

(1924) 02 MAD CK 0037
In the Madras High Court

Venkatramana Pai

APPELLANT

Vs

Sampa alias Santappa Mallayya and Others

RESPONDENT

Date of Decision : 26-02-1924

Acts Referred:

Citation : 95 Ind. Cas. 845 : (1924) 47 MLJ 256

Hon'ble Judges : Victor Murray Coutts Trotter, C.J.; Ramesam, J

Bench : Full Bench

Judgement

Victor Murray Coutts Trotter, C.J.—I desire to say not one word more than is necessary for the decision of this case, because I am free to

admit that I do not understand what the judgment of their Lordships of the Privy Council in *Vidya Varuthi Thirtha v. Baluswami Iyer* ILR (1921) M

831 : 41 MLJ 346 enjoins upon us; but it appears to me that this much is clear that the real line of cleavage in this case is Are we to treat this

instrument as being absolutely clear and, therefore fettering us in its construction, or as something capable of passing a qualified estate in the

property to the tenant ? It is quite common for persons in the position of trustees of religious and charitable endowments to make lease of such

property, and the common current of decisions in this presidency has always been to recognise those as being valid for the life of the lessor or the

trustee, or, what is equivalent to his life, his continuance in the trust and to construe words apparently wider in import as limited to the lifetime of the

lessor qua trustee. That is what we propose to do here. There are no extravagant words in this instrument indicating a permanent lease such as

mulgeni, etc., or other technical phrases of that import, and we think that the Courts should strive, where they can, to put a liberal construction

upon the instrument *ut res magis valeat quam pereat* so as to uphold it and carry into effect the intention of the parties. That being so, no question of limitation arises, and we must reverse the decision of the Court below and give a decree to the plaintiff for possession of the suit land with mesne profits from the date of the District Munsif's decree at the rate awarded by him until possession is given. The Appeal is allowed with costs throughout.

2. There will be a similar decree in Second Appeal No. 411 of 1921.

Ramesam, J.

3. I agree.