

(1947) 12 MAD CK 0032
In the Madras High Court

Yangalasetti Thirupathaiah

APPELLANT

Vs

Kopalle Mangapathi Rao and Others

RESPONDENT

Date of Decision : 05-12-1947

Acts Referred:

Citation : (1948) 61 LW 280 : (1948) 1 MLJ 269

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The petitioner was the first defendant in O.S. No. 571 of 1944, on the file of the District Munsiff's Court, Guntur, the suit being one for a declaration that the suit plot of land was trust property, that its alienation by the second defendant in favour of the first defendant was void and for a consequent injunction restraining the defendants from interfering with the rightful possession of the plaintiff. The suit was decreed. In appeal by the petitioner (the first defendant), the learned District Judge found that the proper Court-fee to be paid would be for two separate declarations with one consequential relief by way of injunction. He was also dissatisfied with the value placed upon the site and directed the appointment of a commissioner at the petitioner's expense to ascertain the value.

2. I have no doubt that the learned District Judge was right in holding that two independent declarations were asked for and that separate fees will have to be paid; for it would not directly follow that because the property was trust property, it could not be alienated. Trust properties are sometimes lawfully alienated.

3. It is argued that the suit property has no market value. For this contention, support is sought in Rajagopala Naidu Vs. Ramasubramania Aiyar and Another, in which a Full Bench of this Court held that a temple had no market value. It was contended that it had some value based on its materials; but the learned Judges held that there could be no market for a temple as such and that therefore it had no market value. That argument would not however apply to the suit site, which

certainly Has a market value. As the learned Government Pleader pointed out, agriculturall and belonging to a temple may be trust property and ordinarily inalienable, and yet may have great market value.

4. The learned District Judge has certainly power u/s 9 of the Court-Fees Act to appoint a commissioner; but a difficulty arises, because the commissioner was not appointed at the instance of any party, and so it is rather difficult to know who in equity would have to pay the costs of the commissioner, at any rate in the event of its being found that the market value is as stated by the plaintiff. If, however, the appointment of a commissioner is warranted u/s 9, he must be paid, and the only person who can pay him is the plaintiff himself. The learned District Judge should, of course, have regard to the limited value of the property. In appointing a commissioner, he will doubtless see that unnecessary expense is not incurred; e.g., an amin or some person who is not likely to demand a high fee may be appointed as commissioner.

5. The petition is dismissed with costs.