

1946

Present : Keuneman S.P.J. and Jayetileke J.

CHELLIAH *et al.*, appellants, and SAIVA PARIPALAM, Respondent.

249—D. C. Jaffna, 16,614.

Evidence—Certified copy of a private document kept at a Kachcheri—Hearsay.

The question at issue was whether certain lands were subject to a charitable trust in favour of a certain *madam*. The main evidence on which the trial Judge relied was a document described as a certified copy of a "register" kept at the Jaffna Kachcheri wherein the lands in question were mentioned as belonging to the *madam*. It was not, however, established that the "register" was made under any statutory duty on the part of the Government Agent; it appeared to be a purely private document based on reports "submitted by the Udayar and Vidhanes of the village in question to the Maniagar."

Held, that the document should have been rejected as hearsay evidence.

A PPEAL from a judgment of the District Judge of Jaffna.

G. Crosette Thambyah (with him *V. K. Kandasamy* and *C. Sanmuganayagam*), for the first and second defendants, appellants.

N. Nadarajah, K.C. (with him *C. Renganathan*), for the plaintiff, respondent.

Cur. adv. vult.

September 25, 1946. KEUNEMAN S.P.J.—

The plaintiff, a corporation incorporated under Ordinance 17 of 1931 (Cap. 240), sued the defendants to obtain judgment declaring that the properties mentioned in the schedule to the plaint were subject to the charitable trust known as the *Chidambaram Ambalavanarswamy Punnianachy Tharmam* and that the plaintiff as the lawful trustees of the said trust was entitled to possess the said properties.

Plaintiff obtained judgment as prayed for, and the first and second defendants appeal.

There were several matters which the plaintiff had to establish in order to succeed in this action :—

- (1) Was there a charitable trust as described in the plaint ?
- (2) Were the three lands described in the schedule to the plaint subject to the said trust ?
- (3) Was the plaintiff the duly appointed trustee in respect of these three lands ?

(1) The plaintiff's case was that one Punnianacham founded at Chidambaram in India and in Jaffna the trust described in the plaint which was also known as the *Punnianachy Mada Tharmam*. It was alleged that this trust was created for the establishment and maintenance of a *madam* or place of rest for pilgrims who go to worship at the famous shrine of Ambalavanarswamy Temple in Chidambaram, South India, and for the purpose of making contributions to the temple for various *poojahs* and other ceremonies of the temple. Under the terms of this trust a *madam* was in fact built at Chidambaram but this now appears to be in ruins.

In this appeal I do not think there has been any real controversy as regards the existence of the trust as alleged. It is in evidence that the plaintiff has been in possession of certain lands and has administered those lands for the purpose of this trust. The plaintiff has also obtained a vesting order as trustee for these lands—not those in the schedule to the plaint. In my opinion the plaintiff has made out a sufficient case in this respect, and the District Judge has so held.

(2) It is strongly urged for the appellants that the plaintiff has failed to prove that the three lands described in the plaint are subject to this trust. It has been established in evidence that the first land Kuranthan and the second land Arachchivayal originally belonged to Ramanathan Mudaliyar. The thombus of 1822 (P 9 and P 10) strongly support that

contention. There is no proof that Punnianacham was even a descendant of Ramanathan Mudaliyar, nor is it shown how Punnianacham obtained any title to the said lands. In fact we know nothing of Punnianacham and she appears to be a legendary figure. There is no evidence that Punnianacham dedicated these two lands for the purpose described. It is no doubt also true that the appellants have failed to prove that they are the descendants of Ramanathan Mudaliyar. The District Judge has in fact rejected the pedigrees filed by all the parties to this action. But the burden rested on the plaintiff, and he has failed to provide evidence to prove this point. As the case now stands there is nothing to show that the legal title to these lands has been transferred away from the descendants of Ramanathan Mudaliyar, or that this title ever resided in Punnianacham or in any person who made the dedication in trust.

As regards the third land in the schedule to the plaint, Thalymanodai, the thombu P 11 of 1822 shows that the title stood in the name of "Sithamparar Ambalavanar Pandaram". The appellants contended that this was a human being, but the plaintiff alleged that this was the god Ambalavanar Swamy whose shrine at Chidambaram was well known. I think on this point the District Judge was right in holding that the title was in the name of the god. But this does not overcome the difficulties of the plaintiff. There is no doubt evidence of a trust in favour of the god but there is no proof here that the trust was for the special purposes alleged by the plaintiff. I think the ordinary natural presumption would be that the trust was for the benefit of the temple of the god Ambalavanar Swamy of Chidambaram, and not for the establishment of the *madam* or for the other special purposes detailed by the plaintiff. The thombu P 11 does not disclose the identity of the trustees in whom the legal title to this land was vested.

The point was of importance because at the trial, though not in the answer, the appellants maintained that not only the third land but also the first two lands in the plaint were held by them in trust for the temple of the god at Chidambaram.

The document P 22 of 1914 was produced to establish the fact that K. Arumugam, an uncle of the appellants, after declaring that all three lands were held by him as trustee for the Ambalavanar Swamy Temple at Chidambaram, purported to appoint the appellants as co-trustees with him to look after and manage the trust properties. There can be little doubt that Arumugam and the appellants have been in possession of these lands for a considerable time, although the District Judge has held, I think rightly, that the appellants have failed to prove that they are the descendants of Ramanathan Mudaliyar who was the proprietor according to thombus P 9 and P 10 of the first two lands.

In arriving at a decision as to whether the three lands in the schedule to the plaint were subject to the trust as alleged by the plaintiff, the facts must be examined.

It is clear that the oral evidence led by both sides must be eliminated, for the District Judge has himself said—"I think the oral evidence in this case is not very helpful for arriving at a verdict in this case", and has rejected the pedigrees pleaded both by the plaintiff and by the appellants.

After discussing the evidence provided by the thombus, the District Judge went on to examine the documents in the case. The first document he mentioned was P 12, the Paddy Commutation Register, in respect of the first land in the plaint. The name of the proprietor was given as "Nadarayar Ambalavanar". The District Judge rightly holds that this is the god. There is no doubt that this provides evidence that this land was held on trust for the god, but it leaves unanswered the question whether the trust was in favour of the temple of the god or in favour of the *madam* and other matters specified by the plaintiff.

Another document is P 13, the Paddy Commutation Register for 1884-1890 in respect of the first two lands in the plaint. Under name of proprietor is entered "Sithamparathalam Ambalavanaswamy Temple Land" and A. Sithamparapillai of Copay is said to be the manager. As the document now reads there is attached a promise to pay the land tax by K. Ramalingam of Vannarponnai. The District Judge is not correct in stating that this K. Ramalingam is shown in the document as "the person in whose management the two lands were." Further, in the register itself there is a correction. The original promisor was put down as Ponnambalam Karthigesar, an ancestor of the appellants, but this name has been scored off and the name of K. Ramalingam inserted.

There is no evidence to show by whom or under what circumstances this correction was made. There is some evidence in the case that K. Ramalingam acted as a trustee in respect of the trust as regards other lands, not those mentioned in the plaint. But even accepting the amendment as genuine—and this is doubtful—there is nothing in the document P 13 to prove that K. Ramalingam was a trustee in respect of the lands mentioned in the plaint.

Document P 14 tells against the pedigree of the appellants but does not carry the case of the plaintiff any further. The same comment may be made as regards P 15. Documents P 16 and P 17 relate to a land not mentioned in the plaint, of which the manager was the K. Ramalingam previously mentioned.

Documents P 28 and P 35 relate to an action in which K. Ramalingam was sued on a bond and admitted the claim as trustee of the *madam* in question. The plaintiff in that case proceeded to seize the first two lands mentioned in this plaint in virtue of his decree but there is nothing to show what followed on this seizure and there is no evidence that these lands were sold in execution. These documents are therefore inconclusive on the question we have to decide.

The main document on which the District Judge relied was P 36, which is described as a certified copy from "a register of gifted lands belonging to the Chidambaram Ambalavanaswamy kept at the Jaffna Kachcheri." This was apparently prepared on February 20, 1906. The first two lands in the plaint are mentioned in the "register", and under the column "Belonging to which madam" was entered "The Punnianachcham madam". Under the column "Name of person who is possessing now" was entered the name of K. Arumugam, the uncle of the appellants.

It has not been established or even suggested that the "register" (P 36) was made under any statutory duty on the part of the Government Agent. It appears to be a purely private document. It had not even been shown for what purpose this document was made or on whose authority. We do not know what enquiries were made in this connection or from whom. All that the document indicates is that it was based on reports "submitted by the Udayar and Vidhanes of the village in question to the Maniagar." What knowledge these persons had or could have had with regard to the title to these lands or the nature of the trust affecting them has not been shown. The learned District Judge has come to the conclusion that "the document P 36 clearly shows that K. Arumugam recognised that at least lands Nos. 1 and 2 in the schedule to the plaint belonged to the Punnianachchimadam."

It is clear that the District Judge is wrong in this finding. Nothing in the document shows that K. Arumugam recognised the equitable title alleged by the plaintiff. In fact we do not even know whether any enquiries were made from K. Arumugam in this connection. In my opinion the document P 36 should have been rejected as hearsay evidence. No section of the Evidence Ordinance makes this document admissible. Even if it was admissible I do not think any weight can be attached to this evidence.

Another document mentioned by the District Judge is deed P 21 of 1913 whereby Pararajasingham, the owner of the land on which the Pillayar Temple stood on the west of the first land in the plaint, conveyed that land to the Pilayar Temple. In the deed the eastern boundary of the land conveyed is described as property belonging to the Punnianacham Mada Tharmam, *i.e.*, the *madam* in question in this case. I do not think this document is of any value, more especially as the oral evidence of Pararajasingham has not been accepted by the District Judge.

One other document may be mentioned, P 5, which consists of proceedings brought by the plaintiff in 1938 against 16 persons: (It is to be noted that the appellants were not among those 16 persons) to obtain a vesting order under section 112 of the Trust Ordinance in respect of certain named lands. These lands however did not include the three lands mentioned in the plaint. A vesting order was in fact obtained by the plaintiff in respect of the named lands "and other properties belonging to the said Tharmam", *i.e.*, the *madam* in question. It was argued that the vesting order included all lands even though they were neither named nor described. I have considerable doubts whether lands which were completely unidentifiable in the proceedings could be said to have been vested in the plaintiff, and I have further doubts whether the vesting order bound parties who were not parties to the proceedings in which the vesting order was obtained.

But it is not necessary in this appeal to decide these points because the vesting order in fact throws no light upon the question whether the three lands mentioned in the plaint were subject to the trust alleged by the plaintiff.

(3) In the circumstances it is not necessary to decide the further question whether the plaintiff has proved that he is the duly appointed

trustee in respect of these three lands. All I need say is that a number of difficult and controversial points have been argued in this connection. It is also clear that the plaintiff has never been in possession of these three lands as *de facto* trustee.

In the result I set aside the judgment of the District Judge and dismiss the plaintiff's action as against the first and second defendants, who will have costs in both courts.

JAYETILEKE J.—I agree.

Appeal allowed.
