

A.S(MD)No.140 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	02.03.2023
Pronounced on	13.04.2023

CORAM

**THE HONOURABLE DR JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR JUSTICE K.K.RAMAKRISHNAN**

**A.S(MD)No.140 of 2015
and
M.P(MD)No.2 of 2014 and C.M.P(MD)No.8058 of 2019**

The Idol of Sri Renganathaswamy,
Srirengam rep., by its Joint Commissioner/
Executive Officer, Devasthanam Officer,
Devasthanam Office, Srirengam,
Tiruchirappalli.

.. Appellant / Plaintiff

Vs.

1.J.Sriram

2.B.Mani

3.M.Chandra Ammal(died)

.. Respondents/Defendants

[R2 who is already recorded as LR of
deceased R3 vide memo in USR78 as
per the Court order dated 16.03.2018]



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PRAYER: Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 29.04.2013 in O.S.No.82 of 2011 on the file of the III-Additional District Judge, Tiruchirappalli.

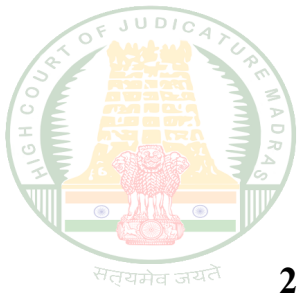
For Appellant : Mr.M.Saravanan
For Respondents : Mr.R.Devaraj
for Mr.M.Siddharthan
for R1

: Mr.M.Karunanidhi
for R2

JUDGMENT

[Judgment of the Court was made by **K.K.RAMAKRISHNAN, J.**]

The plaintiff temple is the appellant before this Court challenging the judgment and consolidated decree dated 29.04.2013 passed in O.S.No.82 of 2011 by the learned III-Additional District Judge, Tiruchirappalli, comprising the dismissal of the suit filed by the temple as well as the partly decreed portion of counter claim filed by the first respondent herein.



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2. The plaintiff temple filed a suit in O.S.No.82 of 2011 on the file of learned III Additional District Judge, Tiruchirappalli, seeking the relief of

- (i) recovery of possession of the suit schedule properties ;
- (ii) declaring the compromise decree obtained in O.S.No.319 of 2007 by the first respondent on the file of the learned District Munsif, Kulithalai is illegal and void and will not bind the plaintiff idol;
- (iii) declaring the alienation made by the first respondent in favour of the second and third respondents are illegal; and
- (iv) directing the respondents to pay the future profits from the date of the plaint till the date delivery of the possession of the properties.

3. It is averred in the plaint that the plaintiff idol is the absolute owner of the suit schedule property and one Mr.Ramasamy Rao executed vyvastha document dated 17.11.1864 and he absolutely dedicated the income of the suit schedule properties for two charities, one is distribution of Panagam and Vadaparuppu during Pagal and Rapathu festival at Four Pillars Mandapam, Naalukettan Entrance in the planitiff temple during the 'Vaigunda Egadasi Festival' day and also perform the 'Ashtothra Archana' daily to the plaintiff idol. The said suit schedule properties are purchased only for doing the said

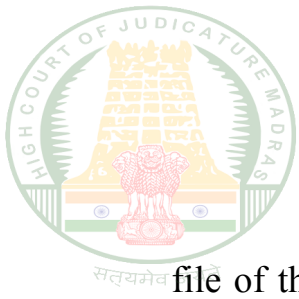


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charities and specifically directed his son-in-law to obligate the said 'Dharmam' activities till the majority of his grandsons, namely, Ramachandra Rao and Narayana Rao. While so, the descendants of the said grandsons, after their life time, committed mismanagement of the said properties and hence complaint was made to the Deputy Commissioner, HR& CE which resulted into filing of O.A.No.95 of 1954 filed by the said descendants of grandsons under sections 57 (f) & (g) of the Old Madras Hindu Religious & Charitable Endowments Act, 1951 (herein after called "Old Act' 1951") to determine the nature of endowments. The Deputy Commissioner was declared the above charities of distribution of Panagam and Vadaparuppu during Pagal and Rapathu festival at Four Pillars Mandapam, Naalukettan Entrance in the planitiff temple during the 'Vaigunda Egadasi Festival' day and also perform the 'Ashtothra Archana' daily to the plaintiff idol as religious charities apart from declaring some other charities, which are not connected with the present suit. The descendants were preferred the appeal against the same in A.P.No.127 of 1955 before the Commissioner, HR&CE Department and he also confirmed the order of the Deputy Commissioner, HR&CE Department.

4. So, the descendants filed a statutory suit in O.S.No.72 of 1956 on the



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file of the learned Sub Court, Tiruchirappalli, to set aside the above orders of the Commissioner as well as the Deputy Commissioner of HR & CE Department. The learned trial Judge, after considering the evidence and documents, declared that distribution of Panagam and Vadaparuppu during Pagal and Rapathu festival at Four Pillars Mandapam, Naalukettan Entrance in the plaintiff temple during the Vaigunda Egadasi Festival day and also perform the 'Ashtothra Archana' daily to the plaintiff idol are religious charities and also declared some of the other endowments as religious charities and some of them as private charities. Aggrieved over the same, appeal suit in A.S.No.216 of 1959 was filed before this Court. This Court, upon re-appreciation of evidence both oral and documents, held that the performance of Rapathu and Pagal Pathu Ubayams during the Vaigunda Egadasi is religious charity and the same was enforceable one. After that, one of the descendant, Madhusoodhanan filed a suit in O.S.No.319 of 2007 on the file of the learned District Munsif, Kulithalai for declaration that the resolution has passed by the descendants of the grandson of the executant as illegal and void and allow him to perform the Ubayamas as private charities of Ramasamy Rao in the temples situated at K.Patti village situated far away place of plaintiff's temple without impleading the plaintiff temple. In the said suit, they entered into compromise and the first

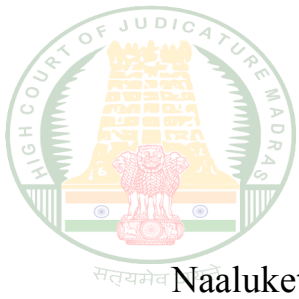


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respondent was allotted the suit schedule properties. On the basis of the compromise, the first respondent executed two sale deeds on 25.09.2009 in favour of the first and second respondents whereby the suit schedule properties allotted to the religious charities are transferred without obtaining the permission under Section 34 of the Tamil Nadu HR & CE Act, 1959 (hereinafter called as “New Act’ 1959”). As per the Vyvashta deed dated 17.11.1864, the executant completely divested the suit schedule properties with the temple for doing the said religious charity and hence the alienation is void. So, the possession of the respondents is illegal and hence the plaintiff filed a suit for the reliefs stated supra.

5. The first respondent filed a detailed written statement running more than 47 pages, denied the entitlement of the temple to claim the relief sought in the plaint and he specifically stated that there was no complete dedication of the suit schedule properties in favour of the temple and the absolute title is vested only with the grandsons of the executant and he was acquired through inheritance and the income from the suit schedule properties is alone charged for performance of the said charities of distribution of Panagam and Vadaparuppu during Pagal and Rapathu festival at Four Pillars Mandapam,



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Naalukettan Entrance in the plaintiff temple during the 'Vaigunda Egadasi Festival' day and also perform the 'Ashtothra Archana' daily to the plaintiff idol. Further, the mentioning of 'Dharmam' in the said deed did not taken as the complete dedication of the properties. In addition to that, the finding in the appeal suit in A.S.No.256 of 1959 is operated as *Res Judicata* and the executants never intended to divest the properties to the temple and the same was clearly revealed from the incorporation of the various terms namely “தாங்கள் இருவர்களே முக்கிய பாக்கியஸ்தர்களானதினாலே” and “நய நஷ்டத்துடன்”. Further the Executive Officer has no jurisdiction to file a suit without the sanction of the Commissioner and the properties were allotted to the first respondent through the valid compromise entered between the family members, in O.S.No.319 of 2007 on the file District Munsif Court, Kulithalai and he validly executed the sale deed for proper consideration with intention to spend the interest of the income for the said 'Dharmam' activities. Upon deposit of the said sale consideration, in order to maintain the above 'Dharmam', the first respondent made a counter claim with the following reliefs:

“1. to declare that the plaintiff has right to deposit the sale proceeds of 1.58 acres allotted to item No.1(b) charity sale deed No.2156 of 2009 of SRO, Srirangan in the State Bank



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of India, Srirengan and conduct the Private Astothra Archanas through interest received from the deposit.

2. to declare that this plaintiff Ubayadar has right to performs the private panagan Vadaparuppu Ubayan in terms of the Vyvasthathapathan in the usual banner in accordance with the Temple Rules and regulations.

3. to declare that this plaintiff has right to distribute Panagan vadaparuppu to the public in terms of the High Court Order in the Temple in the place allotted by the Temple Administration or if not in the place of his choice.

4. to declare that the plaintiff has right to constitute a public Trust titled "Thirukkattupallai Raneswaran Rao Panagan Vadapaaruppu Ubayan Charity Trust, Srirangan" by depositing the sale proceeds of 1.58 acres allotted to item No.1(a) charity sale deed No.2155 of 2009, SRO, Srirangan in the State Bank of India, Srirangam as permanent corpus in a Nationalized bank in Srirangan.

5. to declare that the plaintiff has right to draw interest from the Bank and utilize for the expenses of both Ubayam and charity activities.

6. to declare that the plaintiff and his successors natural and legal have right to operate on the account as Trustees of the

Ubayam Charity Trust, and for other reliefs."



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6. The second and third respondents filed the separate written statements after adapting the above pleadings of the first respondent, they pleaded that they are innocent and bonafide purchasers for valid and the title of the first respondent was crystallised in the Vyvastha deed itself and only charge was created over the suit schedule properties and hence they seek for dismissal of the suit.

7. The plaintiff temple has also filed their reply by way of written statement to the counter claim made by the first respondent that after reiterating the original plaint averment, they specifically pleaded that the counter claim is not maintainable and the relief in the counter claim is not only against the intention of the executant of the Vyvashta deed and also against the findings of the A.S.No.216 of 1959 and hence temple authorities seeks for dismissal of the counter claim.

8. Considering the rival pleadings, the trial Court initially framed 10 issues and subsequently recasted and framed 8 issues as follows:

*“1. Whether the properties mentioned in Ex.A6
Vyvastha pathiram are entirely and absolutely*



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dedicated to the plaintiff temple or part of the income derived thereof to be used for performing endowments?

2. Whether the sale of the suit properties by 1st defendant to the 2nd and 3rd defendants are valid?

3. Whether the judgment and decree passed in O.S.No. 319 of 2007 by the District Munsif Court, Kulithalai is null and void?

4. Whether the plaintiff is entitled for a relief of without recovery of possession without proper prayer for declaration over the suit property?

5. Whether the plaintiff is entitled for future mesne profits from the defendants 1 to 3?

6. Whether the suit is maintainable without proper sanction order of the Commissioner?

7. Whether the 1st defendant is entitled to deposit the sale proceeds of documents through document No. 2155/2009 and 2156/2009 to conduct the Astothra Archana as per his Counter?

8. To what other relief the parties are entitled?"

9. The learned trial Judge examined PW1 and marked Ex.A1 to Ex.A6 on the side of the plaintiff. On the side of the defendants, the trial Judge examined witnesses DW1 to DW3 and allowed to mark the documents Ex.B1



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सत्यमेव जयते to Ex.B15.
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10. After considering the oral and documentary evidence, dismissed the suit filed by the temple in entirety and partly allowed the counter claim filed by the first respondent. The learned trial Judge held that only charge is created over the properties and hence there was no necessity to obtain the permission from the HR&CE Department for making the alienation in favour the second and third respondents under the Vyvastha Pathiram, Ex.A6; there was no absolute dedication or divestment of title of the property with temple, only charge alone created to use the income derived from the suit schedule property for distribution of Panagam and Vadaparuppu during the Rapathu and Pagalpathu festival and there was no right of declaration to the properties as recognised either in the document or earlier proceedings. The learned Judge also gave a finding that upon the interpretation of Ex.A6, there was no trust was created. Hence, in all aspect temple is not entitled to any relief as prayed for. Similarly, the learned trial Judge partly decreed the counter claim *viz.*, directed to deposit the sale proceeds of 1.58 acre allotted to charities and permitted to draw interest of the said sale proceeds to perform private 'Ashtothra Archana' and for distribution of Panagam and Vadaparuppu and also



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directed the temple authority to give call letter for making the payment to perform Panagam and Vadaparuppu by passing the consolidate judgment and decree.

11. Aggrieved over the same, the appellant filed the present consolidate appeal challenging the consolidate judgment and decree containing the dismissal of the suit filed by the appellant and partly decreeing the suit in respect of the counter claim.

12. The learned counsel for the appellant would submit that upon reading the entire contents of the Ex.A6, Vyvastha Pathiram, the executor intended to absolute dedication of the suit schedule properties for the charity purpose, namely, distribution of Panagam and Vadaparuppu during the 'Vaigunda Ekathasi' festival. The document is in the form obligation deed to obligate his son-in-law to do the charity mentioned in the document till the majority of the grand sons of the executant. Even after their majority, grandsons bound to do the charities. Further, from the words of the document that there is absolute dedication in favour of the temple and the descendants of the Ramasay Rayar has no right to deal the properties as if the property belongs



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to them. Once the absolute dedication, they have no right at all to alienate the properties. He further submit that in O.S.No.319 of 2011 even though, we are not a party to the proceedings by abundant caution, they filed the suit for declaring the decree is null and void on the account of that their collusive compromise in respect of all the property dedicated to the temple including suit properties.

13. The first respondent has no legal right to execute the sale deeds in favour of the second and third respondents dated 25.09.2009 when the said property is covered under the religious charities as per the judgment of this Court in A.S.No.219 of 1959. Further, the learned trial Judge finding that this Court in A.S.No.219 of 1959 divided the charitable purpose mentioned in Ex.A6 that the Panagam is religious charities and the Astothra Archana is not come under the religious purpose and hence sale deed executed by the first respondent dividing the properties into two parts and one part for meeting the expenditure of the Archana and one part for discharging the duty of the religious charities Panagam and Vadaparuppu is valid exercise is not legally correct on the ground that there was no absolute dedication. Further finding only charge is created is against the interpretation of the documents and also



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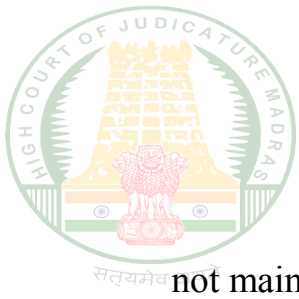
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against the law laid down by the Hon'ble Supreme Court in various judgments.

14. The further finding that mere suit for recovery of possession without declaration is not maintainable is perverse on the ground that in A.S.No.216 of 1959, the right of the temple over the suit schedule properties is crystallised. Hence title of the property is vested with the temple, so suit with prayer of mere recovery of possession is maintainable.

15. Further the learned counsel submitted that the finding of the learned trial Judge that the suit filed by the Inspector, without getting sanction from the HR&CE Commissioner has not maintainable, is not legally correct and the suit was filed with the sanction of the Commissioner under Ex.A4.

16. The prayer in the counter claim clearly goes against the findings in A.S.No.216 of 1959 and he take the dubious stand as against the finding and decree of A.S.No.219 of 1959 in one place, viz., he pleaded that the appellant has no authority to act contra to the judgement of A.S.No.219 of 1959, but on the other hand, his prayer in the counter claim is against the direction of the above judgment. In view of the above stand, his relief in the counter claim is



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not maintainable.
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17. The first respondent countenance the same and submitted that in the decree in A.S.No.219 of 1959, this Court specifically divided the purposes in two part, one is Astothra Archana and the other is Panagam and Vadaparuppu. Insofar as the Astothra Archana is concerned, it is not the religious charitable activities and it is private charity in nature and the Panagam is concerned religious charities and hence only charge is created for two purposes over the property. Hence, the first respondent alienated the properties to meet out the above expenditure. Hence, the trial Court is correct in dismissing the suit and decreeing the portion of the counter claim.

18. The first respondent would submit that the suit is not maintainable and without sanctioning of the Commissioner HR&CE, the Inspector has no authority to file the suit for recovery of possession. The present appeal is not maintainable without any separate appeal against counter claim and hence, the finding rendered by the trial Judge in respect of the relief granted in the counter claim is operated as *res judicata* to the relief claimed by the plaintiff temple. The suit for possession without declaration is not maintainable on the ground



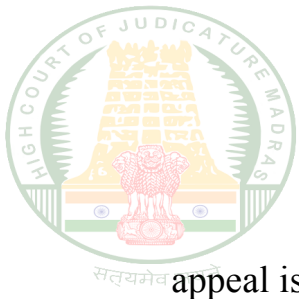
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that the Division Bench clearly held that the portion of the charities is not declared as religious. So, the temple ought to have filed suit for declaration and recovery of possession and in no point of time, the property is vested with temple as a title holder.

19. The first respondent counsel further submitted that only the portion of the amount was dedicated to the charity. Hence, the trial Court on equity considering the A.S.No.219 of 1959 and allowed the counter claim and recognised the sale deed executed by the first respondent in favour of the third respondent is legally valid and since the purpose is not religious charities, the permission under Section 34 of the HR&CE Act is not necessary. He further submitted that the amount was deposited for the purpose of doing the charities mentioned in the document and the same was sufficient to meet out the expenditure of the charities mentioned in Ex.A6. Hence, the judgment and decree passed by the trial Court is in accordance with law and the same is as a result of the proper appreciation of the fact and hence need not be interfered by this Court.

20. By way of reply, the appellant submitted that the present single



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appeal is not maintainable on the ground that there was no separate appeal filed against the portion of the decree granted in the counter claim is not accepted for the reason that a consolidated judgment as well as the decree is granted and hence, the consolidated appeal is filed with proper Court fee for plaint relief as well as the counter claim relief, hence, there was no question of *res judicata* and maintainability of the appeal. Since common issue filed and the judgment was rendered, the plea of *res judicata* is not available to the respondent when the said finding is challenged before this Court in this appeal.

21. Considering the rival submission this Court framed the following points for determination:

1. Whether the executant endowed the suit property with specific intention of the absolute divestment under Ex.A6-Vyvastha Pathiram in favour of the temple by creating obligation upon the descendant of the executant to do religious charities mentioned in the of the document from the income of the suit property with deprivation of the right to deal?
2. Whether compromise decree in O.S.319 of 2007 on the file of the District Munsif Court, Kulithalai is valid so far as the suit property and if so, whether it conferred any right upon the first



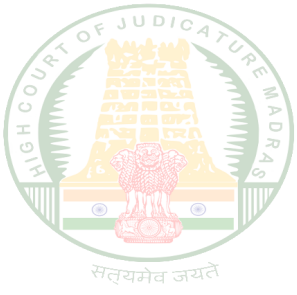
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respondent to deal the same?

3. Whether the trial Court is correct in not setting aside the alienation made in favour of the second and third respondents by the first respondent?
4. Whether decree granted in favour of the first defendant by trial court that he is entitled to deposit the sale proceeds of the suit schedule property for performing the endowments as prayed in the counter claim is in accordance with law?
5. Whether the suit for recovery of possession was maintainable without relief of declaration?
6. Whether the suit filed by the Executive Officer of the temple is maintainable without obtaining the proper sanction from the Commissioner?
7. Whether this appeal suit is maintainable without filing separate appeal against the decree passed in counter claim filed by the first respondent?
8. What are the reliefs, both parties are entitled?



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22. Q-1. Whether the executant endowed the suit property with specific intention of the absolute divestment under Ex.A6-Vyvastha Pathiram in favour of the temple by creating obligation upon his grandsons to do religious charities mentioned in the Clause-I of the document from the income of the suit property without the right to deal?

22.1. The first respondent in his written statement specifically raised plea that in all the past proceedings before the HR&CE as well as Civil Courts, the subject of the trust and its creation was not an issue for decision. Further he contended that there is no speaking decision rendering finality to the issue, whether Ramasamy Rao has created any trust through his Vyvastha Pathiram. The word "முக்கிய பாத்தியஸ்தர்களானதினாலே" "நயநஜ்டத்துடன் பொருத்து பார்த்து அனுபவித்துக் கொள்ளும்படிக்கு இந்த வெவஸ்தா பத்திரம்" incorporated in the said document clearly expressed his intention of vesting of absolute ownership on the grandsons and only mere charge was created for doing the Dharmam activities and hence there was no trust was created and hence the first respondent descendant of the grandsons inherited the properties and sold the same to the second and third respondent and hence the trial court was correctly



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come into a conclusion that there was no trust and there was no absolute dedication and charge alone was created to do the Dharmam.

22.2. In order to ascertain the intention of executant, this Court firstly devolve upon the nature of the document, motivation behind the execution of the said document and from the contents of the document whether any the absolute dedication with divestiture of property by revisiting the entire march of law relating to the interpretation of Ex.A6–Vyvastha document through scanning of various principles laid down by the Hon’ble Supreme Court in the judgments viz., AIR 1965 SC 1916, (2020) 17 SC 96, 2022 SCC Online SC 888, 1987(Supp) SCC 714, (2019) 8 SCC 689, AIR 1957 SC 797, (2016) 15 SCC 597, AIR 1966 SC 653, AIR 1963 SC 890.

22.3. To find out the nature of the document, this Court duty bound to look into the true meaning and characteristic of Vyvastha Pathiram, a deed in dispute marked as Ex.A6 dated 17.11.1864.

22.3.1. The ‘Vyvastha Pathiram’ is a deed of nomination by which the executant furnished the particulars of the properties dedicated for charities or ‘Dharmam’ and nominated his descendants to continue the ‘Dharmam’



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activities as obligator in the manner stated therein by utilising the income arising out of the said properties without alienation.

22.3.2. The said practice of execution of Vyavastha Pathiram is existed in the Maharashtra and the same is fortified from the following judgment of the Hon'ble Supreme Court:

Dhaneshwarbuwa Guru Purshottambuwa v. Charity Commissioner reported in 1976 (2) SCC 417 :

*“The next document is **Vyavasthapatra** (Ex.41) of April 25, 1897. We find from the evidence of Ramkrishna that the shishya is appointed by the Maharaj who happens to be holding the gadi at the relevant time. This fact is borne out by the recitals in Ex. 41. This document may be described as a deed of nomination or will whereby it appears Krishnabuwa whose guru was Tukaram Maharaj nominated Balkrishna Gangadhar Dhanurkar, as the devadhikari of the gadi to succeed him. The appellant submits that Balkrishna was bestowed a “malaki” as the term appears in this document.’*

(emphasis supplied)

22.3.3. The number of inscriptions of Tamilnadu ancient temples including the “Elavaanaraisoor Kovil Inscription” also amplified the existence of the similar deed,i.e. executed for complete dedication of property for



22.3.4. From perusal of the document Ex.A6, it is clear that the executant signed in Maharashtra language (रामसामिराव मकाराख्डीरत्तिल कैयमुत्तुप्पोडिरोक्किहार) and hence the executant with clear legal understanding without any ambiguity executed the said document as deed of nomination.

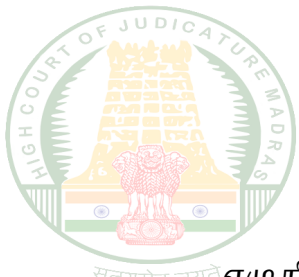
22.4. To Appreciate the document following portion of the Ex.A6 is necessary :

"தெய்வ கிருபையினாலே என் சுயார்ஜிதத்தால் உண்டான சொத்துக்கள் விபரம்."

"ஆக இந்த மூன்று தாலுக்காவிலுள்ள ஸ்திதிகளில் தர்மத்துக்காக நிச்சயித்து விட்ட ஸ்திதிகள்.".....

"முதலாவது, ஸ்ரீரங்கம் ரெங்கநாத ஸ்வாமி தர்மத்துக்காக வெங்கட்டரெங்க நாயகனிடத்தில் வாங்கின தோட்டத்தின் வருமாகத்தினால் ராப்பத்து பகல் பத்து உச்சபத்தில் நாலுகோட்டான் வாசலுக்கு வடபுறமிருக்கிற நாலுகால் மண்டபத்தில் பானகம், வடை பருப்பு உபயமும் தினம் அஷ்டோத்திர அர்ச்சனையும் நடப்பிக்க வேணும்.".....

"22வது மேல் எழுதிய தர்மம் முதலான சகலமான சொத்துக்களுக்கும் தாங்கள் இருவர்களே முக்கிய பாத்தியஸ்தர்களானதினாலே உங்களுக்கு தகுமான வயது வரும் வரையிலும் எனக்கு மாப்பிள்ளையாகவும், உங்களுக்கு தகப்பனாராகவும் இருக்கிற வேலூர் கிருஷ்ணராயர் ஆகிய அப்பண்ணராயர் மேற்கண்ட தர்மம் முதலான சகல அலுவல்களும் நயநஷ்டத்துடன் பொருத்து பார்த்து அனுபவித்துக் கொள்ளும்படிக்கு இந்த வெவஸ்தா பத்திரம்



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எழுதிக் கொடுத்தோம்."

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22.4.1. From the above material contents of the document, it is clear that the said document namely, 'Vyvastha pathiram' characterised with deed of nomination. In the first place, the executant disclosed the properties allotted for the purpose of doing 'Dharmam' activities.

22.4.2. The said deed, grandsons are nominated only to succeed the executant and obligated them to continue the performance of family pious obligation of doing Dharma and Archana, charities mentioned therein from income of the propeties without any right of inheritance, ie., nothing more than to succeed for performance of Dharmam mentioned therein.

22.4.3. To determine the intention of the executant, the document must be read a whole; to ascertain his motivation for dedication of the charity; to ascertain the motivation of the executant, it must be the duty of the Court to sit in the armchair of executant. The Court must not only be considered the meaning of words mentioned in the document in the natural sense and also taken the circumstances under which it had coined with help of the status of the party and his trained conveyance in drafting the deed in question.

22.4.4. Upon reading the entire contents of the document (Ex.A6)-

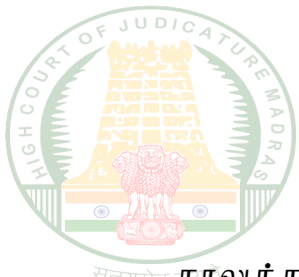


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Vyvastha Pathiram, this Court found that the executant clearly described the source of purchase, object of the purchase, disclosure of the allocation of the properties with clear divestiture of ownership to temple to perform various 'Dharmam', nomination of the son-in-law and grandsons to perform the said 'Dharmam' and create the obligation upon the grandsons to continue 'Dharmam' as obligators/obligor by means of appropriation of the income arising out of properties by managing the said properties with denouncement of title.

22.4.5. Source of purchase and Object of purchase:

It is mentioned in the deed Ex.A6, the properties covered under Ex.A6 acquired only with the blessing of the God by describing the specific word 'தெய்வ கிருபையினாலே என் சுயார்ஜிதத்தால் உண்டான சொத்துக்கள் விபரம்.' The executant family had purchased numerous properties in the three Taluks. Among the said properties, the properties mentioned in the Ex.A6 are purchased only for doing the 'Dharmam'. Hence, in the said deed, it is specifically stated that among the properties situated in various places, the property mentioned in Ex.A6 specifically reserved for doing 'Dharmam' in the following words: "ஆக இந்த மூன்று



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தாலுக்காவினுள்ள ஸ்திதிகளில் தர்மத்துக்காக நிச்சயித்து விட்ட ஸ்திதிகள்." So the object of the purchase of the said properties is only for doing 'Dharmam'.

22.4.6. Disclosure of allocation of the properties to perform various 'Dharmam':

Under Ex.A6, the executant clearly without any ambiguity expressed his intention for the allocation of number of properties to perform various 'Dharmam' and 'Archana' using the entire income arising out of the said properties perpetually which the family already had been conducted from time immemorial without diverting the income or the property for their inheritance. From the following details of 'Dharmam' and 'Archana' prescribed in the deed Ex.A6, the executants only intended to divest the property to the specified charities.

Nature of 'Dharmam'	Property
Performance of Distribution of Panagam and Vadaparuppu during Pagal and Rapathu festival the Nallukettan Entrance of the Renganathaswamy temple and daily Astothra Archana.	Garden purchased from the Venkatarenga Naicker
Astothra Archana on every sukravaram and Ekadesi in every month at Thayar Sannathi and Sahasranama Archanai for 9 days during Navarathiri festival at Thayar Sannathi in Srirangam Temple.	Income from the 1 st shop at South Gopuram
Astothra Archana on every Saturday and on Ekadasi in Chakrapanisami Temple, sub-temple of Srirangam.	Income from the 5 th shop at South Gate
Astothra Archana on Saturdays and on Ekadasi in Singaperumal temple	Income from 2 nd shop at South Gate



Astothra Archana by vilvam and Sahasranama Archanai for 9 days during Navarathiri festival in Sri Akilandeswari Amman Temple at Thiruvanaikoil and Sri. Jambunathar Temple during Somavara Pradosam in every month and Astothra Archana for 9 days during Navarathiri festival	Income from 2 nd shop on Eastern side
Pooja to Anjaneya at Chitra Street and on Hanumantha Jayanthi and Dwadeshi Kattalai in every month	Income from Kallapalli village property
Cauveri water Tirumanjanam to Sivayam Sri.Rathinagiriswarar Temple	Income from Coconut Tope at Vaiganallur
Pooja to Perumal temple at Karuvappanayagan Pettai Village	Patta land in Karuvappanayagan Pettai Village
Pooja and construction of Eswaran Temple at Karuvappanayagan Pettai Village	Patta land in Karuvappanayagan Pettai Village
Lighting of 50 lights daily in Karthigai month and on Karthigai day	Income from shops 3 and 4 at Eastern side.
Handed over the property to the Venkatachariyar for construction of Perumal Temple at Erayasamudram village, Perambalur Taluk	Tank and Topes in Erayasamudram village, Perambalur Taluk.
Performance of Water Pandal at Karuvappanayakkanpettai village	Patta lands in the said village
Annadanam in the Chathiram at Karuvappanayakkanpettai village	Property allotted for the said purpose in the said village.
Feedings of Desanthris who come to Srirangam during night.	Lands in Murugur Village entrusted with Srinivasa Rayar.
Performance of Annadhanam at the building north of Hanumarkoil at Srirangam	Income from out of Melur village Tope
Vanapojana Dharmam at Srirangam	Income from the Keel Saragu Shop No.1 and Mel Saragu Shop Nos. 1 to 4
Plantation of flower place and flower Kainkaryam to Sri Renganathasamy	Income from one Kanniappan of Murugur Village
Property transferred to the sister's son of the executant Naraharirayar without any alienation. If any alienation and the same to be purchased in the name of Chathiram.	Property at Karuvappanayakkanpettai village

22.4.7. Nomination of the son-in-law and grandsons and thereby obligated them to perform the said 'Dharmam':



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The executant intended to continue the said 'Dharmam' from the income of the said properties after his life time and hence, he nominated the son-in-law and grandsons to perform the said 'Dharmam' endlessly and perpetually as an obligator/obligor.

22.4.8. Create the obligation upon the grandchildren to perform 'Dharmam' as obligator/obligor.

Since the executant family was philanthropist one and he obligated his grandson to continue the said 'Dharmam' for the reason that the executant's son was predeceased and only available family members are the grandchildren through his only daughter.

22.4.9. Clear divestiture of ownership and appropriation of the income from the property to the oblige/temple upon the conferring the right of possession to the obligator namely, grandchildren.

22.4.10. There was a clear divestiture of ownership to the obligee, namely Lord Renganatha Temple etc., and only grandsons nominated and entrusted the possession of the property to generate the income and to utilise the same for doing the said 'Dharmam'.



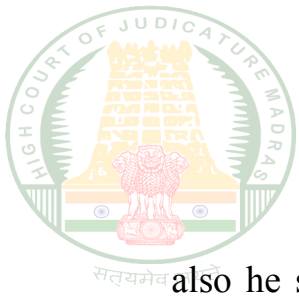
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22.5. In the Ex.A6, the executant intended to give **valid dedication and absolute dedication.**

22.5.1. To decide the valid and absolute dedication in the case of ambiguity, it is duty bound to find that how the founder treat the property, how the descendant treated it and how income of the endowed property deal actually applied to the object of dedication.

22.5.2. From reading of the entire content of present document, it is clear that the properties are meant only for the purpose of doing the religious charity of the family and also the executant with clear intention executed the said 'Vyavastha' document to direct his son-in-law to discharge the said 'Dharmam' by using the income of the said properties, Till the majority of the Ramachandra Rao and Narayana Rao namely, grandsons of the executant through his daughter and further directed the grandsons to discharge the said 'Dharmam' without any failure. The executant clearly disclosed the fact that these properties are only acquired and allocated for the purpose of doing 'Dharmam' and the executant clearly expressed the family intended to keep the property for doing the charities and 'Dharmam' and hence he clearly disclosed the number of the properties with specification of the 'Dharmam' activities and



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also he specifically stated that the 'Dharmam' activities are continued by the executant by spending the whole income of the property for the purpose alone and same was also followed by his immediate descendants namely grandsons who are nominated for the said purpose in the deed. Hence there is absolute dedication.

22.5.3. The Hon'ble Supreme Court in ***AIR 1974 SC 740*** also laid down the principle that to ascertain intention subsequent dealing of the property by descendant to be considered as stated below:

“Even surrounding circumstances, subsequent dealing with the property, the conduct of the parties to the document and long usage of the property and other relevant factors may have to be considered in an appropriate case.”

22.5.4. In this case, The executant, philanthropist, belief upon the mythologist statement that the life of any property of family ends with third generation, clearly executed their Vivashta Pathiram with clear identification of the properties with specification of various Dharmams and obligate the grand sons to do each Dharmam mentioned therein. Further, his inner conscious in his last breath forced to take independent decision to execute the

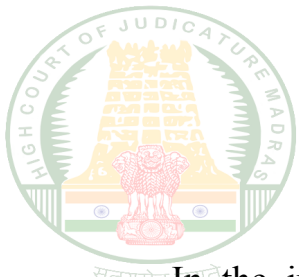


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Ex.A6 on the account that any attempt at retaining the property himself might lead to dissipation of the same during his life period. So the intention of the executant through the execution of the deed is clear that he openly denounced the title and right over the properties absolutely at his last breath in order to safeguard the properties imposed the duty upon the crown to take the custody and continuation of Dharma's perpetually. The executant executed vyavastha pathiram under Ex.A6 on 17.11.1864. Since he was struggling for his last breath, he made the said arrangement. As per Ex.B2, he died in the year 1894 itself.

22.5.5. The son-in-law and the grandsons during their life period had been discharging their obligation with all divinity without any alienation. During the life period, there was no dispute. It might be the reason that they were enjoying the fruits only from various properties that were allotted for the family partition during their life period without claiming title over the property specifically reserved for doing 'Dharmam' mentioned in the Ex.A6. Apart from the contents of Ex.A6, it is clear from the Ex.A1, judgment in O.S.No.71 of 1956 on the file of learned Sub Judge, Trichy, the executant of Ex.A6 namely, Ramasamy Rao have had number of the properties in various villages.



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In the judgment, it is averred that after death of the Ramasamy Rao, the following transaction were taken place without including the properties reserved for 'Dharmam' in Ex.A6.

Year	Description of disposition of property
09.04.1888	The grandsons of the executant namely, Ramachandra Rao and Narayana Rao divided numerous properties of the executant's family situated in various villages except the properties mentioned in Ex.A6.
31.07.1895	Narayana Rao, executants registered the Will in respect of his share derived under the above said deed dated 09.04.1888 in favour of his daughters along with life interest to his wife.
27.03.1910	Ramachandra Rao's sons divided the properties.
06.12.1937	One of the daughter of Narayana Rao, namely, Raji Bai executed Will in favour of her husband, namely, Vasudeva Rao.

22.5.6. In the above said documents, there was no reference about the properties mentioned in the Ex.A6, In the said circumstances, the document should be interpreted in the fulfilment of the intention of the executant. After death of the grandsons, descendant namely first respondent's conscience polluted with money greed which was impulsed him to execution of fictitious sale deeds in favour of the second and third respondents by fraudulent claim of inheritance right.



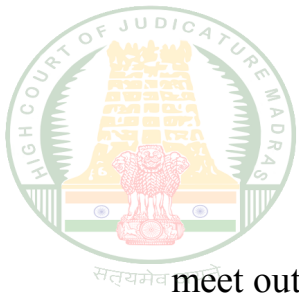
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22.5.7. So, it is clear from the contents of the document and also from subsequent conduct and other material circumstance there was an absolute dedication with clear divestiture of property to the temple for the 'Dharmam'.

22.5.8. Before, the Learned Trial Judge, on behalf of the temple authority, in following precedents cited to prove the contents of the Ex.A6 only disclosed the absolute dedication: *AIR 1930 MAD 405, 1978 2 MLJ 296, 1996 1LW561*, but the trial Court without considering the said precedents erroneously held that under EX.A6 there was no absolute dedication and the title was vested with the grandsons of the executant.

22.5.9. The submission of the first respondent that only small portion of the amount was granted to perform the religious charity of distribution of Panagam and Vadaparuppu is not correct and also against terms of the Ex.A6. The mentioning of the word "**வருமானத்தினால்**" did not quantify the amount and entire amount derived from the income from the said garden to be utilised for the said religious purpose. So, the submission of the learned counsel that minimum amount was contributed and hence, they have right of alienation to



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meet out the expenses is not accepted.

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22.6. The learned trial Judge, without reading the entire portion of the documents, only giving importance to the few words of the document in isolation namely, “பாத்தியஸ்தர்களானதாலே” & “நயநடிடத்துடன்”, and irrelevant clause 21 which related to enjoyment of family properties came into conclusion that the property is vested with the first respondent.

22.6.1. It is settled principle that while considering the intention of the executant in the nature of the religious endowment, entire documents to be considered. In the case of conflict between the earlier deposition of absolute title towards endowment and later part of take away the said in expressed terms without any ambiguity, the Court apply principle that in the case of such a conflict the earlier disposition of title should prevail and the later directions of disposition should be discarded in unsuccessful attempt to restrict the title already given. The case of conflict between the earlier disposition of absolute title and latter part or take away the said without any expressed term and there was ambiguity in way of interpretation to the words used in the document, the Court must have reconciled the same by applying harmonious construction and



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ascertained the true meaning to the words upon consideration of all circumstances before and after the execution of the document in such way without defecting object of endowment. If not ascertainable the principle of the which part favoured for absolute title in favour of endowment to be taken into consideration.

22.6.2. The executant coined the word “பாத்தியஸ்தர்களானதாலே” in the end portion of Ex.A6 with the intention that after his life time, grandchildren are only available legal heirs to continue the 'Dharmam' activities and they are minor and hence, he disclosed the particulars of the properties and 'Dharmam' activities with method of performance. So, the said word “பாத்தியஸ்தர்களானதாலே” is interpreted to the context of the nomination, ie., to succeed him for the purpose of conducting the said 'Dharmam' activities. Similarly, “நயநடிடத்துடன்” intended such a way that in any case, even in the absence of the income from the property, the nominee is dutybound to do the 'Dharmam' activities. So the learned trial Judge's interpretation to the said words is not in accordance with law when the executants in his first part of the document without any ambiguity stated that all the properties dedicated for



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doing the charities and later part further directed to continue the 'Dharmam' implidely. Even the income was neither existed nor sufficient to meet the expenditure for charities.

22.7. In considering the income distribution, if the entire income was dedicated for the purpose of the religious charities or endowment, the Court must treat as complete divestment. If the entire income was dedicated for the purpose of the religious charities as well as the private charities without any proportion, that case also, Court must treat the case as complete divestment for the purpose of the religious charities for the reason that which portion consumed the more money is not ascertainable and the temple authority as equity to fulfil the private charities without fail for reason that the temple authority got the title to the property out of the from which income was accumulated. As per the march of law, the deed which provided for a charge on properties for payment of income amount to a divestment as held by the Hon'ble Supreme Court in **2019(8)SC689** reiterating the principle in **AIR1966SC653**.



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22.7.1. The Hon'ble Supreme Court in *M.R.Goda Rao Sahib Vs. State of Madras* reported in **AIR 1966 SC 653** held as follows:

“By the instrument the settlors certainly divested themselves of the right to receive a certain part of the income derived from the properties in question. They deprived themselves of the right to deal with the properties free of charge as absolute owners which they previously were. The instrument was a binding instrument.”

22.7.2. The said principle of that case that the deed which provided for a charge on the properties for the payment of money amount to divestment reiterated by the latest Hon'ble three member bench of Supreme Court in **2019 (8) SCC 689 [M.J.Thulasiraman v. Hindu Religious & Charitable Endowment Admn.,]** with further elaboration of principle held that the rock inscription made in the year 1834 with specific clause of utilization of certain amount for feeding of Brahmins during the festivals of Thiruvottiyur and Mylapore and for other charity expenses amount to a clear divestment of the right to receive a certain part of income and clearly amount to specific endowment in the following paragraph :-

“ ...Following our holding that the rock inscription provides for a religious charity, it is sufficient to show that money has been endowed for the performance of the same for it to constitute a specific endowment under the Act.”



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22.7.3. The said principles further elaborated by Hon'ble Supreme Court in **2020 (17) SCC 96 [Sri Renganathaswamy v. P.K. Thopulan Chettiar, Ramanuja Koodam Annandhana Trust]** and held that whenever a deed created an obligation on the executant's descendants to fund the charitable activities out of the income of the property dedicated, only presumption is that he had a clear intention to divest himself and his descendant of the property and endowed it for continuation of charitable activity with complete destitute and relevant portion as follows:

“16.that, “the settlor purchased the punja land mentioned in the schedule of property... for the performance of charity work in reference to Sri Renganathanswamy sanctum”. The property outlined in the schedule of the deed of settlement is described as, “property allotted for charity work”. With respect to the legal heirs, the deed of settlement creates an obligation on the settlor's legal heirs to continue the charitable activities at the suit property out of their business incomes. The settlor had a clear intent to divest himself and his legal heirs of the property and endow it for the continuation of the charitable activities at the suit property. The purpose of the endowment was to carry on charitable work. The deed of settlement obligates the legal heirs to continue the charitable activities at the suit property”



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22.7.4. In result, scanning of the various parts of Ex.A6 Vyvastha Pathram, it is clear that schedule of properties are given; various Poojas and charities (Dharmam) have mentioned; executant clearly obligated to utilize the whole income with complete dedication for religious purpose without any ambiguity of divestiture of title to a temple and complete denouncement of his title over the property. So, in all aspects, acceptance of the case of the first respondent by the court below that there was no divestiture of ownership with temple authority and the utilisation of money alone dedicated without divestment and grandsons got title through Ex.A6 and devolved on first respondent by inheritance is erroneous and the same was not consonance with the principle laid down the Hon'ble Supreme Court stated above.

22.7.5. In result, Question No.1 is answered in favour of temple and hence finding of the court below only charge has been created is liable to be set-aside and as sequel, the **1st respondent is not entitled to encumber the property in any manner.**

23. Q-2: Whether compromise decree in O.S.319 of 2007 on the file of



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the District Munsif Court, Kulithalai is valid so far as the suit property and if so, whether it conferred any right upon the first respondent to deal the same?

To deal this point for determination, it is most appropriate to see the prayer in O.S.No.319 of 2007 and the compromise decree as such which are as follows:

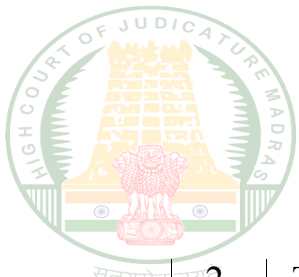
Sl.No	Prayer in O.S.No.319 of 2007	Decree in O.S.No.319 of 2007
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1.	To declare that the resolution as made in the meeting held on 19.10.2007 is unsustainable in law, and that it does not bend the plaintiff in any manner whatsoever, the decision arrived in that meeting, would not be such as to infringe with the rights of the plaintiff's participation in the charitable activities performed by Ramasamy Rayar of Thirukattupalli in his personal capacity.	On the endorsement made by the learned counsel for the plaintiff, the prayer seeking to declare that the resolution as made in the meeting held on 19.10.2007 is unsustainable in law, and that it does not bend the plaintiff in any manner whatsoever, the decision arrived in that meeting, would not be such as to infringe with the rights of the plaintiff's participation in the charitable activities performed by Ramasamy Rayar of Thirukattupalli in his personal capacity is dismissed.
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2.	To declare that the plaintiff Tirukattupalli Ramaswamy Rayar can participate in the private charitable activities and in future the plaintiff's family can participate hereditarily on ratio basis.	This prayer to declare that the Tirukattupalli Ramaswamy Rayar can participate in the private charitable activities and in future the plaintiff's family can participate hereditarily on ratio basis, is ordered accordingly.
3.	To declare by way of convening a meeting procedurally between the plaintiff and the defendants who have the rights in doing charitable works pertaining to Ramasamy Rayar private religious charitable trusts and to fix a ratio on the basis of a rotational procedure by way of which the Ramasamy Rayar private religious charitable trusts shall be administered.	This prayer to declare to declare by way of convening a meeting procedurally between the plaintiff and the defendants who have the rights in doing charitable works pertaining to Ramasamy Rayar private religious charitable trusts and to fix a ratio on the basis of a rotational procedure by way of which the Ramasamy Rayar private religious charitable trusts shall be administered is ordered as not necessary.



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Description of Property:

In Karur District, Kulithalai Taluk, K.Pettai Village.

1.Archana Sri Lakshmi Narayana Temple, K.Pettai.

2.Thanneerpandal, K.Pettai.

3.Annadhana Chathiram, K.Pettai.

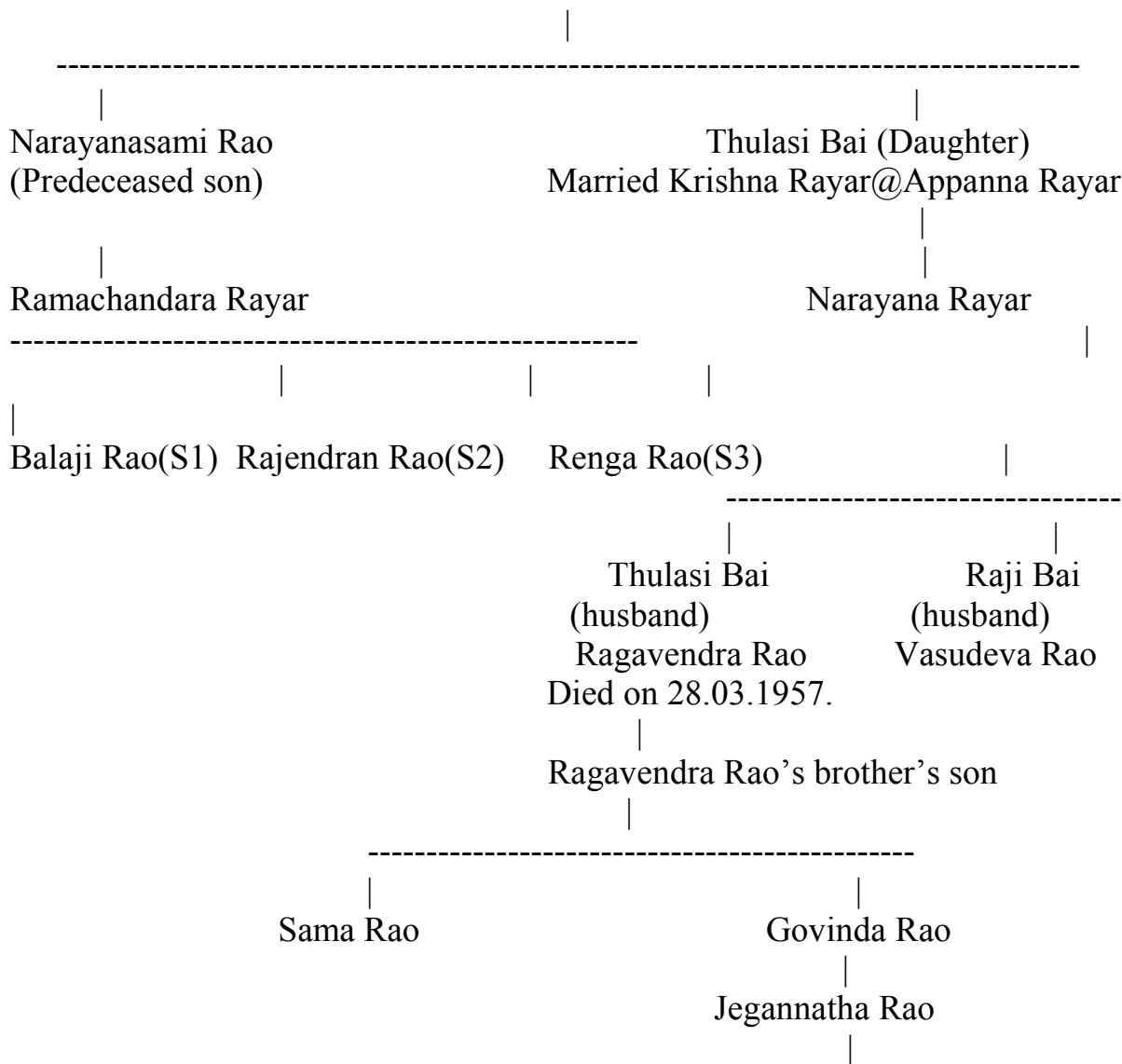
4.Vanabojanam, K.Pettai.

23.1. The suit prayer was only relating to the claim of their honour in the suit schedule four charities conducted in the K.Pettai village temples. In the said circumstances, the parties clandestine manner entered in to the compromise including the charities activities and the properties situated at Srirengam, Trichy which is dedicated to the plaintiff temple. To record the said compromise, the Court has no jurisdiction without impleading the plaintiff temple. In the said suit, it is the case of the first respondent and the parties in the suit entered into the compromise allocating the title of the suit schedule property in favour of the first respondent. So, the compromise term itself against the decree in A.S.No.216 of 1959 passed by this Court and also the said Munsif Court has no jurisdiction to pass a decree relating to the property



without proper array of parties i.e., the temple already got the declaration in
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A.S.No.216 of 1959.

Ramasami Rao





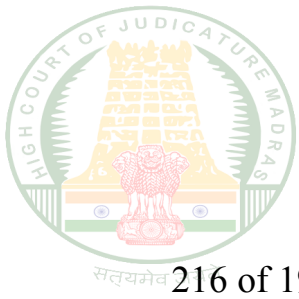
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Sriram (1st Respondent)

23.3. Under Ex.A6, the executant only nominated his grandson to discharge the 'Dharmam' activities stated therein. It is not the case of parties in O.S.No.319 of 2007 that the grandsons of the executant further made any arrangement in favour of the parties in the suit in O.S.No.319 of 2007 to acquire title. So, without any valid right and title, they themselves colluded together and divided the properties in the suit filed for relief of granting honour in the suit scheduled four charities activities in K.Pettai village. Earlier this Court recognised the religious charities activities in A.S.No.216 of 1959 and also the Commissioner of HR&CE expressly granted sanction to file suit under Ex.A5 upon considering the representation sent by the first respondent to remove the suit schedule property from the list of the temple properties. So the present first respondent, remotely connected with the executant family i.e., Ramachandara Rao's daughter's husband's brother's son lost their character of doing the charities genetically and deviated from the path of Dharma by doing misdeed and justifying the same by giving dubious meaning not only the Dharmams mentioned in the deed and also judgment of this Court in A.S.No.



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216 of 1959, more particularly to the meaning of Dharmam.

23.4. This Court in earlier occasion clearly declared the right of the temple to enforce the religious charities activities and hence, the present decree in O.S.No.319 of 2007 is against the terms of the A.S.No.216 of 1959 and also against the terms of Ex.A6. The said decree was not brought to the knowledge of the said Court and hence, decree obtained by fraud and also obtained the decree by abuse of process of law without disclosing the earlier decree and the judgment.

23.5. The Learned Trial Judge committed error of law in giving seal of approval of fraud committed by the 1st Respondent in obtaining compromise decree in O.S No. 319 of 2007 without considering the above facts and same is condemned in terms of the terms of the **1994 (1) LW 21: S.P. Chengalvaraya Naidu (Dead) by L.Rs. vs. Jagannath (Dead) by L.Rs. and Ors.**

"Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and honest in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It



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can be challenged in any court even in collateral proceedings.

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage.”

23.6. Apart from that, item No.1 in O.S.No.319 of 2007 as well as this suit properties meant for the distribution of Panagam and Vadaparuppu is already declared as a religious charities by this Court in A.S.No.216 of 1959 and the Court has no jurisdiction to enter the compromise without setting aside the said decree and also without impleading the temple as a party to the proceedings.

23.7. In result, Question No.2 is answered in favour of the temple and hence, the decree is null and void and the same was not binding on the temple authority and the sale deed executed on the basis of the invalid decree is also illegal and in result, both decree as well as sale deeds are liable to be cancelled as prayed by the temple authority.



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24. Q-3: Whether the trial Court is correct in not setting aside the alienation made in favour of the second and third respondents by the first respondent?

24.1. The second and third respondents pleaded that they are bonafide purchasers and their sale transaction is proper and lawful. In the written statement as well as the sale deed itself they have disclosed about the above property dedicated to the terms of the compromise decree itself does not confer any power of alienation. So their plea of bonafide purchaser and the plea of department has no jurisdiction is untenable. As earlier in the year 1929, the similar contention of bonafide of sale was not accepted by this Court in **Sivaswami Aiyar vs. Thirumudi Chettiar and Ors.**

[MANU/TN/0078/1928], stating the own reason as follows:

"Now before us it is contended that the Subordinate Judge has found that the father of these defendants had been duped by Venkataramier into believing that it was his private property and that he bonafide believing the same took the mortgage for consideration. The contention thus advanced is in our opinion no less startling than untenable. If it is sound the only result will be that no public trust is safe because all that a fraudulent trustee has



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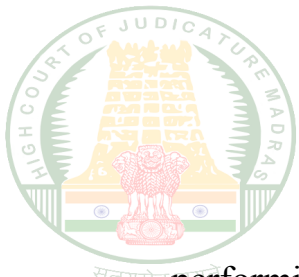
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to do is to convey it to somebody who is foolish enough to believe what the fraudulent trustee says, vis., that the property conveyed is his personal property and does not make any enquiries.”

24.2. On applying the said principle, this Court has no hesitation not to accept the plea of bonafide purchaser as submitted by the second and third respondents' counsel. In the said circumstances, the alienation made by the first respondent on the basis of the said compromise decree as if it is conferred right of alienation is not legally correct.

24.3. In result, the learned trial Judge committed error in law in not setting aside the alienation and not decreeing the suit as prayed by the plaintiff with relief of mesne profit by taking into account of the intentional diversion of the first respondent from discharging the charity into alienation of the property. Accordingly Question No.3 is answered in favour of the temple.

25. Q-4: decree granted in favour of the first defendant by trial court that he is entitled to deposit the sale proceeds of the suit schedule property for



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performing the endowments as prayed in the counter claim is in accordance with law?

25.1. The 1st Respondent pleaded that descendant of the executants felt difficulties in performing the various ubayam and Dharmam and Charities mentioned in the deed Ex.A6 after demise of grandson's of the executant and the turn system is not workable and hence they decided to assign each charities to each member of the family and for that purpose, they entered compromise decree in O.S No. 319 of 2007 on the file of District Munsif Court, Kulithalai.

As per the compromise decree, the suit item property as granted to the 1st Respondent. The 1st Respondent in order to perform the distribution of Panagam and Vadaparuppu during Pagal and Rapathu festival at Four Pillars Mandapam, Naalukettan Entrance in the planitiff temple during the 'Vaigunda Egadasi Festival' day and also perform the 'Ashtothra Archana' daily to the plaintiff idol decided to generate fund to perform the distribution of Panagam and Vadaparuppu during Pagal and Rapathu festival and the 'Ashtothra Archana' daily to the plaintiff idol, decided to divide the property into two equal parts in the ratio of 1.58 Acre and sold the same to the 2nd and 3rd Respondent. The executant did not create any trust for doing in the same and



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hence the 1st Respondent with all bonafide decided to create Public Trust in the name of Thirukkattupalli Ramaswami Rao Panagam Vadaparuppu Ubayam Charity Trust, Srirengam by depositing the sale proceed of 1.58 Acre in the State Bank of Srirengam. Further, to decided to deposit the sale proceeds of remaining 1.58 Acres in the name of *Private Astothra Archanas* and hence he made a counter claim with the following prayer:

- “1. to declare that the plaintiff has right to deposit the sale proceeds of 1.58 acres allotted to item No.1(b) charity sale deed No.2156 of 2009 of SRO, Srirangan in the State Bank of India, Srirengam and conduct the Private Astothra Archanas through interest received from the deposit.*
- 2. to declare that this plaintiff Ubayadar has right to performs the private panagan Vadaparuppu Ubayan in terms of the Vyvasthathran in the usual banner in accordance with the Temple Rules and regulations.*
- 3. to declare that this plaintiff has right to distribute Panagan vadaparuppu to the public in terms of the High Court Order in the Temple in the place allotted by the Temple Administration or if not in the place of his choice.*
- 4. to declare that the plaintiff has right to constitute a public Trust titled “Thirukkattupallai Raneswaran Rao*



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Panagan Vadapaaruppu Ubayan Charity Trust, Srirangan"

by depositing the sale proceeds of 1.58 acres allotted to item No.1(a) charity sale deed No.2155 of 2009, SRO, Srirangan in the State Bank of India, Srirangam as permanent corpus in a Nationalized bank in Srirangan.

5. to declare that the plaintiff has right to draw interest from the Bank and utilize for the expenses of both Ubayam and charity activities.

6. to declare that the plaintiff and his successors natural and legal have right to operate on the account as Trustees of the Ubayam Charity Trust, and for other reliefs."

25.2. The plaintiff temple filed the written statement stating that the relief counter claim is not legally maintainable and the Act of entering compromise relating to the plaintiff idol property without impleading the petitioner temple is void and illegal and amount to the fraud on the Court. Further, the division of the property in two parts and act of sale in favour of the 2nd and 3rd Respondent is amount to the perpetual fraud and same was invalid without obtaining permission U/s 34 of the Act from the competent authority and the prayer to create private trust and perform Private Astothra Archana by depositing the above illegal sale proceeds is against the intention of the



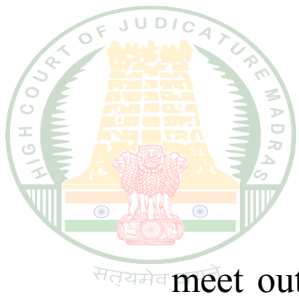
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executant and also decree in As. No.216 of 1959 and hence prayer in the counter claim is liable to be rejected.

25.3. The Learned Trial Judge after holding that, the above endowments is to be performed within the premises of the plaintiff's idol and held that the title is vested with grandsons of the executant and they are entitled to alienate the property and they are entitle to deposit the sale proceeds in the Bank Account and the 1st respondent entitle to use the interest on the deposit for performing the endowments.

25.4. From the contents of the Ex.A6 documents, it is clear that descendant of the executant namely 1st respondent bound to perform the Astothra Archana from the income of that property and also their obligation to maintain the property in order to generate the income; and only right was conferred on 1st respondent is to use the generated income for the purpose of performing Astothra Archana and distribution of Panagam and Vadaparuppu during Pagal and Rapathu festival and Nowhere it is authorised the first respondent to sell the property and from the sale proceeds, the above mentioned charity activities to be performed. Further, it is the case of the D.W. 2 that if the property was properly maintained, sufficient to be generated to



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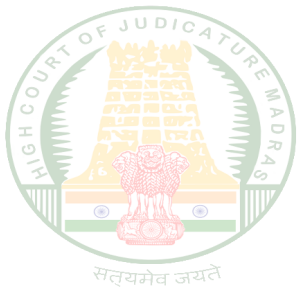
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meet out the expenses. It is also not the case of the first respondent that the said property did not fetch more income to meet out the daily expenditure to perform the said Astothra Archana. Even in such case, sale is not permissible as held by the Hon'ble Supreme Court in **2006 (1) SCC 257 Jt.Commr., HRCE, Admn. Deptt. v. Jayaraman,**

“11. The mere pleas that it was difficult to protect the property and that there was only meagre income therefrom were by themselves not grounds to direct or permit the sale.”

25.5. Further, the above relief are not only against the intention of the executant under Ex.A6 and also finding of this Court A.S No. 216 of 1959. As per the Ex.A6 and judgment in As. NO.216 of 1959, they have no right to claim such relief. To fructuate the object of the charity mentioned in the Ex.A6 the plaintiff claimed such right with intention of justifying his alienation made to 2nd and 3rd respondent. Apart from that, the grand of relief by the trial Court nullifying is amount to nullifying the decree in A.S.No.216 of 1959.

25.6. It is well settled the performing Astothra Archana and Ubayam is also commended the purview of the specific endowments as per the march of



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law in subsequent to the judgment passed in AS No. 216 of 1959 in the following cases 1978 (1) MLJ 296(DB), 2022 SCC Online SC 888.

25.7. In addition to that, as per the above finding that the 1st Respondent has no right to alienate the property on account of the absolute dedication of the property with complete divestiture of the property to the temple, the prayer for the counter claim is not maintainable and the learned Trial Judge erroneously granted decree without considering the above legal and factual matrix and hence this Court without any hesitation set-aside the decree granted in the counter claim made by the 1st Respondent. Accordingly, Question No.4 is answered against the first respondent.

26. Q-5:the suit for recovery of possession was maintainable without relief of declaration?

26.1. The executant executed vyavastha pathiram under Ex.A6 on 17.11.1864. In the said deed, he described the various 'Dharmam' and religious charities had been conducted by the family perpetually and made arrangement

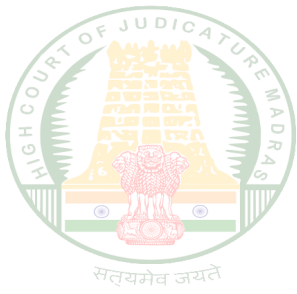


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to continue the said 'Dharmam' activities by way of creating obligation upon the obligator namely, his son-in-law and his grandsons. Since he was struggling for his last breath, he made the said arrangement. As per Ex.B2, he died in the year 1894 itself. The son-in-law and the grandsons during their life period had been discharging their obligation with all divinity without any alienation. During the life period, there was no dispute. It might be the reason that they are enjoying the fruits only from the properties allotted for the family without claiming title over the property specifically reserved for doing 'Dharmam' mentioned in the Ex.A6.

26.2. After death of the grandsons, namely, Ramachandra Rao, Narayana Rao, the first respondent being decendant without any satisfaction over the numerous property allotted to the family under the partition deed dated 09.04.1888, created commotion in their family either to enjoy the property stated in the Ex.A6 or to obtain the honour mentioned in the Ex.A6 among themselves as a family property which resulted in misdeed. So, complaint was made from the public to the Deputy Commissioner, HR&CE Department with request to allocate the properties for the religious and secular charities mentioned in the Ex.A6. The allegation of misdeed in the complaint as follows:

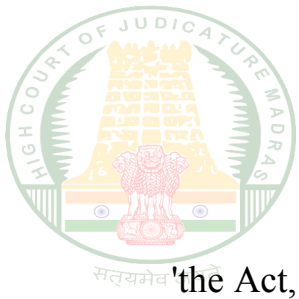


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“By a petition received from one Sri.V.Srnivasachari it was brought to the notice that the charities were not properly conducted. Enquiry made by the Inspector, HR&CE, Tiruchy division also showed that the charities were not performed, then the accounts were not maintained for the income and expenditure of the trust properties, that the Chatram building at Karuvappanayakkanpettai itself was allowed to go to ruins and that the properties were divided among the co-parceners of the families of the trustees as if their private properties.”

26.3. Upon receipt of the complaint, the Deputy Commissioner deputed the Inspector of his Department to enquire and submit report. The Inspector of Department also found that charities were not properly conducted and number of the fraudulent acts were going on. So HR&CE Department conducted enquiry into allegation and *prima facie* found that follower of the grandson of executant ruined the property. So, the Deputy Commissioner of HR&CE Department issued the notice under Section 57(f) &(g) of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as



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'the Act, 1951') for the below stated purpose:

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“Notice was therefore issued by me under Section 57 (f) and (g) of the act of my intention to decide the nature of the endowments and to allocate the properties for the religious and secular charities with a view to make arrangement for their proper management and conduct of the charities.”

26.4. With intention to decide the nature of the endowments and to allocate the properties for religious and secular charities with a view to make the arrangement for the proper management and conduct the charities, the proper proceedings in O.A.No.95 of 1954 is initiated. The relative as well as the descendants of the Ramachandra Rao and Narayana Rao filed their objection stating that under Ex.A6, there was neither religious charities nor secular charities created and also there was not divestiture of property. Hence, the Department lacks jurisdiction. The Deputy Commissioner, as a competent original authority decided the character of the endowments into two categories, namely, Item Nos.1 to 5, 8 to 11 of the activities mentioned in the Ex.A6 are religious charities and Item Nos.13 to 17 are declared as private secular charities. He also directed the temple authority to enforce the religious charities mentioned above. The authorities passed the order on 29.07.1955 and the same



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was challenged by the remote relative of grandson of the original executant in Appeal No.127 of 1995 before the Commissioner of HR&CE. The Commissioner confirmed the order passed by the Deputy Commissioner with further direction to the temple authorities to take the appropriate proceedings for the proper performance of the charities. So, the grandsons of the Ramachandra Rao and the husbands of the Narayana Rao's daughters filed the statutory suit in O.S.No.72 of 1956 on the file of the Sub Court, Trichy.

26.5. During the pendency of the said suit, initially, the first respondent's ancestors filed the memo stating that they are not intended to prosecute the suit in respect of the property relating to the charities and only confined their claim in respect of some of the items not relating to charitable purpose, subsequently, intended to conduct the suit and adduce the evidence. On the perusal of the evidence, both document and oral, the learned Sub Judge was pleased to confirm the order of the authorities and dismissed the suit filed by the first respondent's ancestors.

26.6. The same was challenged before this Court in A.S.No.216 of 1959 and this Court partly allowed the appeal and partly dismissed the suit



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confirming the trial Court finding and issued the following direction:

“The charity mentioned in its 1(a) is distribution of panagam (sweet drink) and vadaparupu during pagal and rapathu festival in Ranganathaswami temple and the charity is to be performed out of the income derived from the garden purchased from Venkatarangam Naicker. This is certainly a religious endowment public in character and the beneficiaries are the public. The Commissioner was therefore right in declaring this charity as a religious charity”

“The result to items 1(b) and 2 to 5 are not religious charities and the Commissioner has no jurisdiction to interfere with the performance of these charities. Regarding items 7,10 and 12 also the Commissioner will have no jurisdiction over them for the present, as the temples have not been constructed out of properties set apart for the purpose and he will have jurisdiction only after the temples come into existence. With regard to item 18 also the Commissioner will have no jurisdiction to give any directions. The Commissioner will have jurisdiction to enforce the charities mentioned in items 1(A) and 8 and 9.”

26.7. The said operative portion of the judgment culminated into decree and the same was attained its finality without any further appeal. So the



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temple's right over the property already declared. So, the Executive Officer after obtaining the necessary sanction from the Commissioner of HR&CE Department under Ex.A5, filed the present suit for recovery of possession upon making the necessary Court fee.

26.8. In the said circumstances, the temple authority as obligee has every right to file the suit for recovery of possession without seeking declaration of title on the premises that their right over the property is already crystalized in A.S.No.216 of 1959 and complete divestment is conferred upon the temple over the property for discharging the religious charities of Panagam and Vadaparuppu during Pagal and Rapathu festival in Renganathaswamy temple from the income of the suit schedule items property.

26.9. So, the suit is maintainable as prayed for. But, the learned trial Judge, without considering the above legal aspect as well as the factual matrix, simply held that suit is not maintainable on the ground that charities are private in nature and the temple was not in possession of the property. It is well settled that the temple is not necessary in actual physical possession of the properties. In this case, the situation to claim the recovery of possession arise only on the



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execution of the sale deed in favour of the respondents 2 and 3 by the first respondent on the basis of void compromise decree and hence as held by the Hon'ble Supreme Court in AIR 2000 SC 1099, when the possession been taken over to the void action, there is no need to seek for declaration and suit for mere recovery of possession is sufficient.

26.10. In the said circumstances, Question No.5 is answered in favour of the appellant temple and suit for recovery of possession is maintainable without declaration.

27. Q-6: the suit filed by the Executive Officer of the temple is maintainable without obtaining the sanction from the Commissioner?

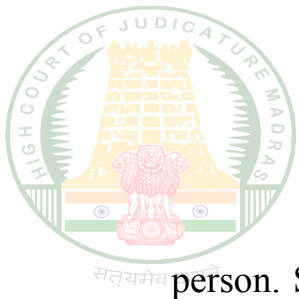
27.1. The Executive Officer, after obtaining permission from the Commissioner, HR&CE Department under Ex.A5 dated 26.03.2011, on the basis of the compromise decree entered between the legal heirs of the Ramachandra Rayar and Narayana Rayar in O.S.No.319 of 2007, filed the present suit in O.S.No.82 of 2011 for recovery of possession and to set aside the alienation made in favour of the second and third respondents. From the



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perusal of the Ex.A5, it is clear that proper sanction was granted by the Commissioner, HR&CE after considering the representation sent by the first respondent to remove the suit schedule properties from the Renganathaswamy temple properties list and the request of the Deputy Commissioner. So, the sanction was granted with application of mind to the facts and circumstances of the situation and more particularly, the first respondent made a request to remove the property from the temple's properties list. So, the finding of the learned trial Judge and the submission of the learned counsel for the respondents that the said Ex.A6 did not amount to the sanction is not accepted. Apart from that the Executive Officer/Joint Commissioner is appointed under the Act to protect the interest of the temple and the temple properties and also duty bound to see the proper discharge of the religious charities activities. In the said circumstances, he filed a suit for recovery of possession and to set aside the alienation made by the respondent in contravention of the provision of the Act. Any person, who are interested in protecting the temple property, in the interest of the temple, always entitled to file a suit for recovery of possession. Apart from that, the Court itself is duty bound to protect the interest of the temple over the property by exercising the *parens patriae* jurisdiction. The said mandate is on the basic concept that idol is not a juristic



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person. So, the Hon'ble Supreme Court in the case of **A.A.Gopalakrishnan v. Cochin Devaswom Board**, reported in **AIR 2007 SC 3162** held as follows:

"The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebait/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

27.2. Further, the Hon'ble Division Bench also in **2011 (2) LW 1 (DB- Hon'ble Mrs.Justice R.Banumathi & Hon'ble Mr.Justice M.M.Sundresh, as they then was) A.N.Kumar v. Arulmighu Arunachaleswarar Devasthanam, Tiruvannamalai rep. By Executive Officer**, in para 32 stated as follows:

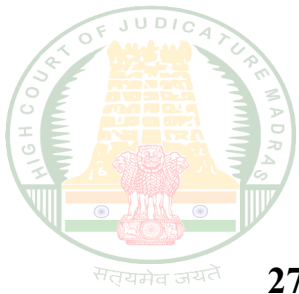
"The Executive Officer, being an Officer appointed by a competent authority, is duty bound to protect the property of the temple. Therefore, it is incumbent on him to file a suit and protect the right of the temple."



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27.3. *It is also relevant to extract the following passage from Tudor on Charities, VII Edition, page 294 in the context of the parens patriae jurisdiction:*

"1. The Court and the Crown: The Crown as 'parens patriae'. The character of 'parens patriae' which formerly imposed upon the Crown the duty of watching over the interests of wards makes it the protector of charity in general. Therefore, as Lord Eldon said, 'where money is given to charity generally and indefinitely, without trustees or objects selected, the King as parens patriae is the constitutional trustee'. While the jurisdiction of the court of Chancery over charitable foundations and gifts was in general conterminous with that over trusts of every kind, in one respect it had a jurisdiction peculiar to charitable trusts, in that wherever there was an intention to create a trust in favour of charity, the Court would give effect to the intention, in the first place by validating a defective gift and subsequently by reforming the trusts, if necessary, so that the donor's paramount intention might be perpetually observed. This was an inherent jurisdiction, not conferred by statute, and now vested in the High Court of Justice and assigned to the Chancery Division".



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27.4. Similar issues raised before this Court in S.A.No.23 of 2010 (*Mohammed Rafiq and Ors. vs. Arulmigu Pasupatheeswarar Swamy Koil Avoor*), wherein one of us, after distinguish in the earlier Division Bench Judgement in **2003 (1) LW 386**, decided as follows:

“15. Any person, who are interested in the temple, is entitled to initiate law into motion. Further, the Court itself as parens patriae is bound to protect the interest of idol.”

27.5. The Division Bench in **2003 (1) LW 386** held on facts that suit is not maintainable at the instance of the Executive Officer. In the said case, Ex.A12-communication of the Commissioner was marked in which the Commissioner of HR&CE instructed the Executive Officer to obtain the legal opinion in reference to the enforcement of settlement deed executed by the settler and the Inspector of the Department found that there was no 'Nandhavanam' and there was no performance of any activities. Without considering that the suit was filed and hence, there was no express or implied sanction granted by the Commissioner. Further, in the said case, there was no earlier adjudication regarding the religious charities mentioned in the said settlement deed. So, this Court held that suit filed by the Executive Officer is



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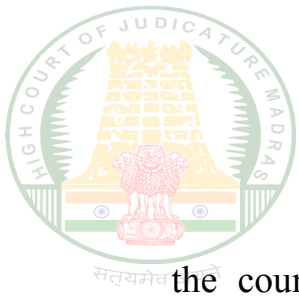
not maintainable.

27.6. It is settled that the property so dedicated to religious charities is placed extra commercium and is entitled to special protection at the hands of the HR&CE authorities whose duty is to intervene and prevent fraud in dealing with the endowments. So, in this case, authorities filed a suit within the ambit of power.

27.7. So, in all aspect, the contention of the respondents that the suit filed by the Executive Officer without getting permission of the Commissioner, is factually and legally not correct and so, this Court finds no reason to accept the respondents' submission and held that the suit is not maintainable and hence, the suit filed by the Executive Officer is maintainable. **Accordingly, Question No.6 is answered negatively.**

28. Q-7: Whether this appeal suit is maintainable without filing separate appeal against the decree passed in counter claim filed by the first respondent?

28.1. The respondents submit that the plaintiff suit was dismissed and



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the counter claim filed by the first respondent is partly decreed. So, the appellant ought to have filed two separate appeals. But, they filed only one appeal and hence, the finding in the counter claim is operated as *res judicata* and hence, the present appeal is not maintainable. For the said submission, the first respondent heavily placed his reliance on the judgment reported in **2015(3) SCC 624**.

28.2. This Court cannot accept the said plea of the respondent on the following reasons:

28.2.1. The learned trial Judge tried both the suit as well as counter claim by framing the common issues and rendered the finding clubbing all the common issues. More or less, the issues relating to the suit as well as counter claim is based on the common evidence of both oral and document. The trial Court also conducted the unified proceedings in both the suit as well as counter claim. More particularly, single decree was drafted with dismissal of suit as well as granting of the portion of the counter claim relief. So, the temple authorities preferred the single appeal against the unified decree by paying the court fee for both reliefs in the following manner:

Memo of Valuation



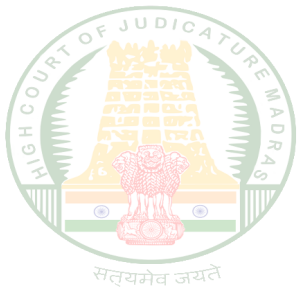
Value of Suit	Rs.75,04,000/-
Court Fees paid	Rs.402/-
Value of counter claim	Rs.6,000/-
Court Fees paid	Rs.453/-
Value of the First Appeal	Rs.75,10,000/-
Court Fees paid	Rs.855/-

28.3. The Section 96 of CPC., provides the appeal to be preferred only against the 'decree' in the following words:

- i) Section96(1): *Appeal from original decree:- Save where otherwise expressly provided in the body of this **Code** or by any other law for the time being in force, an appeal shall lie from “every decree” passed by any Court exercising original jurisdiction of the Court authorized to hear appeals from the decisions of such Court.*
- (ii) *An appeal may lie from an original decree passed ex parte.*
- (iii) *No appeal shall lie from a decree passed by the Court with the consent of parties*
- (iv) *No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed (ten thousand rupees.)”*

28.4. The Order 8 Rule 6F of CPC also provide that the Court having jurisdiction to try the counter claim should render the judgment in the counter claim in the following terms:

“Order 8 Rule 6 F: *Relief to defendant where counter-claim succeeds: Where in any suit a set-off or counter-*



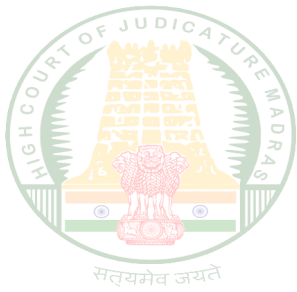
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claim is established as a defence against the plaintiff's claim, and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party to such balance."

28.5. From the combined reading of the above provisions, it is clear that one appeal is maintainable for more than one reason that the suit as well as counter claim commonly adjudicated upon preparing of common issues and unified judgment was delivered and the operative portion of the said unified judgment culminated to the consolidated decree with respect to the relief both in suit as well as the counter claim, the judgment referred by the learned counsel for the respondents reported in **2015 (3) SCC 624** also emphasised the above principle impliedly. In the said case, tenant filed the suit for injunction claiming absolute right over the property and the temple authority also filed the suit for recovery of possession. Both suits were tried together. The temple suit was decreed and tenant suit was dismissed. The tenant did not prefer any appeal against the dismissal of his suit for injunction and only preferred the appeal against the decree granted in favour of the temple. In the said circumstances, the Hon'ble Supreme Court in ***Sri Gangai Vinayagar Temple v. Meenakshi Ammal***, reported in **2015 (3) SCC 624** held as follows:

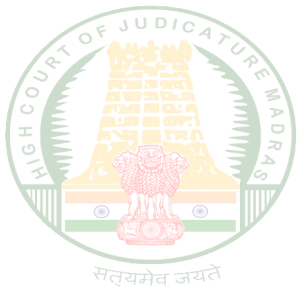


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“27. Procedural norms, technicalities and procedural law evolve after years of empirical experience, and to ignore them or give them short shrift inevitably defeats justice. Where a common judgment has been delivered in cases in which consolidation orders have specifically been passed, we think it irresistible that the filing of a single appeal leads to the entire dispute becoming sub judice once again. Consolidation orders are passed by virtue of the bestowal of inherent powers on the courts by Section 151 CPC, as clarified by this Court in Chitivalasa Jute Mills v. Jaypee Rewa Cement [(2004) 3 SCC 85] . In the instance of suits in which common issues have been framed and a common trial has been conducted, the losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments. While so opining we do not intend to whittle down the principle that the appeals are not expected to be filed against every inconvenient or disagreeable or unpropitious or unfavourable finding or observation contained in a judgment, but that this can be done by way of cross-objections if the occasion arises. The decree not assailed thereupon metamorphoses into the character of a “former suit”. If this is not to be so viewed, it would be possible to set at naught a decree passed in Suit A by only challenging the decree in Suit B. Law considers it an anathema to allow a party to achieve a result indirectly when it has deliberately or negligently failed to directly initiate proceedings towards this purpose. Laws of procedure have picturesquely been referred to as handmaidens to justice, but this does not mean that they



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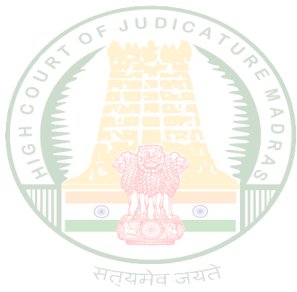


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can be wantonly ignored because, if so done, a miscarriage of justice inevitably and inexorably ensues. The statutory law and the processual law are two sides of the judicial drachma, each being the obverse of the other. In the case in hand, had the tenant diligently filed an appeal against the decree at least in respect of OS No. 5 of 1978, the legal conundrum that has manifested itself and exhausted so much judicial time, would not have arisen at all."

28.6. So the mandate of the precedent cited supra demands that if number of decrees are passed arising out of common judgment where the number of suits were commonly adjudicated, the judgment debtor legally required to be file separate appeal against their disallowed portion. But, in the present case, there was no such situation arise. Suit as well as counter claim are decided in the unified proceedings and the operative portion of the judgment culminated into single consolidated decree and hence, the appeal is maintainable. In result, the common finding which was based for granting decree as well as dismissal of the suit is subject matter of the present appeal and hence, there is no question of application of the principle of *res judicata*.

28.7. So, the submission of the counsel that the present appeal is not maintainable, is not accepted and also the plea of *res judicata* is also not



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WEB COPY accepted and hence, the Question No.7 is answered negatively.

29.Other incidental findings:

29.1. The first respondent money grubber makes his mind with devil's paradise which resulted into giving different meaning to the 'Dharmam' mentioned in the Ex.A6 by raising the various meaning to the word 'Dharmam' and made a counter claim upon taking the dubious stand over the judgment of this Court in A.S.No.216 of 1959 to the extent of finding of this Court in respect of the distribution of Panagam and Vadaparuppu is not religious charities and made a counter claim to deposit the sale proceeds of the suit schedule properties in the name of the Trust and the said interest to be utilised for doing the distribution of Panagam and Vadaparuppu. In short, the first respondent gave the alm to the God Renganathar and God Renganthar is at his mercy.

29.2. In the said circumstances, this Court is duty bound to give the true meaning for the '**Dharmam**'.

*“In Prof. Wilson's Glossary of Judicial and Revenue
Terms:*



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the expression “Dharma” is stated to mean “law, virtue, legal or moral duty”, derived from the Sanskrit verb “Dhri” meaning “to hold”, that which keeps a man in the right path.

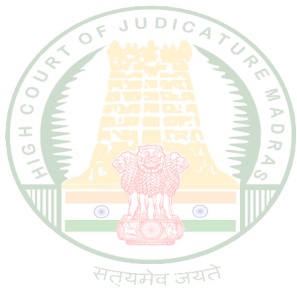
“In Wilson's Dictionary ‘dharam’ is defined to be law, virtue, legal or moral duty

*Considering the above meaning in 1899 the Privy Council in **Runchordas Vandrawandas v. Parvatibhai** declared a bequest or a gift to “Dharma” (Dharm) simpliciter to be void, the concept being vague and uncertain.*

29.3. Subsequently, the privy council in *Vaidhanatha Ayyar Vs. Swaminatha Ayyar* , AIR 1925 PC after considering the “Runchordas Case” held that if the executant intended to create specific share in the property for “Dharmam” and is not void for uncertainly which as follows:-

“A perusal of Swaminatha Ayyar’s will indicates to my mind that the “Dharmam” he intended to create in respect of the two-third share in the two-third share was the dharmam to which he gave a one third share in the income: and that the gift of two-third share of a two-third share is not void for uncertainty.”

“This is what the Learned Judges of the High Court said on that subject:-



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As regards two-third of the income of the properties given to the wife which the will directs to be utilized for dharmam on her death, it is argued that the reference, there is not to this choultry but to charity generally. The Learned Subordinate judge has held that the word “Dharmam” refers to this choultry and we think he is right in that construction. In that view of the will the choultry becomes entitled under Ex.C to seven-ninth of the income of the properties.”

29.3.1. *A.S. Narayana Deekshitulu v. State of A.P., (1996) 9 SCC 548:*

“61. Though dharma is a word of wide meaning as to cover the rules concerning all matters such as spiritual, moral and personal as also civil, criminal and constitutional law, *it gives the precise meaning depending upon the context in which it is used.*” ,

29.3.2. *The Advocate-General of Bombay v. Jimbabai [ILR 41 Bom 181 : 17 Bom LR 799] Beaman, J.,HELD that in this country “Dharma” did mean roughly and almost invariably in the cases which had come up for legal decisions just “charity” and nothing else.*

29.4. 1979 (1)SCC496 [Commissioner of Income Tax(Central) Delhi,



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New Delhi v. Bijli Cotton Mills (P) Ltd.,]:

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in our view a gift to “Dharmada”, or payment for “Dharmada” must be regarded as a gift or payment for religious or charitable purposes and such a gift or payment would not be invalid for vagueness or uncertainty.

13. Apart from the fact that the concept of “Dharmada” or “Dharmadaya” in common parlance means anything given in charity or for religious or charitable purposes.”

In Prof. Wilson's Glossary the expression “Dharmada” or “Dharmadaya” is stated to be the vernacular equivalent of the Sanskrit expression “Dharmadan” or “Dharmadayam” and the expression “Dharmada” is explained thus:

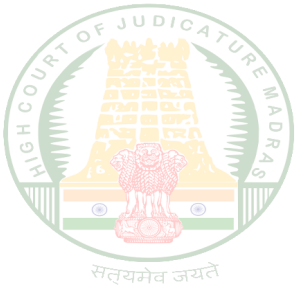
“Dharmadao, corruptly, Dharmadow, (from Dan or Daya, donation). An endowment, grant of food, or lands, or funds, for religious or charitable purposes.”

Two other allied expressions, namely, “Dharmakhaten” and “Dharmarth” are explained thus:

“Dharmakhaten (Marathi) the head of accounts under which pious or charitable gifts are entered.

Dharmarth (Sanskrit). Any thing given for charitable or pious purposes.”

In Molesworth's Dictionary (Marathi-English), Second Edition, reprinted 1975, the expression “Dharmadaya” or “Dharmadav” is stated to mean “an alms or a gift in



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So, the Marathi word “Dharmadaya” or “Dharmadav” Dharmakhaten” and Sanskrit expression “Dharmadan” or “Dharmadayam”, in Tamil documents noted as derivative term of “Dharmam”.

29.5. In result, the subscription of word “Dharmam” is only meant for complete and absolute dedication of property or money to perform religious endowment.

29.5.1. “In 1907 SCC OnLine Mad 89 [*“Parthasarath Pillai and Another Versus Thiruvengada Pillai and Others”*] the word ‘Dharmam’ when used in connection with gifts of property by a Hindu has a perfectly well-settled meaning and connotes ishta and poorta donations. The word is a compendious term referring to certain classes of pious gifts, and is not a mere vague and uncertain expression.

The testator must be presumed to have used the word with reference to the definite objects inculcated by shastraio precepts and well known to the people, and therefore the gift to ‘Dharmam’ is not void for indefiniteness.”

29.6. So the executant in his clear intention described the word 'Dharmam' and hence the first respondent, as a member of the executant's family must be acted as per 'Dharma' to discharge the 'Dharmam' activities in



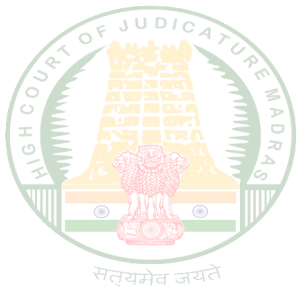
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order to fulfil the intention of the executant who had actually given numerous properties for their absolute occupation by absolute documents which were divided by the first respondent and their ancestors after the demise of the grandchildren of the executant.

29.7. In the book named “Hindu Religious and Charitable Endowments” penned by Thiru.V.K.Varadachari (3rd Edition) at page No.95, it is defined that *“It is settled principle that a pure religious endowment is neither a gift under Section 123 of Transfer of Property Act nor a trust. A gift requires acceptance for its validity and in the case of an endowment such acceptance by the deity is not expected or insisted upon under law. In a trust, the property is transferred to the trustee in whom it vests for the benefit of the cestui que trust. In a religious endowment, it vests in the deity or the idol”*.

29.8. So finding of court below that Ex.A6 is not a document creating trust is not necessary when the executant was intended only to obligate the grandsons to perform endowments by providing Panagam, Vadaparuppu and Ashtothra Archana to the plaintiff idol under vyavastha deed of nomination with the absolute divestiture and complete deprivation of the right to deal with



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the properties free of charge as absolute owner which they previously were.

30. Q-8: What are the other reliefs, both parties are entitled?

30.1. In the Ex.A6, it is directed to conduct number of Archanas. Archana is intended for the purpose of the eradication of the sins of the family and also to remove the evil and for well being of the family. The first respondent not doing the Archana with income of the properties and committed the further sin by doing the alienation. In the year 1950 onwards the descendant of the executant continuously committed mischief and misdeed in respect of the properties allotted for 'Dharmam' and they themselves entered into the turn system to do the charities and in that process also they failed and fraudulently obtained the compromise decree by allotting the suit schedule properties to the first respondent. The first respondent without doing the charities mentioned in the deed, clandestine manner divided the property into two parts and made the fictitious transaction to the second and third respondents. Hence, they are not interested in performing the 'Archana' in fulfilment of the intention of the testator. Since there is no legal provisions regarding the division of the



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property relating to the performance of the different endowments, *in equity*, the temple authorities are dutybound to perform the Astothra Archana as per the wish of the testator. It is relevant to refer the following portions of the judgment of the Hon'ble Supreme Court as well as this Court :

(i) *M.P. Mathur v. DTC, (2006) 13 SCC 706:*

14.The term “equity” has four different meanings, according to the context in which it is used. Usually it means “an equitable interest in property”. Sometimes, it means “a mere equity”, which is a procedural right ancillary to some right of property, for example, an equitable right to have a conveyance rectified. Thirdly, it may mean “floating equity”, a term which may be used to describe the interest of a beneficiary under a will. Fourthly, “the right to obtain an injunction or other equitable remedy”.

30.2. Q-8.1: So, this Court directed the temple authority for the reasons stated above, to perform the daily Astothra Archana in the name of the executants without demanding any money from the first respondent.

30.3. Q-8.2: Since this Court find that the first respondent has no authority to execute the sale deed in respect of the suit schedule property,



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the second and third respondents were permitted to withdraw the deposited sale consideration with accrued interest.

30.4. Q-8.3: Since the 2nd and 3rd respondents are not bonafide purchasers and their purchase are fictitious one and their possession is illegal and they are enjoying the properties on the basis of the fraudulent sale deed, they are bound to account for their fruits of enjoyment over the suit property from the date of sale deed onwards. Further, the first respondent doing the all sort of mischief in respect of the suit property without any authority, he also jointly and severally liable to pay the mesne profit.

30.4.1. Hence, this Court declared the right of plaintiff temple to initiate separate proceedings for mesne profit against the respondents 1 to 3 as per the procedure stated in the Civil Procedure Code.

31.Details of the findings of this Court in a nutshell as follows:

Question Number	Discussion Paragraph No.	Finding
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Q-1. Whether the executant endowed the suit property with specific intention of the absolute divestment under Ex.A6-Vyavastha Pathiram in favour of the temple by creating obligation upon his grandsons to do religious charities mentioned in the Clause-I of the document from the income of the suit property without the right to deal?	22	In result, Question No.1 is answered in favour of temple and hence finding of the court below only charge has been created is liable to be set-aside and as sequel, the 1st respondent is not entitled to encumber the property in any manner.
Q-2: Whether compromise decree in O.S.319 of 2007 on the file of the District Munsif Court, Kulithalai is valid so far as the suit property and if so, whether it conferred any right upon the first respondent to deal the same?	23	In result, Question No.2 is answered in favour of the temple and hence, the decree is null and void and the same was not binding on the temple authority and the sale deed executed on the basis of the invalid decree is also illegal and in result, both decree as well as sale deeds are liable to be cancelled as prayed by the temple authority.



Q-3: Whether the trial Court is correct in not setting aside the alienation made in favour of the second and third respondents by the first respondent?	24	In result, the learned trial Judge committed error in law in not setting aside the alienation and not decreeing the suit as prayed by the plaintiff with relief of mesne profit by taking into account of the intentional diversion of the first respondent from discharging the charity into alienation of the property. Accordingly Question No.3 is answered in favour of the temple.
Q-4: Whether decree granted in favour of the first defendant by trial court that he is entitled to deposit the sale proceeds of the suit schedule property for performing the endowments as prayed in the counter claim is in accordance with law?	25	In addition to that, as per the above finding that the 1 st Respondent has no right to alienate the property on account of the absolute dedication of the property with complete divestiture of the property to the temple, the prayer for the counter claim is not maintainable and the learned Trial Judge erroneously granted decree without considering the above legal and factual matrix and hence this Court without any hesitation set-aside the decree granted in the counter claim made by the 1 st Respondent. Accordingly, Question No.4 is answered against the first respondent.
Q-5: Whether the suit for recovery of possession was maintainable without relief of declaration?	26	In the said circumstances, Question No.5 is answered in favour of the appellant temple and suit for recovery of possession is maintainable without declaration.



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Q-6: Whether the suit filed by the Executive Officer of the temple is maintainable without obtaining the sanction from the Commissioner?	27	So, in all aspect, the contention of the respondents that the suit filed by the Executive Officer without getting permission of the Commissioner, is factually and legally not correct and so, this Court finds no reason to accept the respondents' submission and held that the suit is not maintainable and hence, the suit filed by the Executive Officer is maintainable. Accordingly, Question No.6 is answered negatively.
Q-7: Whether this appeal suit is maintainable without filing separate appeal against the decree passed in counter claim filed by the first respondent?	28	So, the submission of the counsel that the present appeal is not maintainable, is not accepted and also the plea of res judicata is also not accepted and hence, the Question No.7 is answered negatively.



Q-8: What are the other reliefs, both parties are entitled?	30	Q-8.1: So, this Court directed the temple authority for the reasons stated above, to perform the daily Astothra Archana in the name of the executants without demanding any money from the first respondent. Q-8.2: Since this Court find that the first respondent has no authority to execute the sale deed in respect of the suit schedule property, the second and third respondents were permitted to withdraw the deposited sale consideration with accrued interest. Q-8.3: Hence, this Court declared the right of plaintiff temple to initiate separate proceedings for mesne profit against the respondents 1 to 3 as per the procedure stated in the Civil Procedure Code.
Other incidental Finding	29	

32. The Hon'ble Supreme Court in **Pratapsinhji N Desai v. Deputy Charity Commissioner, Gujarat** reported in 1987 (Supp) SCC 714, emphasised the duty of the temple authority to initiate the timely action to prevent the fraudulent transaction in the following words:

“The property so dedicated to a pious purpose is placed extra-



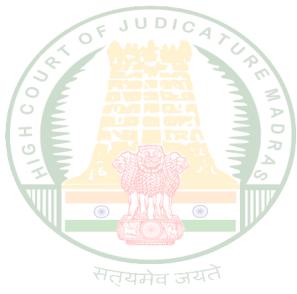
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commercium and is entitled to special protection at the hands of the sovereign whose duty it is to intervene to prevent fraud and waste in dealing with religious endowments.” But in this case, the same was not done. Eventhough, this Court in A.S.No.216 of 1959 by judgement dated 25.07.1963 declared the right of the temple in respect of the ‘Dharmam’, the HR&CE Department without acted as per the above direction, allowed the first respondent to commit the above all misdeed and mischief over the properties and only upon reciept of the communication from the first respondent to release the properties from the temple list, the plaintiff filed a suit for recovery of possession. Hence, this Court desisted to impose cost upon the first respondent.

33. In the result, this appeal suit is allowed in the following terms:

1. The judgment and decree passed by the trial Court in O.S.No. 82 of 2011 dated 29.04.2013 on the file of the III-Additional District Judge, Tiruchirappalli, is liable to be set aside and accordingly, the same is set aside. Consequently, the plaintiff temple’s prayer is decreed as prayed for in totality.
2. The judgment and decree of the trial Court in allowing the portion of counter claim in O.S.No.82 of 2011 on the file of the learned III-Additional District Judge, Tiruchirappalli, is



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liable to be set aside and accordingly, the same is set aside.

3. The temple authority is directed to perform the Astothra Archana in the name of the executant Ramasamy Rao in perpetual manner without demanding any amount as per the norms of the HR&CE Department in order to fulfil the intention of the executant of Ex.A6.
4. The respondents 2 & 3 are permitted to withdraw the entire sale consideration amount deposited in the Bank with accrued interest.

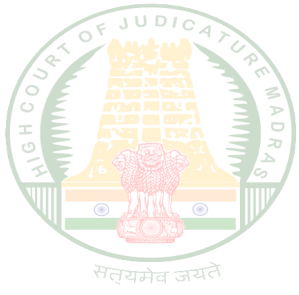
There shall be no orders as to costs. Consequently, connected miscellaneous petitions are closed.

[G.J.J.] & [K.K.R.K.J.]
13.04.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
PJJ

To

1. The III-Additional District Judge,
Tiruchirappalli.



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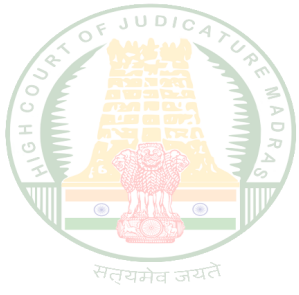
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2.The Section Officer,

V.R.Records,

Madurai Bench of Madras High Court,

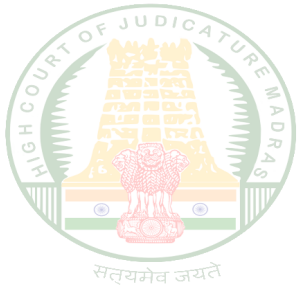
Madurai.



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**DR.G.JAYACHANDRAN,J.
AND
K.K.RAMAKRISHNAN,J.**

PJL

**Judgment made in
A.S(MD)No.140 of 2015**

13.04.2023