IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal Nos. 2456 and 2457 of 1978

Nagu Reddiar and others .. Appellants

Vs.

Babu Reddiar and others .. Respondents

and

Vice Versa Judgment

KAILASAM, J.

These two appeals are by certificates granted by the High Court of Madras against a common judgment in A.S.No.114 and A.S.No.194 of 1958.

These appeals arise out of a suit filed by the plaintiffs in the court of the Subordinate Judge, Tiruchirappalli in OS. No.152 of 1955 under Section 92 of the code of Civil Procedure for removing one Nagu Reddiar, the first defendent from the trusteeship of the suit charities and for framing a scheme for the said charities. The trial court found that the two charities in in question were public trusts and comprised all the alienated properties except item 7 of plaint, A schedule to the trust properties. The trial court found that B schedule properties were bequeathed for performance of puja on the Samadhi and for feeling the Agathies and paradesies in the Matam and that the Samadhi could not be separated from the Matam and therefore the dedication of the B schedule properties in favour of the Matam and Samadhi koil is invalid in law. The court ordered the removal of the defendent from the office of the trusteeship and directed him to render accounts and ordered the framing of a scheme for plaintiff. A schedule properties except item 7 which was found to be not a trust property. Aggrieved by the judgment both the plaintiff, and the defendants preferred appeals to the High Court of Madras the appeal by the plaintiff being A.S.No.114 of 1958 and by the defendents A.S.No.194 of 1958. The High Court disposed of both the appeals by a common judgment dismissing A.S.No.114 subject to the modification of the decree of the lower court that the first defendant would be liable to render account in respect of the trust properties only for six years prior to

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prior to the date of the suit and not for the entire period of his management as ordered by the judge.

The High Court allowed the appeal in A.S.No.194 of 1958 in part holding that item 7 of the plaint A schedule properties was also part of the trust properties. It also found that alternations of items 7, 8 and 15 of B Schedule properties were not valid or binding on the trust. Differing from the trial court, it held that the Matam and the Samadhi kokl were not inextricably mixed up and that the endowment for sachidhananda matam was a valid endoment. The High Court allocated half the properties mentioned in the B Schedule to the Sachidananda Matam and feeding charity and directed that the other half of the B Schedule properties should go to the first defendant because it related to the Puja in the Samadhi the endowment for which purpose not being valid. Aggrieved by the judgment of the High Court the parties have preferred appeals against the common judgment in A.S.No.114 and 194 of 1958. For the purpose of convenient reference, we will refer to the parties as plaintiffs and defendants according to their rank in the trial court.

The facts of the case are briefly as follows.
By a deed, Ex.A1 dated 10th September, 1885 five members of the family of one Naga Reddi dedicated certain properties belonging to the family described in Schedule A and B to the plain to two charities are called the Annadana Chatram and the other called Sachidananda Matam situated in the village of Vairichettiapalayam. Besides the two charities, properties were endowed for the upkeep of one Karpaka Vinayakar Temple constructed in the village by the ancestors of the founders and for certain Kattalai in Sabhanayagar temple in Chidambaram, Subramanyasami temple in Palani and Arunachalaswarasami temple in Tiruvannamalai. On the same day the founders of the trust under Ex.A2 nominated one of them, Ramalingachi Reddiar, as a trustee for the charities of life. After his life time his son, grandson and her descendants were to succeed, Under Ex.A1 separate sets of properties were dedicated for each of the charities till he died in 1942. He had no natural issue and therefore adopted the first defendant in 1918 as his son. The first defendant assumed management of the trust properties in accordance with the line of succession indicated in Ex.A2. In the plaint it was alleged that after the

first defendant took charge of the properties in 1942, he had not carried out the directions of the trust alienated the trust properties by sale and exchange and had not maintained any accounts. On the ground of misfeasance, malfeasance and misappropriation of trust properties the plaintiffs prayed for the removal of the first defendant from the office of the trusteeship and asked for accounts and for framing of a scheme. The main contesting defendant being the wife of the first defendant's brother-in-law. The second defendant and the other defendants are eigher alienees or persons in possession of the trust properties.

In these two appeals before us the concurrent findings of the courts below that the Annadanachatram is a public trust and that it is valid is not disputed. The finding of the High Court that the trust properties were improperly alienated and that they are not valid is also not questioned before us. The findings of the courts below that the first defendant was guilty of breach of trust in relation to the properties and directing his removal from the office of trusteeship for a period of five years and the direction calling upon him to render accounts for a period of five years before the filing of the suit are not challenged. In both the appeals before us the only point that was raised was regarding the B Schedule properties. The contention on behalf of the plaintiff is that the endowment is a valid one and as it was mainly in favour of the Matam and feeding of the poor who visited the matam and that the performance of the puja in the samadhi was not connected with the main endowment as the properties vested absolutely in favour of the Matam. On behalf of the defendants it was submitted that the endowment is not valid in law as its purpose was for maintenance of a tomp (Samadhi) of an ancestor of the defendant which is invalid in law.

The trial court held that the samadhi koil referred to in Ex.A1 and A2 means the tomp or tombs built over the place where the mortal remains of certain ancestors of the executants of Exs. A1 and A2 were interned and that from the description that the Samadhi koil adjoining or appur tenant to the Matam and the fact that the properties were bequeathed for performance of puja at the samadhi koil and feeding the agathies and paradesis, the bequest is one in connection with the performance of puja at the samadhi. It also found that the samadhi and the matam premises

were adjoining each other and so closely intervened that they cannot be separated and therefore the bequest for the performance of puja at the samadhi koil should be declared as invalid. The High Court while agreeing with the conclusion of the trial court that the samadhi is really the tomb of an ancestor of the defendants firmly disagreed with the finding of the trial court that the matam and the samadhi are intervined or so inextricably mixed up that the endowment under Ex. A1 of B Schedule properties must be held to be an invalid document as it benefits a Samadhi. The High Court came to the conclusion that the charity in favour of the Matam for feeding of the poor is a valid endowment and was a distinct charitable object and therefore valid endowment. While confirming the endowment in favour of the Sachidananda Matam, it found the endowment as regards the samadhi of the tomb as invalid. Having regard to the nature of the services rendered by the Matam and the samadhi, the High Court allocated half the properties mentioned in the B Schedule to Sachidananda Matam and feeding charities but directed the other half of the properties in the B Schedule to be delivered to the first defendant.

The question that falls for determination is the nature of the endowment as regards the B Schedule properties and as to how far it can be held to be valid. As rightly pointed out by the trial court the determination of this question will solely depend upon the construction of the two documents. Exs. A1 and A2 particulars Ex. A1 the trust deed.

The trust deed was executed on 10th September 1985 by five persons in respect of the undermentioned charities. Karpaga Vinayakar temple constructed by their ancestors, Annadhana choultry and the nandavanam (flower garden) attached to it, Sachidananda Matam (and the Samadhi Koil) tomb attached to it Sabanayagar temple in Chidambaram, Subramaniaswami temple in Palani and Arunachaleswaraswami temple in Tiruvannamalai. The recital in the document provides that the settlers are allotted 84.8 acres described in the schedule absolutely under the document for being utilised for the charities mentioned. The settlers declared that they would have no rights whatsoever in respect of the aforesaid properties. The recitals are followed by the Schedules. The first schedule recites that the properties

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mentioned thereunder are allotted to the Karpagam Vinayagar temple. After giving description of the various items of properties it is directed that the income from the properties will be utilised for conducting pujas twice a day and abishekam on special occasions by employing brahmins for the Vinayagar daily. A separate schedule is given regarding the properties which are allotted to the Annadanam choultry. The schedule starts by saying that the properties which are allotted to the Annadanam choultry. At the end of the schedule, it is directed that the income from these properties be spent for feeding the brahmins that come to the choultry and for expenses of the Nandavanam attached to the choultry. The next schedule is relevant for our purpose. The schedule in question is captioned as follows:-

Description of the properties allotted to Sachidananda madam it may be noted that the description does not include the samadhi but at the end of the schedule it is provided that the income from the properties mentioned in the schedule be spent for feeding the Agathis and paradesies and for conducting puja in the samadhi attached to the matam. The other Schedules describe the properties that are allotted to the various etmples, Sabanayagar temple at Chidambaram, Arunachaleswaraswami temple at Thiruvannamalai and Subramaniaswamy temple at Palani.

On behalf of the defendants, Mr. Mridhul the learned counsel submitted that the endowment under the B Schedule was for the purpose of the feeding the Agathies and Paradesies who visited the samadhi and the matam was for purpose of accommodating such visitors to the samadhi and as such the principle object of the endowment was for samadhi and that it is invalid in law. In any event, the counsel submitted that the finding of the lower court that both the charities were so inextricably intervined that they cannot be separated which would ential the invalidation of the entire endowment was correct. On the other hand, Mr. Krishnamurthy Iyer the learned counsel for the plaintiffs submitted that the samadhi was in fact a kovil and the entire endowment was valid as it was for the purpose for feeding the poor who came to the temple. In any event he submitted that the vesting of the properties under schedule B was only in favour of the matam and that only direction was to spend some money for performing the puja in the samadhi. In the event of the direction

for the puja of the samadhi being held unsustainable in law that the part of the endowment alone is liable to be declared invalid.

We find no difficulty in rejecting the extreme contentions of both the parties and agreeing with the finding of the courts below that the samadhi was a tomb of ancestors of the settlers of the trust and as such the settlement in favour of the tomb is not valid in law. The question therefore that remains for consideration is as to what part of the endowment under B Schedule could be found to be valid. Strong reliance was placed by both the learned counsel on the tamil words that are used in the settlement deed. Mr. Mridul, the learned counsel for the defendants, submitted that the document if properly construed would show that only a charge was created on the properties for performing the various charities and the properties continued to vest with the settlers. In any event he submitted that the pe properties described in schedule B were jointly endowed for the Matam as well as for the Samadhi and were inextricably interwined and as such invalid. Particular stress was laid by the learned counsel on the words which means a document for charity in writing evidencing the transactions. The learned counsel would construe the words 'poruthtarvu' & as meaning charge. We are unable to agree, the words means document evidencing the transaction 'Ataravu' means support and 'Porthataravu' would mean document in support. The plea of the learned counsel is unsupportable as the document explicity states that the properties are given absolutely for the charities.

This unequivocal statement if followed by the racitals that the settlers will have no right whatsoever to the properties endowed. Again to place the matter beyond all doubt, it is specifically recited that for the purposes of conducting the charity Ramalingacha Reddiar, his son, grandson and their descendants will be Dharmahartas. On a reading of the documents we have no doubt that the properties were absolutely endowed in favour of the charities and the settlers specifically relinguished all their rights in the endowed properties. This leaves us with the consideration of the question whether the properties were endowed in favour of both the matam and the samadhi or the matam alone. The schedule commences as follows:

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The description of the lands allotted to the Sachinandaswami madam.

This description standing alone world mean that the properties were to vest in the Sachidanandaswami matam alone. But the recital in the body of the trust deed includes the samadhi koil attached to the matam as one of the beneficiaries which would indicate that the endowment was in favour of the samadhi also. While agreeing with the learned counsel that the above recital would support the plea that the endowment was in favour of the Samadhi also, are inclined to hold that the properties as described in the schedule were intended to be vested in the amatam with a direction that incomes from the specified properties were to be spent for the purposes mentioned in the schedule itself, we find that in the schedule under which properties are allotted to the Annadana Choultry. While the schedule begins by stating the properties are allotted to the Annadana choultry, at the end of the schedule it is directed that the income from the properties spent for feeding the poor in the choultry and for maintaining Nandavanam. Reading the entire document as a whole we feel that the intention was that whole of the properties were endowed for the purpose of charities mentioned the vesting was to be as directed in the schedule with the obligation that the income from the properties as mentioned should be utilised for the upkeep of Nandavanam attached to Annadanam choultry, and for the purpose of puja in the samadhi also from the income of the properties that were allotted to the Sachidananda matam. On a careful reading of the document, we are satisfied that the properties described in the schedule referred to as a properties allotted to Sachidanandaswami madam vested in the matam with a charge that a part of the income should be spent on the puja to be performed in the samadhi.

In this view we are unable to accept the conclusion arrived at by the High Court that the properties were endowed for the matam and the samadhi and that as the purposes of the charities were distinct and separate they could be separated. We are equally unable to agree with the allotment of half the B schedule properties for the charities concerned with the matam. The direction that the other half of B schedule properties should go to the first defendant cannot be sustained in law, for even on the finding of the High Court, the properties would have to revert back to the settler and their desendants.

We are of the view that only a charge was created for the expenses for conducting the puja on the samadhi on the properties that vested with matam. The question arises as to how for such a direction in the settlement could be held to be valid in law, it is not dispute that for the settlement to be valid and for the trust to claim exemption from the rule against perpertuity, it must be for a religious and charitable purpose recognised as such by Hindu Law. The English law relating to settlements on tombs does not apply to Hindu Religious endowments. The courts in India have adopted the technical meaning of charitable trusts and charitable purposes which the courts in English have placed upon the term charity. But in addition, under the head of advancement of religion, there are other charitable objects in Hindu Law which will not be charitable according to English Law for that law forbid bequests for what are termed superstitutious uses. Under the Mussalmanwakf valdings Act, 1913 Act VI of 1913, a Vakf for the maintenance and support, wholly or partially of his family of descendants is valid provided the ultimate benefit if expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious pious or charitable purpose of a permanent character.

What are purely religious purposes and what religious purpose will be charitable must be entirely decided according to Hindu Law and Hindu notions. Mrs. Saraswathiammal and another Vs. Rajagopal (1954 SGR 277) it was held that the determination of what conduce to religious merit in Hindu Law is primarily a matter of Shastraic induction and therefore any purpose claimed to be valid one for perpectual dedication on the ground of religious merit though lacking in public benefit must be shown to have a shastraic basis as far as Hindus are concerned. While stating so, this court recognised that other religious practices and beliefs may have grown up and obtained recognition from certain classes as constitutions of purposes conducive to religious merit. But if such beliefs are to be accepted by courts as being sufficient for valid perpetual dedication of property therefore without the element of actual or presumed public benefit, it must atleast be shown that they have obtained wide recognition and constitute the religious practice of a substantial and large class of persons. After referring to the Madras decisions in Krishnamurthy Vs. (ILR 58 Mad. 204) Thondilkodaramma (Mudaliar

and two other, A Dravia Sundaram Pillai Vs. V. Subramanian Pillai and 2 ILR 1945 Mad. 854) and Velusamy Gounder Vs. Dandapani 3(1946) IMLJ. 354 this court observed that it was held in the above decisions that the building of a samadhi or a tomb over the remains of a person and the making of provisions for the purpose of Gurupooja and other ceremenies in connection with the same cannot be recognised as charitable or religious purpose according to Hindu Law.

The rule that a provision for the purpose of puja over the tomb of the remains of a person is invalid is subject to certain exemptions. As pointed out by this court in the Saraswathi ammal's case (supra) there have been instances of Hindu saints having been definedand worshipped but very few if at all have been entombed. Such cases stand on a different footing from the case of an ordinary private individual who is entombed and worshipped the reat. After regarding the decision in Saraswathi ammal's case, a bench of the Madras High Court in Sr. Ramanasramam by its Secretary Sambasiva Rao Vs. The Commissioner, Hindu Religious and Charitable Endowments, Madras observed (1) 1960(2) MLJ. 121 that as samadhi over one who comes to be regarded as of the illuminate, or even the tombs, of heroes may evolve in course of time as shrine of Hindu Public religious worship as was held in the Board of Commissioners for Hindu Religious Endowments, Madras Vs. Piduagee Narasimkhan and other (2) 1939 (1) MLJ. 134 Ratnavelu Mudaliar Vs. Commissioner for Hindu Religious and Charitable Endowments 3 1953(2) MLJ. 574 and Ramasami Vs. The Board of Commissioners, Madra 4(1950(2) MJL 511) This court referring to the decision of Board of Commissioner for Hindu religious endowments, Madras Vs. Piduga Narasimhan and others (supra) observed that the judges of the High Court were inclined to hold that the worship was religious. But this was a case of a grant from sovereign authority and was not an endowment for worship of a tomb in 1953 2. MLJ 574 a Bench of the Madras High Court held that the samadhi or tomb of one Apparsawami is place of religious worship taking into account that the institution and for over a century regarded as a place of religious worship. Viswanatha Sastri J. in TRK Ramasami Servai and other Vs. the Board of Commissioner for the Hindu Religious and Charitable Endowments, Madras through the president (1) 1950(2) MLJ 511 expressed his view that it was sufficient if the worshippers

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considered themselves likely to be receipients of the bounty of blessing of a divine presence, which they believed to exist at the place. Samadhis of saints are recognised as religious institutions in the south. It is well known that the Samadhi of Saint (Pattinathar s is considered as place of woship in Thiruvottiyur near Madras). According to tradition grant gaints have attained yoga samadhi in the well known pilgrims centres. Saint Thirumoolar attained samadhi in Chidambaram, Saint Konaganawar at Tirupathi, Saint Valmiki at Srirangam and Bhoosamuni at Palani.

The raising of a tomb over the remains of an ancestor, an ordinary person is not recognised as religious in nature. The burden is on the person setting up a case of religious practice in the community to prove it. This prohibition may not apply when an ancestor is cremated and a memorial raised for performing Siradha ceremonies and conducting periodical worship for this practice may not offered the Hindu sentiment which does not ordinarily recognise entombing the remains of the dead. A place of worship will not cease to be religious because of its being in the memory of a person.

It may be stated that the case before us relates to the tomb of an ancestor of the settlers, it was never pleaded that any religious practice existed among the community, of building samadhis over the remains of the ancestors and performing pujas. The plea of the defendant in para 6 of the written statement is that the dominent purpose of the dedication of B schedule properties was samadhi Koinkarwam i.e. worship of the ancestors in their entombeent and as such invalid in law.

It only remains to consider what appropriate directions should be given in the case. In view of our finding that the vesting of B schedule properties was in favour of the madam alone with charge on the properties that the expenses for puja at the samadhi should be met out of the income of the property the vesting will not fail but the direction to meet expenses for the puja at the samadhi is unsustainable in law.

The High Court directed framing of a scheme for the administration of the two trusts. The High Court also agreed with the trial judge that the Board of trustees should consist

of three persons two of whom should be respectable residents of Vairichettipalayam and the third should be a member of the family of the first defendant. We agree that a scheme should be framed with a Board of trustees consisting of three members, one belong to the family of the donors and the two other respectable residents of the donors and two other respectable residents of the village. In the prohibition against the first defendant for being a trustee for five years has expired his claim to be appointed as one of the trustees from the members belonging to the family of the settlers may be considered by the subordinate judge. The three trustees appointed by the subordinate judge will administer the scheme that may be framed subject to the directions that may be issued by the subordinate judge from time to time.

It is the common case of the parties what due to changed circumstances every few people visit the village on their way to various places of pilgrimage and therefore there are not many visitors to be fed in the choultry. The income from the properties that are allotted to the Karpaka Vinayakar temple under Ex. A1 will be used in conformity with the directions in the document. Regarding the property which had been allotted to the Annadhanam choultry the direction is that from the income of the property. The brahmins that visit the choultry should be fed and the Nandavanam should be maintained. The direction will be adhered to but if there are not enough brahmin as in the document the income will be utilised for feeding the poor boys and girls of the schools of the village even though they may not belong to the brahmin community. Regarding the properties that are allotted to the Sachidandasamy matam, it is seen that there are not enough pilgrims passing through the village due to improved transport facilities. The direction to incur expenses for the puja in the Samadhi Koil has failed. The income from the properties after feeding the Agathies and Paradesies that visit the matam will be utilised for feeding the poor in the village. It will be open to the subordinate judge to utilise the surplus income from the properties allotted to Annadhanam choultry and Sachidanandaswami matam for feeding the poor school going boys and girls in the village. We are satisfied that settlement is predominently for a charitable purpose and as the directions regarding feeding of the brahmins in the Annadanam choultry for agathies and paradesies

in the madam cannot be dult carried out as intended by the settlers applying the cy-press doctrine we direct as indicated above that the funds may be utilised for purposes which are as nearly as possible with the intention of the donors. There will be no order as to costs.

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