Saraswathi Ammal And Another vs Rajagopal Ammal on 20 October, 1953

Equivalent citations: 1953 AIR 491, 1954 SCR 277, AIR 1953 SUPREME COURT 491, 1967 MADLW 7

Author: B. Jagannadhadas

Bench: B. Jagannadhadas, Mehr Chand Mahajan, B.K. Mukherjea

PETITIONER:
SARASWATHI AMMAL AND ANOTHER

Vs.

RESPONDENT:
RAJAGOPAL AMMAL.

DATE OF JUDGMENT:
20/10/1953

BENCH:
JAGANNADHADAS, B.
BENCH:
JAGANNADHADAS, B.
MAHAJAN, MEHR CHAND
MUKHERJEA, B.K.

CITATION:
1953 AIR 491 1954 SCR 277
CITATOR INFO :
R 1970 SC 458 (12,14)
E&R 1978 SC1174 (13,14)

ACT:
Hindu law-Religious endowments-Dedication for worshing at tomb-Validity-Public policy.

HEADNOTE:
A perpetual endowment of properties for the purpose of samadhi kainkaryam, i.e., worship of and at the samadhi (tomb) of a person, is not valid under Hindu law.

To the extent that any purpose is claimed to be a valid one for perpetual dedication on the ground of religious merit though lacking in public benefit, it must be shown to have a Shastraic basis so far as Hindus are concerned. The

heads of religious purposes determined by belief in acquisition of religious merit cannot be allowed to be widely enlarged consistently with public policy and needs of modern society.

Kunhamutty v. T. Ahmad Musaliar and Others (I.L.R. 58 Mad. 204, A. Draviasundaram Pillai v. N. Subrahmanya Pillai (I.L.R. 1945 Mad. 854), Veluswami Goundan v. Dandapani ([1946] 1 M.L.J. 354) approved. M. K. A. Ramanathan Chettiar v. Vada Levvai Marakayar and Others (I.L.R. 34 Mad. 12) and Board of Commissioners for Religious Endowments v. Pidugu Narasimham and Others ([1939] 1 M.L.J. 134) distinguished. Fatma Bibi v. Advocate-General of Bombay and Another (I.L.R. 6 Bom. 42), Dwarakanath Bysack and Another v. Burroda Persaud By sack (I.L.R. 4 Cal. 443), Rupa Jagashet v. Kishnaji (I.L.R. 9 Bom. 169) and Parthasarthy v. Tiruvengada Pillai and Others (I.L.R. 30 Mad. 340) referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 200 of 1952.

Appeal from the Judgment and Decree dated the 15th day of July, 1949, of the High Court of Judicature at Madras (Rajamannar C. J. and Ayyar J.) in Appeals Nos. 625 of 1945 in O. S. No. 35 of 1944 of the Court of the Subordinate Judge, Tinnevelly.

R Ganapathy Iyer and K. Vaitheeswran for the appellants.

Ramchandra Iyer for the respondent.

1953. October 20. The Judgment of the Court was deli- vered by JAGANADHA DAS J.

JAGANNADHADAS J.-This appeal arises out of a suit for partition. The plaintiff and the 1st defendant are daughters of one Kanakasabapathi Pillai. The 2nd defendant is the husband of the 1st defendant. Kanakasabapathi was a selfmade man and built up a flourishing motor bus service and also acquired substantial properties, movable and immov- able. He died on the 24th August, 1942, without any male issue and left him surviving a widow, Gomathi Ammal, and two daughters, the plaintiff and the 1st defendant. His widow continued the motor service and managed the other properties with the help of the 2nd defendant as her manager and died on the 7th March, 1940. The 1st defendant and her husband were throughout living with her mother. On her mother's death they both got into possession of all the properties including the motor service. The plaintiff accordingly brought the present suit originally as one for administration but later amended it as one for partition and separate possession of her half share in the properties. Both the courts below have decreed partition with ancillary reliefs. There are some minor variations in the decree of the High Court from that of the Subordinate Judge, details of which it is not necessary to notice. The defendants are the appellants before us.

Shortly before her death, the widow. Gomathi Ammal, executed two documents both on the same day, namely the 4th November, 1940, (1) a sale deed by which she conveyed the entire bus service as a going concern to the 2nd defendant for consideration of Rs. 80,000 (vide Exhibit D-6); and (2) a settlement deed by which she dedicated some immovable properties worth about Rs. 27,000, for the performance of certain services purporting to be of a religious and charitable character (vide Exhibit D-8). The main dispute between the parties was as to the validity of these two deeds, apart from certain mind contest as to Whether some of the suit properties were part of Kanakasabapathi's estate and liable for partition. As regards the sale deed (Exhibit D-6) 'both the Court below have concurrently found that it was executed for grossly inadequate consideration and brought about by undue influence and fraud of the 2nd defendant. The sale deed was accordingly set aside. With reference to the dispute as regards the individual items of property, the Subordinate Judge found that item 25 of Schedule 11, item 6 of Schedule 111-C and item 5 of Schedule IV did not form part of the estate of Kanakasabapathi and that all the other items belonged to the said estate. This finding also has been confirmed by the High Court. There is no further appeal to this court as regards these matters.

The only questions before us are those arising out of the settlement deed (Exhibit D-8) and relate to the properties comprised in Schedules I and 11 attached thereto. They form Schedule 11 of the plaint. For a proper appreciation of the points that arise on this appeal, it is desirable to set out the settlement deed (Exhibit D-8) executed by Gomathi Ammal which reads as follows:

> "The properties described in schedule I herein are the properties which belong to the estate of my husband the late T. G. Kanakasabapathi Pillai Avargal aforesaid. They were purchased by him in his name and after his death, they be- long to me and are in my possession and enjoyment. All the properties described in schedule 2 herein are my private properties which were purchased in my name from out of my own funds and which are in my possession and enjoyment. My husband aforesaid who had been sick for about two months prior to 24th August, 1942, died on 24th August 1942. My husband, while he was so sick, expressed to me his wish that if perchance he should die, he should be entombed in the property forming the first item property of schedule I herein, that the vacant lands forming item:, 2 to 6 of the said schedule I should be annexed to the first item property of the said schedule I as part and parcel thereof utilised for the benefit of and free access to the said tomb that the incomes derived from the properties forming items 7 to 17 of the said schedule I should be utilised for the kainkariyam (services) expenses relating to the samadhi (tomb) that the said first schedule properties should-be managed and enjoyed and the kainkariyam relating to the said samadhi performed by me during my lifetime and after me, by the persons who may be appointed by me according to my discretion, that the said properties should be charged solely with the said kainkariyam (services) in the manner stated above and that no one else should have any right or interest therein, that no one should alienate the said properties in any manner, that all necessary interest should be taken in improving the said properties and that I should make a settlement in writing, mentioning the above particulars, and within a few days thereafter, my husband passed away. As desired by him, he has been entombed

in the property forming the first item of schedule I herein. A person was appointed for (doing) pooja in respect of the said samadhi and daily pooja as well as special Gurupooja and annadhanam (charity of feeding), etc. in Avani (August September) of the first year in Tiruvona Nakshatram when he died, have been conducted. In having so conducted them, a sum of Rs. 200 has been spent in connection with the expenses of daily pooja and for the salary of the person and a sum of Rs. 1,000 for Gurupooja and annadhanam, etc. in the aforesaid one year. The properties forming items 7 to 16 of Schedule I fetch only an income of Rs. 400 per year. Since it is not sufficient for conducting the said kainkariyams (services) and as I intend that the said kainkariyams shall be regularly and decently conducted by contributing the amount required for the expenditure over and above the said income, that the said acts shall be hereditarily and permanently performed for ever and that necessary arrangements must be made therefore. I have, with a view to discharge my duties which I have towards my husband and also realising the necessity of utilising also the income derived from any private properties described in schedule 2 herein for the expenses in connection with the kainkariyam of the said samadhi, executed this settlement deed including also my private properties mentioned above. I have therefore charged all the properties mentioned in schedules I and 2 herein solely with my husband's samadhi kainkariyam. I have decided that out of the incomes derived from 'the aforesaid properties, the -Revenue Union and other theer-

vas payable in respect of the aforesaid properties and the expenses in connection with repairs and improvement shall be deducted that, from out of the balance income, the expenses in connection with the daily pooja of the said samadhi, the expenses in respect of the salary of the person conducting the said daily pooja and the expenses in connection with Gurupooja and annadhanam, etc., performing on the day of Thiruvona Nakshathram in the month of Avani of every year shall be regularly met and the said kainkariyams decently performed, that after deducting the expenses incurred in the manner stated above the surplus that may be left over shall be spent for matters connected with education and that the properties described in schedules I and 2 herein shall be enjoyed and all the acts performed in the manner stated above with the income derived therefrom during my lifetime and after my death by K. Ramaswami Doss Avargal, my junior son-in-law, who has married my younger daughter, son of Krishna Konar Avargal, Yadhava, Vaishnavite, manager of my motor service, since I fully believe that only the said K. Ramaswami Doss Avargal is the fit and proper person to perform all the above acts truly, regularly and efficiently after my lifetime, and after him his male descendants in hereditary succession as hukdars and I have executed this settlement. Koilpatti, where the properties described in schedules I and 2 herein, being a place growing in importance from day to day, the vacant land in the properties described in schedules I and 2 herein may be sold if and when they can fetch suitably and profitably high price and for the amounts realised by such sale other sub- stantial properties capable of yielding income may be purchased. Except under such circumstances, no one has the right to make any other alienations whatever. Should any such alienations be made, it shall not be valid. No

one has the right to cancel this settlement or make alterations therein".

As appears from the above, Kanakasabapathi was en- tombed after his death and the question is as to the validity of the dedication made therefor. it will be seen that the settle-

ment deed proceeds on the footing that the dedication was made in pursuance of the desire of the husband and that the items in schedule 2 thereto which are items 18 to 24 of Schedule II attached to the plaint in this suit are the widow's own property and not part of the estate of Kanakasabapathi. The courts below have found both these assertions not to be true. But no question has been raised before the courts below or before us that the settlement, even if otherwise valid, was beyond the powers of the limited owner, Gomathi Ammal. The courts below in coming to the conclusion that the dedication was invalid (partially as held by the Subordinate Judge and wholly as held by the High Court) relied on Kunhamutty v. Thondikkodan Ahmad Musaliar and two others(1) and other cases following it. Learned counsel for the defendants-appellants contested the correctness of this line of decisions and also urged that the dedication in the present case was substantially one for religious and charitable purposes like, Gurupooja annadhanam and education and that, therefore, this does not come within the scope of these cases. It will be convenient to consider this latter contention first.

From the recitals in the settlement deed set out above, it will be seen that items I to 6 are vacant sites, and that the samadhi is in item 1, while items 2 to 6 have been set apart along with item I for the benefit of and free access to the samadhi. All the other items 7 to 25 have been dedicated in order that the income thereof may be utilised for the following services. (1) Expenses in connection with the daily pooja of the said samadhi and the salary of the person conducting the daily pooja; (2) Gurupooja and annadhanam to be performed annually at the samadhi on Thiruvona Nakshathram day in Avani when he died, that is, the day of the annual sradh of late Kanakasabapathi; and (3) any balance left over after meeting the above expenses to be spent for matters connected with education. Learned counsel for the appellants points out 'that the recitals in the deed show that only a sum of Rs. 200 (1) I.L.R. 58 Mad. 204.

had been spent by the widow in connection with the expenses, of daily pooja and that as much as Rs. 1,000 had been spent for Gurupooja and annadhanam on the day of annual sradh and that it was to enable the Gurupooja and annual sradh to be performed regularly on more or less the same scale that items 7 to 25 of Schedule 11 to the plaint with their income has been dedicated. It is urged, therefore, that the performance of the pooja and the feeding at the annual sradh on a substantial scale and the utilisation of the balance, if any, for educational purposes, were the main destination of the income and hence the main object of the settlement and that accordingly the dedication is valid. We are unable to accede to this contention. There is no evidence in the case as to what "Gurupooja" contemplated in the deed consists of and whether it is not merely worship of the deceased entombed in the samadhi. Though the word "Guru" ordinarily refers to a preceptor, it is not inapplicable to an ancestor considered as Guru. However that may be there is enough in the settlement deed to show what the dominant motive of the dedication is. A careful perusal of the document shows that Gurupooja and annadhanam on the sradh day were contemplated as being parts of the worship at the tomb. There can be no doubt about it at least so far as items 1 to 10 are

concerned which fetch only a small income. The inspiration and motive for the dedication therefor is the alleged desire of the husband that the properties and their income are to be utilised for the kainkariyam (services) expenses relating to the said samadhi. The dedication of additional items 11 to 25 is only in pursuance of the same impulse. It is recited that during the first year after her husband's death she herself got the daily pooja as well as Gurupooja and annadhanam on the sradh day conducted and spent for the same. Her spending as-much as Rs. 1,000 for Gurupooja and annadhanarn on the day of sradh was clearly as part of the smadhi kainkariyam which she had undertaken. It is for the continuance of the samadhi kakariyam, an the same scale that she endowed additional properties over and above what was said to have been endowed at the desire of her husband. It is clear, therefore, that all these various items of expenses are contemplated as expenses for the samadhi kainkariyam and not for any other kind of religious or charitable purpose as such. That the dedication was meant not for the annual sradh or education as such but only as part of samadhi kainkariyam is clinched by the term in the deed, Exhibit D- 8, which runs as follows: -

> "I have, therefore charged all the properties mentioned in schedules 1 and 2 herein (Schedule 11 of the plaint) solely with my husband's samadhi kainkariyam".

Hence notwithstanding that the major portion of the income may have to be spent for Gurupooja and annadhanam in connection with the annual sradh, it is clear that the domi- nant purpose of this dedication was the samadhi kainkariyam, that is to say, that worship of and at the samadhi (tomb). The validity or otherwise, therefore, of the dedication must be determined on that footing and not as though it was a dedication for the performance of the annual sradh on a sub- stantial scale or for annadhanam as such. Nor does it make any difference in this case that the surplus is contemplated to be utilised for educational purposes. That surplus is contigent and indefinite as well as dependent on the uncontrolled discretion of the 2nd defendant as to the scale on which he chooses to perform the samadhi kainkariyam. The validity, therefore, of such a dedication as was made under Exhibit D-8 for the worship primarily connected with the tomb of a deceased person falls to be considered. As already stated the Madras High Court has pronounced against it in a number of cases, viz., Kunhamutty v. Thondikkodan Ahmad Musaliar and two other(1); A. Draivaisundram Pillai v. N. Subramania Pillai(2) and Veluswami Goundan v. Dan- dapani(3). It has been brought to our notice that the said High Court in a case which came up for its consideration subsequent to the judgment in the present case felt that the (1) I.L.R.58 Mad.204 at 2ll.

(2) I. L.R. 1954 Mad. 854.

(3) [1946] I.M.L.J. 354.

above line of cases require re-consideration and referred the question for the consideration of a Full Bench. But we are informed that the Full Bench reference did not materialise on account of the subject-matter therein having been compromised.

It was held in the Madras decisions above noticed that the building of a samadhi or a tomb over the remains of a person and the making of provision for the purpose of Gurupooja and other ceremonies in connection with the same cannot be recognised as charitable or religious purpose according to

Hindu law. This is not on the ground that such a dedication is for a superstitious use and hence invalid. Indeed the law of superstitious uses as such has no applica- tion to India. The ground of the Madras decisions is that a trust of the kind can claim exemption from the rule against perpetuity only if it is for a religious and charitable purpose recognised as such by Hindu law and that Hindu law does not recognise dedication for a tomb as a religious or charitable purpose. It is, however, strenuously argued by the learned counsel for the appellants that the perpetual dedication of property in the present case, as in the Madras cases above referred to, must be taken to have been made under the belief that it is productive of spiritual benefit to the deceased and as being some what analogous to worship of ancestors at a sradh. It is urged, therefore, that they are for religious purposes and hence valid. The following passage in Mayne's Hindu Law, 11th Edition, at page 192, is relied on to show that.

> "What are purely religious purposes and what religious purposes will be charitable must be entirely decided accord- ing to Hindu law and Hindu notions."

It is urged that whether or not such worship was origin- ally part of Hindu religion, this practice has now grown up and with it the belief in the spiritual efficacy thereof and that courts cannot refuse to accord recognition to the same or embark on an enquiry as to the truth of any such religious belief, provided it is not contrary to law or morality. It is further urged that unlike in English law, the element of actual or assumed public benefit is not the determining factor as to what is a religious purpose under the Hindu law. Now, it is correct to say that what is a religious purpose under the Hindu law must be determined according to Hindu notions. This has been recognised by courts from very early times. [Vide Fatma Bibi v. Advocatc-General of Bombay and another(1)]. It cannot also be disputed that under the Hindu law religious or charitable purposes are not confined to purposes which are productive of actual or assumed public benefit. The acquisition of religious merit is also an important criterion. This is illustrated by the series of cases which recognise the validity of perpetual endowment for the maintenance and worship of family idols or for the continued performance of annual sradhs of an individual and his ancestors. See Dwrakanath Bysack and another v. Burroda Persaud Bysack(2) and Rupa Jagashet v. Krishnali(3). So far as the textual Hindu law is concerned what acts conduce to religious merit and justify a perpetual dedication of property therefor is fairly definite. As stated by the learned author Prananath Saraswathi on the Hindu Law of Endowments at page 18-

> "From very ancient times the sacred writings of the Hindus divided work productive of religious merit into two divisions named ishta and purtta, a classification which has come down to our own times. So much so that the entire object of Hindu endowments will be found included within the enumeration of ishta and purtta."

The learned author enumerates what are ishta works at pages 20 and 21 and what are purtta works at page 27. This has been adopted, by later learned authors on the law of Hindu Religious Endowments and accepted by Justice Subrahmania Ayyar in his judgment in Parthasarthy Pillai and another v. Thiruvengada Pillai and others(4). These lists are no doubt not exhaustive but they indicate that what conduces to religious merit in Hindu law is primarily a mat- ter of Shastraic injunction. To the extent, therefore, that any purpose is claimed to be a valid one for perpetual

dedication (1)I. L R. 6 Bom. 42 (2)I.L.R. 4 cal 443.

(3)I.L.R. 9 Bow. 169.

(4) I.L.R.30 Mad. 340 at 342.

on the ground of religious merit though lacking in public benefit,it must be shown to have a Shastraic basis so far as Hindusare concerned. No doubt since then other religious practices and beliefs may have grown up and obtained recog- nition from certain classes, as constituting purposes Condu- cive to religious merit. 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 at least be shown that they have obtained wide recognition and constitute the religious practice of a substantial and large class of persons. That is a question which does not arise for direct decision in this case. But it cannot be maintained that the belief in this behalf of one or more individuals is sufficient to enable them to make a valid settlement permanently tyingup property. The heads of religious purposes determined by belief in acquisition of religious merit cannot be allowed to be widely enlarged consistently with public policy and needs of modern society.

The learned Judges of the Madras High Court appear to have made the Full Bench reference above noticed on an argument before them that erection of tombs for deceased persons and endowment of properties for the upkeep thereof and for the performance of worship thereat were common amongst Hindus of certain communities and that it is believ- ed by them to redound to their spiritual benefit, and that the validity of such endowments have been recognised by the courts. But the case that they referred to is Muthu Kana Ana Ramanatham Chettiar v. Vada Levai Marakayar and Other(1), which relates to Muslims and it may well be that the position is, as stated therein, amongst Muslims. We have been referred to a statement at page 223 of P. R. Ganapathi Iyer's Hindu and Mohamedan Endowments, 2nd Edition, wherein it is stated-

> "Gifts for the maintenance of tombs or samadhies of private persons have been regarded as valid under the Hindu law."

(1) I.L.B. 34 Mad. 12.

We have been unable to find on what authority this statement was based. There is only a solitary passage in the case reported as the Most Reverend Joseph Colgan v. Administisator-General of Madras(1) wherein it appears as follows: -

> "Dedication of property in perpetuity for the perform- ance of religious ceremonies, maintenance of tombs and other purposes not allowed by English law to be charitable, have always been held lawful amongst Hindus and Muhammadans."

In so far as this statement relates to tombs of Hindus, we are unable to find any support from our knowledge and experience. There have been no doubt instances of Hindu saints having been defined and worshipped but very few, it at all, have been entombed and we are not aware of any prac- tice of

dedication of property for such tombs amongst Hindus. Such cases, if they arise, may conceivably stand on a different footing from the case of an ordinary private in- dividual who is entombed and worshipped threat. The case reported as The Board of Commissioners for Hindu Religious Endowments, Madras v. Pidugu Narasimliam and others(2) has also been referred to. It is a somewhat curious case furnishing an instance where images of as many as 66 heroes who were said to have been killed in a war between two neighbouring kingdoms in the 13th century were installed in a regular temple and systematically worshipped by the public for several centuries and inam grants therefor made during the Moghul period. With reference to the facts of that case, the learned Judges were inclined to hold that the worship was religious. This, however, is a case of a grant from a sovereign authority and in any case is not an endow- ment for worship of a tomb. In the three Madras cases in which it was held that the perpetual dedication of propertv by a Hindu for performance of worship at a tomb was not vaild, there was no suggestion that there was any widely._ accepted practice of raising tombs and worshipping thereat and making endowments therefor in the belief as to the reli- gious merit acquired thereby. In the present case also, no (1)I.L.B. 16 Mad 4. 424 at 446. (2) [1939] 1 M.L.J. 134.

question has been raised that in the community to which the parties belong there was any such well recognised practice or belief. The defendants in the written statement make no assertion about it. But on the other hand, the plaintiff in paragraph 12 of his plaint asserts that the-

> "Institution of samadhi and ceremonies connected with it are not usual in the community to which the parties belong".

Indeed it may be assumed that such a practice is not likely to grow up amongst Hindus where cremation and not burrial of the dead is the normal practice, except probably as regards sannyasis and in certain dissident communities. We see no reason to think that the Madras decisions are erroneous in holding that perpetual dedication of property for worship at a tomb is not valid amongst Hindus.' We accordingly affirm the judgment of the High Court and dismiss the appeal but in the circumstances without costs.

Appeal dismissed.

Agent for the appellant: S. Subramanian.

Agent for the respondent: M. S. K. Aiyangar.