PRIVY COUNCIL.*

BULLI GANGI REDDI (PLAINTIFF), APPELLANT.

1927, February 22.

v.

BULLI TAMMI REDDI (DEFENDANTS 1 AND 2 AND OTHERS), RESPONDENTS.

[On Appeal from the High Court at Madras.]

Hindu Law—Religious endowment—Power of karta to dedicate family property—Evidence of dedication—Application of profits of property.

The fact that the deceased karta of a Hindu joint family regularly paid the expenses of a choultry out of the profits of a family property, the expenses not however exhausting the whole of those profits, does not establish a dedication of the profits to the charity.

Consideration of the powers of a karta to dedicate property of the joint family to a religious charity.

APPEAL (No. 174 of 1924) from a decree of the High Court (20th January 1922) reversing, so far as material to this appeal, a decree of the Subordinate Judge of Cocanada (16th August 1920).

The appellant instituted a suit against the respondents for partition.

A variety of issues were framed, but the only question material to the present appeal was whether Gangi Reddi, the deceased karta of the joint family, had made an effective dedication of the profits of a usufructuary mortgage to the expenses of a choultry. It was originally contended that the usufructuary mortgage in question had been the separate property of Gangi Reddi and was dedicated by his will; but it was found in the

* PRESENT: LORD PHILLIMORE, LORD CARSON, LORD DARLING, MR. AMEER ALI and SIR LANCELOT SANDERSON.

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suit, and not disputed on the present appeal, that it had been the property of the joint family.

The facts appear from the judgment of the Judicial Committee.

The Subordinate Judge made a preliminary decree for taking accounts and by his judgment held that there had been no dedication of the profits of the usufructuary mortgage.

On Appeal, the High Court (SPENCER and KUMARASWAMI SASTRI, JJ.) modified the decree with regard to the terms of accountability, and, coming to the conclusion on the facts that the whole of the profits derived from the usufructuary mortgage had been continuously devoted to the expenses of the choultry, they held therefore that there had been a dedication.

DeGruyther, K.C., and *Narasimham* for the appellant.—A dedication was not proved. To establish a dedication it must be shown that the donor intended to convey the property irrevocably to himself or to a trustee for the charitable purpose. Though the continued application of the income from a property to a particular charity is evidence of a dedication, it is not sufficient by itself: *Konwar Doorganath Roy* v. *Ram Chunder Sen*(1), *Abhiram Goswami* v. *Shyama Charan Nandi*(2). Moreover, an examination of the evidence and accounts shows that the whole of the income from the property was not applied to the expenses of the charity, though the expenses were paid out of that income. That, in any case, is not sufficient: *Govinda Doss* v. *Venkataperumal*(3). The decision in *Ramalinga Chetti* v. *Sivachidambara Chetty*(4) does not controvert that view. There, there had been a gift on the occasion of the funeral of a deceased member of the family.

The respondents did not appear.

The JUDGMENT of their Lordships was delivered by

LORD PHILLIMORE.

LORD PHILLIMORE.—This case turns on a question of fact. A member of the family of Reddi, whom it is

(1) (1876) I.L.R., 2 Calc., 341; L.R., 4 I.A., 52.
(2) (1909) I.L.R., 36 Calc., 1003; L.R., 36 I.A., 148.
(3) (1914) 27 M.L.J., 195. (4) (1919) I.L.R., 42 Mad., 440.

convenient to call Gangi Reddi, was a merchant carrying on business at Cocanada. He died in April 1917. He had two sons, one of whom predeceased him, leaving a son—the present plaintiff. The younger son and his son are the present defendants. There were also several daughters.

Gangi Reddi made three wills asserting that his property was self-acquired property, and being such that he could dispose of by will. It has, however, been decided that his property is to be regarded as ancestral family property, and not such as he could dispose of by will.

The younger son had assisted his father in his later years and was according to the will to be manager of family property, and in fact he undertook to manage it and did so till this suit was brought on the 18th December 1918. By it the plaintiff's claim to a half share of the entire family property was asserted and a partition was demanded.

The plaint contained various allegations of malversation by the first defendant.

When the case came on for trial, a number of questions arose which were disposed of by the Subordinate Judge. Most of his directions were confirmed by the High Court on appeal. In the cases in which the judgment of the Subordinate Judge was so varied the decision of the High Court has been generally accepted. The only point remaining is that which is the subject of the present appeal.

The earlier clauses of the will provide for certain distributions between the wife and sons and daughters which are either not questioned or have been disposed of by the judgments already mentioned. The last clauses of the will run as follow:—

"7. I advanced a loan to Muchilika Appalaraju and others of Chengondapalli, Ernagudem Taluk, took an usufructuary

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mortgage of Chengondapalli and its hamlets Patnam Madampatt, etc., forming a muttah belonging to the said Appalaraju and others and have been managing the same. The net profits realized from the said muttah annually, I have been giving away for the expenses of feeding, etc., in the choultry which I built in Gollalamamidada and have been making credit and debit entries accordingly in the accounts also. So long as the said Chengondapalli muttah is in our possession according to the term, the net profits annually realized therefrom shall be paid for the expenses of the said choultry even after my death, and Bulli Thammi Reddi shall look after the whole management needed for it. Besides this, the interest that may annually be realized on a sum of Rs. 10,000 (ten thousand rupees) out of my own funds shall either be spent to meet the expenses of the charity choultry at Gollalamamidada once a year or shall be kept in deposit for the said purpose.

"8. The will already executed by me on 13th May 1906 and registered as No. 12 on pages 111 to 114 of Vol. 4, Book III, in the office of the Sub-Registrar of Bikkavole is hereby cancelled and this will has been executed to take effect from the time of my death. This will is executed with my consent."

It has been stated that Gangi Reddi claimed that his property was all self-acquired. He asserted this claim in the first paragraph of the will in question; but as it has been decided that this claim was not well-founded, he could not dispose of this property or found a charitable endowment by will. In the present suit the plaintiff disputed the validity of this endowment, and the first defendant supported it.

Originally the defence rested upon the proposition that the property was self-acquired; but during the progress of the case the first defendant was allowed to raise further defences, namely, that there had been a dedication to charity during the lifetime of Gangi Reddi, and that the plaintiff's father and other persons interested had acquiesced in the dedication. As regards the sum of Rs. 10,000 the Subordinate Judge upheld this dedication while in respect of the usufructuary mortgage he held

that there was no dedication. As regards so much of the charity as he held to be validly founded, the Judge directed that the management should be with the two branches of the family in alternate years, varying in this respect the direction in favour of the first defendant which appears in the will.

The plaintiff accepted this decision, and so it must be taken as settled that there was a valid constitution of a charitable endowment to the extent of the Rs. 10,000. The first defendant was not content with the other part of the decision and appealed to the High Court, which decided that there was an appropriation of the usufructuary mortgage as well as of the Rs. 10,000 to the charitable endowment.

It is from this decision that the plaintiff now appeals.

It is much to be regretted that the first defendant has not seen his way to be represented before their Lordships; but the facts of the case have been fully presented by counsel for the appellant, and every portion of the evidence on the record has been brought to their Lordships' notice.

A dedication of a portion of the family property for the purpose of a religious charity (and the charity which Gangi Reddi purported to endow is of this nature) may, according to Hindu Law, be validly made without any instrument in writing, even if it be an appropriation of some landed property, and the act of the karta of the family would be valid if assented to in any way, however informally, by the other members of the family. Such an appropriation may even (if the property allotted be small as compared with the total means of the family) be made by the karta without consent. This much was not questioned by counsel for the appellant.

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But the appropriation or alienation must be made by the manager by an act *inter vivos*, and must not be an alienation *de futuro* by will.

In the view of the Subordinate Judge the foundation, so far as the Rs. 10,000 was concerned, was supported by the principles above stated, but the other endowment was not. In the view of the High Court both stood upon the same footing.

The evidence in the case was somewhat meagre. The plaintiff gave evidence and had nothing material to depose on this subject, but he relied on entries in the family book of accounts. The first defendant said that his father wanted a choultry for Brahmans to be built, and that it had been located in its place for ten or fifteen years. The clerk in the service of the deceased verified the accounts and spoke as to a mortgage on an estate called Toyyeru, held in common by Gangi Reddi and another man named Basavi Reddi, the profits of which so far as it came to Gangi Reddi were used by him for the expenses of running the choultry, the balance or surplus being spent by Gangi Reddi on his own account. He further said that at a later date the usufructuary mortgage of Chengondapalli, spoken of in the will, was also acquired. In cross-examination he stated that there were separate khatas or accounts relating to Toyyeru, Chengondapalli and the choultry kept in the ledger books, and that the expenses incurred for the choultry used to be debited to the choultry account from day to day.

This is all the material oral evidence, and it is meagre enough; but the first defendant, on whom lies the burden of supporting this endowment, offered some documentary evidence of importance.

Gangi Reddi—as it has been said—made three wills. The first, dated 13th July 1905, was confined to provisions

relating to members of the family. In the second, dated the 13th May 1906, these words occur:

"From after my death interest accruing on a sum of Rs. 10,000 (ten thousand rupees) shall be paid once a year for the Dharma Chathram (charity house) situate in Gollala-mamidada;"

and in the third will comes the clause already mentioned.

Now the third will states historically that he has been giving away the net profits of the usufructuary mortgage for the expenses of feeding, etc., in the choultry, and that he had been making credit and debit entries accordingly in the accounts, and then proceeds to direct that so long as the mortgage remains in the possession of the family the net profits annually realized shall be applied in the same manner.

This is not quite in agreement with the statement of the clerk, who speaks of a surplus or balance which was applied to the ordinary family expenses; but still there is the statement which is not to be neglected.

The other document of importance is a deposition which Gangi Reddi made on the 16th October 1903—that is, before any one of the three wills were made. It would appear that in that case he was suing upon a promissory note, and that the defence was that it was a forgery, and that this defence was supported by a suggestion that he had not money enough to be in a position to lend the sum, whenever it was said to be due on the promissory note.

Their Lordships would gather that the transaction had been effected by the elder son who at the time of the deposition had not been long dead, and that some difficulty may have arisen because he was dead at the time when the trial came on. In that deposition

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Gangi Reddi started by giving himself a character as a substantial person, and he said as follows :—

"I am plaintiff. I have been dealing for the last forty years. All this is my self-acquisition. I am illiterate. I am only a marksman. I earned my property by trade. I paid this year Rs. 265 or 275 as income-tax. I get about Rs. 3,000 from my lands. I endowed a choultry at Samarlakota for Rs. 10,000. I gave a leasehold right of the annual value of Rs. 1,200 for 25 years for a chatram in my village. My son asked me to endow the chatram for lame and blind people, with the interest accruing on Rs. 10,000 funded capital. I am going to do so hereafter. Basavi Reddi and myself are the biggest merchants of my village. There are no big merchants in my village who are not of my caste or in the neighbouring villages. For the last 10 or 14 years my son was carrying on all my affairs. I and Basavi Reddi are partners in the Rice Mill at Nidadavole. I had dealings with defendants. My son was conducting business on my behalf with the defendants."

He was cross-examined upon this statement, and he then said

"The lease right with which I endowed the choultry is held jointly by me and Basavi Reddi."

This deposition, it may be said, cuts both ways. It supports the statement that he had endowed a choultry, and further supports the endowment with Rs. 10,000. But if the leasehold right was held jointly with Basavi Reddi, it was the leasehold right of Toyyeru and not of Chengondapalli, which apparently he held alone, and the statement if it relates to Toyyeru cannot be evidence of an unrevocable donation of that property, because no such case is now set up.

Neither Court in India seems to have noticed this. It agrees with the accounts and with the evidence of the clerk that at one time some of the profits of the Toyyeru mortgage were applied to support the choultry. If so, it would be a *temporary arrangement* by which the deceased in that way applied at his pleasure portion of his income to the upkeep of the charity.

From the accounts it appears that some money was spent on the choultry at as early a date as 1897, and that the building was set up in 1899.

Down to the year 1900 such expenditure as was made upon the choultry was debited in the Toyyeru account and not to the Chengondapalli account. This expenditure did not exhaust the profits from Toyyeru, and the mode of accounting simply points to those profits as being used as the purse out of which the deceased made his charitable contribution.

After 1900 and until 1911 an account of the expenses on the choultry, never amounting to more than a few hundred rupees a year, and much less than the receipts of corresponding date from the Chengondapalli mortgage, was regularly kept; but there was no transfer of the debit to Chengondapalli, and no correlation between the two accounts till December 1911, when the sum of Rs. 8,400 for the charity and another sum of Rs. 11,240 being the loss on a particular trade, were both debited to the account of Chengondapalli, and even then left it in credit to the extent of Rs. 6,321. Such accounts as have been filed since that date are simply accounts kept contemporaneously for the two purposes without any correlation or transfer from one to the other.

These accounts support the appellant's case. They are inconsistent with any appropriation of the full net profits of the usufructuary mortgage to the purposes of the choultry. They do not even show any regular appropriation year by year of any fixed sum or indeed of the annual cost of upkeep fixed or unfixed, to the account of the charity.

Their Lordships, however, have been embarrassed by the view taken in both Courts as to these accounts. There is a passage in the judgment of the Subordinate Judge in which he says that there is

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"no doubt of the fact that in the Chengondapalli khata the income was being shown as having been taken on to the account of the choultry in the account books maintained during the time of the late Gangi Reddi. This fact could not be denied on plaintiff's side. But the plaintiff's counsel contends that though expenses for a charity might be met from out of a particular property it cannot be held that that property was dedicated for the upkeep of the charity."

This looks at first sight like a finding that the whole proceeds of the usufructuary mortgage were applied to the benefit of the choultry; and if this were the case, there must be some error in the presentation of the accounts as printed, some material omissions or some explanation, which, if the respondents had been represented by counsel, would have been furnished. The result has been to necessitate very careful enquiry.

But as their Lordships have already noticed, there is an initial mistake in the judgment of the Subordinate Judge. He had failed to notice that the deceased in his deposition must have been speaking of the other estate. Further, when the passage of his judgment is more carefully scrutinized, it would seem that he had not thought it necessary to draw the distinction between meeting all the expenses of a charity out of a particular property, and applying all the receipts of that property to the charity.

His judgment, so construed, does not throw suspicion upon the accounts. As to the High Court, the learned Judges say :—

"It appears from the accounts that the income from the muttah was utilized for the expenses of the choultry from the date of its opening. The evidence shows that there was a dedication of the income from the muttah for the purpose of the upkeep of the choultry."

Much of this paragraph, as already observed, is founded on a mistake; but, be this as it may, their judgment is consistent with a view that the profits of

the usufructuary mortgage were not all applied to charity; but merely that they were treated as the purse from which the expenses of the charity were met.

This being so, the accounts and the evidence of the clerk really conclude the matter, and their Lordships must hold that there was no dedication of the Chengondapalli mortgage by any act *inter vivos*, and that the view of the Subordinate Judge was right; and their Lordships will humbly advise His Majesty that the appeal should be allowed, and the judgment of the Subordinate Judge restored with the costs here and below.

Solicitors for appellant: *Douglas Grant* and *Dold*.

A.M.T.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Jackson.

KOZHIKKOT PUTHIA KOVILAGATH MANAVADAN *alias* ANUJAN RAJA AVARGAL AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

VIAYATHEN SREDEVI *alias* VALIA THAMBURATTI AVARGAL AND OTHERS (DEFENDANTS), RESPONDENTS.*

1926. November 9.

Malabar Law—Tarwad—Karnavan—Suit by junior members for removal of karnavan—Liability to account—Fraud and misappropriation alleged against karnavan—Karnavan ceasing to be such by succession to a higher sphere—Maintainability of suit—Suit, whether can be continued as to accounts—Karnavan, whether and when personally liable—Liability of agent of karnavan.

Where certain junior members of a Malabar tarwad sued for the removal of the karnavati, on allegations of fraud,

* Appeal Suit No. 128 of 1926.