

(1935) 10 MAD CK 0086
In the Madras High Court

Vedavyasa Alasinga Bhattar and Others	APPELLANT
Vs	
Vedavyasa Venkatasudarsana Bhattar and Others	RESPONDENT

Date of Decision : 24-10-1935

Acts Referred:

Citation : (1936) 43 LW 614 : (1936) 70 MLJ 424

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—One Vedavyasa Bhattar was a Dharmakartha of the Srirangam temple and the right of his family to a place in the Dharmakarthaship is still reserved in the scheme framed by the High Court in Sitharama Chetty v. Sir S. Subramania Aiyar I.L.R.(1915) 39 Mad. 700 : 30 M.L.J. 39. He had also certain mirasi offices in the temple with emoluments and perquisites attached to them. In 1870 the office of the Dharmakartha and certain mirasi offices were held by three descendants of the said Vedavyasa Bhattar, vis., (1) Sri Venkata Bhattar (2) Venkatasudarsana Bhattar and (3) Thatha Bhattar who then constituted an undivided Hindu family. Owing to dissensions in the family in 1870 they became divided in status and later effected a partition of their properties including the mirasi offices in a certain manner. Ex. III dated 1st January, 1876, which evidences the division "provides, so far as the Dharmakarthaship is concerned, enjoyment by turns by the three members in rotation each for one year. The actual arrangement in the document was only for three years. But it is in evidence and not disputed that it was acted upon up to the date of the suit by the representatives of the various branches. In 1924 by a document, Ex. V dated 7th February, 1924, and styled deed of partition, four members of the family, representatives of the three branches who were parties to the deed of 1876, purported to effect a complete partition of all that they had kept and enjoyed in common up to that date. They affirmed the arrangement of 1876 and stated that the properties were being enjoyed in accordance therewith up to that date. Thirumalai Bhattar one of the parties to Ex. V died leaving no issue and the first defendant became his heir under the Hindu law in preference to the plaintiffs. It

may be mentioned that the plaintiffs 1 and 2 and the first defendant were parties to Ex. V. The plaintiffs have now filed the suit out of which this second appeal arises praying for two reliefs, vis., (1) for "declaring that the plaint schedule offices, rights and perquisites lapse by survivorship to the plaintiffs and the defendants 1 and 2 on the death of the said Vedavyasa Thirumalai Bhattar, on 12th November, 1927, and as a consequential relief (2) for directing (a) the first and second defendants to enjoy the plaint schedule offices, rights and perquisites with the plaintiffs in equal moities by turns or in any other manner the Court may deem fit to order, giving necessary directions therefor to the first, second and third defendants ".

2. Both the Courts have dismissed the suit holding that the arrangement entered into in 1876 and 1924 were binding on the parties in virtue of which the first defendant is entitled to enjoy the share of Thirumalai Bhattar in preference to the plaintiff.

3. Mr. Rajah Iyer on their behalf has raised three contentions: One on a question of fact and two on questions of law namely (1) the office of Dharmakarthaship was in fact kept undivided and plaintiffs have succeeded to the share of Thirumalai Bhattar by right of survivorship along with defendants 1 and 2. (2). The Office of Dharmakarthaship and the mirasi offices are inalienable and impartible. (3) Whatever may be said of religious offices, the office of dharmakarthaship being in the nature of a bare trusteeship could not be the subject of a partition and every descendant succeeds to the trusteeship in his own right, not as a representative of another and any arrangement come to between the parties at one time could only bind them and not their successors.

4. The question of fact can be easily disposed of. The documents clearly indicate that the members of the family became divided in status and effected a complete division of all the properties including the office. In the document of 1876 no doubt provision was made only for three years in regard to the dharmakarthaship but it was illustrative of the future order in which the property was to be enjoyed by the several branches and for a period of nearly half a century it was so enjoyed. It must therefore be found that the office was divided and enjoyed by turns by the three branches in rotation in accordance with the arrangement of 1876.

5. The office of a trustee of a temple or a religious office therein is prima facie inalienable. It is also indivisible. In one sense it is true that where the office is held by many, it is a collective office. I may state at the outset that it is neither sound nor proper to think of such offices from the point of view of a bare trustee under English law. The conception of the office of a trustee in English law is not the same as the Hindu conception. In *Vidya Varuthi Thirtha v. Balusami Ayyar* when speaking of a trustee of a temple, their Lordships of the Privy Council observed;

It has also to be remembered that a trust in the sense in which the expression is

used in English law is unknown to the Hindu system pure and simple...in no case is the property conveyed to or vested in him nor is he a trustee in the English sense of the term.

6. The office of a trustee has always been prized as a valuable possession or property much more than tangible property. The succession to a religious office or the office of a trustee of a temple is regulated according to the course prescribed by the founder expressed or implied or according to the usage which is again supposed to be the index of the intention of the founder. Usage has often been resorted to for making the office heritable, *Nul Kisshen v. Hurrishandra* (1818) 2 Morley's Digest 146 to make it also partible under certain conditions, *Mitta Kunth v. Neeranjana* (1874) 14 Bengal L.R. 166 *Mancharan v. Pranshankar* I.L.R.(1882) 6 Bom. 298 or to make it alienable in the line of heirs, *Mancharan v. Pranshankar* I.L.R.(1882) 6 Bom. 298 *Rajaram v. Ganesh* I.L.R.(1898) 23 Bom. 131 *Sri Mahant Prayag Doss Jee Varu and Others Vs. Archakam Bokkasam Govindacharlu and Others*, . The intention of various pious donors and benefactors in creating such offices and endowing properties to religious or charitable purposes has always been and must be deemed to have been in accordance with the notions and known usages of the community. Even where the office of trusteeship is hereditary - and it may be held by a single family or a number of families. Vide (1876) L.R. 4 I.A. 76 (Privy Council) . As observed by Wallis, J. in *Boidyo Gauranga Sahu Vs. Sudevi Mata*, the institution of hereditary trusteeship is held to rest on the intention of the donor either expressed in the instrument of trust or to be presumed from the usage. In (1876) L.R. 4 I.A. 76 (Privy Council) their Lordships of the Privy Council observed;

The unknown founder may be supposed to have established this species of corporation with the distinct object of securing the due performance of the worship and the due administration of the property by the instrumentality and at the discretion of four persons capable of deliberating and bound to deliberate together; he may also have considered it essential that those four persons should be the heads of particular families resident in a particular district open to the public opinion of that district, and having that sort of family interest in the maintenance of this religious worship which would insure its due performance.

7. The Courts in dealing with these hereditary and charitable offices have always kept two considerations in view : (1) the intention of the founder must be given effect to and should not be frustrated (2) the interests of the trust are paramount and any thing injurious to the interests of the trust cannot be countenanced. So, whether it is a case of a partition or an alienation, the courts have subordinated questions relating thereto to those two considerations. The prohibition against alienation for example was founded on the principle that to make the office the subject of a bargain was to defeat the intention of the founder *Narayana v. Ranga* I.L.R.(1891) 15 Mad. 183 : 2 M.L.J. 19 and it was by the application of this principle that even an alienation for consideration to an heir was forbidden. The question of partibility has again been viewed from the

same stand point. Melville, J. observed in *Mancharan v. Pranshankar* I.L.R.(1882) 6 Bom. 298.

Hereditary offices, whether religious or secular, are no doubt treated by the Hindu text writers as naturally indivisible; but modern custom whether or not it be strictly in accordance with ancient law, has sanctioned such partition as can be had of such property by means of a performance of the duties of the office and the enjoyment of the emoluments by the different co-parceners in rotation.

8. No doubt these observations were made with reference to a religious office but it has also been extended to the case of a bare dharmakarthaship without any emoluments attached thereto. As observed by Bhashyam Iyengar, J. in *Ramanathan Chetti Vs. Murugappa Chetti*,

The juristic basis for the usage and the custom above referred to is not strictly the legal right of partition of ordinary joint family property, but the equitable right to settle a suitable scheme for the efficient and satisfactory management of trusts the duration of the turns of the several members in rotation being however fixed with reference to the law of partition.

9. Their Lordships of the Privy Council in 10 CWN 825 (Privy Council) (on appeal from *Ramanathan Chetti Vs. Murugappa Chetti*, observed:

The arrangement seems to have been a perfectly proper arrangement conducing to the due and orderly execution of the office.

In such a case, (where the office vests by descent in a number of persons) in order to avoid confusion or an unseemly scramble, it is not unusual, and it is certainly not improper, for the parties interested to arrange among themselves for the due execution of the functions belonging to the office in turn or in some settled order and sequence. There is no breach of trust in such an arrangement nor any improper delegation of the duties of a trustee.

10. Thus it will be seen that the principle of partition is permitted on the ground that the usage which sanctions it is wholesome for the efficient and smooth discharge of the duties of the office, where the office being hereditary in the family devolves on a number of co-trustees. So far as the trust is concerned, whoever manages the office by turns must be deemed to be managing on behalf of all and management by one of them in rotation is not considered to be adverse or exclusive to other co-trustees.

11. The question now arises, if partition is permitted how it is to be enjoyed by the several members thereafter. Bhashyam Iyengar, J., in the very same case observes:

The usage and custom generally is that along with other properties the office also is divided in the sense that the office is agreed to be held and the duties thereof discharged in rotation by each member or branch of the family the duration of their turns being in proportion to their shares in the family property.

Such a scheme of management may proceed either on the footing that the co-trustees are to continue as undivided members quoad the trust property or on the footing of being divided members, as in the case of the rest of the family property. In either case as between themselves their position will be that of co-trustees though on the death of any of them the devolution of his interest in the office will vary according as the scheme of management has been settled on the one footing or the other.

12. This view seems to be borne out both on principle and authority. In the case of religious offices with emoluments attached thereto, usage has always been to permit partition and heritability in the various branches, according to the laws of inheritance applicable to private property; but should such a principle also be extended to the case of a trusteeship where there are no emoluments attached thereto? In 4 CWN 329 (Privy Council) the Privy Council applied the Hindu law of inheritance to the trusteeship of a temple. Sir Richard Couch said:

In their Lordships' opinion the ruling in *Juttindramohan Tagore v. Ganendromohun Tagore* (1872) L.R.IndAp Supp. Vol. P. 47 is applicable to an hereditary office and endowment as well as to other Immovable property.

13. (treating the office as Immovable property.) It may be noticed Sir Richard Couch was a party to the decision in *Mitta Kunth v. Neeranjana* (1874) 14 B.L.R. 166 which recognised partition of an office. Lord Macnaughten assumes that the office of a temple descends according to the ordinary law of inheritance applicable. He says in 10 CWN 825 (Privy Council) :

On Mayandi's death, the office devolved by inheritance on male descendants of his two wives.

14. Later on he says:

The office may become vested by descent in more than one person.

15. In *Meenakshi Achi and Another Vs. Somasundaram Pillai*, where a widow of a divided member of a family was allowed to succeed to the management of a charity, in that Kattalai in a temple, His Lordship Chief Justice Wallis made the following observation:

It was next argued by Mr. Ramachandra Aiyar that as the plaintiff is now the only male member in the junior branch, he is entitled to the right to the exclusion of the females. He relied upon *Purappavmtalingam Chetti v. Nullasivan Chetti* (1863) 1 M.H.C.R. 415 and on *Chenna Kesavaraya v. Vaidelinga* ILR (1877) 1 Mad. 343 for the position that the office of a trustee in a public institution is indivisible and that succession to it must be regulated as in the case of impartible estates. However much one may wish that such a rule of law should obtain in regard to the management of trusts, we are of opinion that the course of decisions in this Presidency, which has the sanction of the Judicial Committee, is opposed to this principle. In *Ramanathan Chetty v. Murugappa Chetty* I.L.R. (1923) 27 Mad. 192 : 13 M.L.J. 341 Sir V. Bhashyam Ayyangar, J., pointed out

that the right of trusteeship in a public institution possessed by the members of a family, when it is hereditary, descends in the same manner as the right to the enjoyment of ordinary family property.

16. In *Annaya Tantri Vs. Ammakka Hengsu and Others*, it was held that a Hindu female was entitled to succeed to the office of archaka in a temple. Where succession according to the ordinary Hindu law is permitted in the case of a religious office there does not seem to be any objection to permit such a course of a descent in the case of a secular office like a bare trusteeship. In *Tiruvengadam v. Butchayya* I.L.R.(1927) 52 Mad. 373 : 55 M.L.J. 757 *Srinivasa Ayyangar, J.*, after referring to *Kunjamani Dasi v. Nikunja Behari* (1915) 22 C.L.J. 404 observes:

When the office is held by a number of persons jointly, the right to the office on the death of any of the joint holders passes to his personal heirs, that is, to those who would be his heirs in respect of his separate property.

17. In *Boidyo Gauranga Sahu Vs. Sudevi Mata*, *Srinivasa Ayyangar, J.*, in dealing with the doctrine of reverter of an office of a trustee to the natural heirs of a founder observes that where a founder of a charity:

does not appoint another person to manage the properties so given, or settle a scheme for such management, as he is entitled to do at the time of the endowment and as a part of the same transaction, the natural presumption or the legal inference is that he intends to manage the property himself on behalf of the charity or reserves the management to himself. Such management may pass to his heirs by inheritance, just as a legal estate of inheritance may pass in England.

and he points out, citing the Privy Council decision in 17 CWN 741 (Privy Council) that:

the vesting of the management in accordance with rules of inheritance applicable to private property must from the very nature of the right, be subject to the condition that the devolution in the ordinary line of descent is not inconsistent with or opposed to the purpose the founder had in view in establishing the worship.

18. Once it is recognised that the office of trustee is property to which the rules of inheritance governing ordinary property are applicable, and it has been applied where the office has vested in a single person, on principle the same rule must govern the devolution of the turn of office which has become vested on division between the various members of the family.

19. Mr. Rajah Iyer relied on a number of decisions in support of his contention that this principle should not apply to the case of a bare trusteeship. The decision which he strongly relied on is that of the Judicial Committee in (1917) L.R. 45 I.A. 1 (Privy Council) where their Lordships make the observation that *Ramanathan Chetti Vs. Murugappa Chetti*, and 10 CWN 825 (Privy Council) dealt

with a case of private trust. As has been pointed out by Wallis C.J., in *Meenakshi Achi and Another Vs. Somasundaram Pillai*, the observations of the Privy Council in that case which were purely obiter appear to have proceeded on some misconception as to the facts of that case and he pointed out that the decision of the Judicial Committee in 10 CWN 825 (Privy Council) proceeded on the view that the trust they were dealing with was a public trust.

20. No doubt the approval of the decisions in *Jaafar v. Aji* (1864) 2 M.H.C.R. 19 and *Trimbak v. Lakshman* I.L.R.(1895) 20 Bom. 495 would seem to suggest that their Lordships would favour the rule of impartibility, but as pointed out by Wallis C.J., the course of decisions has been opposed to this rule. Further their Lordships did not decide the question and the actual decision was rested on the facts peculiar to the foundation in question. Sir Walter Phillimore observed:

It is unnecessary however to decide whether there is a general rule for the devolution of the management of charities of this class, because in their Lordships' view, there is sufficient indication in the documents and surrounding circumstances of this case that a devolution of the management to the heirs of the original donee is inconsistent with the purposes of the founder when he created the endowments.

21. *Alagappa Mudaliar v. Sivaramasundara Mudaliar* I.L.R.(1894) 19 Mad. 211 was another case relied on. But that case itself explains the principle upon which a partition will be permissible. The decision while it lays down that a renunciation or a waiver of a trust should not be permitted, enunciates the following principle:

If it was a mere arrangement for the more convenient management of the choultry, reserving to the plaintiff's brothers their right of control, and, if necessary of resumption of actual management, then it might be said that there would be no interference with the supposed will of the founder and that the arrangement would be lawful. To that extent it seems clear that any co-parcener jointly entitled to management may waive his rights.

22. In every case of partition where several branches enjoy the office by turns there is no surrender or renunciation. It is always subject to the implied condition that the resumption of actual management can be availed of either by consent of parties or through Court and there is no question of divesting themselves of all control over the offices. As has been pointed out by their Lordships of the Privy Council in 10 CWN 825 (Privy Council) If he (a member) has any ground for attacking the management of the temple or the administration of the property attached to it, the Courts are open.

23. The case in *Ry.V. Ayiswaryanandaji Saheb (died) and Others Vs. Ry. Sivaji Raja Saheb and Others*, is distinguishable because it was found therein that impartibility and management by a single individual who was the eldest member of the family had been the rule from the foundation.

24. The decision in 10 CWN 825 (Privy Council) is itself an authority for the

proposition that a family arrangement or a partition entered into by the several branches of the family must be given effect to so long as the interests of the trust are not imperilled. In this case the members of the family have acted upon the arrangement for nearly half a century and there is no reason why the arrangement should not be held binding on the representatives of the various branches. In a recent case *Varadachariar and Stodart JJ., in Nilamani v. Appanna Poricha* (1935) 70 M.L.J. 262, following *Ramanathan Chetty v. Murugappa Chetty* I.L.R.(1903) 27 Mad. 192 : 3M.L.J. 341 and 10 CWN 825 (Privy Council) observed that:

the arrangement will be binding upon the parties thereto and their representatives till modified either by common consent or in some manner known to law.

25. In this case the plaintiffs themselves were parties to Ex. V and it was not open to disturb an arrangement which they affirmed and which they acted on.

26. The first defendant is therefore entitled to enjoy the turn of office of Dharmakartha as also the various religious offices which fell to the share of Thirumalai Bhattar in preference to the Plaintiffs. In the result the second appeal fails and should be dismissed with costs.

27. Leave refused.