

Buddu Satyanarayana and ors. Vs. Konduru Venkatappaiah and ors.

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Court : Chennai

Decided On : Dec-15-1948

Reported in : AIR1950Mad586

Judge : Subba Rao and ; Panchapakesa Ayyar, JJ.

Acts : [Evidence Act, 1872](#) - Sections 114; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100

Appeal No. : Appeal No. 474 of 1945

Appellant : Buddu Satyanarayana and ors.

Respondent : Konduru Venkatappaiah and ors.

Advocate for Def. : M. Seshachalapathi and ; G. Venkatarama Sastri, Adv.

Advocate for Pet/Ap. : T. Krishna Rao, Adv.

Disposition : Appeal dismissed

Judgement :

Subba Rao, J.

1. This is an appeal against the decree and judgment of the Court of the Subordinate Judge, Tenali, decreeing the suit filed by the Executive Officer of Sri Somasekhara Swami temple of Kotipalli, hamlet of Donepudi, for possession of the suit properties. The origin of the temple is lost in antiquity. The suit properties, extending about 93 acres and 33 cents were granted in inam to the deity by the late Janganna Rao the then zamindar of Rachur in Fasli 1179, i. e., corresponding to 1770 A. D. The properties granted were only dry lands and they continued to be so till recently when they were converted into wet land. In or about 1860 it appears that the income from these lands was only Rs. 266-3-1. Though in the pleadings it was assumed that the zamindars of Rachur were the hereditary trustees of the suit temple it does not appear that in the year 1860 they were the trustees of the suit temple, or, at any rate, that the hereditary trustees were in active management of the institution. The temple has no other property besides the suit schedule properties and the entire suit properties have all along been in the possession of the archakas, the defendants and their predecessors for over a century, and they were performing the services of Nitya Naivedya Deeparathana for the temple deity. The Hindu Religious Endowments Board appointed the plaintiff as the Executive Officer of the suit temple, and he filed the suit, as afore-said, for recovery of possession of the plaint scheduled properties and for mesne profits.

2. To the suit, the archakas and their alienees were made parties. The defendants filed separate written statements raising various contentions. The following issues reflect the contentions of the parties:

1. Did the grant to the temple consist of both warams or only melwaram ?

2. Are the suit lands archakatvam service Inam?

3. Is the claim that the lands are service inam lands barred by res judicata by reason of the decree in A. S. Nos. 38 and 39 of 1939 on the file of the Sub-Court, Tenali ?

4. Have the archakas prescribed for the office of the trustee?

5. Is the suit for possession time barred?

6. Has this Court no jurisdiction to try the suit?

7. Are the defendants liable to account for the profits.

8. What are the past mesne profits due to the plaintiff?

9. Did any of the defendants cut the babul trees: if so, what is the value of the trees cut?

10. Is the plaintiff disentitled to maintain the suit as a pauper?

11. Is the liability for mesne profits joint or several?

12. Are the tenants defendants liable for mesne profits? Additional Issues.

1. Whether the plaintiff is in possession of suit lands within 12 years prior to the date of suit?

2. If not, whether the suit for ejectment is maintainable in law?

3. The learned Subordinate Judge held against the defendants on the main issues and decreed the suit as prayed for. Defendants 1, 2, 4, 6 and 7 to 10, 12 and 15 have preferred the above appeal.

4. The learned counsel appearing for the appellants raised two contentions before us (1) that in view of long possession and enjoyment of the plaint items by the archakas and their predecessors, the Court should infer a legal title in them by the application of the principle of lost grant and (2) that what was granted in inam to the deity was only of the melwaram interest in the suit items, and therefore the archakas are not liable to be evicted.

5. The learned counsel for the appellants argued that as the archakas have been in possession and quiet enjoyment of the suit items for a long period of time extending over a century, doing Nitya Naivedya Deeparathana service, the Court should presume that some permanent arrangements must have been entered into between the predecessors, in-interest of the archakas and the trustees in and by which the permanent rights of enjoyment were conferred on the archakas subject to the condition that they should perform Nitya Naivedya Deeparathana in the temple. It may be stated at once that this plea was not specifically raised in the written statements filed by the defendants. There was no issue on this question either. It does not appear to have been argued even before the learned Subordinate Judge, as, if this question had been argued, the learned Judge should have considered the same and given a decision. Ordinarily we would not have been disposed to allow this point to be argued for the first time before us, but, having heard the lengthy argument, we think it is right to deal with that point. Before we consider the facts, it is as well that we state the law relating to the application of the principle of lost grant as disclosed by the decisions cited before us.

6. In *Magniram Sitaram v. Kasturbhai Manibhai*, 46 Bom. 481 : A. I. R. 1922 P. C. 163 a permanent lease was granted by a shebait 100 years before the suit was filed. The suit itself was filed for recovery of possession of the suit lands covered by the lease deed. The plain-tiff contended that the alienation was not valid and binding on him. Lord Buckmaster, delivering the judgment, observed :

'At the lapse of 100 years, when every party to the original transaction has passed away, and it becomes

completely impossible to ascertain what were the circumstances which caused the original grant to be made, it is only following the policy which the Courts always adopt, of securing as far as possible quiet possession to people who are in apparent lawful holding of an estate, to assume that the grant was lawfully and not unlawfully made.'

Their Lordships assumed after the long lapse of time that when the original grant was made it must have been made in exercise of the extended power of the shebait to make the alienation for necessity. The same principle is recognised and applied in a later decision by the Judicial Committee in Muhammad Muzaffar Al Musavi v. Jabeda Khatun, 57 Cal. 1293 : A. I. R. 1930 F. C. 103. In the case of an ancient wakf the lands belonging to the wakf were proved to have been held by tenants for over 70 years at an unchanged rent and as heritable property. If the tenure was created with the consent of the kazi it was valid, otherwise it was invalid. When the validity of the tenures created was questioned after 70 years, their Lordships presumed that the kazi had given his consent. Viscount Sumner, delivering the judgment on behalf of the Judicial Committee, laid down the principle in the following terms:

'The presumption of an origin in some lawful title, which the Courts have so often readily made in order to support possessory rights, long and quietly enjoyed, where no actual proof of title is forthcoming, is one which is not a mere branch of the law of evidence. It is resorted to because of the failure of actual evidence.'

The same principle with its limitations has been expressed succinctly by the Judicial Committee in a later decision reported in Sankaranarayana v. Board of Commissioners for H. R. E., Madras . The temple in that case had four kattalais. Though the temple had a general trustee each of the kattalais was in charge of a special trustee. In regard to one of the kattalais, after meeting all the expenses, there remained a surplus which the trustees claimed for their own benefit and in fact were utilising the surplus for the benefit of their families. It was contended that the owners of the suit properties were subject only to a charge in favour of the kattalais for performance of worship according to the prescribed scale. The Judicial Committee, after noticing the earlier decisions, observed :

'The presumption, it was stated, of an origin in some lawful title which the Courts have so often readily made in order to support possessory rights long and quietly enjoyed, arises where no actual proof of title is forthcoming and the rule has to be resorted to because of the failure of actual evidence. In the present case, where there is ample and convincing proof of the nature of the grant, the object of the endowment and the capacity of the persons claiming the user and enjoyment, the rule can hardly have any application.'

In the result, they held that the property was granted only to the deity and the trustee had no right to any surplus income. It is clear from the aforesaid decisions that the legal origin can and, in certain circumstances should be inferred in support; of proprietary rights long and quietly enjoyed in the absence of definite evidence of title. But in this case, there is clear and definite evidence in regard to the title to the suit properties.

7. Exhibit P.3 is the inam register and is of the year 1860. In this document in cols. 13 to 17, the deity is shown as the grantee. In col. 8, the purpose of the grant is given as 'for the support of the pagoda'. This inam register was prepared on enquiries made by the inam deputy collector, and the inam statements furnished at that time by the archakas were also taken into consideration for preparing the register. The statement filed by them is Ex. D-3. In that statement, under the column 'name of inamdar as per cowle and the names of 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 family of the present enjoyer', the name of the deity is given. Under the col. '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. Indeed they admitted not only the title of the deity but also the fact that the deity was in present enjoyment at that time. In this case, therefore, there is no scope for invoking the principle of lost grant or applying it to the facts of the case. The documents, though the original grant is not filed, the inam register and the inam statement clearly show that the deity was the owner and the enjoyer even in 1860. It has been held more than once by the Judicial Committee that the inam settlement is a great act of state and in the absence of original grant the recitals in the inam register are of great value. In the latest decision of the Judicial Committee reported in *Sankara Narayana v. Board of Commissioners for the H. R. E., Madras, (1947) 2 M. L. J. 315: I. L. R. (1948) Mad. 685: A. I. R. 1918 P. C. 25* their Lordships observed:

'The question arose in a recent case before this Board with reference to a Madras inam : see *Secretary, of State v. Vidhya Sri Varada Thirtha Swamigal, .* Where it was held that the title deeds and the entries in the inam register are evidence of the true intent and effect of the transaction and of the character of the right which was being recognised and continued. The entries in the inam register and the description of the Inamdar therein were accepted as indications of the, nature and quantum of the right and the interest created in the land.'

Further, in this case, the long possession by the archakas is more consistent with another theory namely, that as the trustee was not taking any active interest in the trust properties and as the income from the lands was just sufficient to meet the expenses of Nitya Naivedya Deeparathana, the archakas were allowed to be in possession of the lands on behalf of the temple. The recitals in the inam statement are really consistent with this theory. The suit lands were only dry lands, and the income even in 1860 was only about Rs. 260, that is, about Rs. 20, a month. That income must have been just sufficient for meeting the expenses of Nitya Naivedya Deeparathana. The inam statement also shows, as we have already pointed out, that the deity was not only the grantee but the enjoyer. Neither the inam register nor the inam statement shows the existence of any trustee apart from the archakas. It is, therefore, reasonable to presume, that at any rate, in or about the time when the inam statement was filed that the archakas were in possession of the suit lands on behalf of the deity and had been utilising the income therefrom for the upkeep of the temple. Such arrangements for the convenient management of the temple properties are well known, and they cannot confer indefeasible rights on the archakas. In *Narayanamurti v. Achayya Sastrulu, (1925) 47 M. L. J. 714 : A. I. R. 1925 Mad. 411* the question arose whether a particular land was granted to the deity or the archaka burdened with services. In that case, as in this the archakas relied upon their long enjoyment. In dealing with that argument the learned Judges observed:

'The evidence of user and enjoyment, however, long, uninterrupted and unquestioned, would be evidence of the grant only in the absence of any reliable or cogent evidence with regard to the terms of the grant itself or in the case of any ambiguity in the grant. It seems to be clear that almost very recently the suit lands yielded only just what was sufficient for Nitya Naivedyam or the daily worship. No doubt in such a state of things not only the persons who established the temples and made the endowments but succeeding generations of worshippers would have allowed the archakas to cultivate the lands and take the income performing the Puja as it was obviously the most convenient mode of arranging for the worship of the deities and the payment of remuneration for the archaka service.

But when the income accruing from the lands came to be considerable and the archakas, by reason of old habits and following their forefathers, claimed the lands and surplus profits therefrom to be their own, it was only natural that the worshippers should take steps to secure the surplus income for the institutions.'

These observations are very apposite and they clearly describe the circumstances under which the archakas of the temples are allowed to be in possession of the temple lands. We respectfully agree with those observations. In a recent decision reported in *Venkatadri v. Seshacharyulu, 1947 1 M.J.L. 287: A.I.R. 1948 Mad. 72* the same questions that were argued before us were considered, and the claim of the archakas was negated. At page 292, the learned Judges made similar observations :

'There is no evidence as to how the archakas came into possession of the properties or why they were in possession. But if the trustee allowed the archakas to remunerate themselves from the surplus income of the lands when their value was small and considered that they should be remunerated in some other way when the value increased by reason of their conversion from dry to wet, he would have been acting reasonably and within his rights. If, on the other hand, the archakas were in possession merely owing to his negligence, his negligence cannot affect the rights of the institution.'

We adopt these observations, and, if they are applied to the facts of the present case, the claim of the archakas will have to be negatived.

8. We are also of the opinion that the arrangement pleaded in the case, even if true, cannot be binding on the trust. From the aforesaid facts, it is clear that the temple has no other properties except the lands that are now in the possession of the archakas. If we accept the argument of Mr. T. M. Krishna, swami Iyer, it will mean that a trustee can enter into a permanent and binding arrangement with the archakas in regard to all the properties of the temple depriving the temple for ever of the benefit in the enhancement of the value of the properties or in their income. In our opinion, a trustee cannot tie down the properties of an institution so as to deprive the temple of any future benefit arising out of the rise in prices on account of the dry lands being converted into wet lands or for any other reason. Such a permanent arrangement is really in the nature of a permanent lease of trust property the validity of which was fully considered by the Judicial Committee in *Palaniappa Chetty v. Devasikamony Pandarasannadhi*, 40 Mad. 709 : A.I.R. 1917 P.C. 33. In that case a trustee gave a permanent lease of the trust property at a fixed rent on payment of premium. In the course of the judgment their Lordships stated :

'It is a breach of duty on the part of a Shebait unless constrained by an unavoidable necessity to grant a lease in perpetuity of debottar lands at a fixed rent, however adequate that rent may be at the time of granting, by reason of the fact that by this means the debottar estate is deprived of the chance it would have, if the rent were variable, of deriving benefit from the enhancement in value in the future, of the lands leased.'

The same observations apply mutatis mutandis to the permanent arrangement entered into by a tenant in regard to the trust properties. More so in the case where a trustee puts the archaka under a permanent arrangement of all the properties belonging to the deity. In *Venkataramana Iyengar v. Kasturi Ranga*, 40 Mad. 212 : A.I.R. 1917 Mad. 112, the learned Judges had to consider the case of a perpetual lease of the temple income and they held that the lease was void and not binding upon the Devasthanam. At page 219 Seshagiri Ayyer J, pointed out the distinction between a temporary arrangement and a permanent arrangement affecting the rights of the temple and observed :

'Of course, it is competent to those who are in management to allocate either wholly or in fixed proportions the offerings as remuneration for the necessary services rendered by the servants of the temple. In my opinion, Exs. II to V, evidence only such an arrangement. The income from the offerings was not very large in these days, and the collector thought it right that the archakas should be in receipt of it to supplement their remuneration. But this would not justify an unalterable arrangement by which the temple is deprived of the best part of its resources for ever. The arrangement should be subject to periodical revision, regard being had to the paramount interests of the institution.'

Later on the learned Judges re-stated his view in the following words:

'But such an arrangement can only be of a temporary character, subject to periodical readjustment with reference to the exigencies of the time.'

With great respect to the learned Judge, we think the same principle would apply even in the case of a permanent arrangement in regard to immovable properties. If a trustee cannot make a permanent arrangement in regard to the offerings he cannot equally make an arrangement in regard to the immovable properties of the temple. Indeed it would obviously be prejudicial to the interest of the institution if a trustee

is allowed to tie down the property of the temple in the hands of the archakas. It is said that this decision has not been followed in the later decision reported in *Prayag Doss Jee Varu v. Govindacharlu*, : AIR1935Mad220 . In that case it was held 'that an arrangement by which archakas are remunerated by a share of the offerings and collections is quite a well known practice and cannot be regarded as invalid as being an alienation of trust property or as being entered into by a person with the limited powers of a trustee. Such an arrangement is not by any means detrimental to the interests of the institution, and when such an arrangement has been in vogue for a long time and sanctioned by usage, Courts will not be justified in setting aside the same.'

9. Dealing with that judgment Happell J. in *Venkatadri v. Sessaaharyulu* : AIR1948Mad72 observed that that decision applied to the particular facts of the case, and could not be extended to cases where the archakas claimed a right to remain in possession of the properties in respect of which the grant was to the temple. Even in *Prayag Doss Jee Varu v. Govindacharlu*, : AIR1935Mad220 Varadachariar and Burn JJ. did not question the correctness of the decision in *Palaniappa Chetty v. Devasikamong Pandarasannadhi*, 40 Mad. 709 : A. I. R. 1917 P.C. 33 on the assumption that the arrangement in that case amounted to a permanent assignment or appropriation of the trust properties by the trustee. The learned Judges held that on the evidence on record in the case before them, they were unable to hold that the existing arrangement must be viewed as an 'alienation' of trust property or that it was entered into by a person with the limited powers of a trustee, The learned Judges based their judgment on the mamool arrangement which might have come into vogue when the state was exercising sovereign powers and not merely the limited powers of a trustee over the institution. On that assumption, the learned Judges inferred a permanent arrangement entered into by a person who was competent to do so in the exercise of his sovereign powers. It is not necessary to canvass the correctness of that decision but it is enough to state that that decision has no application to the facts of the present case, as in this case, the permanent arrangement pleaded is one that was entered into between the trustee and the archakas and as we have already pointed out the trustee had no power to enter into any such agreement. Mr. T. M. Krishnaswami Iyer relied upon an unreported decision of Sir John Wallis C. J. and Srinivasa Iyengar J. in appeal No. 283 of 1924 on the file of this Court. In that case a trustee filed a suit for recovery of the property in the possession of the archakas on the ground that the property was the temple property. The case of the defendants was that the properties were endowed specifically for archaka service. It was proved in that case that the archakas were in possession of the lands from time immemorial. There was no other documentary evidence to show the nature of the grant or the circumstances under which the grant was made. In that state of evidence, the learned Judges presumed a legal origin, namely, that the property was specifically endowed for archaka service and that the archakas were the trustees of that endowment. That decision has no application to the present case and the facts of the present case do not warrant any such presumption. For the aforesaid reasons, we cannot presume, on the facts, any permanent arrangement as such grant was beyond the powers of the trustee and also because the possession of the properties by the archakas can be attributed to a reasonable and temporary arrangement subject to periodical adjustments which would certainly be within the competence of the trustee.

10. Mr. T. M. Krishnaswami Iyer, the learned counsel for the appellants, argued that, in any view, we should hold that the grant to the deity was only of the melwaram interest in the suit lands, and therefore, the archakas who are the kudiwaramdars could not be evicted. This is a question of fact in each case whether a particular grant comprised both warams or only melwaram. The recitals in Exs. P-3 and D-3 prima facie show that the grant comprised both the warams. In the inam statement under the col, 'description of the inam land' the extent of the Pymash numbers are given. In the col boundaries of the inam' the particulars of the inam are given. It is mentioned in this statement that Sri Somasekharaswami varu was in the present enjoyment of the said inam. These recitals clearly show that what was granted in inam was of the extent mentioned in the statement and that the deity, Sri Somasekharaswami was in possession of the same. The inam register also shows that the lands alone were granted in inam. The inam was described by the survey numbers, the particulars regarding extent and assessment were also given. It was conferred tax-free. Neither in the statement made by the archakas nor in the inam register was there any indication to show that the inam commissioner was dealing with the melwaram right only. Mr. T. M. Krishnaswami Iyer relied upon a

recital in the inam statement under the col. 'income derived from the inam, whether it is sarvadumbala or jodi. If jodi the amount.' The entry against this column is sarvadumbala inam. Kist according to the rate prevailing for the neighbouring fields Rs. 266-3-1. Relying on this recital, he argued that Rs. 263-3-1 did not represent the income from the entire lands but that it only represented the Government assessment. As the Government assessment was shown only as the income from the inam he argued that the inam must have been only of the Government assessment, His argument emphasises the word 'cist' to a breaking point. If the word cist has a wider connotation so as to include not only the assessment but also the income from the lands the argument of the learned counsel would lose much of its force. In our view the word cist was used in the statement in a loose sense to mean income, for that entry is found under the col. 'income derived from the inam. That that must be the intention of the persons who made that statement is also clear if col. 7 of the inam register is compared with the statement made in the inam statement under the col. 'income derived from the inam' in the statement, the income is shown as Rs. 266 3-1 whereas the assessment is shown as Rs. 193-13-9 in the inam register. Therefore the sum of Rs. 266-3-1 shown as the income derived from the inam cannot be the same as the assessment mentioned in col. 7 of the inam register. In those days, the lands were only dry lands. It is not also likely that the income from these lands would have been more than Rs. 266-3-1. Having regard to the recitals in Exs. D-3 and P-3 and the description of the property as sarvadumbala inam we are not inclined to read the recital under the col. 'income derived from the inam, in the inam statement in the manner desired by the learned counsel for the appellants.

11. Reliance was placed upon an unreported decision of this Court in Appeal No. 213 of 1942 by Wadsworth and Patanjali Sastri JJ. In that case also, the question was whether a particular grant was of both warams or only of melwaram. Wadsworth J. in holding that the grant was only of melwaram laid emphasis upon a similar recital in the inam statement. Under the heading 'income realised from the inam sarvadumbala' in the inam register the assessment of the inam Rs. 14 is shown. As the assessment shown in the inam register and the income shown in the inam statement were the same, the learned Judges held that the extent of the inam was the amount of the assessment. In the course of the judgment, their Lordships observed:

'It seems therefore that the decision must rest on the recital in Ex. V that the income of the inam consists of Rs. 14 read along with the recital in Ex. IV that the assessment on the land also comes to Rs. 14.'

Moreover in that case, as observed by the learned Judges, it was clearly established that the person then in enjoyment of the land was the archaka who was rendering his services for which the inam was granted. It is not necessary to decide in this case whether the conclusion of the learned Judges on the aforesaid recital in the inam statement was correct or not. It is enough to state that, even applying the test laid down by the learned Judges in that case. It is not possible to hold that what was granted was only melwaram. In this case there was an express statement made by the archakas themselves that the deity was in present enjoyment. Further more the income shown in the inam statement is a larger amount than the assessment shown in the inam register. We are therefore, of opinion that that decision has no application to the facts of the present case. In Venkatadri v. Seshacharyulu : AIR1948Mad72 though the amount shown as income was the same as the amount shown as assessment, the learned Judges made the following observation : in regard to the judgment of Wadsworth and Patanjali Sastri JJ.

'The mere fact that the income from the property and the assessment on it are shown as the same is not sufficient to displace the inference that the grant to the temple was of both warams. The income derived from 16 acres of dry land may not have been considerable in 1860 and as the inam was to be treated as free, a precise calculation of appropriate assessment may not have been regarded as important.' We respectfully agree with these observations Mr. T. M. Krishnaswami Iyer also relied on another circumstances to show that the inam could not have been of both the warams. It was argued that, on the strength of the history of Kondavidu circar mentioned in the Kistna Dt. Manual, the zamindars were only renters and, therefore, they could not have granted more than what they had got. In support of this argument the learned advocate for the appellants relied upon the decision reported in Seethayya v. Somayajulu, 52 Mad. 463 : A.I.R. 1929 P. C. 115. The question that arose for consideration in that case was whether the grant was of kudivaram interest

alone or of both warams. The Judicial Committee held that, having regard to the various circumstances and to the terms of the grant the grant was of melwaram alone. In coming to that conclusion one of the points relief upon by their Lordships was that the grantors were Despandyas, revenue officers, and, therefore, there was strong probability that they granted that which in their position as Despandyas they possessed, namely, the rights over the revenue. At the same time, their Lordships made it clear that this fact did not exclude the possibility of the grantors being themselves personally possessed of the land, namely, kudiwaram rights.

12. It is not safe to decide the case on such hypothetical considerations when there is direct evidence of the terms of the grant as embodied in the inam register of 1860.

13. We, therefore, hold, on the evidence on record in the case that the grant to the deity, Sri Somasekharaswami is of the entire lands, that is, both melwaram and kudiwaram. In the result the appeal fails and is dismissed with costs.

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