his keeping up the mosque and performing services regularly. This is the rule followed by Government. (See Board's Standing Order

52, R. III which declares that inams granted for religious objects such as for the support of temples and mosques, are as a rule continued to the

present holders, their successors, and are not subject to further interference, so long as the buildings or institutions are maintained in an efficient

state, and the services continued to be performed according to the conditions of the grant.)

5. We see no objection to the lands being temporarily divided up among the holders of the office or joint trustees as the descendants of the original

trustee become, if the division is for better convenience in the performance of their duties. As Bhashyam Ayyangar, J observed in the case of a

Hindu Temple in Ramanathan Chetty v. Murugappa Chetty 13 M.L.J. 341 that the emoluments of an office are subject to partition like any other

family property though the office is joint and co-trustees all form one collective trustee.

6. As regards the buildings in the mosque compound they are apparently for the habitation of those who perform service in the mosque. It is not

shown that they interfere with the performance of the worship.

7. The District Judge's Order that the occupants should pay rent cannot be supported. If the trustees are not liable to account for the income, they should not be directed to pay rent to themselves. The appeal must therefore be dismissed,

8. In the objection memorandum the 1st defendant has raised the objection that he is not liable to pay the costs of the plaintiffs when he succeeded in the suit. No doubt, he brought the suit on himself by his application to the municipal authorities in which he alleged that the lands and buildings were the exclusive property of the mosque and that he had no personal rights whatever in them. He resorted to this declaration in order to escape payment of the municipal tax. He therefore deserved to have to pay his own costs in the suit. But having been successful, it was not just to make him pay the costs of the plaintiffs also when the suit substantially failed. The lower Court's decree in respect of costs will be modified by directing that each party will pay their own costs throughout.

9. The connected appeal No. 202 of 1920, which is by defendants 3 and 4 in which they persisted in their appeal memorandum in maintaining that the defendants had acquired full rights of ownership by adverse possession in respect of the suit lands and in maintaining that the Judge was wrong in holding that the grants were made for the performance of services at the mosque, though it must be admitted that the defendant's Vakil abandoned this position at the hearing of the appeal, must be dismissed with the exception only that the Lower Court's decree will be modified by omitting the direction as to the levy of rent by 1st defendant from the other defendants for the use of the buildings occupied by them as dwelling houses. Each side to bear their own costs.

10. A declaration will be added to the decree to the effect that the mosque is a public mosque and that the emoluments belong to the office-holders for the time being subject to the due performance of their duties in the mosque.

Ramesam, J.

11. I agree.