Privy Council Appeal No. 149 *of* 1915.

Sri Sethuramaswamiar and Others - - *Appellants,*

v.

Sri Meruswamiar (since deceased) and Others - *Respondents,*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD OCTOBER, 1917.

Present at the Hearing:

LORD BUCKMASTER.
SIR JOHN EDGE.
MR AMEER ALI.
SIR WALTER PHILLIMORE, BART.

[*Delivered by* SIR WALTER PHILLIMORE.]

The plaintiff in this suit is the younger brother of the first defendant, and the nature of his claim is twofold.

He alleged, first, that there were certain joint family properties, of which the first defendant had been manager, and of which he now desired his share.

Secondly, that there were certain properties devoted to charitable and religious purposes, and therefore not available for division, in the management of which he was entitled to share, and for which he desired that there should be a scheme of management settled by the Court.

The second defendant is another younger brother having the same interest as the plaintiff; and the other defendants are widows entitled to allowances during their lives.

The properties, both non-religious and religious, were granted at various times by the then Rajah of Tanjore to the ancestor of the parties, one Setubavaswami. They descended to his son, and that son, having no natural children, to an adopted son, and then to his adopted son, Ramasetuswami, who died, leaving three natural sons, viz., the plaintiff and the first and second defendants.

At the time of the death of Ramasetuswami in 1886 his three sons were minors. The first defendant came of age in 1890, and the plaintiff somewhere about the year 1894. He

made a demand of his rights in 1901 and brought his action in 1904.

There is no dispute as to the circumstances in which the original ancestor received the grants of land from the Rajah of Tanjore. He was a holy man, who, somewhere about the year 1739, was brought from a mutt or religious institution at Mannargudi to Tanjore, and was constituted by the Mahratta Ruler of Tanjore his *guru*, or spiritual preceptor. His descendants in regular succession became *gurus* to the Rajah as long as the Raj remained, and were installed by the Rajah for the time being with certain ceremonies, one of the most important being the placing of the new *guru* on the *gadi*. There was also a religious ceremony, in which the head of the mutt at Mannargudi and certain other heads of Mutts took part, to which reference will be made later on.

When Ramasetuswami, the father of the parties, died the Raj had escheated; but after the usual religious ceremony had taken place, the man claiming to be the adopted son of the last Rajah installed the first defendant with the accustomed ceremony; and there is no doubt that the first defendant is the *guru* of the man who installed him.

The contention on behalf of the first defendant is that the office of *guru* is hereditary by way of primogeniture, and that the non-religious lands were given to the *guru* for the time being to maintain the dignity of his office, and are therefore impartible.

The contention for the plaintiff is that these lands were granted to the original *guru*, no doubt as a reward for his services, but to him personally and his heirs, and not as an appanage or endowment of the office of *guru*.

Shortly after the escheat of the Raj in 1855, enquiries were directed by the Government with a view of ascertaining whether the properties enjoyed by Ramasetuswami were service lands, that is, land enjoyed or endowments of offices held by servants or ministers of the Rajah, which would escheat upon the termination of the Raj, or whether they had been bestowed as personal grants; and a report was made which was acted upon by the Government to the effect that these non-religious properties were not service lands but personal grants, and consequently had not escheated. Thereupon new *inam* grants in confirmation of the original grants were made by the Government to the father of the parties.

The original grants of the non-religious lands show no indication that they were made by way of endowment of an office. The utmost that can be said on behalf of that contention is that the grantee is sometimes described as a Royal Priest. But this is mere description.

The confirmation grants of the non-religious lands describe them as the personal *inams* of the grantee to be held by him as his absolute property to hold or dispose of as he thinks proper, subject to the quit rent. In some of the grants

the *inam* is said to be tax free and hereditary, and that on failure of lineal heirs it will lapse to the State.

There is nothing in these documents, or in any of the other circumstances of the case, to take the descent of the non-religious lands out of the ordinary rule of inheritance. This is what has been decided in favour of the plaintiff by the Subordinate Judge, and in the High Court of Judicature of Madras upon Appeal; and their Lordships see no reason to differ from this conclusion. They arrive without hesitation at the result that the appeal of the first defendant against this part of the decision in the Courts of India fails.

Both Courts have also decided in favour of the plaintiff on the other claim, and have directed that there should be a scheme for the management of the religious and charitable properties, to be settled in due course. This part of the case has given their Lordships more difficulty.

No scheme has, so far, been settled, but there is no doubt as to the lines on which the scheme would proceed. It would, as asked by the plaintiff, provide for equal rights of management by the plaintiff and the first and second defendants and their heirs, either by giving the management to each in rotation, or possibly by dividing the charities and assigning the management of some to one and of the others to the others.

This will be the nearest approach that can be made to the ordinary partition which is granted at the request of any one of the co-parceners of Hindu family lands.

The objects for which these properties were given are described in the deeds as being for the purpose of perpetually conducting a food chattrum near the tomb of the holy man Meruswami, and in one case for the purpose of making an agrahar by building houses round about the holy place.

With regard to what are called private charities, such as endowments for the support of the family idol, the law, as laid down by various decisions in India, and apparently accepted in one case by the Privy Council (*Ramanathan Chetty* v. *Murugappa Chetty*, 27 Indian Law Reports (Madras), p. 192; L.R., 33 Indian Appeals, p. 139), is that, if there is no contrary provision in the original grant, the right of management passes to the natural heirs of the original grantee, and, if there be no other arrangement or usage and no scheme settled by the Court, will be exercised by the managing member of the family before partition, or in turn by the several heirs after partition.

But their Lordships' attention has not been drawn to any case in which these decisions as to management have been applied to lands which constitute the endowment of such a charity as those in question in this suit.

The case most nearly in point is *Thandavaroya Pillai* v. *Shunmugam Pillai* (32 Indian Law Reports (Madras), p. 167); but it does not decide this question, and does not seem to have come up before the Privy Council.

It is unnecessary, however, to decide whether there is a

general rule for the devolution of the management of charities of this class because, in their Lordships' view, there is sufficient indication in the documents and in the surrounding circumstances of this case that a devolution of the management to the heirs of the original donee is inconsistent with the purposes of the founder when he created the endowments.

The grants of the religious or charitable lands made by the Mahratta Rajah to Setubavaswami, which take the form of orders to his officers, describe them as being for the purpose of *inam* and for the purpose of perpetually conducting or establishing the defined charity; and they proceed to state that for this purpose they had been given to the Royal Priest, Setubavaswami.

Having regard to the donee's position and the way in which these grants are set forth, it would be difficult if there was nothing else to guide the Court to determine whether these grants were made to the person or to the office. But the deeds of confirmation of the religious lands made by Government in 1865 are of assistance. They are in a different form from that used in the confirmation grants of the non-religious lands. Each is described as a title-deed granted to the manager for the time being of the charity, which is then described. By the deed the title of the manager is acknowledged, and the *inam* is confirmed to him and his successors. There is no personal name, and it is only from external evidence that it can be determined that the grant was to Ramasetuswami, the father of the parties.

Taking, as their Lordships do, the view that it was not intended by these confirmation deeds to vary the previous rules as to the descent of the religious lands, any more than it was intended to vary the previous rules as to the descent of the non-religious lands, these confirmation grants afford evidence as to the nature of the tenure, as it was commonly understood at the time. These lands, then, had been held, and were to be held in future, by the particular office-bearer from time to time. That office-bearer is, in their Lordships' opinion, to be found in the head of the *mutt*, or institution founded when the original *guru* was induced by the Rajah to migrate from Mannargudi. He would be one person, not several, and the first defendant is the present head.

It is in evidence that the installation ceremonies which are believed to have occurred upon the succession of each new *guru* were of a double character. The induction, as it may be called, by the Rajah to the office of Royal Guru with a seat upon the *gadi* was preceded by a religious ceremony in the nature of an ordination or institution in which the *Mohunt*, or head of the parent *mutt*, placed the first defendant in the seat of headship, other heads of *mutts* taking part in this ceremony, and certain religious rites following.

It is in evidence that the defendant, as the head of the *mutt* thus constituted, performs in person, or by deputy, certain

religious rites, has given initiation to some people, no doubt not many, and has on some, not very frequent, occasions given religious instruction. He is thus pointed out as the natural head and administrator of religious charity; and the office of head of the *mutt* and administrator of the charity have been associated from the first.

The headship of a *mutt* is not a matter of partition. Indeed, the plaintiff admits that he has no claim to share in it. This being so, it appears to their Lordships that the intention of the founder must be deemed to have been that his religious charities should be administered by the man who was head of the *mutt*, to which office the eldest son of the previous holder would naturally succeed, the office being indivisible among the members of the family, and the principles to be applied being those laid down in the case of *Jafar* v. *Aji*, (2 Madras High Court Reports, p. 19); and further approved in *Trimbak* v. *Lakshman* (Indian Law Reports (20 Bombay) p. 495). This being so, there was no jurisdiction in the Indian Court to settle a scheme, the only object of which would be to take away the sole power of management from the eldest son.

This part of the appeal therefore succeeds.

Their Lordships think that the plaintiff should have his costs in the Court of First Instance, as he there recovered a very substantial part of his claim, viz., his right to share in the inheritance, and to have partition, if he desired, of the non-religious lands; but they think that there should be no costs of the appeals to the High Court and to His Majesty in Council.

Their Lordships will therefore humbly recommend His Majesty that the decree of the High Court of Judicature of Madras be varied, in so far as it confirmed that part of the decree of the lower Court, paragraph 8, which ordered that a scheme be settled for the due management of the religious and charitable properties, and so far as as it ordered the first defendant to pay the costs on appeal of the plaintiff and second defendant; and that the decree of the lower Court be varied by striking out paragraph 8, and that there be no costs of the appeal to the High Court or to His Majesty in Council.

In the Privy Council.

SRI SETHURAMASWAMIAR AND OTHERS

v.

SRI MERUSWAMIAR (since deceased) **AND OTHERS.**

DELIVERED BY SIR WALTER PHILLIMORE.

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