ANDHRA PRADESH HIGH COURT

Venkayya

Vs.

Sriramamurthy

Appeal Nos. 761 of 1950 and 258 of 1951, in O.S. No. 102 of 1949

(Chandra Reddy and Bhimasankaram, JJ.)

10.02.1955

JUDGMENT

Chandra Reddy , J.

1. These two appeals arise out of the Judgment and decree in O. Section 102/49 on the file of the Subordinate Judge at Gluru. The plaintiff had filed A. Section 761/50 and the 3rd defendant A. Section 258/51. The plaintiff and the 3rd defendant are brothers. The plaintiff, claiming; that himself and the third defendant are the hereditary archakas of Sri Visweswaraswami Varu of Bhadriraju Kondapadu, instituted the suit for a declaration of their occupancy rights in the plaint A schedule lands and to possession thereof so long as archakatwam service was rendered. The basis of the claim is twofold : (1) that the grant was to the ancestors of the plaintiff and 3rd defendant burdened with the obligation of rendering service; alternatively, (2) that what was granted in inam to the temple was that only the melwaram, the Kudivaram right vesting in the archakas.

2. The 1st and 2nd defendants were the trustees appointed by the Hindu Religious Endowments Board. They resisted the suit by filing a written statement in which they denied that the plaintiff and the 3rd defendant are hereditary archakas, that the grant was to the archakas and lastly that what was granted to the temple was only melwaram.

3. Several issues were raised on the pleadings, but it is sufficient to refer only to issues Nos. 3, 9 and 5, namely,

> (1). Whether the plaintiff and the 3rd defendant are the hereditary archakas of the suit temple ?
> (2). Whether the suit lands were granted in favor of the deity and whether the deity is the owner thereof ?
> (3). Whether in any view the plaintiff and 3rd defendant are entitled to Kudivaram rights in the suit lands ?

On all these issues, the findings given by the trial Court are against the appellants.
4. All three points are canvassed before us in these appeals filed by the aggrieved archakas.

5. On the question whether the plaintiff and the 3rd defendant are the hereditary archakas or not we think it is unnecessary for us to express any opinion in the view we have taken on the other issues and so the question is left open. It was also desired by the parties that this question may be left undecided in these appeals.

6. We will now deal with the other problems arising in these appeals. The controversy mainly centres round the question whether the grant of the suit lands was to the deity or whether they constitute archaka service inam burdened with the obligation of rendering service to the temple. The original grant is not forthcoming and our decision has to rest mainly on the extract of inam fair register marked as Ex. B. 8 and also a copy of the inam statement, (Ex. B. 9) made by the then archakas.

7. Taking up Ex. B. 8 first, under the main heading "Class Extent and value of inam" it is classified as Devadayam.

8. Of course this description by itself is not determinative of the question as it only denotes that it is a religious endowment which will include a service inam attached to a temple. Column 5 shows that the area covered by the grant is ac. 10-61 cents. We find under column 8 "description of inam - if for service, it is to be stated whether the service is continued. If for tanks, buildings, etc., whether they are efficiently kept up," the statement "Devadayam granted for the support of the Pagoda of Visweswaraswami and it is kept up". The entries in columns 9 and 10 are, that the inam is free of tax, and is hereditary respectively. It is true that in column 11 it is stated that the name of original grantee is not known. But that is not of any significance as in the next two columns the temple is shown as having been entered in inam accounts. Under the column grouped under the headings "Particulars regarding the present enjoyment" the name of Sri Visweswara Swami is entered with the addition of the words 'Archaka Velavapalli Papayya aged 20 years'. The learned Counsel for Appellant wants us to draw the inference that it was service inam from the use of the expression 'hereditary in column 10. We do not think such an inference is admissible especially in the face of the other recitals in the document The word only means, in the context permanent. The most decisive entries are those furnished under columns 3 to 16 and it is with reference to these entries that a decision as to who the grantee is, has to be reached. The recommendation of the Inam Commissioner was that it should be confirmed to the pagoda so long as it is efficiently maintained. It is clear from the different entries in the different columns in Ex. B. 8 that the properties were the subject-matter of a grant to the temple And the archakas are not shown as having any beneficial interest in the inam.

9. Turning next to the inam statement, Ex. B. 9 caused to be filed by the then archaka, Papayya, the recitals under the relevant headings confirm the view that the gift was to the temple. Under the various columns bearing on the name of the enjoyer and original inamdar Sri Visweswara Swami Varu is mentioned. The entry "Sri Visweswara Swami Varu archaka" made under column 1 "the name of the inamdar as entered in the dowle and the name of the enjoyer" is pressed into service by the counsel for appellants in support of his contention that the inam was really granted to the archakas burdened with service. It is argued that the recital means that the title to the properties vests in the archaka. We do not think it is capable of that interpretation. It looks to us

that the first entry relates to the name of the inamdar as entered in the dowle i. e., Sri Swamivaru, and the second to the person in enjoyment of the property.

10. Even assuming it should be read as one entry namely that it was the archaka of Sri Visweswara swami Varu that is shown under the column that does not carry the appellant very far as that does not throw any light on the ownership of the property. That only implies that the archaka was in possession of the Inam and enjoying the same. If the meaning is the one attributed to it by Mr. Subrahmanyam, it is unlikely that the archaka would not have given away his rights by acknowledging the title of the deity to the properties. Nor would the commissioner have entered the temple as the grantee and enjoyed thereof if it was service inam. His recommendation also would have been otherwise. The inam fair register was the result of a very careful enquiry by the Commissioner and is to some extent based on the statement caused to be filed by the archaka. As observed by Lord Shaw in *Arunachalam Chetti V. Venkatachalapathi Guruswamigal*[1], the inquiry by the Inam Commissioner was a great act of State and the entries made by responsible officers in the inam fair register were entitled to a great weight. The register must have been compiled from the inam. statement, and inquiries made by the concerned officials, and as such furnishes the best evidence of the title to and the nature of the inam, in the absence of sannad or other documents of an equally valuable nature.

11. Mr. Subrahmanyam next called in aid a passage from the judgment of a Bench of the Madras High Court in *Satyanarayana v. Venkatappaih*[2],

> "In that statement, under the column "name of inamdar as per dowle 'and the names of the present enjoyers," the name of Sri Somasekharaswami Varu is given. Under the column "Name of the original Inamdar and his relationship with the present enjoyer, the name of the deity Somasekharaswami is given. Under the column "particulars of the mode of present enjoyment", again, the name of the deity is given. It may be noticed that either in the inam register or in the inam statement the names of the archakas were not given as enjoyers.

If really they were in enjoyment of the suit lands under some permanent arrangement with the hereditary trustees they must have been shown as the present enjoyers. The statement is really destructive of their case. It shows that in the year 1860 the ARCHAKAS did not set up any such claim based upon permanent arrangement".

12. It is argued inferentially by Mr. Subrahmanyam the learned counsel for the appellant that, if in the case under citation the name of the inamdar as per dowle was that of the archaka, the decision of the learned judges would have been a different one, and that if, as in the present case, the inamdar as entered in the dowle is shown as archaka, the grant should be regarded as one to archaka. We find it difficult to appreciate this argument. The passage occurs in the context of the consideration of the

[1] ILR 43 Mad 253 : (AIR 1919 PC 62)
[2] 1950-1 MLJ 675

several circumstances which are destructive of the archakas' case. There it is nowhere stated that if the name of the archaka was shown as the inamdar in the dowle a different

conclusion would have been reached. That was one of the several factors in coming to the conclusion that the properties were endowed to the temple and the archakas had no manner of right to the temple. The judgment of the learned Judges was affirmed on appeal by the Supreme Court in *satyanarayan v. Venkatappayya*[3], Their Lordships construed the entries in the inam fair register and the inam statement concerning the inam, involved in that case, which are similar to those in the present case except in one particular i. e., column 1 in Ex. B-9 and agreed with the view of the High Court that the inamdar was the temple. The principle of that ruling, in our opinion, governs the instant case. On the material before us the conclusion is inescapable that the lands in dispute constitute an absolute dedication to the temple.

13. In support of these appellants' contention reliance was next placed on the entries under column 12 Ex. A17 a copy of the Devadayam account for fasli 1317 "granted for rendering service such as archaka, etc., to the deity" and under column 16 'Devadayam Service Inam granted for the offerings and lamp-lighting service rendered properly." These recitals cannot form the basis of any view that the grant was for the performance of the archakawatnam service. They explain only the objects of the grant. They are general purposes and only mean they were endowed for the support of the temple. The other entries in the document such as that the name of the original inamdar is "Visweslaraswamy Varu" negative the theory that the inam was for the specific purpose suggested for appellants. That apart, the entries in a document of the description of Ex. A-7 cannot outweigh those in the inam fair register. Therefore the claim of the appellants has to be disallowed.

14. Alternatively, it was urged that assuming that the grant was made in favour of the institution it was only grant of melwaram interest and the archakas had the kudivarm rights therein. The foundation for the contention is again the entry under column 1 of Ex. B-9 and the entry relating to assessment, some recitals in Ex. A-1, the division of the property under Ex. A-5 and the long enjoyment. According to Mr. Subrahmanyam, the bearing of the entry under column 1 of Ex. B-9 on this branch of the argument is that it illustrates the right of the Archakas to possession thereof, the only way to harmonise the several entries in Ex. B-9 is to read them in the way suggested by him, so runs his argument. We find it difficult to accept that interpretation. We have already dealt with this recital. It is an innocuous one and is not capable of the meaning imputed to it by the counsel for the appellants.

15. It was next submitted that the long and upinterrupted enjoyment of the property by the archakas as could be gathered from Ex. A-5 shows that the property was being partitioned amongst the members of the archakas' family. This itself cannot lead to the inference that it was by virtue of that right that they were in possession of the lands in question. The hypothesis is opposed to the tenor of Ex. B-8 and B-9 etc. It is likely that the archakas were in possession of the lands on behalf of the temple and were appropriating the income therefrom to themselves and rendering service. It is evident from Ex. B-8 that at the time of the inquiry there were no trustees to the temple and

[3]1953-1 Mad LJ 693

archakas were in charge of the temple and this explains the entry under column 16. "Archaka Vellyapalli Pappayya". In Ex. A-7 all the villagers are mentioned as Dharmakarthas or inamdars, or, it may be they got into possession under some arrangement whereby they could remunerate themselves out of the income for their service and utilise a part of it for the upkeep of the institution. Such arrangements for the convenient management of the temple are not uncommon

in this part of the country. So their uninterrupted and unquestioned enjoyment of the property does not clothe them with higher rights. Nor does the conduct of the archakas in dividing the properties amongst themselves warrant the conclusion that they had Kudivaram rights. The document should be construed in the light of their enjoyment. Even otherwise the dealings evidenced by the relevant documents do not furnish any basis for the contention that the appellants have kudivaram rights. The recitals in Exs. B-8 and B-9 prima facie show that the grant comprises of both the warams. As already remarked such claim was not put forward at the time of the inam inquiry nor even subsequently.

16. Lastly, it was urged that the amount mentioned in column 7 did not represent the Income from the entire lands but only the assessment payable to Government and it was this assessment that was the subject-matter of the grant as could be deduced from the fact that this tallies with the figure shown in column 14 to Ex. B-9. In our opinion the circumstances that the amounts mentioned under both the columns i.e., those relating to assessment and the income derived by the inamdar are the same does not determine the nature of the inam and it is not enough to displace the inference that the institution was granted both the warams.

17. In this context the observations of the Supreme Court in 1953-1 Mad LJ 693 already referred to are pertinent.

> "Whether the inam comprised the land itself, that is to say, both melvaram and kudivaram rights or only the melvaram rights the entries had to be made in the Inam Register in the same form and even in the case of the grant of the land itself comprising both the rights the amount of assessment had to be set out under column 7 of the Inam Register for it is not suggested that a different form had to be used where the grant comprised both the rights.

It follows therefore, that no inference that the Inam grant comprised only melwaram rights can be Inferred from the fact that under column 7 only the amount of assessment is set out and, therefore, the reasoning on which the decision relied on by the learned Attorney General was founded cannot be supported as correct."

18. Their Lordships expressed the opinion that the unreported Judgment of the Bench of the Madras High Court in the Board of Commissioners for the Hindu Religious Endowments, *Madras v. Parsuram Veeraraghavacharyulu*[4] which lends some support to the contention of the appellants on this aspect of the matter is of doubtful authority.

19. It is also significant that under column 14 of Ex. B-9 "income derived by the inamdar, if there is Kattubady the amount thereof" it is mentioned "paddy by way of

[4](Appeal No. 213 of 1942)

profits derived annually by the Inamdar is one Kallam. The value thereof at the rate of Rs. 14/- per one Kallam is Rs. 14. The use of the words 'paddy by way of profits' affirms our view that it was the land itself that was granted. We may also refer to column 3 which sets out the survey numbers together with word "dry." This circumstance indicates that what was granted was the land comprised within the survey numbers. It is also significant that in column 12 of Ex. B-9 the particulars of the boundaries of the land are given. This is an indication that it was the lands

comprised within these boundaries that were endowed to the temple. We think on these documents there can be no ambiguity about the rights of the temple to the entire interest in the land inclusive of the Kudivaram. The claim now asserted is incompatible with the recitals in the relevant documents.

20. On this discussion it follows that the plaintiffs have not established their right to Kudivaram interest. Therefore, the finding of the lower Court on this issue also must be confirmed.

21. In the result, the appeals fail and an dismissed with costs of the respondent one set to be paid equally by the appellant in both the appeals.
Appeals dismissed