

(1947) 01 MAD CK 0015
In the Madras High Court

Yelamanchili Venkatadri and Another	APPELLANT
Vs	
Vedantam Seshacharyulu and Others	RESPONDENT

Date of Decision : 24-01-1947

Acts Referred:

Citation : AIR 1948 Mad 72 : (1948) ILR (Mad) 46 : (1947) 60 LW 264 : (1947) 1 MLJ 287

Hon'ble Judges : Happell, J

Bench : Division Bench

Judgement

Happell, J.—This is an appeal from the judgment of the Subordinate Judge of Masulipatam, dated 31st January, 1945, by which he dismissed O.S. No. 65 of 1942 on the file of his Court. The appellants were the plaintiffs in the suit and are the trustees of the temple of Sri Vuddandaraya Venugopalaswami Varu of Pedda Maddali. They were appointed trustees on 29th March, 1940, in pursuance of a scheme framed by the Hindu Religious Endowments Board in 1939 for the management of the temple, and they brought the suit to eject defendants 1, 2 and 4 from certain properties and for a declaration that these properties belonged to the temple. The first and second defendants are the archakas of the temple, the third defendant is the hereditary trustee and the fourth defendant was impleaded as a lessee under defendants 1 and 2.

2. A number of issues were framed in the suit based on the contentions of the parties. Arguments in appeal, however, have been confined to the questions whether the grant of the properties in suit was to the temple and whether, if so, the defendants could be entitled, for any reason, to remain in possession. On those questions the plaintiff averments are that the properties belonged to the temple, and that defendants 1 and 2 had only been allowed to be in possession at the will of the plaintiffs and their predecessors as remuneration for their services. Defendants 1 and 2, on the other hand, maintained that the lands are archaka service inams or that, in any case, by usage and custom, they had acquired a right to enjoy the property so long as they were willing to perform the

services to the temple required from archakas. The third defendant supported the case of defendants 1 and 2. The fourth defendant stated that he had handed over possession to the plaintiffs and was not a necessary party to the suit.

3. The properties in question in this appeal consist of the properties shown in the A and A-1 and B schedules attached to the plaint. Different considerations arise with regard to the B schedule properties and they will be dealt with separately. The A and A-1 schedule properties now consist of about 16 acres of wet lands, but the conversion of the lands from dry to wet appears to have been comparatively recent. The temple owns a further 26 acres of land in another village, but it is not disputed that these lands belong to the temple and that the income from them is devoted to temple purposes. It is clear from the Inam Statement (Ex. P-5) and the Inam Register (Ex. P-1) that the grant of the A and A-1 schedule properties was to the temple. The learned District Judge admitted this but for reasons, which will be examined in due course, he was of opinion that the grant was of the melwaram interest only. This opinion, however, made no difference to the reasoning on which his final conclusion was based as he was also of opinion that, although the initial grant had been of the melwaram interest only, the kudiwaramdar--one Tadanki Baskarayya Garu--had later made a gift to the temple of the kudiwaram rights. As regards the question of possession he did not believe the evidence for the plaintiffs that the trustees had ever been in possession of the lands, and he accepted the evidence for the defendants that the archakas had been in possession and enjoyment of the lands at least since the year 1905. He also seems to have been of opinion, although the judgment is not altogether clear on this point, that the archakas should be deemed to have been in possession from time immemorial for the reason that such evidence as there was showed that they had been in possession for any period to which the evidence related. He did not accept the contention that a case of lost grant should be presumed from the long possession of the archakas because, in his view, the grant of both warams had in fact been to the temple and not to the archakas ; but, nonetheless, after the citation of a number of authorities, he finally concluded that when it is established, as in the present case, that the archakas have been in very long possession of the property it must be presumed that they have been in possession legally and that they cannot be dispossessed as long as they carry out, the purposes for which they were put in possession of the property. Earlier in his judgment at the end of paragraph 24 he had held that as the archakas were in possession of the suit properties and were doing the service of nitya nivedya deeparadhana, to that extent they must be deemed to be the trustees and the plaintiffs cannot dispossess them.

4. It has been conceded before us that the document Ex. P-7 on which the learned Subordinate Judge based his finding that there had been a grant to the temple of the kudiwaram rights in the property was not admissible in evidence, and it is not suggested that there is any other evidence of a separate grant of the kudiwaram rights. The conclusion that the initial grant to the temple was of the melwaram rights only is based on the fact that the assessment of the property as

shown in column 7 of the Inam Register is the same as the income derived by the Inamdars from the property as shown in the Inam statement taken with an unreported decision of a Bench of this Court in Appeal No. 213 of 1942, decided by Wadsworth and Patanjali Sastri, JJ. It is argued for the defendants that if the grant to the temple was of the melwaram interest only it should be presumed, in the absence of evidence to the contrary, that the grant of the kudivaram interest was to the archakas who have all along been in possession. In our opinion, the view that the melwaram rights only were granted to the temple cannot be sustained. The facts of the case to which the decision in Appeal No. 213 of 1942 relates relied on by the Subordinate Judge differ in important respects from the facts in the present case. In the case decided by Wadsworth and Patanjali Sastri, JJ., the entry under the heads " particulars of the present family " and " particulars of the present enjoyment " are " P. Vallabhacharyulu the archakas and paracharakas " and " Sri Gopalaswami Varu, Archaka P. Vallabhacharyulu ", respectively, and the fact that the revenue and assessment were the same was only one of the factors in the conclusion that the grant was to the archakas. In the present case there is no mention of the archakas in the Inam Statement or the Inam Register, and the grant is clearly shown as being to the temple alone. Moreover, the following note was appended by the Inam Commissioner to the Register of Inams (Ex. P-1) :

In these two cases the present zamindar remitted the kattubadi on the Inams in fasli 1252, all the registers and accounts show the Inams to have been from the beginning kattubadi. But in the karnam's daul of fasli 1212 (the date of the permanent settlement) which is a genuine account these Inams are among free Inams and must be considered as having been deducted in the assets of that settlement. I, therefore, propose treating them as free;

and the order under column 23 is

As they were free at the permanent settlement and the subsequently imposed jodi has since been remitted by the zamindar they can be treated as free.

It is clear that the Inam could not from the beginning have been a kattubadi Inam if the grant was of the melwaram only, and the mere fact that the income from the property and the assessment on it are shown as the same is not sufficient to displace the inference that the grant to the temple was of both warams. The income derived from 16 acres of dry land may not have been considerable in 1860, and as the Inam was to be treated as free a precise calculation of the appropriate assessment may not have been regarded as important. In our opinion, therefore, the grant to the temple was of both warams ; and the question is, as the Subordinate Judge puts it at the end of paragraph 23 of his judgment " What are the legal implications of the long possession of the archakas? "in face of the fact that the property belongs to the temple.

5. After stating the question for determination the learned Subordinate Judge

examines a number of decisions and then at the end of paragraph 25 of his judgment states his conclusion which is that

From all the decisions above referred to, the only conclusion I am able to come to is that when it is established that the archakas have been in very long possession of the property, it must be presumed that they have been in possession legally and that as long as they carry out the purposes for which they were put in possession of the property they cannot be dispossessed.

Earlier, at the end of paragraph 24 he had said :

Here, the archakas, as I said above, are in possession of the suit properties and are doing service of nitya nivedya deeparadhana ; and to that extent, they must be deemed to be the trustees and the plaintiffs cannot dispossess them.

In our opinion, the authorities cited by the learned Subordinate Judge are distinguishable and do not support his conclusion. In *Kumaraswami Asari v. Lakshmana Goundan* (1929) 59 M.L.J. 974 : ILR Mad. 608 a pujari who founded a public temple had bought a few lands in the name of the temple and the rest in his own name. He had used part of the income for the purposes of the temple and the rest for his own benefit, and this mode of expenditure was continued during the lifetime of his son and grandson. In these circumstances it was held that usage was relevant to determine whether the lands and the offerings were after their acquisition endowed entirely for the temple or were only endowed with the actual expenses thereof. In *(Kommineddi) Kotayya and Another Vs. (Manuri) Venkata Gopala Rao Pantulu Garu and Others*, it was found that there had been a grant of an inam to the archakas and the question was with regard to the construction of the grant. Neither of these decisions has any application to a case like the present where the archakas are found to be in possession and claim to be entitled to remain in possession of the whole of the property which was the subject of a grant to the temple. *Magniram Sitaram Kasturbai v. Manibhai* (1921) 42 M.L.J. 501 : 1921 L.R. 49 IndAp 54 : ILR 46 Bom. 481 (P.C.) and *Mahammad Mosaffar Musavi v. Jabeda Khatum* (1929) 58 M.L.J. 641 : 1929 L.R. 57 IndAp 125 : ILR 57 Cal. 1293 (P.C.) decided by the Privy Council are cases in which a lawful origin of permanent leases granted by religious institutions was presumed. The Subordinate Judge thought that on the analogy of these cases it could safely be presumed that the archakas in the present case had been in possession and enjoyment legally. In our judgment these cases also do not apply. The presumption made in them is of a lawful origin or proprietary rights long and quietly enjoyed. In the present case once it has been held that the grant was to the temple there can be no question of the archakas having acquired any proprietary rights in the lands as against the temple. Whatever the origin of their possession may have been, they must be held to have been in possession in a fiduciary capacity. On the other hand it is argued for the appellants that whenever the question has directly arisen of the claims of archakas in possession as against an institution to whom the grant of the property was made, the claims of the archakas have been disallowed. This submission seems to us to be correct.

The cases relied on for the appellants are Srinivasacharyulu v. Pratyanga Rao AIR 1921 Mad. 467. (Kosuri) Gopalacharyulu and Another Vs. Gadde Lakshminarayana and Others, . The Board of Commissioners for the Hindu Religious Endowments Vs. Parasaram Veeraghavacharlu and Others, and Deeri Narasimhacharyulu and Others Vs. Chalasani Subbayya (died) and Others and Tummulapalli Gopalakrishnamurthi, . In Srinivasacharyulu v. Pratyanga Rao AIR 1921 Mad. 467 it was stated that :

it would be a dangerous proposition to lay down that, if the trustees of religious trusts have, for many years, been applying the income to their own personal use the trust deed must be construed in the light of such conduct.

In Gopalacharyulu v. Lakshminarayana AIR 1929 Mad. 87 the Inam Register showed that the properties which were in possession of the archakas belonged to the temple. It was argued that the archakas must be deemed to have a right in the property according to the custom. The learned Judges who decided the case--Phillips and Odgers, JJ.--did not accept this contention. The facts in the case were very similar to those in the present case. At the time of the Inam settlement the archakas were not shown to have any rights in the property, and there had been no surplus until the lands were converted from the dry to wet. Phillips, J., in his judgment pointed out that, in these circumstances, the Archakas could not have acquired any right by custom either in the land or as regards the utilisation of the surplus receipts. In The Board of Commissioners for the Hindu Religious Endowments Vs. Parasaram Veeraghavacharlu and Others, where the plaintiffs, who were the archakas, claimed a prescriptive title in the properties, Varadachariar, J., observed that :

The plaintiff's claim of prescriptive title is equally untenable. They and their predecessors in title have been all along archakas in charge of the existing temple and there have been no other trustees ; the result is that if the Inams could otherwise be regarded as belonging to this temple, it is not open to them to plead that their possession was adverse to the temple.

Deeri Narasimhacharyulu and Others Vs. Chalasani Subbayya (died) and Others and Tummulapalli Gopalakrishnamurthi, was a case in which the grant was to the temple but the archakas maintained that the income from the lands of which they were in possession should be applied only to the limited purpose of the performance of the archaka's duties. The view taken by the Subordinate Judge that:

there is no usage proved or recognisable in law as regards the application of the income to this limited purpose only.

was approved by Coutts Trotter and Srinivasa Ayyangar, JJ.

6. It is argued by learned Counsel for the defendants that the question is not so much whether the archakas can obtain title by adverse possession as against the temple, as whether they have obtained a right to be remunerated in a certain

way from the endowments of the temple ; and in support of the proposition that archakas can obtain such a right which Courts will not be justified in setting aside he has referred us to the case of *Sri Mahant v. Govindacharyulu* (1934) 68 M.L.J. 295 decided by Varadachariar and Burn, JJ. In that case, although the offerings and collections were dedicated to the temple, it was held that an arrangement by which archakas are remunerated by a share in the offerings and collections cannot be regarded as being an alienation of trust property and that when such an arrangement has been in vogue for a long time and sanctioned by usage, Courts will not be justified in setting it aside. In our opinion this decision applies to the particular facts of the case and cannot be extended to cases where the archakas claim a right to remain in possession of properties in respect of which the grant was to the temple. Moreover in *Sri Mahant v. Govindacharlu* (1934) 68 M.L.J. 295 the decision was based on the fact that the arrangement had been in vogue for more than one hundred years and that it was an arrangement of a kind well known in this country. In the present case the archakas do not seem to have put forward any claim to the properties in 1860. The archakas are no doubt entitled to remuneration, for their services but as the properties belong to the temple, they are not entitled to appropriate for themselves any surplus there may be after the expenses of the particular services which they render have been met. In short, as they have no title to the land or to the surplus income the question whether they should in fact be left in possession of the properties is an administrative matter, mainly dependent no doubt on the extent of the income derived from the land, and is not a question for judicial decision.

7. It is also argued that the present case is distinguishable from the cases cited because in the present case there was a trustee of the temple even at the time of the Inam settlement and because the archakas are not in possession of the whole but only of part of the properties dedicated to the temple. We do not think that either of the distinctions sought to be drawn affects the application of the authorities to this case. There is no evidence as to how the archakas came into possession of the properties or why they were in possession. But if the trustee allowed the archakas to renumerate themselves from the surplus income of the lands when their value was small and considered that they should be remunerated in some other way when the value increased by reason of their conversion from dry to wet, he would have been acting reasonably and within his rights. If, on the other hand, the archakas were in possession merely owing to his negligence, his negligence cannot affect the rights of the institution. It is true that the temple does own other properties, but there was a separate grant of the properties now in question and the archakas are in possession of the whole of them. We do not think that any inference can be drawn of a usage which should be recognised that the archakas are entitled to be remunerated from the whole of the surplus income of these lands merely because the temple owns other lands.

8. An issue was framed, the 10th, as to whether the suit was barred by limitation ; and the learned Subordinate Judge somewhat surprisingly, has found

the issue in the affirmative. The ground on which the finding is based is that the plaintiffs had not shown that the temple was ever in possession of the property within twelve years before suit. If the case was between the temple and a third party it might be that the plaintiffs would have to show that the temple had been in possession within twelve years of the suit. Once, however, it is held that the property belonged to the temple there can be no question of adverse possession as between the temple and the archakas. The archakas were in possession of the property in a fiduciary capacity and cannot have prescribed for it. There was, therefore, no bar of limitation.

9. As regards the B schedule properties, which consist of buildings admittedly within the temple compound, the learned Subordinate Judge found that the archakas were not entitled to the properties, except a right of residence in plot X so long as they do service. Against this finding, defendants 1 and 2 have filed a memorandum of cross-objections. It is not seriously disputed that the buildings and sites belong to the temple; and, that being so, the trustees are entitled to eject them from plots Y and Z. Whether the archakas should be given any other place in which to live than plot X is a domestic matter between them and the trustee.

10. For the reasons given, therefore, the appeal is allowed with costs throughout. In the circumstances of the case, the costs will be recovered from the properties belonging to the temple. The memorandum of cross-objections filed by defendants 1 and 2 is dismissed with costs. The unsuccessful cross-appellants will pay these costs.