

A NAGU REDDIAR AND ORS. ETC.

v.

BABU REDDIAR AND ORS. ETC.
AND VICE VERSA

April 27, 1978

B [R. S. SARKARIA AND P. S. KAILASAM, JJ.]

Settlement of trust on tombs under the Hindu Law whether valid in law—Meaning of "Poruthataravu"—Onus is on the person who claims regular worship of the samadhi a religious practice in the community, to prove.

C By a deed Ex. A I dated 10th September 1885, five members of the family of one Nagi Reddi dedicated certain properties belonging to their family described in Schedule A and B to the plaint to two charities one called Annadhana—Chatram and the other called Sachindananda Matam situated in the village Vairichettipalayam. After the death of Ramalingachi Reddiar his adopted son Nagu Reddiar appellant in C.A. 2456/68 assumed management of the trust properties, in accordance with the succession indicated in Ex. A2, in 1942. A suit O.S. 152/55 under Section 92 of the Civil Procedure Code was filed by the plaintiffs respondents herein in the Court of Sub-Judge Trichirapalli, for removing the appellant No. 1 from the trusteeship of the suit charities and for framing a scheme for the said charities. The Trial Court found that the two charities in question were public Trusts and comprised all the alienated properties except item 7 of the Plaint 'A' Schedule of the trust properties; that 'B' Schedule properties were bequeathed for performance of Puja in Samadhi and for feeding the 'agathis' and 'paradesis' in the Matam and that the samadhi could not be separated from the Matam and therefore the dedication of the 'B' Schedule properties in forum of the matam and samadhikoil is invalid in law. The Court ordered the removal of the defendant from the office of the trusteeship and directed him to render accounts and ordered the framing of a scheme for plaint 'A' Schedule properties except item 7 which was found to be not a trust property.

D Aggrieved by the said decision both the plaintiff respondent and defendant appellant preferred appeals to the High Court. A.S. 114/68 is an appeal preferred by the first defendant appellant against the decree removing him from trusteeship, directing the framing of a scheme and declaring alienations made by him to be not binding on the Trust. A.S. 194/58 is an appeal preferred by the plaintiff against that part of the decree of the judgment dismissing the suit in respect to Sachidananda Matam and 'B' Schedule properties and declaring item 7 of the plaint 'A' Schedule as property not belonging to the Chatnam Trust. Both the appeals were disposed of by the High Court by a common judgment dismissing A.S. 114/58 of the defendant appellant subject to the modification of the decree of the lower Court that he would be liable to render accounts in respect of the trust properties only for five years prior to the date of the suit and allowing in part A.S. 194/58 of the plaintiff respondent holding that item 7 of the plaint 'A' Schedule properties was also part of the Trust properties. It also found that alienations 7, 8 and 15 of 'B' Schedule properties were not valid or binding on the Trust. Differing from the Trial Court it held that the Matam and the Samadhikoil were not inextricably mixed up and that the endowment for Sachidananda Matam was a valid endowment. The High Court allocated half the properties mentioned in 'B' Schedule to the Sachidananda Matam and feeding charity and directed the other half of the 'B' Schedule properties should go to the defendant No. 1 because it related to the Puja in the Samadhi, the endowment for which purpose not being valid.

H Allowing the appeals by certificate, in part the Court

HELD : 1. The samadhi was a tomb of ancestors of the settlors of the Trust and as such the settlement in favour of the tomb is not valid in law.

[776 D]

2. The word "Poruthatharavu" in the words "Dharumathirkaga Ezhuthivaitha Poruthatharavu" does not mean a 'charge'. The words mean a document evidencing the transaction 'Atharavu' means 'support' and 'Poruthatharavu' means a document in support. The document also explicitly states that the properties are given absolutely for the charities. A reading of the documents makes it clear that the properties were absolutely endowed in favour of the charities and the settlors specifically relinquished all their rights in the endowed properties. [776 F, G, H]

3. The recital makes it clear that the endowment was in favour of not only Sachidananda Swami Matam but also the Samadhikoil, but the properties as described in the schedule were intended to be vested in the Matam with a direction that income from specified properties were to be spent for the purposes mentioned in the schedule itself. The intention was that while all the properties were endowed for the purpose of charities mentioned, the vesting was to be as directed in the schedule with the obligation that the income from the properties as mentioned should be utilised for upkeep of the Nandavaram attached to the Annadanam Choultry and for the purpose of Puja in the samadhi also from the income of the properties that were allotted to the Sachindananda Matam. [777 B, D-E]

The properties described in the schedule referred to as the properties allotted to Sachidananda Swami Matam vested in the Matam with a charge that part of the income should be spent on the Puja to be performed in the samadhi. [777 E]

In this view (i) the conclusion arrived at by the High Court that properties were endowed for the Matam and the samadhi and that as the purposes of charities were distinct and separate, they could be separated cannot be accepted. (ii). The allotment of half the 'B' Schedule properties for the charities concerned with the Matam is not correct and (iii) The direction that the other half of 'B' Schedule properties should go to the first defendant (appellant No. 1 in C.A. 2456/68) cannot be sustained in law for on the findings of the High Court the properties would have to revert back to the settlors and their descendants. [777 F-G]

4. For the settlement to be valid and for the trust to claim exemption from the rule against perpetuity, it must be for a religious and charitable purpose. The English law relating to settlement on tombs does not apply to Hindu religious endowments. What are purely religious purposes and what religious purpose will be charitable must be entirely decided according to Hindu law and Hindu notions. [777 G-H, 778 A, C]

5. The determination of what conduces to religious merit in Hindu law is primarily a matter of shastric injunction and therefore any purpose claimed to be a valid one for perpetual dedication on the ground of religious merit though lacking in public benefit must be shown to have a shastric basis as far as Hindu are concerned. Other religious practices and beliefs have also grown up and obtained recognition from certain classes as constituting purposes conducive to religious merit. But if such beliefs are to be accepted by Courts as being sufficient for valid perpetual dedication of property therefor without the element of actual or personal public benefit, it must be shown that they have obtained wide recognition and constitute the religious practice of a substantial and large class of persons. [778 C-E]

The building of a samadhi or a tomb over the remains of a person and the making of provision for the purpose of 'Gurupooja' and other ceremonies in connection with the same cannot be regarded as charitable or religious purpose according to Hindu law. [778 E-F]

Saraswathi Ammal and Anr. v. Rajagopal Ammal, [1954] SCR 277; *Kunhamutty v. Thondikodan Ahmed Mudaliar and two Ors.*, I.L.R. 58 Mad. 204; *A. Drinasundaram Pillai v. N. Subramania Pillai*, I.L.R. 1945 Mad. 854; *Veluswami Gounder v. Dandapani*, [1946] 1 M.L.J. 304 referred to.

A 6. The rule that a provision for the purpose of puja over the tomb of the remains of a person is invalid is subject to certain exceptions. Cases of Hindu saints having been entombed deified and worshipped stand on a different footing from the case of an ordinary private individual who is entombed and worshipped therein. Samadhi over one who comes to be regarded as of the illuminati and the tombs of heroes may evolve in course of time as a shrine of Hindu public religious worship [778 G, 779 A]

B *Saraswathi Ammal and Anr. v. Rajagopal Ammal*, [1954] SCR 277, *Sri Ramanaswami by its Secretary G. Sambasiva Rao and Ors. v. The Commissioner for Hindu Religious and Charitable Endowments*, [1960] 2 M.L.J. 121; *Board of Commissioners for Hindu Religious Endowments, Madras v. Pidugu Narsinham and Ors.*, [1939] 1 M.L.J. 134, *Ratnavelu Mudaliar v. Commissioner of H.R. & C.E.* [1953] 2 M.L.J. 574; *Ramaswami v. The Board of Commissioners, Madras*, [1958] 2 M.L.J. 511 referred to.

C The raising of a tomb over the remains of an ancestor, an ordinary person is not recognised as religious in nature. The burden is on the person setting up a case of religious practice in the community to prove it. This prohibition may not apply when an ancestor is cremated and a memorial raised for performing sharaddha ceremonies and conducting periodical worship for this practice may not offend the Hindu sentiment which does not ordinarily recognise entombing the remains of the dead. A place of worship will not cease to be religious because of its being in the memory of a person. In the instant case, it was never pleaded that any religious practice existed amongst the community of building samadhis over the remains of the ancestors and performing pujas.

D [779 E, F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2456-2457 of 1968.

Appeals by Special Leave from the Judgment and Decree dated 2-2-1962 of the Madras High Court in A. S. Appeal Nos. 114 and 198 of 1958.

E P. R. Mridul, K. Jayaram, K. Ram Kumar for the Appellant in C.A. 2456/68 and Respondent in C.A. 2457/68.

T. S. Krishna Murthy Iyer and Miss Lilly Thomas for the Appellant in C.A. 2457/68 and Respondents C.A. 2456/68.

The Judgment of the Court was delivered by

F KAILASAM, J.—These two appeals are by certificates granted by the High Court of Madras against a common judgment in A.S. No. 114 and A.S. No. 194 of 1958.

G These appeals arise out of a suit filed by the plaintiffs in the Court of the Subordinate Judge, Tiruchirapalli in O.S. No. 152 of 1955 under section 92 of the Code of Civil Procedure for removing one Nagu Reddiar, the first defendant, from the trusteeship of the suit charities and for framing a scheme for the said charities. The trial court found that the two charities in question were public trusts and comprised all the alienated properties except item 7 of plaint-A Schedule of the trust properties. The Trial Court found that B-Schedule properties were bequeathed for performance of Puja in the Samadhi and for feeding the Agathies and Paradesies in the Matam and that the Samadhi could not be separated from the Matam and therefore the dedication of the B Schedule properties in favour of the Matam and Samadhikoil is invalid in law. The Court ordered the removal of the defendant from the

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office of the trusteeship and directed him to render accounts and ordered the framing of a scheme for **A** **Schedule** properties except item 7 which was found to be not a trust property. Aggrieved by the judgment both the plaintiffs and the defendants preferred appeals to the High Court of Madras, the appeal by the defendants being A.S. No. 114 of 1958 and by the plaintiffs A.S. No. 194 of 1958. The High Court disposed of both the appeals by a common judgment dismissing A.S. No. 114 subject to the modification of the decree of the lower court **B** that the first defendant would be liable to render accounts in respect of the trust properties only for five years prior to the date of the suit and not for the entire period of his management as ordered by the sub-Judge. The High Court allowed the appeal in A.S. No. 194 of 1958 in part holding that item 7 of the **A Schedule** properties was also part of the trust properties. It also found that alienations of items 4, 7, 8 and 15 of **B-Schedule** properties were not valid or binding on the trust. Differing from the trial court, it held that the Matam and the Samadhikoil were not inextricably mixed up and that the endowment for Sachidhananda Matam was a valid endowment. The High Court allocated half the properties mentioned in the **B Schedule** to the Sachidananda Matam and feeding charity and directed that the other half of the **B Schedule** properties should go to the first defendant because it related to the Puja in the Samadhi, the endowment for which purpose not being valid. Aggrieved by the judgment of the High Court the parties have preferred appeals against the common judgment in A.S. Nos. 114 and 194 of 1958. For the purpose of convenient reference, we will refer to the parties as plaintiffs and defendants according to their rank in the trial court. **D**

The facts of the case are briefly as follows. By a deed, Ex. A-1, dated 10th September, 1885, five members of the family of one Nagi Reddi dedicated certain properties belonging to their family described in Schedules A and B to the plaintiff to two charities one called the Annadhana Chatram and the other called Sachidananda Matam situated in the village of Vairichettipalayam. Besides the two charities properties were endowed for the upkeep of one Karpaka Vinayakar temple constructed in the village by the ancestors of the founders and for certain Kattalais in Sabhanayagar temple in Chidambaram, Subramanyaswami temple in Palani and Arunachaleswaraswami temple in Tiruvannamalai. On the same day the founders of the trust under Ex-A-2 nominated one of them, Ramalingachi Reddiar, as a trustee for the charities for life. After his life-time his son, grandson and their descendants were to succeed. Under Ex. A-1 separate sets of properties were dedicated for each of the charities particulars of which will be referred to in due course. Ramalingachi Reddiar was managing the charities till he died in 1942. He had no natural issue and therefore adopted the first defendant in 1918 as his son. The first defendant assumed management of the trust properties in accordance with the line of succession indicated in Ex. A-2. In the plaintiff it was alleged that after the first defendant took charge of the properties in 1942, he had not carried out the directions of the trust, alienated the trust properties by sale and exchange and had not maintained any

- A accounts. On the ground of misfeasance, malfeasance and misappropriation of trust properties the plaintiffs prayed for the removal of the first defendant from the office of the trusteeship and asked for accounts and for framing of a scheme. The main contesting defendant was the first defendant, the second defendant being the wife of the first defendant's brother-in-law. The second defendant and the other defendants are either alienees or persons in possession of the trust properties.
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- In these two appeals before us the concurrent finding of the courts below that the Annadhara Chatram is a public trust and that it is valid is not disputed. The finding of the High Court that the trust properties were improperly alienated and that they are not valid is also not questioned before us. The findings of the courts below that the first defendant was guilty of breach of trust in relation to the properties and directing his removal from the office of trusteeship for a period of five years and the direction calling upon him to render accounts for a period of five years before the filing of the suit are not challenged. In both the appeals before us the only point that was raised was regarding the B Schedule properties. The contention on behalf of the plaintiffs is that the endowment is a valid one as it was mainly in favour of the Matam and feeding of the poor who visited the Matam and that the performance of the Puja in the Samadhi was not connected with the main endowment as the properties vested absolutely in favour of the Matam. On behalf of the defendants it was submitted that the endowment is not valid in law as its purpose was for maintenance of a tomb (Samadhi) of an ancestor of the defendant which is invalid in law.
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- The trial court held that the Samadhikoil referred to in Exs. A-1 and A-2 means the tomb or tombs built over the place where the mortal remains of certain ancestors of the executants of Exs. A-1 and A-2 were interned and that from the description that the Samadhikoil adjoining or appurtenant to the Matam and the fact that the properties were bequeathed for performance of Puja at the Samadhikoil and feeding the Agathies and Paradesies, the bequest is one in connection with the performance of Puja at the Samadhi. It also found that the Samadhi and the Matam premises were adjoining each other and so closely intertwined that they cannot be separated and therefore the bequest for the performance of Puja at the Samadhikoil or the feeding of the poor in the Matam cannot be separated and therefore bequest in favour of the Matam and Samadhikoil should be declared as invalid. The High Court while agreeing with the conclusion of the trial court that the Samadhi is really a tomb of an ancestor of the defendants' family disagreed with the finding of the trial court that the Matam and the Samadhi are intertwined or so inextricably mixed up that the endowment under Ex. A-1 of B-Schedule properties must be held to be an invalid document as it benefits a Samadhi. The High Court came to the conclusion that the charity in favour of the Matam for feeding of the poor is a valid endowment and was a distinct charitable object and therefore valid endowment. While confirming the endowment in favour of the Sachidananda Matam, it found the endow-
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ment as regards the Samadhi or the tomb as invalid. Having regard to the nature of the services rendered by the Matam and the Samadhi the High Court allocated half the properties mentioned in the B Schedule to Sachidananda Matam and feeding charities but directed the other half of the properties in the B Schedule to be delivered to the first defendant. A

The question that falls for determination is the nature of the endowment as regards the B Schedule properties and as to how far it can be held to be valid. As rightly pointed out by the trial court the determination of this question will solely depend upon the construction of the two documents, Exs. A-1 and A-2 particularly Ex. A-1, the trust deed. B

The trust deed was executed on 10th September, 1885 by five persons in respect of the under-mentioned charities : C

Karpaka Vinayakar temple constructed by their ancestors, Annadana Choultry and the Nandavanam (flower garden) attached to it, Sachidananda Matam and the Samathikoil (tomb) attached to it, Sabanayagar temple in Chidambaram, Subramaniaswami temple in Palani and Arunachaleswaraswami temple in Thiruvannamalai. D

The recital in the document provides that the settlors had allotted 84.8 acres described in the Schedule absolutely under the document for being utilised for the charities mentioned. The settlors declared that they would have no rights whatsoever in respect of the aforesaid properties. The recitals are followed by the schedules. The first Schedule recites that the properties mentioned thereunder are allotted to the Karpaka Vinayakar temple. After giving description of the various items of properties it is directed that the income from the properties will be utilised for conducting Pujas twice a day and Abishekam on special occasions by employing Brahmins for the Vinayakar deity. A separate schedule is given regarding the properties which are allotted to the Annadanam choultry. The schedule starts by saying that the properties described are allotted to the Annadanam choultry. At the end of the Schedule, it is directed that the income from the properties be spent for feeding the Brahmins that come to the choultry and for expenses of the nandavanam attached to the choultry. The next Schedule is relevant for our purpose. The Schedule in the question is captioned as follows :— E

“Description of the properties allotted to Sachidananda Matam” F

It may be noted that the description does not include the Samadhi but at the end of the Schedule it is provided that the income from the properties mentioned in the Schedule be spent for feeding the Agathies and Paradesies and for conducting Puja in the Samadhi attached to the Matam. The other Schedules describe the properties that are allotted to the various temples, Sabanayagar temple at Chidambaram, Arunachaleswaraswami temple at Thiruvannamalai and Subramaniaswami temple at Palani. G

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A On behalf of the defendants Mr. Mridul, the learned counsel, submitted that the endowment under the B Schedule was for the purpose of feeding the Agathies and Paradesies who visited the Samadhi and the Matam was for the purpose of accommodating such visitors to the Samadhi and as such the principal object of the endowment was for Samadhi and that it is invalid in law. In any event, the learned
B counsel submitted that the finding of the lower court that both the charities were so inextricably intertwined that they cannot be separated which would entail the invalidation of the entire endowment was correct. On the other hand, Mr. Krishnamurthy Iyer, the learned
C counsel for the plaintiffs, submitted that the Samadhi was in fact a kovil and the entire endowment was valid as it was for the purpose of feeding the poor who came to the temple. In any event he submitted that the vesting of the properties under Schedule B was only in favour of the Matam and that only direction was to spend some moneys for performing that Puja in the Samadhi. In the event of the direction for the Puja of the Samadhi being held unsustainable in law that part of the endowment alone is liable to be declared invalid.

D We find no difficulty in rejecting the extreme contentions of both the parties and agreeing with the finding of the courts below that the Samadhi was a tomb of ancestors of the settlors of the trust and as such the settlement in favour of the tomb is not valid in law. The question therefore that remains for consideration is as to what part of the endowment under B Schedule could be found to be valid. Strong
E reliance was placed by both the learned counsel on the Tamil words that are used in the settlement deed. Mr. Mridul, the learned counsel for the defendants, submitted that the document if properly construed would show that only a charge was created on the properties for performing the various charities, and the properties continued to vest with the settlors. In any event, he submitted that the properties described in Schedule B were jointly endowed for the Matam as well as for the Samadhi and were inextricably intertwined and as such invalid. Particular
F stress was laid by the learned counsel on the words "Dharumathir-kaga Ezhuthiyaitha Poruthatharavu" which means "a document for charity in writing evidencing the transaction. The learned counsel would construe the words "Poruthatharavu" as meaning a charity. We are unable to agree. The words mean a document evidencing the transaction. 'Atharavu' means 'support' and 'Poruthatharavu' would mean document in support. The plea of the learned counsel is unsupportable as the document explicitly states that the properties are given absolutely
G for the charities.

H This unequivocal statement is followed by the recital that the settlors will have no right whatsoever in the properties endowed. Again to place the matter beyond all doubt, it is specifically recited that for the purpose of conducting the charity Ramalingachi Reddiar, his son, grandson and their descendants will be Dharmakartas. On a reading of the document we have no doubt that the properties were absolutely endowed in favour of the charities and the settlors specifically relinquished all their rights in the endowed properties. This leaves us with the consideration of the question whether the properties

were endowed in favour of both the Matam and the Samadhi or the Matam alone. The schedule commences as follows : A

"The description of the lands allotted to the Sachidanandaswami Matam."

This description standing alone would mean that the properties were to vest in the Sachidanandaswami Matam alone. But the recital in the body of the trust deed includes the Samadhikovil attached to the Matam as one of the beneficiaries which would indicate that the endowment was in favour of the Samadhi also. While agreeing with the learned counsel that the above recital would support the plea that the endowment was in favour of the Samadhi also, we are inclined to hold that the properties as described in the Schedule were intended to be vested in the Matam with a direction that incomes from the specified properties were to be spent for the purposes mentioned in the Schedule itself. We find that in the Schedule under which properties are allotted to the Annadana choultry, while the Schedule begins by stating that the properties are allotted to the Annadana choultry, at the end of the Schedule it is directed that the income from the properties be spent for feeding the poor in the choultry and for maintaining Nandavanam. Reading the entire document as a whole, we feel that the intention was that while all the properties were endowed for the purpose of charities mentioned, the vesting was to be as directed in the Schedule with the obligation that the income from the properties so mentioned should be utilised for the upkeep of Nandavanam attached to the Annadanam choultry, and for the purpose of Puja in the Samadhi also from the Income of the properties that were allotted to the Sachidananda Matam. On a careful reading of the document, we are satisfied that the properties described in the Schedule referred to as the properties allotted to Sachidananda Swami Matam vested in the Matam with a charge that a part of the income should be spent on the Puja to be performed in the Samadhi. B C D E

In this view we are unable to accept the conclusion arrived at by the High Court that the properties were endowed for the Matam and the Samadhi and that as the purposes of the charities were distinct and separate they could be separated. We are equally unable to agree with the allotment of half the B Schedule properties for the charities concerned with the Matam. The direction that the other half of B Schedule properties should go to the first defendant cannot be sustained in law, for even on the finding of the High Court, the properties would have to revert back to the settlors and their descendants. F G

We are of the view that only a charge was created for the expenses for conducting the Puja in the Samadhi on the properties that vested with the Matam. The question arises as to how far such a direction in the settlement could be held to be valid in law. It is not in dispute that for the settlement to be valid and for the trust to claim exemption from the rule against perpetuity, it must be for a religious and charitable purpose recognised as such by Hindu law. The English law relating to settlement on tombs does not apply to Hindu H

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A religious endowments. The Courts in India have adopted the technical meaning of charitable trusts and charitable purposes which the courts in England have placed upon the term 'charity'. But, in addition, under the head of advancement of religion, there are other charitable objects in Hindu law which will not be charitable according to English law for that law forbids bequests for what are termed superstitious uses. Under the Mussalman Wakf Validating Act, 1913, Act VI of 1913, a wakf for the maintenance and support, wholly or partially, of his family or descendants is valid provided the ultimate benefit is expressly or impliedly reserved for the poor or for any other purpose recognized by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

C What are purely religious purposes and what religious purpose will be charitable must be entirely decided according to Hindu law and Hindu notions. In *Saraswathi Ammal and Another v. Rajagopal Ammal*⁽¹⁾ it was held that the determination of what conduces to religious merit in Hindu law is primarily a matter of Shastraic injunction and therefore any purpose claimed to be a valid one for perpetual dedication on the ground of religious merit though lacking in public benefit, must be shown to have a Shastraic basis so far as Hindus are concerned. While stating so, this Court recognised that other religious practices and beliefs may have grown up and obtained recognition from certain classes as constituting purposes conducive to religious merit. But if such beliefs are to be accepted by courts as being sufficient for valid perpetual dedication of property therefor without the element of actual or presumed public benefit, it must at least be shown that they have obtained wide recognition and constitute the religious practice of a substantial and large class of persons. After referring to the Madras decisions in *Kunhamutty v. Thondikodhar Ahmad Musaliar and two Others*⁽²⁾ *A. Dratvasundram Pillai v. N. Subramania Pillai*⁽³⁾ and *Veluswami Gounder v. Dandapani*,⁽⁴⁾ this Court observed that it was held in the above decisions that the building of a samadhi or a tomb over the remains of a person and the making of provision for the purpose of Gurupooja and other ceremonies in connection with the same cannot be recognised as charitable or religious purpose according to Hindu law.

G The rule that a provision for the purpose of Puja over the tomb of the remains of a person is invalid is subject to certain exceptions. As pointed out by this Court in *Saraswathi Ammal's* case (supra) there have been instances of Hindu saints having been defied and worshipped but very few if at all have been entombed. Such cases stand on a different footing from the case of an ordinary private individual who is entombed and worshipped thereat. After referring to the decision in *Saraswathi Ammal's* case, a Bench of the Madras High Court in *Sri Ramanasramam by its Secretary G. Sambasiva Rao*

H (1) 1954 S.C.R. 277.

(2) I.L.R. 58 Mad. 204.

(3) I.L.R. 1945 Mad. 854.

(4) (1946) 1 M.L.J. 354.

and Ors. v. *The Commissioner for Hindu Religious and Charitable Endowments, Madras*,⁽¹⁾ observed that as samadhi over one who comes to be regarded as of the illuminati or even the tombs of heroes may evolve in course of time as a shrine of Hindu public religious worship, as was held in the *Board of Commissioners for Hindu Religious Endowments, Madras v. Pidugu Narasimham and Others*,⁽²⁾ *Ratnavelu Mudaliar v. Commissioner, for H. R. & C. E.*,⁽³⁾ and *Ramaswami v. The Board of Commissioner, Madras*.⁽⁴⁾ This Court referring to the decision of *Board of Commissioners for Hindu Religious Endowments, Madras v. Pidugu Narasimham and Others* (supra) observed that the Judges of the High Court were inclined to hold that the worship was religious. But this was a case of a grant from a sovereign authority and was not an endowment for worship of a tomb. In (1953) 2 M. L. J. 574 a Bench of the Madras High Court held that the samadhi or tomb of one Apparswami is a place of religious worship taking into account that the institution was for over a century regarded as a place of religious worship. Viswanatha Sastri J. in *T. R. K. Ramaswami Serval and Anr v. The Board of Commissioners for the H. R. E., Madras*,⁽⁴⁾ through its President, expressed his view that it was sufficient if the worshippers considered themselves likely to be the recipients of the bounty or blessings of a Divine Presence, which they believed to exist at the place. Samadhis of saints are recognised as religious institutions in the South. It is well-known that the Samadhi of saint 'Pattinathar' is considered as a place of worship in Tiruvottiyar near Madras. According to tradition great saints have attained Yoga Samadhi in the well-known pilgrim centres; Saint Tirumoolar attained Samadhi in Chidambaram, Saint Konganavar at Tirupathi, Saint Valmiki at Srirangam and Bhgamuni at Palani.

The raising of a tomb over the remains of an ancestor, an ordinary person is not recognised as religious in nature. The burden is on the person setting up a case of religious practice in the community to prove it. This prohibition may not apply when an ancestor is cremated and a memorial raised for performing Sharadha ceremonies and conducting periodical worship for this practice may not offend the Hindu sentiment which does not ordinarily recognise entombing the remains of the dead. A place of worship will not cease to be religious because of its being in the memory of a person.

It may be stated that the case before us relates to the tomb of an ancestor of the settlors. It was never pleaded that any religious practice existed amongst the community, of building samadhis over the remains of the ancestors and performing pujas. The plea of the defendant in Para 8 of the written statement is that the dominant purpose of the dedication of B Schedule properties was Samadhi

(1) 1960 (2) M.L.J. 121.

(2) 1939 (1) M.L.J. 134.

(3) 1953 (2) M.L.J. 574.

(4) 1950 (2) M.L.J. 511.

- A Kainkaryam i.e. worship of the ancestors in their entombment and as such invalid in law.

B It only remains for us to consider what appropriate directions should be given in the case. In view of our finding that the vesting of B Schedule properties was in favour of the Matam alone with a charge on the properties that the expenses for Puja at the Samadhi should be met out of the income of the property, the vesting will not fail but the direction to meet expenses for the Puja at the Samadhi is unsustainable in law.

C The High Court directed framing of a scheme for the administration of the two trusts. The High Court also agreed with the trial Judge that the Board of Trustees should consist of three persons, two of whom should be respectable residents of Vairichattipalayam and the third should be a member of the family of the first defendant. We agree that a scheme should be framed with a Board of Trustees consisting of three members, one belonging to the family of the donors and two other respectable residents of the village. As the prohibition against the first defendant for being a trustee for five years has expired his claim to be appointed as one of the trustees from the members belonging to the family of the settlers may be considered by the Subordinate Judge. The three trustees appointed by the Subordinate Judge will administer the scheme that may be framed subject to the directions that may be issued by the Subordinate Judge from time to time.

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F It is the common case of the parties that due to changed circumstances very few people visit the village on their way to various places of pilgrimage and therefore there are not many visitors to be fed in the choultry. The income from the properties that is allotted to the Karpaka Vinayakar temple under Ex. A—1 will be used in conformity with the directions in the document. Regarding the property which had been allotted to the Annadana choultry the direction is that from the income of the property, the Brahmins that visit the choultry should be fed and the Nandavanam should be maintained. The direction will be adhered to but if there are not enough Brahmins as envisaged in the document the income will be utilised for feeding the poor boys and girls of the schools of the village even though they may not belong to the Brahmin community. Regarding the properties that are allotted to the Sachidanandaswami Matam, it is seen that there are not enough pilgrims passing through the village due to improved transport facilities. The direction to incur expenses for the Puja in the Samadhikovil has failed. The income from the properties after feeding the Agathies and Paradesies that visit the Matam will be utilised for feeding the poor boys and girls of the schools of the village.

G It will be open to the Subordinate Judge to utilise the surplus income from the properties allotted to Anandana choultry and Sachidanandaswami Matam for feeding the poor school-going boys and girls in the village. We are satisfied that the settlement is predominantly for a

H

charitable purpose and as the direction regarding feeding of the Brahmins in the Annadanam choultry and for Agathies and Paradesies in the Matam cannot be duly carried out as intended by the settlors, applying the Cypres doctrine we direct as indicated above that the funds may be utilised for a purposes which are as nearly as possible with the intention of the donors.

A

There will be no order as to costs.

B

S.R.

Appeals allowed in part.