A

M. RADHAKRISHNA GADE RAO SAHIB

v.

STATE OF MADRAS

August 27, 1965

B

[A. K. SARKAR, RAGHUBAR DAYAL AND V. RAMASWAMI, JJ.]

Hindu Religious & Charitable Endowments—Part of the income of properties set apart for charities—If specific Endowment.

The appellants' predecessors by an instrument provided that out of the income of the properties a specified sum was to be set apart for certain C charities, and the balance of the income was to be taken by the members of the family. The Commissioner of Religious Endowments declared that part of the income set apart for charities, as a specific endowment. Thereupon the appellant filed a suit under s. 62(ii) of the Act for cancellation of this order. The Trial Court decreed the suit, but on appeal by the Commissioner the High Court, set aside the Trial Court's decree. In appeal to this Court,

D HELD : (By Full Court) A specific endowment was created by the instrument.

Per Sarkar and Dayal, JJ. The proprietors had divested themselves of that part of the income to be spent on charities. By providing that their liability to pay the amount would be a charge on the properties, the settlors emphasised that they were divesting themselves of the right to the income and the right to deal with the property as if it was E unencumbered. By creating the charge they provided a security for the due performance by them of the liability 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. [645 F—646 A]

F It cannot be said that a charge would be an endowment only where it had first been created in favour of a person who made an endowment in respect of it, that is to say, transferred his rights under the charge in favour of the charities. [646 B]

Per Ramaswami, J. In Hindu Law a dedication may be either absolute or partial. In the former case, the property is given out and out to an idol or to a religious or charitable institution and the donor divests G himself of all beneficial interest in the property comprised in the endowment. When the dedication is partial, a charge is created on the property or there is a trust to receive and apply a portion of the income for religious or charitable purposes. In such a case, the property descends and is alienable and partible in the ordinary way, the only difference being that it passes with the charge upon it. The expression "religious endowment" as defined in s. 6(14) and "specific endowment" as defined in s. 6(16) of the Act must be construed so as to include both H absolute and partial dedication of the property. This view is supported by s. 32(1) of the Act, which contemplates that "specific endowment" attached to a math or temple may consist merely of a charge on property. [649 F—650 D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 444 of 1963. A

Appeal from the judgment and decree dated March 26, 1958 of the Madras High Court in Appeal Suit No. 355 of 1955.

M. S. K. Sastri and M. S. Narasimhan, for the appellant.

A. Ranganadham Chetty and *A. V. Rangam,* for the respondent. B

The Judgment of Sarkar and Raghubar Dayal JJ. was delivered by Sarkar J. Ramaswami, J. delivered a separate Opinion.

Sarkar, J. On January 10, 1914, the appellant's predecessors-in-interest executed an instrument which has been described in these proceedings as a deed of settlement. There is some dispute as to the interpretation of this instrument but this much is not in controversy that it provided that the properties set out in Schedule A to it would be responsible for meeting the expenses of the charities specified in Schedule B. Schedule B set out 17 different charities and the amount to be spent on each. The total of the amounts mentioned came to Rs. 4,311-0-0 and the instrument provided that "in respect of the sum of Rs. 4,311-0-0 which has been set apart for the expenses of the aforesaid dharmams we have created a 'charge' on the entire properties mentioned in the A Schedule herein." That the properties were charged with the payment of the amount is not disputed. It is unnecessary to refer to the other provisions in this instrument in detail and it will be sufficient to state that they provided that the balance of the income of the properties in Schedule A left after meeting the expenses of the charities was to be taken by the male members of the family after payment of certain maintenance, marriage and other expenses to various females. C D E F

On November 10, 1953, the Commissioner for Hindu Religious and Charitable Endowments, Madras, an officer appointed under the Madras Hindu Religious and Charitable Endowments Act, 1951, made, in exercise of the powers conferred on him by the Act, an order declaring that 21 per cent of the income of the properties in Schedule A would be deemed to form a specific endowment within the meaning of the Act. Thereupon the appellant filed a suit under s. 62(ii) of the Act against the Commissioner for cancellation of this order. The trial Court decreed the suit, but on appeal by the Commissioner to the High Court at Madras it was declared that a specific endowment was created by the instrument of 15.9 per cent of the income for the time being G H

A received from the properties mentioned in Schedule A. The appellant challenges that decision in the present appeal. The Commissioner is represented by the State of Madras.

The appellant contends that no specific endowment had been created by the instrument. His contention is that all that was B done was to create a charge on the properties to meet the expenses of certain charities but the settlors never divested themselves of those properties or any interest therein. It was said that 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 the making of any endowment, for thereby the settlors C could not be said to have divested themselves of anything. The main question in this appeal is whether this contention is right.

There is no dispute that in order that there may be an endowment within the meaning of the Act, the settlor must divest himself D 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. E They deprived themselves of the right to deal with the properties free of the 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, F 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 G would be a charge on the properties, the settlors emphasised 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 H 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. A

Mr. Sastri for the appellant said that a charge would be an endowment only where it had first been created in favour of a person who made an endowment in respect of it, that is to say, transferred his rights under the charge in favour of the charities. B We see no reason for holding that an endowment was contemplated as consisting of a charge only in cases like that. We, therefore, think that the High Court was right in its view that the instrument had created a specific endowment.

As we have earlier stated, Schedule B to the instrument set C out 17 different kinds of charities on which different amounts were to be spent. The High Court held that six of these were not charities within the meaning of the Act because they were of a secular nature, and as the Act dealt only with charities of religious nature the disposition made for the purpose of those six charities could not form an endowment within the meaning of the D Act. This is not disputed by the respondent. The dispute before us concerned the remaining eleven charities. We have agreed with the High Court for the reasons earlier stated that what was given in respect of these eleven charities formed an endowment.

But there still remains a dispute as to the quantum of what E was given in respect of them. It was found that the total of the amounts specified in the instrument in respect of these eleven items came to Rs. 1,590. It was however pointed out to the High Court that since 1914 when the instrument was executed, the income of the properties had gone up and the expenses of the charities directed to be performed had also gone up. This is not F disputed. The High Court found that the sum of Rs. 1,590/- was 15.9 per cent of Rs. 10,000/- which was mentioned in the instrument as the current total income of the properties. In view of the increase in the income and expenditure the High Court held that the instrument created an endowment of 15.9 per cent of the income of the properties whatever it might be at any G particular time and not of the fixed sum of Rs. 1,590/-. Learned counsel for the respondent also said that under Schedule B the amount had in many cases been stated as approximate. He further pointed out that in one case 60 kalams of paddy had been directed to be provided, the approximate cost of which was mentioned as Rs. 125/-. It was contended that all these showed that H what was given was a percentage of the total income and not a fixed sum. We are unable to accept this view.

A The fact that the expenses were stated to be approximate does not show that a percentage of the total income formed the subject-matter of the endowment. What was given under each head was more or less a fixed sum. If the expenses had not gone up, then on the present argument, the charities could not claim more than what was stated in the instrument. The instrument cannot bear B a different interpretation because of subsequent events which might or might not have happened. The word "approximate" which we may point out, does not occur in every item of the charities. only shows that the persons responsible for paying moneys for the charities had a discretion to vary the amount mentioned slightly. That may have been because the charities C were not very clearly defined and because the acts constituting them were not rigidly fixed. In any case, we do not see that the word "approximate" created a right in the charities to a proportion of the income. We are, therefore, unable to agree with the High Court that an endowment had been created of 15.9 per cent of the income of the properties. We hold that an endowment D had been created in respect of a right to receive out of the income of the properties a sum of Rs. 1,590-00 only, leaving it to the proprietors who were the owners of the properties and were entitled to their management, in the exercise of their honest discretion to increase or decrease the amounts slightly as they thought the occasion required. The declaration made by the High Court E that an endowment had been created in respect of 15.9 per cent of the income of the properties is set aside and substituted by a declaration that an endowment of the right to receive Rs. 1,590/- out of the income of the properties had been created subject to the discretionary power of the owners of the properties to make F a slight variation in the amounts mentioned.

In the result, we dismiss the appeal subject to the variation earlier mentioned. There will be no order for costs.

Ramaswami, J. I agree with the order proposed by my learned brother Sarkar, J. but I prefer to rely on rather different G reasons.

The endowment known as Gade Rao Sahib Endowment attached to Sri Pushpavaneeswarar temple was created by one Sri Gopal Rao Gade Rao Sahib by the execution of a Settlement deed Ex. A. 1 dated January 10, 1914. Seventeen items of charities were mentioned in detail in Sch. 'B' to Ex. A.1 and the amount to be H spent was Rs. 4,311/- every year from out of the net income of the properties mentioned in the document. The Deputy Commissioner, Hindu Religious and Charitable Endowments, Thanjavur,

by his order dated February 25, 1953 held that the endowment known as Gade Rao Sahib Endowment attached to Sri Pushpavaneeswarar temple was a "specific endowment" as defined in the Madras Hindu Religious and Charitable Endowments Act, 1951 (XIX of 1951) (hereinafter referred to as the Act). Thereupon, the appellant took the matter in appeal to the Commissioner. The Commissioner, by his order dated November 10, 1953 in Appeal no. 46 of 1953 while confirming the order of the Deputy Commissioner that the endowment in question was a "specific endowment", held that out of the charities mentioned in Sch. 'B' to Ex. A. 1, items 1, 4, 10, 11, & 12 were secular charities. The appellant then filed a suit under s. 62(1)(ii) of the Act for cancellation of the order of the Commissioner. It is contended on behalf of the appellant that none of the charities constituted a "specific endowment" within the meaning of the Act and, in any event, all the charities are private family charities. The contention of the appellant was accepted by the Subordinate Judge who granted a decree in his favour. Against the order of the Subordinate Judge the defendant-respondent filed First Appeal A.S. 355 of 1955 in the Madras High Court which allowed the appeal and restored the order of the Commissioner except with regard to item 17 which was treated as secular charity and not falling within the purview of the Act. The present appeal is brought on behalf of the plaintiff against judgment and decree of the High Court of Madras dated March 26, 1958 in the appeal.

A B C D E

The question presented for determination in this case is whether the 11 items of charities mentioned in Sch. 'B' to Ex. A.1 which have been held to be of religious nature are "specific endowments" within the meaning of s. 6(16) of the Act which states :

F

> "6. In this Act, unless there is anything repugnant in the subject or context—
>
> (16) '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 (14);

G

Section 6(14) of the Act defines "religious endowment" or "endowment" to mean :

H

> "all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public

A nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service-holder or other employee of a religious institution;

B .....”

On behalf of the appellant it was contended that in order to attract the operation of s. 6(16) of the Act there must be a transfer or divesting of the ownership and there must be vesting of the title in the charity itself or the trustees. It was submitted C by Mr. Sastri on behalf of the appellant that in the Settlement deed, Ex. A.1 there was only a direction to the trustees to perform certain religious charities from out of the income of the family properties. It was conceded by learned Counsel that the endowment was created in respect of the amount to be spent for the performance of the charities and a charge was imposed on the D immovable properties mentioned in Sch. ‘A’. The argument was stressed on behalf of the appellant that there was merely a charge on the properties and there was no divesting of the title of the properties or vesting of such title in any body of trustees or in the temple itself. It was, therefore, submitted that there is no religious endowment within the meaning of s. 6(14) of the E Act and consequently there is no “specific endowment” within the meaning of s. 6(16) of the Act and the finding of the High Court on this question was defective in law.

I am unable to accept this argument as correct. In Hindu Law a dedication of property may be either absolute or partial. F *Iswari Bhubaneshwari* v. *Brojo Nath Dey*(1). In the former case, the property is given out and out to an idol or to a religious or charitable institution and the donor divests himself of all beneficial interest in the property comprised in the endowment. Where the dedication is partial, a charge is created on the property or there is a trust to receive and apply a portion of the income for G the religious or charitable purpose. In such a case, the property descends and is alienable and partible in the ordinary way, the only difference being that it passes with the charge upon it. (Mayne’s Hindu Law, Eleventh Edition, p. 923). In my opinion, the expression “religious endowment” as defined in s. 6(14) and “specific endowment” as defined in s. 6(16) of the Act must H be construed so as to include both absolute and partial dedication

(1) 64 I.A. 203.

of property. This view is supported by reference to s. 32(1) of the Act which states :

> "32. (1) Where a specific endowment attached to a math or temple consists merely of a charge on property and there is failure in the due performance of the service or charity, the trustee of the math or temple concerned may require the person in possession of the property on which the endowment is a charge, to pay the expenses incurred or likely to be incurred in causing the service or charity to be performed otherwise. In default of such person making payment as required, the Deputy Commissioner may, on the application of the trustee and after giving the person in possession a reasonable opportunity of stating his objections in regard thereto, by order, determine the amount payable to the trustee."

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. In my opinion, Mr. Sastri is, therefore, unable to make good his argument on this aspect of the case.

For these reasons I agree to the order proposed by my learned brother Sarkar, J.

Appeal dismissed and decree modified.