in the statute to include in that expression what in reality is not income, but is deemed income, the liability to assessment would justifiably be limited to profits of the business which is computable under s. 10.

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The appeals therefore fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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v.

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July, 31.

(K. SUBBA RAO AND S. M. SIKRI, JJ.)

Inam grant—Suit for ejectment—Defendant raised plea of Lost Grant—When presumption of Lost Grant arises—Whether grant is melvaram or both varams—Right of Archakas—Whether Archakas can claim remuneration in a suit for ejectment.

The appellants filed suits for the recovery of certain properties from the possession of the respondents. The plaintiffs were the trustees of the temples and the defendants were the archakas and the alienees of the suit properties. These suits were based on title and the relief asked for was the eviction of the archakas from the suit property as they, according to the plaintiffs, (appellants) had no title to remain in possession. The plaintiffs claimed that the suit properties were the properties of the deity and that the defendants had no right therein. The archakas raised the plea that the title of the deity was confined only to *melvaram* in the plaint-schedule lands and that they had title to the *Kudivaram*. Both the Trial Court and the High Court confirmed the title of the deity to both the interests (*Varams*) and negatived the title of the defendant-Archakas. The High Court also held that the archakas were entitled to have a portion of the said properties allotted to them towards their remuneration for the services to the temples and gave a decree directing the division of the said properties into two halves and putting the archakas in possession of one half. Against this decree of the High Court both the archakas and the trustees (appellants) preferred cross appeals to this Court.

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The main point for consideration was whether the High Court, having held that the title to the suit property vested in the deity, had jurisdiction to compel the trustees of the temple to put the archakas in possession of specified extent of property towards their remuneration.

Held: (i) The principle of a Lost Grant can only be invoked where there is no acceptable evidence of the terms of the grant. In the present case there is no scope for invoking the doctrine of Lost Grant as the terms of the grant are clear from the recitals in the inam register and the inam statement, which conclusively establish that both the *Varams* were granted to the deity.

Sankaranarayana Pillayan v. *H.R.E. Board, Madras*, I.L.R. 1948 Mad. 585, *Buddu Satyanarayana* v. *Konduru Venkatapayya*, [1953] S.C.R. 1001, *Maginiram Sitaram* v. *Kasturbai Manibhai*, (1921) L.R. 49 I.A. 54 and *Mohamed Muzafar Ali Musavi* v. *Jabeda Khatun*, (1930) L.R. 57 I.A. 125, relied on.

(ii) The High Court erred in making an allocation of the lands between the trustees and the archakas in a suit for ejectment because there was absolutely no material either in the pleadings or in the evidence to make any such apportionment. The High Court had no option but to deliver possession to the plaintiffs who had established their title to the suit properties. In a suit for framing a scheme for temple a court may in an appropriate case put the archaka in possession of a portion of the temple lands towards his remuneration for services of the temple; but such considerations are out of place in a suit for ejectment.

Brahmayya v. *Rajaswaraswami Temple*, A.I.R. 1953 Mad. 580 as *Venkatadri* v. *Seshacharlu*, I.L.R. 1948 Mad. 46, referred to.

(iii) On the facts of this case it was held that the conduct of the archakas, was consistent with the recitals in the inam register, namely, that what was granted to the deity was the land *i.e.* both the *Varams* and that they had been put in enjoyment the said land in their capacity as archakas and *de facto* trustees. They could not by mortgaging or otherwise alienating the property claim any right in derogation of the title of the deity. They also cannot claim any right because their names are mentioned in addition to deity in the Inam register. Their names in addition to the deity are mentioned as they were in possession of the land in their capacity as *de facto* trustees.

Arunachalam Chetti v. *Venkata Chalapathi Guruswamigal*, (1920) I.L.R. 43 Mad. 253 and *Secretary of State for India* v. *Vidhya Thirta Swamiga*, I.L.R. 1942 Mad. 893, referred to.

Narayanamurthi v. *Achaya Sastrulu*, A.I.R. 1925 Mad. 411 relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 646—652 of 1960.

Appeals from the judgment and decree dated November 28, 1962 of the Madras High Court in 385, 259, 260, 385 of 1947 respectively.

A. V. Viswanatha Sastri and *R. Gopalakrishnan*, for the appellant (in C.A. Nos. 648, 649 and 650 of 1960) and for the respondents (in C.A. Nos. 651 and 652 of 1960).

T. V. R. Tatachari, for respondents Nos. 1, 2, 5 and 6 (in C.A. No. 648 of 1960) and appellants (in C.A. No. 652 of 1960).

S. T. Desai, K. Jayaram and *R. Ganapathy Iyer*, for respondents No. 1, 3, 4, 5, 8 to 11, 15, 16, 18, 19 and 21 (in C.A. No. 649 of 1960) respondents Nos. 1, 2 and 8 (in C.A. No. 650 of 1960) and the appellants (in C.A. No. 651 of 1960).

July 31, 1964. The Judgment of the Court was delivered by

SUBBA RAO, J.—These five appeals by certificate arise out of Original Suits Nos. 183, 184 and 185 of 1945 filed in the Court of the Subordinate Judge, Coimbator, Madras State. *Subba Rao J.*

O.S. No. 183 of 1945 relates to properties claimed on behalf of Sri Chowleswaraswami temple. Periaswami Goundar and Samana Goundar, the plaintiffs in the said suit, are the trustees of the said temple. They filed the suit for the recovery of the plaint-scheduled properties from the defendants who are the archakas and the alienees from them on the ground that the said properties were the properties of the deity and that the defendants had no right therein. They also claimed mesne profits for a period of 3 years prior to the suit. The defendants filed a written-statement admitting the claim of the deity to the *melvaram* interest in the properties but claimed that the archakas owned the *kudivaram* therein and that some of the said properties were validly transferred to the alienees.

O.S. No. 184 of 1945 was filed in the said Court by the trustees of Sri Pongali Amman temple situated in the village of Vengambur for the recovery of the properties

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mentioned in the schedule attached to the plaint. The defendants, who are the archakas and alienees from them, *inter alia,* pleaded that only melvaram in the said properties was granted to the deity and that the archakas owned the *kudivaram* therein and that they had validly alienated their interest in the said properties in favour of the alienees.

O.S. No. 185 of 1945 was filed in the same Court by the trustees of Sri Varadaraja Perumal temple situated in Vengambur village. The plaintiffs sought to recover the properties mentioned in the schedule annexed to the plaint from the archakas and the alienees from them on the same grounds and the defendants raised similar pleas. It is not necessary to mention other defences raised in the written statements filed in the three suits as nothing turns upon them in these appeals.

The main issue in O.S. No. 183 of 1945, O.S. No. 184 of 1945 and O.S. No. 185 of 1945 was whether the inam grants made to the three temples consisted of both the *varams* or *melvaram* alone.

The learned Subordinate Judge tried the said suits along with two other suits and delivered a common judgment therein. On the said issue he held in all the three suits that the grants to the three deities comprised both the *varams.* He further held that the alienations made by the archakas prior to May 16, 1931, were binding on the trustees of the respective temples and that the alienations made subsequent to that date were liable to be set aside. In the result the learned Subordinate Judge gave a decree in each of the suits for possession of the plaint-schedule properties except those covered by the alienations effected before May 16, 1931. He also decreed mesne profits to the plaintiffs for a period of 3 years prior to the suits and also subsequent profits from the date of the suits to the date of delivery of possession at the rate fixed by him. The defendants in the said suits preferred appeals to the High Court of Madras, being Appeals Nos. 259, 260 and 385 of 1947. The said appeals were heard by a Division Bench of the said High Court, consisting of Satyanarayana Rao and Rajagopalan, JJ. The High Court agreed with the

trial court on the finding relating to the nature of the grants to the temples, that is to say it held that the grants to the temples comprised both the *varams*, namely, *melvaram* and *kudivaram*. The learned Judges, for the first time, though there was no pleading, no issue and no contention in the trial Court, held that the archakas were entitled to have a portion of the said properties allotted to them towards their remuneration for the services to the temples and gave a decree directing the division of the said properties into two halves and putting the archakas in possession of one half. They did not disturb the finding of the learned Subordinate Judge in regard to the alienations, that is they maintained the alienations made before May 16, 1931.

Against the decree of the High Court in A.S. No. 259 of 1947 and A.S. No. 385 of 1947 both the archakas and the trustees preferred appeals to this Court questioning the correctness of the decree of the High Court in so far as it went against them. Against the decree in A.S. No. 260 of 1947 no appeal was filed by the archakas, but the trustees preferred an appeal questioning that part of the decree directing a part of the properties to be put in possession of the archakas.

Mr. Desai and Mr. Tatachari, appearing for the archakas in the different appeals, contended that the Courts below, having regard to the consistent and continuous conduct of enjoyment as absolute owners of the properties by the archakas spread over a long period of time, should have invoked the doctrine of lost grant particularly when there was no clear and convincing evidence of the terms of the grant. Alternatively, they argued that the Courts should have held, on a fair construction of the recitals found in the inam statements and the inam register, that only *melvaram* was granted to the deity.

Mr. Viswanatha Sastri, learned counsel for the trustees, contested this position. He would say that there is no scope for invoking the doctrine of lost grant as the recitals in the inam register and the inam statement, which are of great evidentiary value, conclusively establish that both the

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varams were granted to the deity and that all the documents, or most of them, disclosing the conduct of the archakas would support the conclusion that both the *varams* were so granted to the deity.

At the outset it would be convenient to notice briefly the scope of the doctrine of lost grant, as the learned counsel for the appellants have strongly relied upon it. The doctrine of lost grant with its limitations has been succinctly explained by the Judicial Committee in *Sankaranarayana Pillayan* v. *H.R.E. Board, Madras*(1). The temple in that case had 4 *kattalais*. Though the temple had a general trustee, each of the *kattalais* was in the charge of a special trustee or trustees. In regard to one of the *kattalais* after meeting all the expenses there remained a surplus which the trustees claimed for their own benefit and in fact they were utilizing the surplus for the benefit of their families. It was contended by the appellants that they were the owners of the suit properties, which were subject only to a charge in favour of the *kattalai* for the performance of the worship according to the prescribed scale. The Judicial Committee, after noticing the earlier decisions, observed:—

> "The presumption, it was stated, of an origin in some lawful title which the Courts have so often readily made in order to support possessory rights long and quietly enjoyed, arises where no actual proof of title is forthcoming, and the rule has to be resorted to because of the failure of actual evidence. In the present case, where there is ample and convincing proof of the nature of the grant, the object of the endowment and the capacity of the persons claiming the user and enjoyment, the rule can hardly have any application."

In the result the Judicial Committee held that the properties were granted only to the deity and that the trustees had no claim to any surplus income. The said principle has been accepted by this Court in *Buddu Satyanarayana* v. *Konduru Venkatapayya*(2). There a question similar to

(1) I.L.R. 1948 Mad. 585, 605-606. (2) [1953] S.C.R. 1001, 1003.

that now raised was considered. The archakas claimed, relying upon the doctrine of lost grant, that under the original inam grant only the *melvaram* interest was given to the deity. Rejecting that contention, Das, J., speaking for the Court, observed:

> "There is no doubt, on the authorities, that a presumption of an origin in some lawful title may in certain circumstances be made to support possessory rights long and quietly enjoyed where no actual proof of title is forthcoming but it is equally well established that that presumption cannot be made where there is sufficient evidence and convincing proof of the nature of the grant and the persons to whom it was made."

The basis of this doctrine is clearly brought out by two judgments of the Judicial Committee. Lord Buck-master, delivering the judgment in *Maginiram Sitaram* v. *Kasturbhai Manibhai*(1), observed :

> "At the lapse of 100 years, when every party to the original transaction has passed away, and it becomes completely impossible to ascertain what were the circumstances which caused the original grant to be made, it is only following the policy which the Courts always adopt, of securing as far as possible quiet possession to people who are in apparent lawful holding of an estate, to assume that the grant was lawfully and not unlawfully made."

Viscount Sumner in *Mohamed Muzafar Ali Musavi* v. *Jabeda Khatun*(2) said much to the same effect thus :

> "The presumption of an origin in some lawful title, which the Courts have so often readily made in order to support possessory rights, long and quietly enjoyed, where no actual proof of title is forthcoming, is one which is not a mere

(1) [1921] L.R. 49 I.A. 54.

(2) [1930] L.R. 57 I.A. 125.

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branch of the law of evidence. It is resorted to because of the failure of actual evidence."

It is, therefore, clear that the said principle can only be invoked where there is no acceptable evidence of the terms of the grant.

In these appeals the trustees filed copies of the relevant extracts of the inam register and the statements filed by the ancestors of the archakas during the inam enquiry in support of the contention that both the *varams* were granted to the deity. The evidentiary value of the recitals in the inam register has been emphasized by the Judicial Committee in more than one decision. In *Arunachalam Chetti* v. *Venkata Chalapathi Guruswamigal*(1), the Judicial Committee expressed its view on the evidentiary value of the recitals in inam register thus:

> "It is true that the making of this register was for the ultimate purpose of determining whether or not the lands were tax free. But it must not be forgotten that the preparation of this register was a great act of state and its preparation and contents were the subject of much consideration under elaborately detailed reports and minutes. It is to be remembered that the Inam Commissioners, through their officials, made enquiry on the spot, heard evidence and examined documents, and, with regard to each individual property, the Government was put in possession not only of the conclusion come to as to whether the land was tax free, but of a statement of the history and tenure of the property itself. While their Lordships do not doubt that such a report would not displace actual and authentic evidence in individual cases, yet the Board when such is not available, cannot fail to attach the utmost importance, as part of the history of the property, to the information set forth in the inam register."

(1) [1920] I.L.R. 43 Mad. 253.

In the latest decision of the Judicial Committee reported in *Sankaranayana Pillayan's case*(1), it reiterated the same position when it said:

> "The question arose in a recent case before this Board with reference to a Madras inam [see *Secretary of State for India* v. *Vidhya Thirta Swamigal*(2)], where it was held that the title deeds and the entries in the inam register are evidence of the true intent and effect of the transaction and of the character of the right which was being recognized and continued. The entries in the inam register and the description of the inamdar therein were accepted as indications of the nature and quantum of the right and the interest created in the land."

This view of the Judicial Committee has been accepted and applied by the Madras High Court in many decisions when it was called upon to decide on the conflicting claims of a trustee and a archaka to the properties dealt with in the inam registers.

The documents relating to Sri Pongali Amman temple are Exs. P-2 and P-3. Ex. P-2 is the statement filed by an ancestor of the present archakas before the Inam Commissioner. It is of the year 1862. Ex. P-3 is an extract of the inam register. As observed by the Judicial Committee, the entries made in the said register are the result of an elaborate enquiry based upon oral evidence, on the spot enquiry and scrutiny of available accounts and records. The inam statement is only one of the pieces of evidence which the Inam Commissioner might have taken into consideration in compiling the inam register. The recitals in the statement must, therefore, give place to the recitals in the inam register, though an attempt shall be made to harmonize them, if possible. Before considering the recitals in Ex. P-3 it is necessary to bear in mind the common case *i.e.*, that it is the case of both the archakas and the trustees that Ex. P-3 deals only with the property that was given to the deity. But the dispute is as regards the extent of the

(1) I.L.R. [1948] Mad. 585. (2) I.L.R[1942] Mad. 893, 908 (P.C.).

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interest in the property that was given to the deity. Was it only the *melvaram* in the said property that was granted to the deity or was it that both the *varams* therein were granted to the deity. Now let us give a close look to the recitals under the various columns in Ex. P-3. The first major head is "class, extent and value of inam". The said major head is divided into 7 sub-heads. In col. 2 under the sub-head "General class to which the inam belongs", the entry is "religious". In col. 3 under the head "the survey number and the name of the field or fields comprised in the grant—dry, wet or garden", the particulars of the lands are given. This entry shows that except a small extent which is a garden the rest is dry land. These details are more consistent with the grant being of both the *varams* than being of mere *melvaram*. If it is of *melvaram* alone, the quality of the field is quite irrelevant. Sub-heads 4, 5 and 6 show that the extent is about 18 acres and 99 cents and the assessment is Rs. 24-14-5. These recitals leave the impression that the land was a dry land bearing a small assessment of Rs. 24-14-5 and the income therefrom could not have been appreciable in those days. The second main head is "description, tenure and documents in support of the inam". The entries under the various columns under this head establish that the dry lands bearing an assessment of Rs. 24-14-5 described in cols. 3, 4, 5 and 6 were granted as Devadayam to the deity Pongali Amman permanently by Maduraiyar Paligar of Madura. The date of the grant is not known; but even in the accounts of 1209 F. the name of the deity was entered as the grantee. The third major head is "name and relationship of the original grantee and of subsequent and present heirs—length of possession". In Cols. 13 and 15 the name of the deity alone is given. In Col. 16 under the heading "name and age" and in Col. 17 under the heading "place of residence" only the name of the deity is given. Below the name of the deity the name of the pujari "Pujari Muttandi, age 45" is given. In Cols. 18 and 19 under the heading "relation to orginal grantee or subsequent registered holders" and "surviving heirs of the present incumbent" no entry is made. Obviously no entries are made under these sub-heads, as the deity cannot have relations. The mention of Pujari Muttandi in the

context of other entries indicates that he was in charge of the temple. If his name was mentioned because he had some interest in the land, the other suitable entries in regard to his relations ould have been made under the relevant sub-heads. Indeed it is not the case of the archakas that they have some interest in the *melvaram*. If the document was concerned only with the *melvaram* interest, strictly there was no place for the archaka in the document, for he had no interest therein. His name was mentioned only as he was the person who was in *de facto* management of the properties of the deity. In Col. 21 under the heading "Deputy Collector's opinion and recommendation", the entry is "To be confirmed permanently to the Pagoda so long as it is well kept up, subject to the existing jodi of Rs. 3-1-7". Under Col. 22 the inam is confirmed to the pagoda. A reasonable interpretation of the recitals in this document leads to the only conclusion that the Inam Commissioner was dealing with the entire interest in the land, the particulars whereof were given therein. There is no evidence that at the time the grant was made the archakas or any others were *kudivaramdars*. But it is said that Ex. P-2, the inam statement, filed by the then archakas would establish that what was granted was only the *melvaram*. There, in Col. 2 under the head "Name of the inamdar entered in dowle and names of the present enjoyer" the following entry is found:

> "Pongaliamman poosari Kuppaiyandi Muthuveeran as per paimash entry. For fields Nos. 595 and 597 no poosari's name is mentioned. Present (enjoyer) Pongaliamman poosari Muthandi."

It is said that pujari is shown as the enjoyer and, therefore, the deity has no interest in the enjoyment of the land. The deity was obviously represented by the pujari who was the *de facto* trustee. He was in possession of the property in his capacity as the *de facto* trustee. In those circumstances if the pujari of the temple is described as an enjoyer, it can only mean that he was in possession of the land on behalf of the temple. Whatever ambiguity there might be in the said recital it is dispelled by the entry in Col. 12 under the head "Particulars of present enjoyment", namely

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"By directly cultivating this land selling the produce derived therefrom and applying the sale proceed to the service of the deity. I and my agnates have been performing pooja and enjoying the said land according to the conditions of the grant". This entry is couched in clear and unambiguous terms. It describes the nature of the enjoyment of the land by the archaka; it clearly says that he was cultivating the land, selling the produce and from the sale proceeds he was doing the services to the deity in accordance with the terms of the grant. If the deity was entitled only to the *melvaram*, this recital is inconsistent with it. The recital indicates that the entire land was the subject-matter of the grant in favour of the deity and that the produce from that land was utilized for the services to the deity. Strong reliance is placed upon the entry in col. 13 under the head "Income derived from the manibam; whether sarvadambla or jodigai, if jodigai, how much". The entry is, "Income Rs. 24-14-5; Jodigai Rs. 3-1-7." Basing upon the said entries the argument is that Ex. P-3 shows that the assessment on the land was Rs. 24-14-5 and Ex. P-2 indicates that the same amount was the income derived from the inam and, therefore, what was granted in inam could have been only the assessment *i.e.*, Rs. 24-14-5. This argument is farfetched and based on a slender foundation. One of the main objects of the inam enquiry was to ascertain whether the alienated lands were free of tax or not. The archaka who was in possession of the land on behalf of the deity had to give information as regards the tax payable in respect of the land in his possession. In that context the expression "income derived from the manibam" can only mean the assessment fixed on the land. After stating that full assessment was only Rs. 24-14-5 the archaka stated that he was not paying the entire amount, but was paying only the jodigai of Rs. 3-1-7. So understood the said recitals fit into the scheme of other recitals in the said statement and those found in Ex. P-3. A similar argument was advanced before this Court in *Buddu Satyanarayana's case*(1) and was rejected. Das, J., observed at p. 1006 thus:

(1) [1953] S.C.R. 1001

> "Apart from these points of distinction the decision relied on by the learned Attorney-General appears to us to be of doubtful authority. As will appear from the passages quoted above, the decision rested mainly, if not entirely, on the fact that the amount of assessment and the amount of income were the same and the conclusion was drawn that the Inam grant comprised only of the revenue assessment, *i.e.*, of melvaram rights. We are unable to follow the reasoning."

We, therefore, hold that, from the recitals in the said two documents, what was granted to the deity was of both the *varams*.

Learned counsel for the archakas relied upon the long possession and enjoyment of the suit lands by the archakas and their ancestors in support of their contention that the *melvaram* alone could have been granted to the deity. Long enjoyment is also consistent with an arrangement that might have been entered into between the grantor and the then functioning archaka or archakas having regard to the conditions prevailing then. The lands granted were comparatively of small extent and they were dry lands. In those days the income from the said lands must have been very insignificant. There was no trustee for the temple. In those circumstances it is more likely that the grantor would have put the land in the possession of the archaka so that he might, from and out of the produce from the land, maintain the temple, perform the puja and meet the expenditure connected with the puja and also pay himself the remuneration for his services to the temple. That was a convenient arrangement which was adopted in many of the small temples in that part of the country. This practice was recorded with clarity by the Madras High Court in *Narayanamurthi* v. *Achaya Sastrulu*(1). In dealing with a similar argument the learned Judge observed:

> "The evidence of user and enjoyment, however long uninterrupted and unquestioned, would be evidence of the grant only in the absence of

(1) A.I.R 1925 Mad. 411, 412-413

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any reliable or cogent evidence with regard to the terms of the grant itself or in the case of any ambiguity in the grant. It seems to be clear that almost very recently the suit lands yielded only just what was sufficient for *nitya naivedyam* or the daily worship. No doubt in such a state of things not only the persons who established the temples and made the endowments but succeeding generations of worshippers would have allowed the *archakas* to cultivate the lands and take the income performing the *puja* as it was obviously the most convenient mode of arranging for the worship of the deities and the payment of remuneration of the *archaka* service."

"But when the income accruing from the lands came to be considerable and the *archakas*, by reason of old habits and following their forefathers, claimed the lands and surplus profits therefrom to be their own, it was only natural that the worshippers should take steps to secure the surplus income for the institutions."

These observations are very apposite and they clearly describe the circumstances under which the *archakas* of the temples were allowed to be in possession of the temple lands. If that was the situation under which the archakas came into possession of the lands, they were certainly in the position of *de facto* trustees and they could not by mortgaging or otherwise alienating the properties claim any rights in derogation of the title of the deity. Indeed the documents on which the learned counsel relied contain clear and unambiguous admission on the part of the archakas that the land itself was the property of the deity. Exs. P-12, P-13, P-14 and P-15 are copies of mortgages executed by the archakas. Under these documents the land in their possession was mortgaged and it was described as *paditharam Manyam*. They also disclosed that the *paditharam* paddy directed to be paid to the temple was more than the kist payable thereon to the Government. In the prior proceedings *i.e.*, applications preferred by the

archakas for declaring the temples as excepted ones, there was no claim that the *melvaram* alone was granted to the deity. In other proceedings the archakas claimed that the lands were service inams, but they did not come forward with the present plea that *melvaram* only was granted to the deity. Further, pattas for the suit lands were transferred without any objection of the archakas in the name of the deities in 1939 and the archakas also paid contribution to the Madras Hindu Religious Endowments Board on the basis that both the *varams* belonged to the deity. The conduct of the archakas, therefore, is consistent with the recitals in the inam register, namely, that what was granted to the deity was the land *i.e.*, both the *varams,* and that they had been put in possession and enjoyment of the said land in their capacity as archakas and *de facto* trustees.

Learned counsel for the appellants relied upon an order made by A.R.C. Westlake, Collector of Coimbatore, on April 14, 1941, wherein he held that only *melvaram* was granted to the deity. That order came to be made under the following circumstances. The trustees appointed by the Coimbatore District Temple Committee filed an application before the Revenue Division Officer under s. 44-B-11(a) of the Madras Hindu Religious Endowments (Amendment) Act, 1934, for a declaration that the alienations of portions of inam land attached to the temple were null and void and for resumption and regrant of the same to the deity. One of the issues in the application was whether the inam comprised *melvaram* or both *melvaram* and *Kudivaram*. The Revenue Division Officer held that the inam comprised both the *varams*. On appeal, the Collector came to the contrary conclusion. But a perusal of the order shows that his conclusion was based upon pure surmises. The Collector did not refer to any document or evidence for his conclusion. The trustees filed a suit in the Court of the Subordinate Judge, Coimbatore, for a declaration that the inam grant in favour of the plaint temple comprised both the *varams*. The learned Subordinate Judge held that s. 44-B of the Act had no application as the grant was to the deity and was not a service inam. The result of this litigation was that there was no final decision on the

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question whether the grant was of both the *varams* or only of the *melvaram*. These proceedings cannot, therefore, be of any evidentiary value in this case. On a consideration of the entire evidence we agree with the conclusion arrived at by the High Court that the grant to the deity comprised both the *varams* in the suit lands.

Now coming to the appeals relating to Chowleswaraswami temple, the factual and legal position is exactly the same as in the case of Pongaliamman temple. Ex. P-2 is the statement made before the Inam Commissioner by the then archaka and Ex. P-3 is the extract from the Inam register. Under the relevant entries in the inam register, survey numbers, extent, quality and the assessment of the subject-matter of the grant are given. The land is described as Devadayam and is stated to have been granted for the support of the pagoda of Chowleswaraswami. The nature of the grant is described as permanent. The date of the grant is not known. The grantor's name is given as Maduraiyar Paligar of Madura. The name of the original grantee is given as Chowleswaraswami. The grant of the land described earlier is confirmed permanently to the pagoda as long as it is well kept subject to the existing jodi of Rs. 24-8-2. The only mention of archaka is in col. 17 under the head "Particulars regarding present owner" and the entry thereunder is "Chowleswaraswami, stanika Muttaiyan". The other columns where the relationship of the present owner with the previous owners is expected to be recorded are left blank for the obvious reason that the said columns are irrelevant in the case of a deity. The archaka's name in addition to the deity is mentioned as he was in possession of the land in his capacity as *de facto* trustee. The deity must necessarily have to be represented by somebody and that he can only be the stanika who was managing the temple and its properties. The relevant entries in the inam register do not countenance any contention that the *melvaram* interest only in the land was granted and that was confirmed to the deity. If the *melvaram* was granted or confirmed, the recitals would have been different. The corresponding inam statement is Ex. P-2. The entries are practically similar to those found in Ex. P-2 relating to

Pongaliamman temple with some slight variations. Col. 2 makes a clear distinction between ownership of the land and enjoyment. The owner is shown as Chowleswaraswami and the "present" enjoyer is shown as Chowleswaraswami's stanika. The nature of the enjoyment is described in col. 2 thus:

> "The said lands are leased out for *varam* cultivation and I cultivate the same myself some times and the income (masul) therefrom is enjoyed by me and co-sharers (Pangali) and used for Swami Viniyogam."

It is manifest from this recital that the land was the subject-matter of the grant and the income therefrom was derived either by direct cultivation or by leasing out the same, and the said income was enjoyed by the archaka and used for *viniyogam*. The point to be noted is that the predecessor-in-interest to the present archaka admitted that the produce from the land was utilized for the services of the deity. The said admission is inconsistent with the allegation that the grant was only of *melvaram*. The entries in col. 13 are similar to those contained in the corresponding Ex. P-2 relating to Pongaliamman temple, and, for reasons already given, they do not support the contention that the assessment of Rs. 74-1-5 was only granted to the deity.

A combined reading of these two documents leads to the only conclusion that both the *varams* were granted to the deity. Just as in the case of Pongaliamman temple so in the case of Chowleswaraswami temple, the subsequent conduct of the archakas belie their assertion that only *melvaram* interest in the land was granted to the deity. Exs. D-1 of 1867, D-2 of 1868, D-3 of 1870 and D-4 of 1883 are some of the mortgages executed by the archakas of Chowleswaraswami temple. Exs. D-5, D-6 and D-7 are sales. In all these documents the property is described as Chowleswaraswami manyam. If really the *kudivaram* belonged to the archakas, they would not have described the land they were alienating as Chowleswaraswami manyam. The description of the property as that of the deity is consistent with the title of *kudivaram* also being in the deity. Further, as in the other case, the pattas were

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transferred in the name of the deity in 1939, the contributions were paid to the Hindu Religious Endowments Board on the basis that the entire interest in the lands belonged to the deity and that in other proceedings the archakas's case was not that the grant to the deity was only of the *melvaram* but the lands were service inam lands. Though the archakas dealt with the properties by mortgaging or otherwise alienating them they never denied the title of the deity. For the foregoing reasons we hold that even in the case of Chowleswaraswami temple the original grant made to the deity comprised both the *varams*.

In regard to Sri Varadaraja Perumal temple, no appeal was filed by the archakas and they allowed the judgment of the High Court in regard to the title to become final. Nothing, therefore, need be said on the question of title of the land in respect of this temple.

Coming to the cross-appeals filed by the trustees against that part of the decree of the High Court apportioning the property of the deity between the deity and the archakas, the question raised is whether the High Court, having held that the title to the suit property vested in the deity, had jurisdiction to compel the trustees of the temples to put the archakas in possession of specified extent of property towards their remuneration. The High Court observed thus:

> "On these findings, it is no doubt true that the decree in favour of the plaintiffs for possession of the properties on behalf of the deity has to be upheld subject to the consideration set forth below."

Then it proceeded to consider whether any allocation of land should be made between the archakas and the trustees. After noticing the relevant decisions on the subject, it observed thus:

> "These decisions are practically uniform except for the decisions.....(in) A.S. No. 237 of 1950(1) and ..... (in) *Venkatadri* v. *Seshacharlu*(2) and have upheld the allocation

(1) *Brahmyya* v. *Rajeswaraswami temple* A.I.R. 1953 Mad. 580.
(2) I.L.R. 1948 Mad. 46.

> of lands between the archakas and the trustees, the proportion however varying with the extent of the lands and the amount of the income. None of the Judges were of the opinion that the arrangement should be a permanent and an unalterable one and it must naturally be subject to revision or alteration according to the circumstances of the case at the instance not only of the trustees but also at the instance of the archakas, if it was found that the allocation was working to the detriment of either the archakas or of the temple."

It concluded:

> "We think, therefore, in these cases, the best arrangement would be to allocate half the lands in each of the suits for the remuneration of the archakas, to be divided equally, having regard to the wet and dry extents, and leave the remaining half to the trustees, who have to meet the cost of the daily worship and accumulate the surplus in their hands as it belongs to the deity."

On principle, in our view, the conclusion arrived at by the learned Judges of the High Court is unsupportable. The suits were based on title and the relief asked for was the eviction of the archakas from the suit property as they, according to the plaintiffs, had no title to remain in possession. The archakas raised the plea that the title of the deity was confined only to *melvaram* in the plaint-schedule lands and that they had title to the *kudivaram*. Both the courts confirmed the title of the deity to both the interests and negatived the title of the defendant-archakas. In the circumstances the Court has no option but to deliver possession to the plaintiffs who had established their title to the suit properties. In a suit for framing a scheme for a temple a court may in an appropriate case put the archaka in possession of a portion of the temple lands towards his remuneration for services to the temple; but these are not suits for framing a scheme. That apart, there is absolutely no material either in the pleadings or in the evidence to

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make any such apportionment, for the allotment of a particular share to the archaka would depend upon the total income from the lands, the value of the articles required for the worship, the amount of reasonable remuneration intended to be provided and other similar circumstances. An allotment cannot possibly be made on the basis of allocations made in the circumstances and facts peculiar to other cases. Indeed, this Court has already expressed a clear opinion on this aspect of the case in *Buddu Suryanarayana's case*(1). Therein, Das, J., said at p. 1008 thus:

> In a proceeding for the framing of a scheme relating to a temple it may be permissible to take into account the claims, moral if not legal, of the Archakas and to make some provision for protecting their rights, but those considerations appear to us to be entirely out of place in a suit for ejectment on proof of title."

With respect we entirely agree with the said observations. It follows that the High Court went wrong in making an allocation of the lands between the trustees and the archakas in a suit for ejectment.

Learned counsel for the archakas made an impassioned appeal that we should give a direction to the authorities concerned to make an apportionment of the properties on the lines suggested by the High Court, having regard to the long enjoyment of the temple lands by the archakas. Long enjoyment of the temple lands by the archakas is not a peculiar feature of this case. The authorities concerned have made suitable arrangements for remuneration in the case of other temples and we have no doubt that they would make a reasonable provision for the archakas in the present case also for their remuneration in accordance with law.

In the result, Civil Appeals Nos. 648 and 650 of 1960 filed by the trustees are allowed but, in the circumstances, without costs. Civil Appeal No. 649 of 1960 filed by the trustees is also allowed without costs except as against the

(1) [1953] S.C.R. 1001

14th respondent. The said appeal against the 14th respondent is withdrawn on the ground that his interest as a mortgagee is not now subsisting and the said appeal against the 14th respondent is dismissed as withdrawn but, in the circumstances, without costs. Civil Appeals Nos. 651 and 652 of 1960 filed by the archakas are dismissed with costs. One hearing fee.

Ordered accordingly.

GMGIPND—L—51 S.C. (430 —13-11-65—2,500.