Nanduri Yogananda Lakshminarasimachari and Ors

Vs

Sri Agastheswaraswami Varu of Kolakalur

Civil Appeal No. 147 of 1956

(P. B. Gajendragdkar, J. L. Kapur, K. C. Das Gupta JJ)

15.01.1960

JUDGMENT

KAPUR, J. -

This is an appeal against the judgment and decree of the High Court of Madras varying the decree of the trial court. The appellants were the defendants in the trial court and the respondent was the plaintiff who was represented by the sole trustee appointed by the Hindu Religious Endowment Board.

The suit was brought by the deity through the sole trustee for recovery of Rs. 3,480 towards the arrears of income of the property in trust for the years 1942-44 and for a direction for future payment at the rate of 160 bags of paddy per year or its equivalent i.e. Rs. 1,680. The plaintiff alleged that the property in dispute constituted a specific endowment for Kalyanotsavam of the deity and that the defendants who were trustees had committed default in carrying out the purpose of the trust. The prayer was for a decree for the recovery of expenses to Kalyanotsavam and of the feeding charges. The defence raised was that the inam was a personal grant for driving the car of the deity on the festival days and that it was not a specific trust or an endowment for the benefit of the idol. In other words it was a grant of the inam burdened with service to the god. There were other pleas raised in regard to jurisdiction, res judicata and adverse possession. The trial court held that the grant was a specific endowment for the Kalyanotsavam of the deity but the appellants were not bound to spend the whole income of the lands for the purpose. It decreed a sum of Rs. 200 per year as adequate provision for the performance of the service of Kalyanotsavam. The other pleas raised were decided against the appellants.

In the High Court the only point argued was regarding the nature of the grant and as in the opinion of that court a general trustee could not call upon a specific trustee to pay any money except on the ground of expending that amount and there was no proof of this expenditure the prayer as contained in the plaint was not granted and the High Court was also of the opinion that as all the facts had been pleaded and there were no new facts to be alleged and the parties were alive to the real nature of the dispute and had even the issues framed on that very question, it allowed the plaint to be amended by the addition of the prayer for a declaration that the properties in the schedule and the income thereof formed a specific endowment for the due performance of the services of Kalyanotsavam of the deity and feeding charges and other expenses incidental thereto and the appellants were therefore liable to pay the entire income. It was also of the opinion that all the available evidence had been adduced by both the parties and that the prayer for declaration was only

a formal relief which flowed from the allegations in the plaint. It neither involved a change of the cause of action nor did it require a fresh trail and therefore the petition for amendment was allowed by the addition of the prayer stated above.

In this appeal counsel for the appellant has raised three points : (1) that the suit was not maintainable (2) that the amendment should not have been allowed and (3) the grant was a personal grant to the appellants burdened with the provision for service and it was not a specific endowment. As far as the first question is concerned it has not been shown as to how the suit was not maintainable. The question of amendment, in our opinion, was rightly decided by the High Court. As held by that court all the necessary allegations had been made in the plaint and the requisite pleas had been raised by the appellants; an issue was framed on the question and the parties were fully cognizant of the points in controversy and the necessary evidence was led by the parties. In this view of the matter the High Court was right in allowing the amendment by the addition of a prayer in the prayer clause.

We then come to the question of the nature of grant which on a consideration of the documentary evidence and other evidence has been found by both the courts below to be a specific endowment for Kalyanotsavam. This finding was challenged by the appellant. For the purpose it is necessary to consider the inam papers which form the main and basic documentary evidence by the appellant. Inam registers have always been treated as evidence of the utmost importance. The first document to be considered is of the year 1859-60 which is a copy of the inam statement made by N. Buchayya, the ancestor of the present appellants. Column 1 of this document shows the names of the inamdars and the enjoyers to be "N. Buchayya the present enjoyment is towards the Kalyanotsavam" of the deity. Columns 4 & 5 give the residence and name of the original inamdars. In Column 5 are given the particulars of the family of the then enjoyers and the entry is for the deity's Kalyanotsavam. In Column 6 is given the name of the grantor who gave the land to the grantee and "with the income therefrom he has been performing Sri. Swami Varu's Kalyanotsavam from that time". Columns 7-9 give the extent of the land. In Column 11 particulars relating to the present enjoyment are to be given and the entry was Sri Swami Varu's Kalyanotsavam. In Column 12 it was shown that the grant was revenue-free and the land was under the cultivation of Buchayya the income of which was Rs. 11 per annum. The entries show that the inam was granted as a specific endowment for the Kalyanotsavam of the deity and the amount was spent in the services of the deity.

The next document to be considered is a copy of the inam-fair register of May 16, 1860. The High Court finding that some of the entries in that document were not clear sent for the original register from the Collector's office and it was found that some of the entries were not in the original at all. In Column 8 the words 'driving the car' were not to be found and the remarks in Column 12 to the effect that 'the purpose for which the inam was granted is not stated' were not in the original register. In Column 2 of this document the general class to which the inam belonged is shown as religious endowment. Column 8 relates to the description of the inam and the entry is 'For service in the pagoda ..... The service is performed'. Columns 9-11 relate to tenure. Column 12 has already been discussed. In Column 9 it is shown as free of tax. In Column 13 the name of the original grantee is shown to be the ancestor of the appellants. In Column 15 the entry is : 'In fasli 1223 Viresalingam 0-8-8 - In fasli 1236 Nanduri Vissanna Buchayya for service during the festival of the pagoda 0-8-0'. In Column 21 the entry contains the following : 'To be confirmed and continued so long as the service is performed. In fasli 1216 the inamdar is entered as village servant but it is ascertained and is entered in fasli 1256 (?), that service is performed from a long time in the pagoda'. In Column 22 it is stated 'confirmed' and below that is given the number of the title deed to be T.D. 243. From these documents and from the fact that neither the sanad nor the inam title deed was produced and

taking into consideration some admissions of the predecessors of the appellants where it was admitted that they were dharmakartas of the Kalyanotsavam and had been performing that service the High Court came to the conclusion that the inam lands in dispute were endowed for Kalyanotsavam and other purposes incidental thereto and constituted a specific trust and the appellants were trustees thereof.

It was urged by counsel for that appellants that the words in the inam register that the grant was to continue as long as the service is performed were indicative of the fact that the grant was not to the deity but to them individually with the added obligation of spending from out of the income on the particular service to the deity. A combined reading of the two documents i.e. statement of the ancestor of the appellants and the inam register shows that the grant was a specific endowment and that the lands were endowed for the purpose of Kalyanotsavam and for other purposes incidental thereto and constituted a specific trust. The courts below have found this to be the nature of the trust and even if two inferences were possible from the reading of these two documents there is no reason why the view taken by the courts below should be interfered with particularly when there are admissions by the predecessors of the appellants which support the view of the courts below. Besides those words do not necessarily mean that the grant was to the individual with the added obligation to spend on the performance of service. In the present case it is not stated in the inam fair register that the grant was to be confirmed in favour of Buchayya and continue so long as the service was performed. This kind of language used in inam registers has been discussed in some decided cases in the Madras High Court e.g. Hindu Religious Endowments, Madras v. Thadikonda Koteswara Rao (A.I.R. 1937 Mad. 852) where this distinction was prominently brought out between the words "to be confirmed so long as the service is performed" and "to be confirmed to the party so long as he continues the performance of the services". The latter was held to be a personal grant and the former was not so held. We are therefore of the opinion that the finding of the High Court that the grant was a specific endowment for Kalyanotsavam of the deity and therefore a specific trust and not a grant to the appellant with the added obligation of spending on the service must be accepted to be correct.

The next question for decision is as to what portion of the income of the inam lands is to be expended on the service to the deity. The courts below are not in accord on this point. The trial court held that Rs. 200 out of the income should be adequate for the purpose and the High Court applied Cy-pres doctrine and held the whole income to be for the deity even though it exceeded the expenditure for the particular service. One of the facts which emerges from the inam register is that when the grant was made the specific charitable payments exhausted the income of the property and it is a fair inference to draw therefrom that the intention was to devote the whole income to charity and any subsequent increase in the value of the property accrues to the charity; Hindu Religious Endowments v. Thadikonda Koteswararao (A.I.R. 1937 Mad. 852); Tudor on Charities (5 Ed.) p. 164; Laws of England Vol. 4, para. 624, p. 303. The High Court was therefore justified in holding that the whole of the income was to go to deity, thus varying the judgment of the trial court that only a portion of it was to be so employed. The High Court applied Cy-pres doctrine relying on N. Sankaranarayana Pillayan & Ors. v. The Board of Commissioners for Hindu Religious Endowments, Madras ((1947) L.R. 74 I.A. 230). It was there held that where the grant is to the deity and the income is ear-marked for the services for which the specific endowment is created, if there is a surplus which cannot be spent on these services, it would be a case for the application of the Cy-pres doctrine. Taking into consideration that originally the inam income was only Rs. 11 the whole of which was to be and was expended on the service of deity i.e. Kalyanotsavam and considering the nature of the grant the High Court has rightly applied Cy-pres doctrine.

We are therefore of the opinion that the judgment of the High Court was right and we dismiss this appeal with costs.

Appeal dismissed.

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