

**Kapalavayi Kasi Rama Rao and another** - - - *Appellants*

*v.*

**Kotta Venkataratnam** - - - - - *Respondent*

FROM

**THE HIGH COURT OF JUDICATURE AT MADRAS**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 5TH MARCH, 1947**

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*Present at the Hearing:*

LORD UTHWATT  
LORD DU PARCQ  
SIR MADHAVAN NAIR  
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

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This is an appeal from a judgment and decree of the High Court of Judicature at Madras dated 1st December, 1943, which reversed a judgment and decree of the Court of the Subordinate Judge, Guntur, dated 31st March, 1942.

The question in the appeal is whether certain property described in the plans to the plaint is the private property of the appellants or dedicated to the public for charitable purposes.

On the 27th June, 1935, the respondent who was formerly in the employ of the original plaintiff, Kapilavi Mailayya (hereinafter called "the plaintiff") made an application by Original Petition No. 73 of 1935 to the District Judge of Guntur, under section 3 of the Charitable and Religious Trusts Act XIV of 1920 alleging that the said property was public charitable trust property and praying for a direction to the plaintiff to furnish particulars as to the nature and object of the trust, the value, condition and management and the application of the trust property and of its income.

On the 29th November, 1937, the District Judge of Guntur made an Order upon the said O.P. 73 of 1935 that the property was a charitable institution; that the plaintiff was the founder thereof and the dedication by him to the public had been completed by exhibit "E" to the said Petition, which is Exhibit D.1 in these proceedings.

That Exhibit is in the following terms:—

Sree Rama.

Subhamasthu.

Letter of invitation for the opening ceremony of the new *Dharma Chatram* (free choultry) to M.R.Ry. Nagasarapu Lakshmayya, news as to welfare written by Kapalavayi Subbarayudu Garu's son Mallayya.

The learned persons decided that, on the auspicious Monday, Vyshaka Sukla of the year Vibhava (corresponding to 2nd May 1928) under the constellation of *chitta* star in the Dhanurlagnam

at 10-30 Vighadiyas, in the night corresponding to hours 10-31 minutes, the *Dharma Chatram* (free choultry) built for the use of the sojourners, in the western bazaar of the Narasaraopeta village should be consecrated, that on 3rd May 1928 there will be the feeding of Brahmins and that on 5th May 1928 there will be celebrations of Rukmini Kalyanam and Vyshya feeding. So you are requested to come with family and friends to those functions, grace the same with your presence and bless me.

Yours obediently,  
Kapalavayi Mallayya.

Narasaraopeta,  
29th April 1928.

The word translated "consecrated" in the said Exhibit is the vernacular word "Prathishta" which is defined in Wilson's Glossary as "Consecration or setting up of an image, or a temple: a ceremony performed on the completion of a house before it is inhabited; also, purification or re-consecration of an idol, house, or temple that has been polluted".

On the 11th July, 1940, the plaintiff commenced this suit against the respondent. In his plaint he alleged that the building marked "A" in the plan accompanying the plaint and the row of shops marked "B" in the same plan were the absolute property of the plaintiff built with his own funds; that the portion of the building marked "A" was constructed by the plaintiff with the intention of establishing it as a private charitable choultry (i.e., rest-house) under the management of members of the plaintiff's family, but the intended private trust had not been created and no dedication of the property either as a private or public trust had been made nor had the plaintiff at any time decided what was to be the nature and scope of the charity in the choultry whether it was to be the provision of free lodging for any defined purposes or classes of persons whether it was to be free feeding and if so to whom, or whether it was to be anything else. The plaint further alleged that the portion of the building marked "A" was being used for letting out to wayfarers and travellers and the rents so collected were being utilised and enjoyed by the plaintiff absolutely; that the said part was also being utilised by the plaintiff for feeding some Brahmins and Vaisyas; that the feeding was at the discretion of the plaintiff, and the expenses for the same were being met by him from his own funds no endowment having been made therefor either by the plaintiff or by anybody else. It was further alleged that the portion of the building marked "B" was being let out as shops and the rents were being collected by the plaintiff and the same were being enjoyed by him as his own property at his own absolute discretion; and that the entire building was registered in the name of the plaintiff in the municipal registers and he had been paying the taxes therefor. The plaintiff claimed a declaration that the said properties were the plaintiff's own absolute and private property, and that the order in O.P. No. 73 of 1935 on the file of the District Court of Guntur might be set aside. As the plaintiff was not prepared to pay the Court fee in respect of the claim for a declaration, that claim was struck out.

The plaintiff died pending the suit and the appellants were brought on record as his personal representatives, and the plaint duly amended.

The respondent to this appeal, who was the only defendant to the suit, filed a written statement challenging the allegations of fact in the plaint, claiming that the property in suit had been dedicated by the plaintiff to a public charitable trust, and contending that the matter was *res judicata* by reason of the decision of the District Judge in O.P. 73, of 1935. He also claimed that the suit did not lie against him in his personal capacity.

At the trial the learned Subordinate Judge held that the order on O.P. 73 of 1935 did not found a claim of *res judicata* relying on the

decision of this Board in *Babu Bhagwan Din and Others v. Gir Har Saroop and Others* (1939) L.R. 67 I.A.1, and with this opinion their Lordships agree. The learned Judge then considered the question whether a Charitable Trust had been created in respect of the property in suit, and came to the conclusion that it had not. He pointed out that there was no Deed of Trust, and no attempt by the plaintiff to divest himself of the property in suit, and he considered that there was no evidence of any dedication of the property to a Charitable Trust. He thought that the Prathishta ceremony amounted to nothing more than a formal opening of the *dharma chatram* or free choultry, or rest house which had been admittedly built by the plaintiff on part of the property, accompanied as would be natural in the case of an orthodox Hindu, by some religious ceremonies. Accordingly, the learned Judge set aside the Order of the District Judge made upon O.P. 73 of 1935.

From that decision the respondent appealed to the High Court of Madras, though it is difficult to appreciate what personal interest he had in the matter.

On the 1st December, 1943, the High Court allowed the appeal holding that the property had been dedicated as a public charity. For this they relied almost exclusively upon Exhibit D.1, the letter of invitation to the Prathishta ceremony. They stated that the word "prathishta" is used only in connection with the consecration of a building as a public charitable or religious trust, though this view seems inconsistent with the definition in "Wilson" which gives the meaning attributed to the word by the Subordinate Judge as a secondary meaning. The learned Judges did not, of course, regard the letter D.1 as in itself a dedication, but they thought that the ceremony to which the invitation in D.1 related must be taken to have carried out the arrangement contemplated in the invitation. Their Lordships are unable to agree with the view of the High Court. Admittedly some ceremony took place on the 2nd May, 1928, but there is no satisfactory evidence as to what took place at that ceremony; it is not shown that there was any formal dedication of the property at that ceremony, nor even that the word "prathishta" was used thereat. The plaintiff never divested himself of the property which remained registered in his name, and there is no evidence that he ever declared himself a trustee of it for a charitable purpose, or ever acted as such trustee. Nor is there any evidence as to the nature of the supposed trust, except that according to Exhibit D.1 the property was to be used for sojourners, meaning presumably travellers, but whether the use was to be confined to any particular class of travellers, and whether any charge was to be made for the use of the premises by travellers does not appear. The shops erected on the land marked "B" were built as the evidence shows after the ceremony of the 2nd May, 1928, and the plaintiff received the rents from such shops for his own use. Without these rents there would be no endowment for the choultry which would require money to be spent for its upkeep. In their Lordships' opinion the plaint and the evidence, whilst establishing that the plaintiff contemplated that the property in suit would be used as a rest house, which their Lordships assume would be a charitable purpose, do not establish that he ever carried out his intention to dedicate the property, or decided upon the nature of the proposed trust. In their Lordships' opinion the view of the learned Subordinate Judge was right and this appeal must be allowed. The respondent has not appeared on the appeal but the appellants have been put to the expense of appealing to His Majesty in Council owing to the conduct of the respondent in appealing against the decision of the learned Subordinate Judge, and their Lordships see no reason why the respondent should not pay the costs of the appellants.

Their Lordships will therefore humbly advise His Majesty that this appeal be allowed; that the Order of the High Court of Madras dated 1st December, 1943, be set aside and that the Order of the Subordinate Judge dated 31st March, 1942, be restored. The respondent must pay the costs of the proceedings throughout.

In the Privy Council

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DELIVERED BY SIR JOHN BEAUMONT

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