

ANDHRA PRADESH HIGH COURT

Pinninty Peda Govindayya

Vs

Pinninty Subba Rao

(Krishna Rao, J.)

27.12.1968

JUDGEMENT

Krishna Rao, J.

(1.) THIS appeal is filed by defendants 1 to 6 and 8. The respondents filed a suit O. S. 32 of 1959 on the file of the Subordinate Judge, Bapatla under section 92 of the Code of Civil Procedure, after having obtained the sanction of the Advocate General, for framing a scheme for the management of a public trust consisting of Ac 19-96 cents of tamarind tope situate in S.No. 36 of Annavaram village in Bapatla taluk, Guntur District. The case of the plaintiffs is that the ancestors of the Pinninty family dedicated the suit land and tope for the benefit of the public, that a title deed No.397 was granted at the time of the Inam Commission in favour of Pinninty Lakshmi pathi as trustee of the charitable tope free of tax, that ever since, the said tope was being enjoyed by the members of the public, that in August 1958, the defendants cut and carried away some of the tamarind trees, that the defendants in breach of the trust, obtained a patta in their own name under the Inams Abolition Act, that the defendants had been cultivating an extent of about Ac. 5.00 of the trust property for their own use and that a scheme for the administration of the trust should be framed by appointing new trustees by removing the defendants from their trusteeship and for a rendition of accounts against the defendants.

(2.) THE defendants contested the suit alleging that the land was not the subject matter of trust, that their ancestors dedicated only the fruit of the tamarind trees for the benefit of the villagers, that their obligation to distribute tamarind fruit ceased as a result of the levy of full assessment on the land under the provisions of the Inams Assessment Act, 1955, that in view of the patta granted to the defendants under the Inams (Abolition and Conversion into Ryotwari) Act, 1956, the defendants became the ryotwari owners of the suit-land, that the said proceedings cannot be questioned in a civil suit, that there was no breach of trust on their part, that they are not liable to render any account to the plaintiffs, that they cannot be disturbed from the possession of the suit property and that no scheme can be framed in respect of the suit property. THE court below recorded the following findings: (i) that the suit land itself was dedicated by the original owner Pinninty Lakshmi pathi who constituted himself as the trustee of the property and that it was not merely the fruit of the trees that was the subject matter of dedication; (ii) that the decision of the Inams Tahsildar levying full assessment did not operate to extinguish the trust; (iii) that the patta granted in favour of the defendants under the Inams Abolition Act does not in any way affect the

trust which was granted in favour of the public; (iv) that the defendants committed acts of waste and breach of trust; and (v) that it is sufficient if the defendants are directed to furnish an account of the profits received by them for a period of six years prior to the suit. In view of these findings, the Court below passed a preliminary decree for the framing of a scheme with a direction to remove the defendants from their trusteeship and for delivery of possession of properties to the new trustees to be appointed under the scheme. There was a further direction that both parties should submit proposals to the Court for framing the scheme decree. Aggrieved by the said decree, the defendants filed the above appeal in this Court. On behalf of the appellants, the learned counsel, Sri Vidyasagar, raised two contentions, firstly, that the suit land was not the subject matter of a public trust that only the fruit of the tamarind trees standing thereon was the subject matter of dedication to the public, that the defendants have no objection even now for the public enjoying the fruit of the tamarind trees and that there is no need to frame any scheme with regard to the fruit distribution of the tamarind; and secondly, that in any event, in view of the ryotwari patta granted in favour of the defendants in their individual capacity, the trust, if any, ceased to exist and that the Civil Court has no jurisdiction to entertain the suit in view of the provisions of section 14 of the Andhra Inams (Abolition and Conversion into Ryotwari Act. (37 of 1956).

(3.) THE first question for consideration depends upon the proper interpretation of the documentary evidence adduced on both sides. THE earliest document is Ex. B-3 dated 29-12-1964 which is a certified copy of the Inam statement submitted at the time of the Inam Commission enquiry. THE said statement purports to have been given by Pinninti China Sundararamudu. Column I shows that as per the village accounts the grantee was Pinninti Lakshmipathi and that China Sundara Ramudu was the then enjoyer, aged 20 years, resident of Annavaram village. In column 4, it is mentioned that the tope was originally grown by Pinninti Lakshmipathi and that the present enjoyer Sundararamudu was his grandson. In column 6, it is stated that about 100 years prior to the said statement, the tope was converted for charitable purposes for the benefit of the public with the permission of the village officers. THERE is a further note made in the said statement as follows: "THERE are 31 tamarind trees and 5 palmyrah trees and one zuvvi tree. THE boundaries of the land are as follows: No. 22 tope East. No. 2 Cremation ground South. Village West 65-66 Seri North" Column 11 recites that the present enjoyer was protecting the tope and is managing it distributing the fruit charitably for the benefit of the villagers. Column 12 also shows that the tamarind fruit was being freely distributed to the villagers, that the produce was never enjoyed for his personal benefit, that no income was derived by him from the property and that he had no right to alienate the land. Column 13 shows that no documents were filed before the Inam Commissioner. A genealogy was attached to the Statements according to which Pinninti Lakshmipathi was the ancestor and the present enjoyer Sundararamudu was his son's son. The said statement was attested by some of the villagers and also by the village officers. The next document of considerable importance is Ex. A-4, certified copy of the Inam Fair Register. The said land is described as Dharmadayam and the extent of the land is shown as Ac. 19-87 cents brari: total assessment of Rs. 49-11.0 at Rs.2-8-0 per acre. It is stated to be a permanent grant for the public benefit. The name of the grantor is shown as Pinninti Lakshmipathi about 100 years ago. In the survey and settlement village accounts, it was stated as cist zabitha of Fasli 1248 Pinninci Lakshmipathi tope. The name of the grantee is also shown as Pinninti Lakshmipathi. The present enjoyer was shown as Pinninti China Sundararamudu who gave the inam statement, Ex. B-3. In the remarks column, it is noted as

follows: "As this is a charitable tope it is to be confirmed without quit rent": Column 22 says "confirmed as recommended", and title deed No: 397 was accordingly issued. It is also noted under columns 2 to 5 that there were 307 tamarind and other trees on the land, In pursuance of the enquiry evidenced by Ex A-4, the Inam Commissioner issued a title deed No. 397 Ex; B-2 dated 4-1-1870 in favovr of Pianinti China Sundararamudu under the following terms : "By order of the Governor in Council of Madras acting on behalf of the Secretary of State for India in Council, I acknowledge your Title to a Dharmadayam or Charity Inam consisting of the right to the Government revenue on land claimed to the Acs. 19-87 cents ol dry land situated in the village oi Annavaram, Taluk of Bapatla, District of Krishna and held for the public benefit. This Inam is confirmed to you and your successors tax free to be held without interference so long as the conditions of the grant are duly fulfilled". Ex. A-6 is the Inam B register of the village for Fasli 1332 in which the land is described as Dharamadayam bearing patta No. 397 ard S. No. 36 of an extent of Ac. 19-96 cents and bearing a cist of Rs 74-14-0. It is noted therein under the column of enjoyers as managers for the time being for the charitable tope. Ex.A-7 of the year 1908 is a certified copy of the re-settlement register in which the land is described as charitable tope. The certified copies of No. 2 account Exs. B-13 to B-20 of Faslis 1358 to 1367 show the name of pattadar or enjoyer as "the Dharmadayam Inams then Manager". No. 14 account Ex. B-21 to B 25 and B-27 also described the suit land as Dharmadayam land. Ex. B-26 which is a certified copy of the Survey and Settlement Register of 1873 also described the suit land as tamarind tope. ;