IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.05.2006

CORAM:

THE HON 'BLE MR. JUSTICE K.MOHAN RAM

A.S.No.172 of 1992

The Karthikeya Vanabojanam and
Desikar Trust, Madurantakam.
Rep. By the Trustee A.K.Rangachari
Chengalpattu … Appellant (Plaintiff)

-Vs-

1. The Commissioner
HR & CE Admn. Department
Nungambakkam High Road,
Madras - 600 034.

2. The Deputy Commissioner,
HR & CE Admn. Department
Nungambakkam High Road,
Madras - 600 034. … Respondents.

Appeal U/s.70 (2) of the TN HR & CE Act 22/1959 against the Judgment and Decree made in O.S.No.88 of 1986 on the file of the Principal Subordinate Court, Chengalpet dated 22.10.1991.

For Appellant : Mr. W.C.Thiruvengadam
For Respondents : Mr. G.Sugumaran, Special G.P. (HR & CE).

- - -

J U D G M E N T

The unsuccessful plaintiff in O.S.No.88 of 1986 on the file of the Principal Sub-Court, Chengalpet has filed the above appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the suit.

3. The case of the plaintiff as set out in the plaint is as follows:

(i) One Lakshmi Ammal wife of Narashimhachari died issueless leaving the suit properties to be reverted back to the available reversioners in the family and her husband pre-deceased her. On 04.03.1898 her father-in-law Sri. Arunapuram Venkatachariar and her brother Ayanam Srinivasachariar jointly executed a registered deed of declaration of Trust setting apart the suit properties for

the performance of private Kattalais with a provision for the line of succession to manage its affairs. The founders of the family Trust as trustees were performing the Karthigai Vanabojanam and suitable festivals to Lord Desika in the main shrine situated in Sri Kothandaramaswami Temple, Madurantakam. The Trust deed provides for the line of succession and also earmarks the amount to be spent for the private trust in question. There is no specific mention of any particular Kattalai for Lord Desikar and the choice is left open to the trustees and therefore it cannot be construed as a specific endowment coming under the purview of the Tamil Nadu Hindu Religious and Charitable Endowment Act (hereinafter referred to as the 'Act').

(ii) It is the further case of the plaintiff that the successors of the founders of the Trust have been performing the Kattalais from and out of the income of the suit properties. At the time of filing the suit Sri A.K.Rangachari and one another as hereditary trustees succeeded to the management of the trust and the management of the private Trust had always been vested with the plaintiff family and the public at large had never interfered with the private trust. The performance of Karthigai Vanabojanam at Mambakkam and the festivals to Lord Desika at Sri. Kothandaramaswami Temple Mathurandagam cannot be construed either as a religious charity or as a specific endowment so as to attract the definition in Tamil Nadu HR and CE Act 22 of 1959. The performance of Karthigai Vanabojanam has been stopped soon after the demise of the founders, but the festivals to Lord Desika is being continued. The plaintiff may change the mode of festival from time to time.

(iii) While so, the plaintiff filed O.A.No.48 of 1980 before the Deputy Commissioner HR and CE, the second defendant. By an order dated 31.03.1982 passed therein the plaintiff Trust was declared as a Religious Institution. Against the said order the plaintiff filed A.P.No.12 of 1983 before the Commissioner HR and CE Board the first defendant. But the appeal was dismissed. Therefore the suit in O.S.No.88 of 1986 has been filed under Section 70 of the Tamil Nadu HR and CE Act praying for a decree to set aside the order dated 05.05.1986 passed by the first defendant in A.P.No.12 of 1983 and consequently to declare that the plaintiff Trust is not a religious institution attracting the provisions of HR and CE Act.

4. A detailed written statement has been filed by the first defendant which has been adopted by the second defendant. The averments in the written statement are set out below:

(i) The allegation that the plaintiff trust is a family trust is not admitted. No Will or Trust Deed was left behind by Lakshmi Ammal. In the Trust Deed dated 04.03.1898, it is categorically stated that the properties have been endowed for the performance of Thaddiaradanai Kainkaryam in the

annual Vanamahotsavam of Arulmigu Kothandaramaswamy Temple, Mathurandakam at Mambakkam village and for the performance of the proper charitable Kainkariyams in the Annual Brahmotsavam of Sri Vedantha Desikar in Kothandaramar Temple, Mathurandakam. It is also stated that their successors have absolutely no right on the properties. It is not correct to state that it is a charge on the properties whereas it is a total dedication of the properties. The properties were not set apart for the performance of the family charities with a provision for the line of succession to manage its affairs. The Trust Deed provides that the Patta should be in the joint names of Arulmigu Kothandaramaswamy Temple, Mathurantakam and Trustees.

(ii) The Trust created is a "specific endowment" only as defined under Section 6(19) of the Act and it is not a private trust. The performance of Kattalais in a public Temple and the performance of Vanabojanam during the annual Brahmotsavam in a public temple establish the public character of the Trust. There has been no succession in the management.

(iii) It is the further case of the defendants that the Trust Deed which was executed only after the demise of Lakshmi Ammal stipulates the performance of both Kainkaryams and the alleged stoppage of the Kainkaryams is not admitted. On the above said pleadings, the defendants sought for the dismissal of the suit.

5. On the above said pleadings, the Trial Court framed the following issues, viz.:

i) Whether the declaration declaring the order dated 05.05.1986 passed by the first defendant in A.P.No.12 of 1983 in respect of the suit trust as invalid can be granted?

ii) Whether the suit trust is a private family trust?

iii) To what relief the plaintiff is entitled to?

6. During Trial, the Trustee A.K.Rangachari has been examined as P.W.1 and one Thiru.Senthamarai has been examined as P.W.2 and Exs.A-1 to A-5 have been marked on the side of the plaintiff. On the side of the defendants, one Smt. P.Sulochana has been examined as D.W.1 and Exs. B-1 and B-2 have been marked.

7. The Trial Court, on a consideration of the oral and documentary evidence adduced in the case, dismissed the suit, upheld the order of the first defendant and held that the suit Kattalai is not a private family Kattalai. Being aggrieved by that the plaintiff has filed the above appeal.

8. Heard Mr. W.C.Thiruvengadam, learned counsel appearing for the appellant and Mr. G.Sugumaran, learned Special Government Pleader (HR & CE) appearing for the respondents.

9. Mr. W.C.Thiruvengadam, learned counsel for the appellant submitted that Ayanam Srinivasachari (brother of Lakshmi Ammal) and Arunapuram Venkatachari (father-in-law of Lakshmi Ammal) entered into an agreement Ex.A-1 on 04.03.1898 setting apart Lakshmi Ammal's property for the performance of two Kattalais and there is no dedication of lands in favour of the Deity. According to the learned counsel, Desikar Uthsavam has to be performed in the month of September every year and no specific item has been indicated in the document, but it is stated "**உசிதம் போல் செய்யவும்** " and the appellant is performing "Thirumanjanam" and the amount stipulated is Rs.35/- only. The second item of performance is Vanabojanam to Lord-Kothandaramasamy at Mambakkam Village when the deity is taken on procession in Karthigai month and the amount stipulated is Rs.25/-. The learned counsel further submitted that,

(i) there is no absolute dedication.
(ii) improvement of the property has to be done by the descendants of the family.
(iii) joint Patta to be obtained in the name of Deity and the heirs

and hence there is no absolute dedication. The learned counsel further submitted that when there is a specific direction that temple authorities cannot question the performance, the said performance of service will not attract Section 6(19) of the Act. According to the learned counsel, Section 38(1) can be invoked if there is non-performance and the Trust Deed, at best only creates a charge on the suit properties.

10. In support of his contentions the learned counsel relied upon the following judgments, viz.,

(i) 91 L.W. 337 (D.B.) (R.M.AR.AR.RM AR. Ramanathan Chettiar Vs. The Commissioner of Hindu Religious and Charitable Endowments, Madras and others).
(ii) A.I.R. 1974 A.P. 316 : (V 61 C 69) (M.Appala Ramanujacharyulu Vs. M.Venkatanarasimhacharyulu and Others).
(iii) 2001 (2) C.T.C. 351 (The Commissioner, H.R. & CE (Admn) Department, Vs. N.A.Ramaswamy Chettiar and two others).
(iv) 1960 (2) M.L.J. 231 (State of Madras, represented by the Commissioner for the Madras Hindu Religious and Charitable Endowments, Mount Road, Madras Vs. Thuthukudi-Kozhumbu Vyaparikalin Thuthukudi Sri Subramaniaswami Mahimai Paripalana Sangam through its Honourary Secretary).
(v) 1952 (1) M.L.J. 282 (The Commissioner of Hindu Religious Endowments Board, Madras Vs. Sri Vinayakar Arudra Tiruppani Sabha).

11. Mr. G.Sugumaran, learned Special Government Pleader (HR & CE) appearing for the respondents submitted that in Ex.A-1 dated 04.03.1898 the authors of the document have absolutely dedicated the properties for the performance of two services namely,

(i) performance of Karthigai Vanabojanam i.e.

"கோதண்டராம சுவாமியாருக்கு வருடி வார கார்த்திகை மாத்தில் மாம்பாக்கத்தில் நடக்கும் வனபோஜன உச்சவத்தில் ததியாராதனை தர்ம காரியத்திற்காகவும் " and

(ii) performance of festivals to Lord Desikar Shrine situate at Madurantakam Sri. Kothandaramaswamy Temple (which is a public Temple) i.e.

"மேற்படி தேவஸ்தானத்தில் எழுந்தருளியிருக்கும் வேதாந்த தேசிகர் வருஉடிவாரி பிரம்ம உற்சவத்தில் உசிதமான தர்ம காரியங்களை நடத்த வேண்டியதற்காகவும் ".

The learned Special Government Pleader further submitted that the authors of the document Ex.A-1 have not retained any right over the properties i.e. "மேற்படி நிலங்களை பற்றி நமக்காவது, நம்மை சார்ந்த சந்ததிகளுக்காவது யாதொரு பாத்தியமும் கிடையாது". According to the learned Special Government Pleader, the above recitals in the document would show that the suit properties have been dedicated absolutely and the property is vested with the temple. The authors and their successors cannot deal with the suit properties.

12. The learned Special Government Pleader referred to Ex.B-1, the Property Register of the Temple maintained as contemplated in Section 29 of the Act and relied upon the entry made at Page. 105 of the Register and submitted that the suit properties and the performance of service had been brought under Ex.B-1 Property Register of the Temple. Therefore, according to the learned counsel, endowment is specific endowment coming under the control of the Department. The learned Special Government Pleader further submitted that the document Ex.A-1 has to be read as a whole and the intention of the authors of the document has to be ascertained and respected. According to him under Ex.A-1, the successors have to perform the charities and the income from the property has to be spent for performance of two charities and for developing the charities and the Patta shall be in the name of Temple and its trustees.

13. The learned Special Government Pleader further submitted that to ascertain the intention of the authors of the document, the document has to be read harmoniously and in support of the said submission, the learned Special Government Pleader relied upon A.I.R. 1963 S.C. 890 and by relying upon the judgment reported in 2000 (2) C.T.C. 559, the learned Special Government Pleader submitted that performing Vanabojanam Dathiyarathanai and performing charity during Bramotsavam of the Temple are specific endowments.

14. The learned Special Government Pleader referred to paragraph 7 of the plaint wherein it is pleaded that performance of Karthigai Vanabojanam has been stopped soon after the demise of the founders of the Trust, but the persons in management of the Trust have been performing festivals to Lord Desikar. The learned Special Government Pleader submitted that though the plaintiff stopped one service namely performance of Karthigai Vanabojanam the properties endowed remained as such and therefore the character of the properties has not been changed and the properties still vest with the Temple as evidenced by Ex.B-2. The learned Special Government Pleader further submitted that the Department can enforce the performance of service under Section 38

of the Act. The learned Special Government Pleader relying upon A.I.R. 1966 S.C. 653 submitted that even if the document is construed to create a charge, it will also be a specific endowment.

15. The point for determination in the above appeal is whether there was absolute dedication of the properties as a specific endowment under Ex.A-1 dated 04.03.1898. For deciding the issue in question, the definitions of certain words as given in the Act are relevant:

> Section 6 (16) "religious charity" means a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math or temple or not;
>
> Section 6 (17) "religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any charity and includes the institution concerned and also the premises thereof, but does not include gifts of property made as service – holder or other employee of a religious institution;
>
> Section 6(19) "Specific endowment" means any property or money endowed for the performance of any specific service or charity in a math or temple, or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation (1) to Clause (17).

Similarly, the relevant recitals in Ex.A-1 which are necessary for deciding the issue are set out below viz:-

> "லஷ்மி அம்மாளும் அவள் புருஷனின் நரசிம்மாசாரியரும் சந்ததி இல்லாமல் இறந்து போய் விட்டபடியால் மேற்படி நரசிம்மாசாரியர் பேரனும் லஷ்மி அம்மாள் பேரனும் சாசுவதாமாய் தர்மம் நடக்க வேண்டியதற்காக நாம் இருவரும் ஏகோபித்து மேற்படி முக்கால் பங்கு நிலங்களையும் அதன் மிராசு வகையறா சமஸ்தானங்களையும் மேற்படி மதுராந்தகம் கிராமத்திலெழுந்தருளியிருக்கும் ஸ்ரீ கோதண்டராம சுவாமியாருக்கு வருஷ வாரி கார்த்திகை மாதத்தில் மாம்பாக்கத்தில் நடக்கும் வனபோஜன உச்சவத்தில் ததியாராதனை தர்ம கைங்கரியத்திற்காகவும் மேற்படி தேவஸ்தானத்தில் எழுந்தருளியிருக்கும் வேதாந்த தேசிகர் வருஷ வாரி பிரம்ம உற்சவத்தில் உசிதமான தர்மம் கைங்கரியங்களை நடத்த வேண்டியதற்காகவும் நாம் மனப்பூர்த்தியாய் ஏற்பாடு செய்துக் கொண்டு விட்டுவிட்டபடியால் மேற்படி நிலங்களைப் பற்றி நமக்காவது நம்மைச் சேர்ந்த சந்ததிகளுக்காவது யாதொரு பாத்தியமும் கிடையாது"
>
> "நாளது தேதிமுதல் கொண்டு மேற்படி நிலங்களை வரும்படி உற்பத்தி செய்யவும் தர்மத்தை சரியாக பரிபாலனம் பண்ணவும் மேற்படி திரு. வரதாசாரியர், ஸ்ரீனிவாசாரியார் இவர்களுக்கும் பரியாதம் அதிகாரம் உண்டு"
>
> "அடியில் கண்ட சாத்தனூர் கிராம வருஷவாரி வரும்படியில் சர்க்கார் தீர்வை போக மிகுதியில் வனபோஜன கைங்கரியத்திற்காக இருபத்தி அஞ்சு ரூபாய்க்கு அதிகப்படாமலும் துப்பல் வேதாந்த தேசிகர் கோயில்

கைங்காரியத்திற்காக முப்பத்து அஞ்சு ரூபாய்க்கு அதிகப்படாமல் செலவு செய்து வரவேண்டியதல்லாமல் மிகுதி வருமானத்தை வட்டிக்கி கொடுத்தோ அல்லது தகுந்த ஊரில் நிலம் முதலானது வாங்கியோ விருத்தி செய்து வந்து வரும்படி குறைப்படும் பட்சத்தில் அந்த வருஉடித்திற்கு முஜபர் செய்து யக்தானது சாரமாக தர்மத்தை விருத்தி செய்ய வேண்டியது. மேற்படி நிலங்களில் மேற்படி கைங்காரிய திட்டத்திற்கு குறைவாய் வரும் பட்சத்தில் அந்த வருஉடிங்களில் நாமே மேற்படி செலவு செய்து தர்மம் பரிபாலனம் செய்ய வேண்டியது. மேற்படி நிலங்களின் பட்டா மேற்படி கோதண்டராம சுவாமியார், வேதாந்த தேசிகள் இவர்கள் பேரிலும் மேற்படி தர்ம பரிபாலகர் இவர்கள் பேரிலும் இருக்க வேண்டியது. மேற்படி உற்சவங்களில் யாராவது யெவ்விதத்திலாவது சுணக்கம் நேரிட்டால் மேற்படி கைங்காரியங்களில் பத்திக்காக வைத்திருக்கும் தர்ம பணத்தை மெம்பர்கள் அதிக அபிப்பிராயத்தின் பேரில் பழக்கத்தின்படி தர்மத்தை நடத்த வேண்டியது. மேற்படி சாத்தனூர் கிராம நிலங்களில் வரும் வருமானம் கைங்காரியத்திட்டத்திற்கு குறைவுபட்டால் அந்த கைங்காரியத்திற்கு லோபது மில்லாமல் மெம்பர்கள் யுத்தப்படி நடக்க வேண்டியது. இத்தர்மத்தை பற்றி தேவஸ்தான தர்ம கர்த்தா முதலான அதிகாரிகளுக்கு யாதொரு பாத்தியதையும் கிடையாது".

16. The contention of the learned counsel for the appellant is that since the improvement of property has to be done by the descendants of the family and joint Patta has to be obtained in the name of Deity and the heirs, there is no absolute dedication. The learned counsel by relying upon the following recitals in Ex.A-1 namely "crpjk; nghy; bra;at[k;" submitted that discretion is given to the trustees to perform such Kattalais as they deem it proper and therefore this fact will show that there was no absolute dedication of the properties. At this juncture, the decisions relied upon by the learned counsel in support of his contentions have to be considered.

17. By relying upon the following observations made in 91 Law Weekly 337, viz.,

> "14. It is, therefore, seen that acceptable and cogent material evidencing the intention to dedicate property for the particular purpose followed by an actual divestment or appropriation of the property to the specific object is an essential sine qua non to create an endowment
>
> 16. …. From the documentary evidence let in, which as we said remains uncontradicted, we gather the impression that the persons to administer the trust are definite and ascertained individuals belonging to the family of the donor and they are vested with the discretion to utilize the fund for performing the Abhishekam in any Siva temple of their choice. This solitary element would not make it a public endowment".

the learned counsel submitted that there is no absolute dedication of the property and there was no actual divestment or appropriation of the property to the specific object to create an endowment. But the above said observations have been made in the context of the factual background of that case. In paragraph 6 of the said judgment the important features of Ex.A-4 which was a material document in that case have been set out and the same reads as follows:

> "6. … The so-called intention expressed by the donor is vague. There is a discretion vested in the family to spend for such abishekams and the choice is obviously with them to choose any particular Siva temple in any part of our country. Abishekam, therefore, was to be performed only at the behest of the donor for his family members. *Ex facie* and intrinsically it is not possible for any member of the public including the person in authority or in charge of a particular temple to compel the trustees for the time being in charge of the fund to donate funds. … As no property has been set apart to ensure the continued performance of such worship in a particular temple and as the donor and the members of his family kept for themselves the power to make annual donations to various unnamed Siva temples in the country for the performance of abishekams, the element of a public endowment appears to be absent".

Therefore, the facts of that case are totally different from the facts of the case on hand and hence the above decision is not applicable to this case.

18. The learned counsel relied upon the decision reported in A.I.R. 1974 A.P. 316, wherein it is observed as follows:

> "4. An endowment can be created by the execution of a deed of dedication by the donor. But however, it must be noted that the mere execution of a deed of dedication without the donor intending to act upon the terms of the deed, would not create a valid endowment. In other words, to constitute a valid endowment, it must be established that the donor intended to divest himself of his ownership in the property dedicated. An endowment may be real or nominal. Whether a particular endowment is nominal or real, is a question of fact depending upon the facts and circumstances of each case. In order to determine whether an endowment is nominal or real, the factors relevant and material are (i) whether, in fact, any endowment has been created or not, and (ii) the conduct of the parties and the surrounding circumstances. Where an endowment has, in fact, been created or a trust came into existence, the subsequent conduct of the parties with regard to the enjoyment of the property settled or endowed, is not very much material."

It was submitted by the learned counsel for the appellant that the authors of Ex.A-1 did not intend to act upon the terms of the deed. In the light of the observations made in the above decision, the terms of Ex.A-1 have to be considered.

19. The learned counsel relied upon the decision reported in 2001 (2) C.T.C. 351, wherein in paragraph 9, it is observed as follows:

> "9. In order to constitute a specific endowment, it is necessary that the donor should divest himself of the property and in case of dedication to God or to a charity, the amount should be set apart and appropriated towards the specific object. In the absence of divesting of property there can be no specific endowments. In our case, the documents itself provides for changing the object for which certain funds have been allotted. If the object is changed the allotment of funds to the charities goes. The temple authorities cannot make a demand for performance of these charities since the settlement deed under which certain charities are contemplated, itself provides that the settlors are at liberty to change the object and nobody else except the Vanika Vaisya Community people of Mannachannallur has got the right to interfere with the internal affairs of the society. The performance of the charities as per the document is an internal affair, in which neither the temple nor others can interfere. Therefore, the temple, in which the charities are to be performed cannot ask for a charge or insist upon the performance of the charities and no charge has been created for the same".

From the said observation it could be easily seen that in that case the document itself provided for changing the object for which certain funds have been allotted and if the object is changed the allotment to the funds of the charities goes. In that context, the Division Bench held that the Temple in which the charities are to be performed, cannot ask for a charge or insist upon the performance of the charities and no charge has been created for the same. In this case, Ex.A-1 does not provide for changing the object for which the property has been dedicated and as such the above said decision is not applicable to the facts of this case.

20. The learned counsel relied upon the decision reported in 1960 (2) M.L.J. 231, wherein it is observed as follows:-

> "In order to constitute a valid endowment it is necessary that the donor should divest himself of the property and in case of dedication to God or to a charity the dedication can be effectuated orally without any necessity for a written instrument. But a mere credit entry in the account books of the donor

> for a certain charity will not be sufficient to create an endowment unless the amount is set apart and appropriated towards the specific object".

The facts of this case is totally different from the facts of the case on hand and this Court fails to see as to how this decision will help the case of the appellant and in the considered view of this Court, this decision is not applicable to the facts of this case.

21. The learned counsel relied upon the decision reported in 1952 (1) M.L.J. 282, wherein the object of the society has been set out as under:-

> "The object of the society was given as the conduct of the festival during Margali month on Arudra Nakshatram day in the temple of the said Vinayakar at a cost not less than Rs.150 out of the income which may be derived from the said property. The balance was to be kept as savings and out of the amount saved in this manner other immovable properties were to be purchased. The festival was being performed year after year till the year 1947 when the members of the society met and passed a resolution at a special meeting of the general body altering the object of the society. As altered the object ran as follows".

In the above said background, the Division Bench held that

> "It cannot be said that there was a specific endowment of the entire or part of the income of the property for a specific religious charity. There was no divesting of ownership even as regards income and there was nothing to prevent the society from changing its objects".

But the facts of that case and the facts of the case on hand are totally different. Ex.A-1 contains clear recitals showing that there was absolute dedication of the property and as such the above said decision is not applicable to the facts of this case.

22. Mr. G.Sugumaran, leanerd Special Government Pleader referred to A.I.R. 1966 S.C. 653 in support of his contentions and relied upon paragraph 4 of the judgment which reads as follows:

> "4. There is no dispute that in order that there may be an endowment within the meaning of the Act, the settlor must divest himself of the property endowed. To create an endowment he must give it and if he has given it, he of course has not retained it; he has then divested himself of it. Did the settlors then divest themselves of anything? We think they did. 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. This indeed is not in dispute. The rights created by it were, therefore, enforceable in law. The charities could compel the payment to them of the amount provided in Schedule B, and, if necessary for that purpose, enforce the charge. This, of course, could not be if the proprietors had retained the right to the amount or remained full owners of the property as before the creation of the charge. It must, therefore, be held that the proprietors had divested themselves of that part of the income of the properties, which is mentioned in Schedule B. By providing that their liability to pay the amount would be a charge on the properties, the settlors emphasized that they were divesting themselves of the right to the income and the right to deal with the property as if it was unencumbered. By creating the charge they provided a security for the due performance by them of the liability which they undertook. Further S. 32 of the Act provides that where a specific endowment to a temple consists merely of a charge on property, the trustees of the temple might require the person in possession of the properties charged to pay the expenses in respect of which the charge was created. This section undoubtedly shows that the Act contemplates a charge as an endowment".

The learned Special Government Pleader further relied upon paragraph 14 of the decision, which reads as follows:

> "14. …. This Section, therefore, contemplates that "specific endowment" attached to a math or temple may consist merely of a charge on property. It is, therefore, not possible to accept the argument on behalf of the appellant that in order to constitute a "specific endowment" within the meaning of the Act there must be a transfer of title or divestment of title to the property".

23. The learned Special Government Pleader relied upon the decision reported in 2000 (2) C.T.C. 559, wherein it is observed in paragraph 26 as follows:

> "The founder had set apart his house and clearly intended that the income there from should be utilized for feeding pilgrims who visit temples. Therefore all the elements that are required to constitute a specific endowment are present in this case. The Sanskrit, English Dictionary (Varan Shivram Apte 1993, ed.) also defines, "Ladiya" (sic) as belonging to that, his, hers, its this and (sin) "Aradhanam" *inter alia* as worshipping, Adoration, Propitiation (as of a diety) indicating the religious aspect of Thathiarathanai."

In the light of the above said observations and considering the facts of that case, the Division Bench held that the founder of the charities had created a specific endowment for the performance of the "Thathiarathanai Service" to "Desantharis" and the said endowment will definitely come within the purview of the Act.

24. Relying upon the above said two decisions, the learned Special Government Pleader submitted that the contention of the appellant that no specific endowment had been created by the instrument (Ex.A-1) is liable to be rejected. The learned Special Government Pleader, by referring to the contention of the appellant, that all that was done was to create a charge on the properties to meet the expenses of charities but the settlors never divested themselves of any interest therein and the mere provision for meeting the expenses of the charities out of the income of the properties and the creation of the charge would not amount to making of any endowment, submitted that in the light of the decision reported in A.I.R. 1966 S.C. 653, "specific endowment" attached to a math or temple may consist merely of a charge on property and therefore the contention of the learned counsel for the appellant that no specific endowment has been created under Ex.A-1 is liable to be rejected. The said contention of the learned Special Government Pleader merits acceptance and the law laid down in the decisions reported in A.I.R. 1966 S.C. 653 and 2000 (2) C.T.C. 559 squarely applies to the facts of this case.

25. In this context it is pertinent to note that an endowment can be created by the execution of a deed of dedication by the donor. To constitute a valid endowment, it must be intended to divest himself of his ownership in the property dedicated. Where an endowment has, in fact, been created or a trust came into existence a subsequent conduct of the parties with regard to the enjoyment of the property settled or endowed is not very much material. In order to establish a valid endowment it must be proved that the grant was made with the intention that the profits should be applied for the particular religious purpose and that the profits have been so applied. When however the acts and conduct of the parties show that the income of the property was employed in the performance of religious rites laid down by the founder, the mere fact that the members of the grantor's family were nominated shebaits, or they were to be remunerated out of the endowed fund are not proper grounds for holding the dedication to be nominal. Merely because the acts of the trustees are contrary to the terms of the endowment it cannot also be regarded as reflecting the intention of the testators. As laid down in A.I.R. 1963 S.C. 890 to ascertain the intention of the authors of the document, the document has to be read harmoniously.

26. Applying the aforesaid principles, I shall presently examine whether there is any endowment in fact in the present case. The recitals in Ex.A-1, which are very material for the purpose of determining the nature of the endowment created, have to be considered. It is not the case of the appellant that no endowment has

been created under Ex.A-1, but the contention is that it is not a religious endowment or a specific endowment. But it is the contention of the appellant that a charge has been created over the properties for the performance of a festival in Desikar Sannathi without specifying definitely, as to the festival that has to be performed in a public religious institution. It is the further case of the appellant that in the absence of a definite direction by the founder of the Specific Endowment, the performance of a festival in any temple cannot be construed to fulfill the definition of a Specific Endowment as contemplated under Section 6 (19) of the Act. It is the further contention of the appellant that the performance of Karthikai Vanabojanam at Mambakkam is not associated with any religious institution coming under the Act and the performance of some festivals to Lord Desikar in Sri Kothandaramaswami Temple at Madurantakam cannot be equally construed either as a 'Religious Charity' or as a 'Specific Endowment' so as to attract the definition of Section 6(19) of the Act.

27. The above contentions of the appellant are contrary to the very recitals in Ex.A-1 and as such the same could not be countenanced. A perusal of Ex.A-1 dated 04.03.1898 clearly shows that the authors of the document have absolutely dedicated the properties for performance of two services, viz.,

(i) performance of Karthigai Vanabojanam i.e.

"கோதண்டராம சுவாமியாருக்கு வருஉடி வார கார்த்திகை மாத்தில் மாம்பாக்கத்தில் நடக்கும் வனபோஜன உச்சவத்தில் ததியாராதனை தர்ம காரியத்திற்காகவும்" and

(ii) performance of festivals to Lord Desikar Shrine situate at Madurantakam Sri. Kothandaramaswamy Temple (which is a public Temple) i.e.

"மேற்படி தேவஸ்தானத்தில் எழுந்தருளியிருக்கும் வேதாந்த தேசிகர் வருஉடிவாரி பிரம்ம உற்சவத்தில் உசிதமான தர்ம காரியங்களை நடத்த வேண்டியதற்காகவும்".

Further, the authors of Ex.A-1 have not retained any right over the properties and the same is clear from the following recital viz., "மேற்படி நிலங்களை பற்றி நமக்காவது, நம்மை சார்ந்த சந்ததிகளுக்காவது யாதொரு பாத்தியமும் கிடையாது". This recital in Ex.A-1 clearly shows that the suit properties have been dedicated absolutely and the property is vested with the Temple and the authors of Ex.A-1 and their successors cannot deal with the suit properties. Ex.B-1 is the Property Register of the Temple maintained under Section 29 of the Act and Ex.B-2 is the entry made in the Register-Ex.B-1 at page 105 and this entry clearly establishes that the properties and the performance of services have been brought under the control of the department.

28. Further the document Ex.A-1 has to be read as a whole and has to be read harmoniously to find out the intention of the authors of the document and the intention of the authors of Ex.A-1 has to be respected. A reading of the recitals extracted above from Ex.A-1 shows the following viz.,:-

(i) The successors have to perform the charities.

(ii) Income from the properties has to be spent for performance of two charities and the steps to be taken to develop the income from the properties have also been mentioned.

(iii) The minimum amount to be spent for two charities have been mentioned as Rs.25/- and Rs.35/- and it is also stated as to what should be done in the case of non-realisation of sufficient income from the properties.

It is further stated in Ex.A-1 as to what should be done with the excess income after meeting out the expenses of the said two charities. It is nowhere stated in Ex.A-1 that the excess income can be utilized for the benefit of the trustees. Ex.A-1 further provides that the Patta in respect of the properties shall be in the joint names of the Temple and the Trustees. It is the admitted case of the plaintiff themselves that they are performing "Thirumanjanam" for Lord Desikar in Kothandaramaswamy Temple which is a public temple. All the above said features contained in Ex.A-1 clearly establish that there is absolute dedication of the properties. Therefore the contention of the learned counsel for the appellant based on the isolated words "உசிதம் போல் செய்யவும் " cannot be countenanced.

29. The following recitals in Ex.A-1 viz.,

"கோதண்டராம சுவாமியாருக்கு வருஉடி வார கார்த்திகை மாதத்தில் மாம்பாக்கத்தில் நடக்கும் வனபோஜன உச்சவத்தில் ததியாராதனை தர்ம காரியத்திற்காகவும் "

shows that the trustees have to perform 'ததியாராதனை தர்மகாரியம் ' during "கார்த்திகை வனபோஜன உற்சவம் " for Lord Kothandaramaswamy Temple; which shows that the authors of Ex.A-1 have set apart sizeable portion of the income and clearly indicated that the income should be utilized for feeding pilgrims during the Karthikai Vanabojana Urchavam. Therefore all the elements that are required to constitute a specific endowment are present in this case. The word 'ததியாராதனை' itself indicates the religious aspect. It is also the admitted case of the plaintiff that the trustees were performing 'ததியாராதனை' during the above said festival, but subsequently they stopped it. As laid down in A.I.R. 1974 A.P.316, the acts of the trustees contrary to the terms of Ex.A-1 cannot also be regarded as reflecting the intention of the authors of Ex.A-1. As rightly pointed out by the Trial Court, P.W.1's evidence is unreliable as it is opposed to the very recitals in Ex.A-1. Similarly, the evidence of P.W.2 is not of much help to the plaintiff and there is no documentary evidence to show that he is cultivating the lands. It must, therefore, be held that there is intrinsic evidence available in the very document Ex.A-1 in the form of recitals which would establish the real and true nature of the endowment. Where the trustees commit a breach of trust in not carrying out all or some of the objects of the trust, it does not in any way nullify the trust created for a charitable purpose. When once there is evidence of divestiture of personal rights to the trustees, the trust is complete. The entries in Exs.B-1 and B-2 clearly show

that the trust created under Ex.A-1 has been acted upon and a specific endowment has been created. There is no positive evidence on the side of the plaintiff to show that the trustees are enjoying the property on their own right. But on the other hand, there is positive evidence adduced by the department through D.W.1, Exs.B-1 & B-2 and also the evidence of P.W.1 to the effect that the charitable purposes for which the properties in question were dedicated under Ex.A-1 are being carried out and continued. The Commissioner / the Appellate Authority has considered all these aspects and given a correct finding and I see no reason to differ from that.

30. As rightly contended by the learned Special Government Pleader though the trustees stopped one service namely performance of 'தயிராதனை' during Karthikai Vanabojanam Festival, the properties endowed remain as such and therefore the character of the properties has not been changed and the properties still vest with the temple as evidenced by Ex.B-1. The submission of the learned Special Government Pleader by relying upon A.I.R. 1966 S.C. 653, that even if the document is construed as creating a charge, as contended by the learned counsel for the appellant, then also it will be a specific endowment has to be accepted.

31. Therefore, in any view of the matter the recitals in Ex.A-1 unmistakably establish that a specific endowment has been created. Therefore, I see no reason to interfere with the well reasoned judgment of the Trial Court and therefore the judgment and decree of the Trial Court are confirmed and the appeal is dismissed. However, no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

srk

To

The Principal Subordinate Judge, Chengalpattu.

Copy to:

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.W.C.Thiruvengadam, Advocate Sr 23489
+1cc to the Govt. Pleader SR 23500

JRG (CO)
km/22.8. A.S.No.172 of 1992