

Jammi Raja Rao

Vs

Sri Anjaneyaswami Temple Valu

Civil Appeals Nos.301-302 of 1976

(Ms. M. Fathima Beevi, S. C. Agrawal JJ)

06.03.1992

JUDGEMENT

S. C. AGRAWAL, J.:-

1. These appeals by special leave directed against the judgment dated April 25, 1975 of the Andhra Pradesh High Court in Appeals Nos. 87 and 362 of 1972, involve the question whether the Temple of Sri Anjaneya Swami (hereinafter referred to as 'the suit temple') situate at Valuthimmapuram in Peddapuram Taluk, East Godavari District, of the State of Andhra Pradesh is a private temple and not a public temple and the appellant as the hereditary trustee of the suit temple is entitled to the possession of the temple and the properties attached to it.

2. After the enactment of the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927), hereinafter referred to as 'the 1927 Act', Turanga Rao, father of the appellant, submitted an application (O.A. No. 117 of 1934) under Sections 18 and 84 of the said Act wherein it was claimed that the suit temple is a private temple and the applicant was the hereditary trustee of the same. One M. Satyanarayana Murthy of Peddapuram also filed a petition before the Board alleging that the suit temple is a public temple and that he may be appointed as the trustee. The said application of Turanga Rao was dismissed by the Board of Commissioners constituted under the 1927 Act by order dated March 30, 1935, and it was held that the suit temple is a public temple in terms of Section 9 (12) of the said Act and that the Act was applicable to it and to its endowments. Turanga Rao filed a petition (O.P. No. 15 of 1936) in the Court of District Judge of East Godavari for setting aside the order of the Board dated March 30, 1935 and to declare him as the hereditary trustee of the suit temple. In the said proceedings, Turanga Rao filed a petition (Exhibit A-7) dated April 2, 1936 seeking to withdraw O.P. No. 15 of 1936 on the ground that the post of trustee for the suit temple was now vacant and the Board was proposing to appoint him as the trustee. In view of the said application of Turanga Rao, the District Judge passed an order (ex. A-8) dated April 2, 1936 whereby O.P. No. 15 of 1936 was dismissed. It appears that there-after, in 1936, Turanga Rao was appointed as a trustee of the temple for a period of five years. The said appointment of Turanga Rao as a trustee was not renewed on the expiry of the period of five years but he continued to be in possession of the suit temple and the properties attached to it till his death in 1946. After the death of Turanga Rao, the appellant came in possession of the same. Madras Act 11 of 1927 was replaced by Madras Religious and Charitable Endowments Act of 1951 (Madras Act 19 of 1951). On the creation of the State of Andhra Pradesh the said Act in its application to the State of Andhra Pradesh, was styled as Andhra Pradesh (Andhra Area) Hindu Religious and Endowments Act, 1951, hereinafter referred to as 'the 1951 Act'. The said Act was replaced by the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Andhra Pradesh Act 17 of 1966), hereinafter referred to as 'the 1966 Act', which came into force on January 26, 1967.

3. The appellant moved an application (O.A. No. 19 of 1967) under Section 57 of the 1951 Act, corresponding to Section 77 of the 1966 Act, whereby he pleaded that the nature and character of the suit temple be determined as a private temple and the appellant be declared as its hereditary trustee, Managercum-Archaka. The said application of the appellant was dismissed by the Deputy Commissioner, Endowments Department, Kakinada by order (Ex. A-10) dated August 30, 1969 where by it was held that the appellant had not been able to establish his exclusive right over the suit temple nor had he been able to extract proof that the temple is a private one and that there was no evidence that the trusteeship of the temple is hereditary one. Thereupon, the appellant filed a suit (O. S. No. 21 of 1970) in the Court of District Judge, East Godavari District, to declare the suit temple as a private temple and its trusteeship, Managership-cum-Archakaship is hereditary after setting aside the order dated August 30, 1969 passed by the Deputy Commissioner, Endowments Department, Kakinada. Another suit, which was originally numbered as O. S. No. 41 of 1968, was filed by the Executive Officer of the suit temple for recovery of possession of the scheduled lands and ejecting the appellant therefrom and for directing the appellant to render the true and proper account of the net proceeds realised by him from the suit lands during the period of six years prior to the suit and for recovery of the said proceeds. The said suit was originally filed in the Subordinate Court, Kakinada but it was withdrawn to the Court of District Judge, East Godavari District to be tried along with O. S. No. 21 of 1970 and on such withdrawal, it was tried as O.S. No. 108 of 1970 of the Court of District Judge, East Godavari District.

4. The case of the appellant in O.S.No.21 of 1970 filed by him was that the suit temple was founded and the idol was installed by the ancestors of the Jammi family for the exclusive worship of the Jammi family and there were no worshippers from the public and that certain lands mentioned in the annexed Schedule were also endowed by them for the upkeep of the temple and for performing, Nithya Naivedya Deepa Dhooparadhana' and that the trusteeship management and archakatvam vests solely in the Jammi family ever since the inception, devolving on the family members by the right of primogeniture and in the absence of descendants in any one .branch, by testamentary appointment by the last office-holder, and that no outsider had succeeded to the office even by appointment. It was claimed that Jammi Chikacharyulu held the office of the trustee, Manager-cumArchaka since installation till 1862 and thereafter Jammi Mukhya Pranacharyulu Garu held it from 1862-73, Jammi Pedda Hanumantha Rao Garu from 1873-1917, Shrimati Jammi Munemma, widow of Mukhyapranacharyulu, discharged the functions from 1917-1934, Jammi Turanga Rao, the appellant's father, from 1934-1946 and that from 1946 onwards the appellant is discharging those functions. It was claimed that the suit temple is purely a private temple and the public as such have no legal right to access to the suit temple. As regards the proceedings which took place in 1935-36, the case of the appellant was that Jammi Turanga Rao did not care to place all the material showing the nature and character of the temple and hence the Board, by its order dated March 30, 1935, held that the suit temple was a public temple and further that although Jammi Turanga Rao had questioned the correctness of the order passed by the Board by preferring O. P. No. 15. of 1936, he did not properly prosecute that matter and he jeopardised the interest of the suit temple as also of the hereditary trustees by bartering away all rights in a compromise whereunder he withdrew the said petition on condition of the Board appointing him as a trustee and that in doing so, Turanga Rao acted in gross dereliction of his duties as a hereditary trustee of a private temple since he had no authority to compromise and barter away valuable rights of the temple and the trust and that the said acts of Turanga Rao cannot in any manner bind his successor trustees and the trust and that the order passed by the District Judge dismissing O.P. No. 15 of 1936 is not valid. The said suit was contested by the defendant-respondents who denied the allegation that the suit temple was built and idol was installed by the Jammi family and the suit temple was constructed on the land of the appellant for

their exclusive worship and was claimed that the suit temple area founded by the public for the benefit of all Hindus. It was claimed that the suit temple is not a private temple but a public temple right from the inception and that the trusteeship, management-cum-archakavatam did not vests solely in the Jammi family and it did not devolve on the members of the Jammi family either by primogeniture or by testamentary appointment, in the absence of descendants in any one branch, on the members of the Jammi family. It was denied that the office of the trustee, Manager-cum-Archaka of the suit temple was held by persons mentioned in the plaint and it was claimed that during the periods mentioned in the plaint, several persons not belonging to Jammi family acted as trustees and further that even if some of the members of the Jammi family assumed management of the suit temple, it does not clothe the appellant with trusteeship much less hereditary trusteeship. It was also asserted that public have full access, right from its inception, to the suit temple and all the Hindu have been worshipping the deity in the suit temple. It was also stated that in spite of the efforts of the father of the appellant to secure an order in his favour by placing all the material, he could not succeed in showing that the suit temple is his family's private temple and that he was not guilty of negligence in prosecuting the proceedings before the Board as well as the Original Petition before the District Judge, but since the material was against his contention, the appellant's father had withdrawn the Original Petition in the Court of District Judge and that the decisions in the proceedings initiated by the appellant's father were binding on the appellant and the appellant was not entitled to lay claim once again for the relief asked for in the suit.

5. O.S. No. 108 of 1970 filed by the Executive Officer proceeded on the basis that the scheduled properties belonging to the suit temple have been endowed to the temple in ancient times and that the appellant is a Archaka in the temple and had been in the management of the suit lands and was unauthorisedly and unlawfully utilising the income of the scheduled lands for his own personal use and that the possession of the scheduled properties by the appellant is detrimental to the interest, of the suit temple and that he is not entitled to be in possession of the properties. The said suit was contested by the appellant on substantially the same grounds which he raised in O.S. No. 21 of 1970 filed by him.

6. By his common judgment dated January 10, 1972, the District Judge, East Godavari District, disposed of both the suits and O. S. No. 21 of 1970 filed by the appellant was dismissed while O.S. No. 108 of 1970 was decreed. It was held that the suit temple is a public temple and the appellant is not a hereditary trustee of the temple. The appellant was directed to render accounts of the net income realised for six years prior to the filing of O. S. No. 108 of 1970 and it was also held that the plaintiff in the said suit was entitled to future profits till delivery of possession. The appellant filed Appeals Nos. 87 and 362 of 1970 against the said judgment and decree of the District Judge, East Godavari district. The said appeals were dismissed by the High Court by judgment dated April 25, 1975.

7. Shri Sitaramiah learned counsel appearing for the appellant has urged that the High Court has erred in holding that the suit temple is a public temple and not the private temple of the family of the appellant, and that in arriving at the said finding, the High Court has not applied the correct tests and has not properly considered the material documents produced by the appellant. Shri Sitaramiah has taken us through the relevant record and the evidence adduced by the parties. Before we refer to the same, we may briefly set out the principles of law that are applicable for determining whether an endowment is public or private.

8. In *Deoki Nandan v. Murlidhar*, 1956 SCR 736: (AIR 1957 SC 133), this Court has indicated these principles. It has been observed:

"The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment."

(pp. 759-60) (of SCR) : (at p. 136 of AIR)

9. While dealing with the question, who are the beneficiaries when a temple is built, idol installed therein and properties endowed therefor, it has been stated :

"When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers". (pp. 762-763) (of SCR) : (at p. 137 of AIR).

10. In that case temple was held to be a public temple. One of the considerations which weighed with the Court in arriving at this conclusion was that the idol was installed not even in the precincts of the residential quarters but in a separate building constructed for that very purpose on a vacant site. It was observed that "it is a factor to be taken into account in deciding whether an endowment is private or public whether the place of worship is located inside a private house or a public building." (p. 770) (of 1956 SCR 756). (at p. 142 of AIR 1957 SC 133).

11. Relying on this decision, Shri Sitaramiah has submitted that in the instant case, the suit temple is situate in the private residential house of the appellant and this aspect has been omitted from consideration by the High Court. The said submission of Shri Sitaramiah is, however, not borne out by the evidence on record, which shows that the suit temple is located at Valuthimmapuram and the appellant's residential house is at Peddapuram and in Peddapuram there is another temple dedicated to Anjaneya Swamy in the residence of the appellant. In his deposition, as P.W. 1, the appellant has stated

"The suit temple is the last installation by him near a forest in Valu Thimmapuram."

"Along with the installation of the suit idol, Hanumatdeekshitulu Garu installed one idol in our house itself. Chikkaryulu, that is, the son of Hanumatdeekshitulu, constructed a temple for that idol also, and dedicated his self-acquired property to the deity."

"Within 2 miles from the suit temple, there is no village, but within half a mile from the suit temple, there is harijanawada.

12. During cross-examination, P.W. 1 has further clarified:

"Hanumat Deekshitulu, installed one temple at Kotipalli, another at Vjieswaram, one at Dowleswaram, one in our own house and the other is the suit temple."

"I and my ancestors belong to Paddapuram. Valuthimmapuram is 2 miles to Peddapuram."

13. It would thus be clear that the temple in the residential house of the appellant at Peddapuram is different from the suit temple situate at Valuthimmapuram and the suit temple is not situated in the residential house of the appellant.

14. We may now briefly refer to the documents on which strong reliance has been placed by Shri Sitaramiah, namely, Ex. A-4, Ex. A-6 and Ex. A-9, Ex. A-4 is a partition deed executed in 1867 by Jammi Mukhya Pranacharyulu and Jammi Bindu Madhava Rao sons of Jammi Hanumantha Charyulu, and the sons of their deceased brothers Chikka Charyulu, Venkata Charyulu and Vyasraya Charyulu wherein it is stated that Chikka Charyulu purchased some Inam Jyroythi lands in the names of Addanki Rammanna Pantulu and Venkata Krishna, the father of his son-in-law Yerraamilli Kameswara Rao and got the same dedicated by them to the suit temple at Valuthimmapuram and that Chikka Charyulu himself had been exercising Sarvadhikaratvam and Dharmakarthatvam and as he became old, he appointed, his brother, Bindu Madhava Rao to do service to Shri Anjaneya Swamy enshrined at Valuthimmapuram. It is further stated that Yerramilli Kameswara Rao had no male issue and his daughter Hunemma alias Ramanamma, was given in second marriage to Mukhya Pranacharyulu and as per the settlement at the time of marriage, the Dharmakarthatvam and the properties belonging to Shri Anjaneya Swamy in Valu Thimmapuram should after the death of Chikka Charyulu pass to Mukhya Pranacharyulu and that after the death of Chikka Charyulu the entire properties standing in the name of Shri Anjaneya Swamy passed to Mukhya Pranacharyulu and he is enjoying the same and since Mukhya Pranacharyulu has become old and has no male issue, it is settled that Mukhya Pranacharyulu, himself, during his lifetime shall appoint as Dharma kartha any member from out of our family only but should not appoint any other person and the Dharmakarthatvam of Shri Anjaneya Swamy shall remain in our family alone and that our family members alone shall perform the worship of the deity without powers of disposition by way of gift and sale and they shall enjoy the said lands truly from son to grandson and so on the succession. In the said deed it was also stated that if the God wills otherwise, the Dharmakarthatvam of the deity at Valuthimmapuram and the entire property belonging to the said deity shall pass hereditary, by rule of primogeniture, in the family of late Chikkacharyulu and from then onwards the concerned individual himself shall be the Dharmakartha and shall attend to the worship of the deity and maintain the family.

15. Ex. A-6 is the will dated August 13, 1973 executed by Jammi Mukhya Pranacharyulu whereby the trusteeship relating to Sri Anjaneya Swami at Thimmapuram which was in his possession was entrusted to China Hanumantha Rayudu and Peda Hanumantha Rayudu.

16. Ex. A-9 is an extract from the register repared under S. 38 of the 1927 Act in respect of the suit temple by Jammi Turanga Rao, the father of the appellant, who was trustee of suit temple at that time. Against column 4(a) relating to names of previous trustees, the periods of their previous service, their addresses and dates of assuming of the said posts and their particulars, it has been mentioned: 1) Jammi Chikkacharyulu till the year 1862; 2) Jammi Mukhya Pranacharyulu till the year 1873; 3) Jammi, Peda Hanumantha Rao Garu till the year 1917; 4) Jammi Munemma alias

Ravanamma till the year 1931; and 5) Jammi Turanga Rao till the year 1934. Against Column 4(b) relating to whether the suit Temple is under the control of or whether it is managed as per the scheme approved by the Court or whether it is under the management of the independent trustees who were not governed by the such scheme whether the said trustees are appointed by as per the terms of deeds or as per the custom other particulars, it has been stated: "As per the deed executed in 1873 by Jammi Mukhya Pranacharyulu and subsequently since 1934 onwards acted as de facto trustee and as per the orders issued by the Board of Trustee in March, 1936."

17. While considering whether any weight could be attached to the abovementioned documents, the High Court has pointed out that by order.Ex. B-7 passed in O.A. No. 117/ 1934, the suit temple was declared as public temple by the Board and O.P. No. 15 / 1936 filed by Turanga Rao, the father of the appellant, for setting aside the said order of the Board was dismissed since the said petition was withdrawn by Turanga Rao. In this context, the High Court has also referred to the documents Ex. B-1, Ex. B-2, Ex. B-4 and Ex. B-5. Ex. B-1 is the certified copy of Inam Register of the lands in T.D. No. 1620 in village Valuthimmapuram. Under Column No. 16 relating to particulars regarding the name of the present owner there is the entry: "Sri Anjaneya Swami Varu Manager Yerramilli Kameswarao". This relates to the period 1869-70. Ex. B-2 is certified copy of Inam Register No. 36, village Valu Thimmapuram relating to suits lands in T.D. 192 containing entries of the year 1860. Under column 2 relating to General Class to which the Inam belongs, it is mentioned, "Devadayem Religious Institutions". Under Column 7 relating to description of Inam, it is stated : "Devadayem granted for the daily offerings". Under column 12 relating to written instruments in support of the claim it is stated: "Deed of sale executed by Godavari Juggana to Yerramilli Venkata Kroostnama on 1st Oct., 1844, selling this Inam of 5 Jooms (not clear) for 44 Rupees". Under column 16 relating to particulars regarding present owner it is mentioned: "Vali Timma Pooram Anjaneya Swamy Manager Yerramilli Camaswara Rao". Under column 19, relating to surviving heirs of the present incumbent, it is stated : "This Inam was purchased by Yerramilli Venkata Kroostnama the father of the present Dharmakartha or Manager Yerramilli Camaswararao from Juggana son of the party in Col. 14 for 44 Rs. Document in support of this sale is produced." In column 21, relating to Deputy Collector's opinion and recommendation, it is stated: "In the account for Fasly 1241, it is stated that this Inam of 5 Jooms was older (not clear) as this is an old Inam it is to be confirmed to the temple as long as it is maintained properly". This endorsement bears the signature of Deputy Collector and the date January 11, 1860. Ex. B-4, is certified copy of the entry in the,Inam Register 'B' for the years 1312 Fasli for village Valuthimmapuram wherein in column1 relating to particulars of Inam, it is stated: "income from the temple". Under Col. 2 relating to name and profession of Pattadar entered in the Inam Register it is mentioned: "Sri Anjaneyaswami Varu (Deity)". Similarly Ex. B-5 is the certified copy of Inam Register No. 31 of Valu Thimmapuram village wherein in column No.2 relating to the name of the Inamdar there is the entry "Sri Anjaneya Swamivaru", and in column No. 16 relating to names of the Managers of Religious Endowments and Inams, Archakas and trustee, there is the entry "Manager Yerramilli Kameswa Rao" .This entry relates to the year 1308 Fasli (1901 A.D.). After referring to these documents, the High Court has observed:

"These documents, which relate to the suit temple and the suit lands, clearly show that the members of the Jammi family were not mentioned either as trustees or managers of the suit temple or as the persons in possession and enjoyment of the suit lands,though they mention that Anjaneyaswami as the pattaholder of the said lands and Yerramilli Kameswara Rao as the Manager or as Dharmakartha of the temple and its lands. If the plaintiff's predecessors were in possession of the lands described in the suit schedule of O.S. No. 108/1970, they would have paid taxes and the plaintiff could have proved the possession and enjoyment by filing the necessary documents.

Not even a single land revenue receipt was produced by the plaintiff to show that the land revenue or the quit rent was paid by the plaintiff's father and forefathers. In the absence of any such documents and in the face of Exs. B-1, B-2, B-4, and B-5 it is clear that the members of the Jammi family never dealt with the suit lands or with the suit temple in the manner as mentioned in Exs. A-4 and A-6 or in Ex. A-9 and that Exs. A-4 and A-6 were never acted upon by the Jammi family."

18. The High Court has further observed:

"In view of Exs. B-1, B-2, B-4 and B-5, it is difficult to accept the plaintiff's case that the lands which were endowed to the temple were purchased by Chikkacharyulu with his own funds. Whatever may be the recitals in Exs. A-4 and A-6, it is clear that there is no iota of evidence to show that in fact the plaintiff's father's predecessors acted as hereditary trustees and enjoyed the suit lands as mentioned in Exs. A-4 and A-6. On the other hand, Exs. B-1, B-2, B-4 and B-5 make it abundantly clear that Yerramilli Venkatakrishnamma and Yerramilli Kameswara Rao were acting as Dharmakarthis or Managers of the suit temple and the suit lands. Hence Exs. A-4 and A-6 were never acted upon. Thus Exs. A-4 and A-6 are of no consequence."

19. We are unable to hold that the High Court was not justified in preferring to place reliance on the entries in the Inam Register (Exs. B-1, B-2, B-4 and B-5) as compared to Ex. A-4 and Ex. A-6 which are documents executed by the members of the appellant's family and Ex. A-9, the register prepared by Turanga Rao, the father of the appellant after his appointment as a trustee under the 1927 Act. Laying stress on the importance of the entries in the Inam Registers, the Judicial Committee of the Privy Council, in *Arunachellam Chetty v. Venkatachalapathi Guruswamigal* (1919) 46 Ind App 204: (AIR 1919 PC 62) has observed:

"It is true that the making of this Register as for the ultimate purpose of determining whether or not the lands were tax free. But it must not be forgotten that the preparation of the Inam Register was a great act of State, and its preparation and contents were the subject of much consideration under elaborately detailed reports and minutes. It is to be remembered that the Inam Commissioners through their officials made inquiry on the spot, heard evidence and examined documents, and with regard to each individual property the Government was put in possession not only of the conclusion come to as to whether the land was tax free, out of a statement of the history and tenure of the property itself." (pp. 217-218) (of IA): (at p. 65 of AIR).

20. It was held that they could not fail to attach "the utmost importance, as part of the history of the property, to the information set forth in the Inam Register." These observations were reiterated by this Court in *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayah Gosavi* (1960) 1 SCR 773 at p. 780: (AIR 1960 SC 100 at p. 104).

21. Shri Sitarimiah has placed reliance on the decision of this Court in the *Poohari Fakir Sadavarthy v. Bondilipuram v. Commr., Hindu Religious and Charitable Endowments*, 1962 Suppl (2) SCR 276: (AIR 1963 SC 510), wherein after referring to the decision of the Privy Council in *Arunachellam's case* (AIR 1919 PC 62) (supra), it was observed:

"The observations of the Privy Council in *Arunachellam's case* that in the absence of

the original grant the Inam Register is of great evidentiary value, does not mean that the entry or entries in any particular column or columns be accepted at their face value without giving due consideration to other matters recorded in the entry itself." (p. 291) (of SCR): (at p. 516 of AIR).

22. In the present case it cannot be said that there is an ambiguity in the entries in the Inam Registers. They indicate that the lands attached to the suit temple were purchased by Yeramilli Venkata Kroostnama, the father of Yeramilli Kameswara Rao, and Yeramilli Kameswara Rao was in possession as Dharam Karta or Manager and that the lands were entered in the said. Registers as property of the deity, namely, Sri Anjaneya Swami and the Inam was "Devadayam" for the religious institution and was granted to the temple as long as it was maintained properly. These entries relate to the years 1860, 1869-70, 1901 and state that Yeramilli Kameswara Rao the Manager of the suit temple in these years and the lands were granted in Inam for the maintenance of the temple.

23. Apart from the aforesaid documentary evidence, there is oral evidence of DWs 1 to 4. DW 1, Bachala Chandrayya, is a Harijan residing in Valu Thimmapuram. He has stated :

"People from Kondapalli used to visit the temple. Settbaliyas from my village used to visit the temple. Kurukuri Subbanna of Rayabhupalapatnam, for 3 years, got the pujas performed in Karteeka Masam in the suit temple and also arranged feasting. One Kittamsetti Gangaraju of Peddapuram, a Devangi by community, presented eyes to the idol".

On cross-examination, he has stated:

"Some people used to offer Namaskaram to God, standing outside on the road, and some people used to go inside the temple. P.W. 1 used to lock the temple and keep the key in a niche and whoever wanted to enter the temple in the absence of P.W. 1, used to open the temple with the key from the niche, and used to pay homage and go after locking and keeping the key in the niche".

24. Similarly, D.W. 2, Pithani Subbarao, who belongs to Valu Thimmapuram, has stated :

"I am a Settbaliju. I am in the habit of visiting the temple along with other members of my community..... Not only the people of my village, but also the people of the neighbouring villages visit the temple".

On cross-examination, he has stated:

"When P.W. 1 leaves the temple, he leaves the key in the niche so that anybody that visits the temple in his absence, may open the lock with the key and break coconut and lock it again and go away."

25. D.W. 3, Kurukuri Subbanna of Village Rajabhaopalapatnam has stated:

"On auspicious days, I used to get Abhishekam performed by the Archaka. For three years, I arranged Santarpana in Karteek Masam in the suit temple."

On cross-examination, he has stated:

"I arranged Santarpana not only for my workers but also for villagers, and the persons belonging to my village in the suit temple."

26. D.W.4, Duvva Raju of Village Anuru Kondapalli has stated:

"While passing in front of the suit temple, I and other villagers offer homage to the God, and break coconuts. It is not the exclusive temple of P.W. 1 and it is open to all".

On cross-examination, he has stated:

"I used to go to the temple at 10.00 a.m. There used to be none by that time. Sometimes it used to be locked, and sometimes it used to be kept open. The keys used to be kept in the niche".

27. It is no doubt true that "the mere fact that the public is allowed to visit a temple or thakurdwara cannot necessarily indicate that the trust is public as opposed to private" (Babu Bhagwan Gir v. Gir Har Saroop, (1939) 67 Ind App 1 (AIR 1940 PC 7)). But, as pointed out by this Court in Deoki Nandan v. Murlidhar (AIR 1957 SC 133) (supra), if the endowment was in favour of the idol itself "proof of user by the public without interference would be cogent evidence that the dedication was in favour of the public". The entries in the Inam Registers mentioned above (Exs.. B- 1, B-2, B-4 and B-5) indicate that the dedication in the present case was in favour of the idol (Sri Anajaneya Swami).

28. While considering the question whether the suit temple is a public temple or a private temple, it cannot be ignored that the suit temple falls in the area which was formerly part of Madras Presidency. In the greater part of the Madras Presidency, where private temples are practically unknown, the presumption is that temples and their endowments form public religious trusts. Exception is made in respect of Malabar, where the large tarwards often established private temples for their own use and there is no presumption one way or the other. Mundancheri Koman v. Achutan Nair, 61 Ind App 405 at p. 408: (AIR 1934 PC 230 at p. 231)) in T. V. Mahalinga Iyer v. State of Madras, AIR 1980 SC 2036, it has been observed that so far as Tamil Nadu is concerned there is initial presumption that a temple is a public one, it being up to the party who claims that it is a private temple, to establish that fact affirmatively and this initial presumption must be rebutted by clinching testimony and the crucial question is as to whether the public worship in the temple as of right. In the instant case, we find that the said presumption, instead of being rebutted by the appellant, is reinforced by the entries in the Inam Registers as well as by the oral evidence of DWs 1 to 4 with regard to public having free access to the suit temple for the purpose of worshipping the deity.

29. As pointed out by this Court in Narayan Bhagwantrao Gosavi Balajiwale's case (AIR 1960 SC 100) (supra), the finding that the suit temple is a public temple and not a private one is a finding of fact. In the instant case, the trial court as well as the High Court have found that suit temple is a public temple. The said finding is not open to further scrutiny of this Court unless it suffers from an error of law. We have examined the contentions urged by Shri Sitaramiah to assail this finding, but we do not find any merit in the same. We, therefore, uphold the finding recorded by the High Court that the suit temple is a public temple and not a private one and that the appellant has failed to establish his case that he is a hereditary trustee of the same.

30. Shri Sitaramiah has urged that even if the suit temple is held to be a public temple, the appellant has acquired title over the suit lands by prescription inasmuch as after the death of his father, Jammi Turanga Rao, in 1946 he has been in possession of the suit property in his own right and that O.S. No. 108/70 was filed only in 1968, long after the expiry of the prescribed period of limitation. Shri Sitaramiah has conceded that the plea of limitation was not raised by the appellant at any stage earlier but he argued that in view of the express provision contained in Section 3 of the Limitation Act, 1963, it is permissible for the appellant to raise the plea before this Court in these appeals and in this context he placed reliance on the decision of the Privy Council in *Raja Har Narain Singh v. Chaudhrai Bhagwant Kaur*, (1891) 18 Ind app 55 and the decision of the Calcutta High Court in *Troylokya Nath Bose v. Jyoti Prokash Nandi*, (1903) ILR 30 Cal 761. In support of his submission that rights can be acquired in property of a religious and charitable trust by adverse possession, Shri Sitaramiah has placed reliance on the decisions of the Privy Council in *Balwant Rao Bishwant Chandra Chor v. Puran Mal Chaube* (1883) 10 Ind App 90, *Ambalavana Pandara Sannidhi v. Meenakshi Sundareswaral Devastanam* (by its Manager) 47 Ind App 191: (AIR 1921 PC 97), *Lala Hem Chand v. Lala Pearey Lal*, AIR 1942 PC 64 and the decision of this Court in *Sarangadevar Peria Matam v. Ramaswamy Gounder*, (1966) 1 SCR 908: (AIR 1966 SC 1603). Shri Nambiar, the learned counsel for the respondent has, on the other hand, submitted that since the appellant obtained possession over the suit properties as the legal representative of Turanga Rao, who was the trustee, the bar of limitation would not apply in view of Section 10 of the Limitation Act, 1963. In our opinion, the objection with regard to the bar of limitation was rightly not raised by the appellant before the lower courts in view of the provisions contained in S. 94 of the 1951 Act and in S. 103 of the 1966 Act. S. 94 of the 1951 Act provided as under:

"Nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any religious institution which had not been vested in such person or his predecessor-in-title before the commencement of this Act."

31. Section 103 of the 1966 Act reads as under:

"Nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any charitable or religious institution or endowment which had not vested in such person or his predecessor-in-title before the 30th September, 1951 in the Andhra Area of the State and on the date of the commencement of this Act in the remaining areas of this State."

32. The suit temple falls in the Andhra area of the State of Andhra Pradesh and in view of S.103, the relevant date for considering whether a right has been acquired by prescription is September 30, 1951. In order to succeed the appellant would have to establish that he had acquired the right over the suit properties by prescription before September 30, 1951. Shri Sitaramiah does not dispute that possession of Jammi Turanga Rao, father of the appellant, was not adverse to the trust in view of his having been appointed as the Trustee in 1936. Adverse possession on behalf of the appellant has been claimed after the death of his father in 1946. Even if it be assumed that the possession of the appellant was adverse ever since 1946, it cannot be said that he had acquired his title Over the suit properties by adverse possession before September 30, 1951. In this view of the matter, it cannot be held that the appellant has acquired title over the suit properties by adverse possession. In these circumstances, we do not consider it necessary to go into the question whether in view of Section 10 of the Limitation Act the appellant cannot claim title by adverse possession since he obtained possession of the suit property as the legal representative of Jammi Turanga Rao who was in

possession of the suit property as Trustee.

33. Shri Sitaramiah has lastly contended that Ex. A-4 shows that after meeting the expenses for the upkeep of the deity, the income from the suit property has to be used for the benefit of his family which means that there was only a partial dedication of the property in favour of the deity. The submission of Shri Sitaramiah is that in view of the fact that the dedication was only partial, the property retained its original private and secular character and that there was only a charge on the common obligation used as part of the income for the upkeep of the deity and therefore, the said property attached to the temple cannot be regarded as the trust property. Reliance has been placed on the decision of this Court in *S. Shanmugam Pillai V. K. Shanmugam Pillai* (1973) 1 SCR 570, at pp. 582-83 : (AIR 1972 SC 2069 at pp. 2076-77). Since we have not accepted the case set up by the applicant on the basis of the aforesaid document and have found that in view of the entries in the Inam Registers, there was complete dedication of the property to the deity, it cannot be held that there was only a partial dedication of the suit property and the property continued to retain its private and secular character.

34. In the result, the appeals fail and are accordingly dismissed with costs. Appeals dismissed.

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