PETITIONER:
PALANIVELAYUTHAM PILLAI & ORS.

Vs.

RESPONDENT:
RAMACHANDRAN & ORS.

DATE OF JUDGMENT: 09/05/2000

BENCH:
U.C.Banerjee, S.B.Majumdar

JUDGMENT:

S.B.Majmudar, J.

This appeal, on grant of special leave, is moved by Defendant nos. 1-4 in Original Suit no.341 of 1968 in the Court of the Subordinate Judge of Madurai in the State of Tamilnadu. The said suit was filed by Respondent nos. 2 & 3 herein as plaintiffs against number of other defendants with which we are not concerned in this appeal. The said suit was filed for partition and separate possession of the plaintiffs undivided share in the suit properties scheduled A, B & C. It was contended that the plaintiffs and the 7th defendant were the sons of one Sivasankaran Pillai through his second wife, while the Defendant nos. 1,5 & 6 were the sons of the said Sivasankaran Pillai through his first wife. The 8th defendant was the second wife of Sivasankaran Pillai. Sivasankaran Pillai died on 27th January, 1956. According to the plaintiffs, the suit properties were the ancestral properties of the said Sivasankaran Pillai who inherited the same. That the said properties remained as joint family properties and the plaintiff and Defendant nos. 1,5 & 6 were continuing as undivided members of the joint family even after the death of Sivasankaran Pillai.

The contesting Defendant nos. 1, 5 & 6 resisted the suit on various grounds. In the present proceedings, the dispute centers around schedule C properties only. Hence we may not dilate on other properties and the nature of dispute between the contesting defendants qua them. So far as schedule C properties were concerned, the contention of the contesting defendants was that they were gifted by the original owner one Palanivelayutham Pillai by a Gift Deed dated 18th February, 1907 in favour of Madurai Devasthanam Tirupparankundram Andavar Subramaniaswamy and consequently, they were not liable to be partitioned amongst the descendants of said settlor. It was further contended that under the said Gift Deed the right of management of the aforesaid endowed properties was entrusted, on the death of the settlor, to his second wife who had to continue charitable performances for the deity along with her heirs and had to act as a trustee qua these properties. That the said designated trustee, the second wife of the settlor Pitchammal alias Avudai Ammal, after the death of the settlor, had continued to manage the said properties as a trustee. That she had executed a General Power of Attorney

on 3rd August, 1922 in favour of R. Sivasankaran Pillai whose properties were sought to be got partitioned in the present suit. That, amongst others, the said Sivasankaran Pillai was entrusted with the task to manage and maintain schedule C properties and to perform the charitable activities as per the document executed by the deceased husband of Pitchammal. That by a Will dated 27th January, 1924, the said Pitchammal also appointed the very same Sivasankaran Pillai and his wife Subbammal who pre-deceased Sivasankaran Pillai, as successor trustees after her death. He alone, therefore, remained the repository of the right of management of schedule C properties. That the said Pitchammal died on 24th June, 1950 and thereafter Sivasankaran Pillai continued to manage the schedule C properties pursuant to the Will dated 27th January, 1924. That the said Sivasankaran Pillai, by his Will (Ex.B-487) dated 1st July, 1955, bequeath the rights of management and trusteeship to Defendant no.9 - K.Sethuramalingam Pillai, his son-in-law, so far as schedule C properties were concerned. While on the same day he executed another Will qua his other properties in favour of Defendant nos. 1, 5 & 6. The plaintiffs contention was that the aforesaid two Wills of Sivasankaran Pillai were unauthorised, illegal and inoperative at law. Earlier, the present appellants resisted the said suit and contended that the Wills were legal and valid but subsequently by an amended written statement Defendant nos. 1,5 & 6 parted company of Defendant no.9 and submitted that Sivasankaran Pillais Will (Ex.B-487) dated 1st July, 1955 in favour of Defendant no.9 entrusting the management of schedule C properties to him after testators death was not legally proved and, in any case, was inoperative at law as Sivasankaran Pillai could not Will away the right of management of schedule C properties to a stranger like Defendant no.9, who was his son-in-law, bypassing his own sons who were his heirs.

The learned Trial Judge, after recording evidence offered by the contesting parties, came to the conclusion that so far as schedule C properties were concerned, they could not be partitioned being kattalai properties i.e. consisting of special grant for religious services in a temple. The learned Trial Judge, however, held that the Will of 1st July, 1955 (Ex. B-487) entrusting the management of the aforesaid schedule C properties to his son-in-law, Defendant no.9, bypassing his own sons was duly proved and was perfectly legal and valid. The aforesaid decision was rendered by the learned Trial Judge on 30th November, 1976.

Being aggrieved by the said decision of the learned Trial Judge, the present appellants along with Defendant no.5 filed first Appeal no. 1058 of 1977 in the High Court of Judicature at Madras. The appeal was confined to schedule C properties and two contentions were canvassed for consideration of the High Court. They are : 1) Whether the Will (Ex. B-487) dated 1st July, 1955 said to have been executed by Sivasankaran Pillai favouring Defendant no. 9 was legal and valid and was duly proved. 2) Whether under the aforesaid Will Sivasankaran Pillai was authorised to entrust trusteeship and management of schedule C properties, i.e. kattalai properties, to a stranger like Defendant no.9, who was his son-in-law, bypassing his own sons. The Division Bench of the High Court, by its impugned judgment dated 12th July, 1984, negated both these contentions and upheld the decision of the Trial Court on

these issues. That is how the appellants-original Defendant nos. 1-4 have landed in this Court in the present proceedings by obtaining special leave to appeal under Article 136 of the Constitution of India.

RIVAL CONTENTIONS: Learned counsel for the appellants Shri Sampath in support of the appeal vehemently contended that Sivasankaran Pillai, the father of Appellant no.1 was not having any sound disposing state of mind on the date on which he is said to have executed the Will (Ex. B-487) i.e. on 1st July, 1955. That he was almost invalid and was not having enough mental poise and that the Will was clouded by many suspicious circumstances. He further submitted that, in any case, the Will was not legally proved as attesting witnesses to the said Will were not examined in proof thereof. He alternatively contended that, in any case, the Will could not be treated as a valid legal document under which the right of management of schedule C kattalai properties could be entrusted to a stranger to the family like Defendant no.9, who was his son-in-law, bypassing the appellants, who were his straight lineal descendants. In support of this alternative contention, it was submitted that the original endowment of schedule C properties, pursuant to the Gift Deed of Palanivelayutham Pillai dated 18th February, 1907, created a life interest or widows estate in favour of his second wife Pitchammal who had to carry on religious and charitable performances along with her heirs after the death of the donor; and as Pitchammal had no issues or her legal heirs, on the death of Pitchammal, the right of management would revert to the reversioners being the lineal descendants of original settlor - Palanivelayutham Pillai. That Pitchammal died on 24th June, 1950. Thereafter, Sivasankaran Pillai, as a reversioner, could continue in management of the Kattalai properties but he, in his turn, could not have willed away the said right of management in favour of Defendant no.9, who was a stranger to the family. That right of management would legally enure in favour of Sivasankaran Pillais lineal descendants - like appellants and Defendant no.5 and consequently the Will (Ex.B-487) of Sivasankaran Pillai was legally inoperative even on this ground. It was also contended by Shri Sampath that pending the suit, even Defendant no.9 has died, and his heir - Defendant no.10 - his widowed wife, who is the sister of Appellant no.1, was bequeathed with the right of management of schedule C properties by Defendant no.9 by his own Will in her favour and that the said Will would fall through if it is held that the Will (Ex.B-487) dated 1st July, 1955 of Sivasankaran Pillai in favour of Defendant no.9 itself was inoperative in law.

It was also contended that by an Order dated 13th September, 1945 of the Board of Commissioner for Hindu Religious Endowments, Madras, a scheme of administration was settled under Section 57 of the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927) for administration of the kattalai known as Palani Velayudham Pillais specific endowments for Uchikalam kamalapatram service and feeding on Karthigai Monday for Sri Subramaniaswamy Temple, Tirupparankundram, Madurai. That the said order was passed at the time when Sivasankaran Pillai was managing the properties under the General Power of Attorney dated 3rd August, 1922 executed by Pitchammal in his favour. Therefore, the kattalai trustee had to be governed by the said scheme of administration and that

Defendant no.9 who was managing the schedule C properties, had not complied with the requirements of the said scheme.

Learned senior counsel for the contesting respondents - Defendant no.9 and Defendant no.10, being the heir of Defendant no.9 (since deceased), on the other hand, contended that the decision rendered by the High Court on the aforesaid points is quite justified and calls for no interference. That the testamentary capacity of deceased Sivasankaran Pillai has been found to be well sustained on record. That there were no suspicious circumstances surrounding the Will; that the Will was legally proved as the scribe was also an attesting witness and was examined as such. Consequently, the Will was legally proved; that mere presence of Defendant no.9 at the time of execution of the Will could not be treated to be a suspicious circumstance when, on the same day, the testator executed two Wills and got them registered. One Will (Ex. B-487) was in favour of Defendant no.9 and another Will (Ex. B-488) was executed in favour of contesting defendants themselves, the appellants herein, and Defendant nos. 5 & 6 so far as his personal properties were concerned. On the legality of the Will, it was submitted that by the Gift Deed (Ex. B- 506) the settlor appointed his second wife Pitchammal as manager and trustee qua schedule C properties, entrusting her with the duties of carrying on charitable performances indicated in the Gift Deed and though she had to carry on these performances along with her heirs, in the absence of her legal heirs, she became entrusted with absolute right of management and trusteeship and could not be treated as having widows estate or limited interest. Hence, there was no question of the said right of management and trusteeship devolving on the reversioners on her death. That she had every right to appoint her successor manager which she did by appointing Appellant no.1's father - Sivasankaran Pillai by her Will dated 27th January, 1924 (Ex. B-26) which started operating on 24th June, 1950, when Pitchammal died. That thereafter Sivasankaran Pillai performing the duties of management pursuant to his appointment by Pitchammal also had equal right to appoint another manager on his demise as per the impugned Will (Ex.B-487) dated 1st July, 1955 favouring Defendant no.9. That the settlor had not reserved the right of management to be confined to his own lineal descendants but had completely parted with the same in favour of his second wife Pitchammal pursuant to the Gift Deed (Ex. B-506) and consequently whatever Pitchammal did was binding not only on Sivasankaran Pillai but also to his successor manager as per his Will (Ex.B-487) dated 1st July, 1955. That there was no restriction on the right of Sivasankaran Pillai to appoint the manager of his choice on his demise so far as schedule C properties were concerned and that is exactly what he had done by the impugned Will (Ex. B-487) dated 1st July, 1955 and, therefore, the High Court was right in upholding the said Will in favour of Defendant no.9. Once that conclusion is reached, Defendant no.9, as a manager of these properties, was equally competent to entrust the said management on his demise to Defendant no.10 as his successor manager. So far as the Order dated 13th September, 1945 of the Board of Commissioner for Hindu Religious Endowments, Madras is concerned, it was submitted that no reliance was placed on the same during the trial and, therefore, the appellants cannot raise any contention in that behalf. However, Respondent no.8, Executive Officer appearing for the Devasthanam - originally joined as Defendant no.11 in the

suit, submitted that the scheme settled by the Order dated 13th September, 1945 could not be enforced earlier because of the pendency of this litigation and the said scheme will be given effect in the light of the decision of this Court, whereunder the appropriate kattalai trustee will be ascertained and the said trustee will have to act under the supervision of the Executive Officer for the time being in force. In the light of the aforesaid rival contentions, the following points arise for our consideration : 1. Whether the Will (Ex. B-487) dated 1st July, 1955 said to have been executed by Sivasankaran Pillai in favour of Defendant no.9 was legally proved. 2. Whether the said Will was surrounded by suspicious circumstances and was required to be rejected. 3. Whether the aforesaid Will can be treated to be legal and valid in so far as it tried to entrust the management of kattalai properties in favour of a stranger to the family, Defendant no.9, bypassing the sons of Sivasankaran Pillai. 4. Even if the aforesaid points are decided against the appellants and in favour of Defendant nos. 9 & 10, whether the scheme of administration settled as per the Order dated 13th September, 1945 of the Board of Commissioner for Hindu Religious Endowments, Madras is required to be enforced against the kattalai trustee, now Defendant no.10, who is the legatee of the management rights as per the Will executed by Defendant no.9 in her favour. We shall deal with these points seriatim. POINT NO.1: So far as the proof of Will (Ex. B-487) dated 1st July, 1955 is concerned, a mere look at the said Will shows that apart from two attesting witnesses S. Ramachandran and R. Balakrishnan, T.K.Sankara Narayanan, who is the scribe of the Will, has also witnessed the same. The description of Sankara Narayanan mentions that it is written and witnessed by him and when he was examined in proof of the said Will before the Trial Court, it cannot be said that the attesting witnesses were not examined in proof of the said Will. The submission of learned counsel Shri Sampath appearing for the appellants to the effect that Sankara Narayanan is shown to be a witness in the other Will (Ex. B-488) dated 1st July, 1955 is now not shown to be a witness simpliciter so far as the disputed Will is concerned and, therefore, he should not be treated as an attesting witness to the latter Will, cannot be countenanced. It is difficult to appreciate this contention. If the Will (Ex. B-487) had shown Sankara Narayanan only as a scribe, Shri Sampath would have been right. But the Will shows that Sankara Narayanan ascribed his signature apart from describing himself as a scribe. It must, therefore, be held that the disputed Will was attested by three attesting witnesses out of which one Sankara Narayanan was examined in the Trial Court for proving the said Will. The Trial Court as well as the High Court were justified in taking the view that the Will (Ex. B-487) was duly executed. It has also to be kept in view that on the very same day the testator executed and got the Will registered along with the other Will (Ex. B-488) in favour of Defendant nos. 1,5 & 6. Point no.1 is, therefore, answered in the affirmative in favour of the contesting respondents and against the appellants.

POINT NO.2: So far as this point is concerned, it has to be kept in view that both the Trial Court as well as the High Court have concurrently held on facts that the deceased testator was in a sound disposing state of mind and was capable of executing the Will and that there were no suspicious circumstances surrounding the Will. Merely because Defendant no.9 was present at the time of execution

of both the wills, it could not be said that it was a suspicious circumstance. It has also to be kept in view that on the very same day i.e on 1st July, 1955 the testator Sivasankaran Pillai executed two Wills, one - the disputed Will (Ex. B-487) in favour of Defendant no.9 so far as schedule C kattalai properties and their management were concerned. But simultaneously at the same sitting on the same day, he executed another Will (Ex. B-488) in favour of the appellants & Defendant nos. 5 & 6, his own sons so far as his personal properties were concerned. Both the Wills were got registered simultaneously. It is easy to visualise that if the Will in favour of appellants and Defendant nos. 5 & 6 executed by the testator on the very same day can be found to be legal and valid though held by the Trial Court to have not been acted upon, it cannot be held by any stretch of imagination that the same testator, who was in sound disposing state of mind, while executing a valid Will (Ex. B-488) in favour of Appellants and Defendant nos. 5 & 6 would loose his testamentary capacity while executing on the same day at the same time another disputed Will (Ex. B-487) in favour of Defendant no.9. The appellants cannot be permitted to blow hot and cold at the same time. Of course, Shri Sampath, learned counsel for the appellants, submitted that he does not rely upon the Will (Ex. B-488) as it is not acted upon but that is neither here nor there. Even if the Will in favour of the appellants might not have been acted upon for reasons best known to them after the demise of the testator, that would not affect due execution of the said Will by the testator nor would it affect his testamentary capacity qua the disputed Will executed on the same day and got registered by the testator simultaneously with the Will (Ex. B-488) in favour of the appellants and Defendant nos. 5 & 6. Even though an attempt was made to show that the testator was unwell and confined to bed and the plaintiffs went to the extreme and submitted that testator was a lunatic, the evidence on record shows to the contrary. He might be old and suffering from illness but his testamentary capacity is not shown to be affected adversely in any manner when on the same day he executed two Wills and got them registered. The findings reached about testamentary capacity of the testator by the Trial Court and confirmed by the High Court are well sustained on evidence and cannot be said to be suffering from any patent error of law or being perverse which would call for our interference in appeal under Article 136 of the Constitution of India. Reliance tried to be placed by learned counsel Shri Sampath for the appellants on the three decisions of this Court in Bhagwan Kaur w/o Bachan Singh v. Kartar Kaur w/o Bachan Singh & Ors., (1994) 5 SCC 135, H. Venkatachala Iyengar v. B.N.Thimmajamma & Ors., AIR (46) 1959 SC 443 and Ramchandra Rambux v. Champabai & Ors., AIR (52) 1965 SC 354 also cannot be of any assistance to him as the fact situations which fell for consideration in the aforesaid decisions were entirely different and suspicious circumstances considered in these decisions are found to be totally absent, so far as the facts of the present case is concerned.

Mr. Sampath tried to highlight certain circumstances, which according to him, were highly suspicious. We may briefly refer to them. He submitted that under normal circumstances any reasonable person like the testator, would not disinherit his own children, i.e the appellant no.1 and his brothers nor would he prefer a total stranger as a sole legatee of schedule C properties. This contention is totally devoid of force. The reason is obvious. So far as

schedule C properties were concerned, they were not personal properties of Sivashankaran Pillai. They were endowed properties belonging to the temple. Mere right of management was given to him by earlier manager Pitchammal and it is this right of management which was being entrusted by him to Defendant no.9, who was found to be a capable manager. So far as the personal properties are concerned, the testator executed another Will (Ex.B-488) on the same day in favour of his own children, including the appellants. He had, therefore, not disinherited them qua his own personal properties. The second suspicious circumstance highlighted by Shri Sampath was to the effect that Defendant no.9, being beneficiary of the Will, had actively participated in its execution. That is neither here nor there. Even despite his active participation, Defendant no.9 saw to it that the testator bequeathed his personal properties in favour of his own sons, namely, the appellants and Defendant nos. 5 & 6.

It has also to be kept in view that Defendant no.9 was brother-in-law of Appellant no.1 and a trusted worldly wise person on whom the testator, his father-in-law, had full trust. He was not shown to be inimical to the appellants when the disputed Will was executed. In fact, he was looking after the interest of the entire family. Thus his presence proved to be beneficial not only to him but also to the appellants. The next circumstance pressed in service was that the testator was residing with Defendant no.9 in his house. This, to say the least, is not a suspicious circumstance but a relevant circumstance which would persuade the testator to entrust the management of the kattalai properties to Defendant no.9. The next circumstance tried to be highlighted by Shri Sampath was that the testator was seriously ill and had undergone abdominal operation and was unconscious and had no capacity to understand things. It is difficult to appreciate this contention. Even though the testator might be ill and might have undergone abdominal operation, he could not be said to be unconscious when he himself got the Will registered before the authorities when the registering officer remained present in the house of Defendant no.9 between 8 9 in the morning and ascertained the willingness and capacity of the testator in getting the Will executed and registered by the authority. Shri Sampath tried to submit that the scribe got the Will executed by the testator by exercising undue influence and coercion. This contention, to say the least, is not at all borne out from the evidence when the very same scribe became an attesting witness to the Will (Ex. B-488) in favour of appellants themselves and Defendant nos. 5 & 6. If he was out to pressurise the testator to disinherit the appellants and Defendant nos. 5 & 6, he would never have stood as an attesting witness to the Will (Ex. B-488) in favour of Defendant nos. 1, 5 & 6 on the very same day on which it was executed by the testator along with the disputed Will. Resultantly, point no. 2 is also answered against the appellants and in favour of the contesting respondents.

POINT NO.3: So far as this point is concerned, we have to trace the genesis and the nature of the management entrusted to Sivasankaran Pillai by the deceased Pitchammal. The first document, in chronology, is the Gift Deed (Ex.B-506) dated 18th February, 1907. It recites that the donor Palani Velayutham Pillai was donating the properties in favour of Madurai Devasthanam Tirupparankumdram Andavar

Subramania swamy. These properties were gifted to the temple for the purpose of performing poojas and Archanas to the deity daily at noon, for performing lotus archana in every karthigai month and for Bhojanas to Brahmins and others. The Gift Deed also recited that excluding the payment of government taxes the remaining income derived out from the under-mentioned properties had to be utilised for the aforesaid purpose by the management of the trustee and in case of death of the donor prior to the death of his second wife, she will continue the said charitable performances along with her heirs and after the amount spent for the said purpose, an amount of Rs.2/- per month had to be detained by them and she had to act as a trustee. In the event of any fault on the part of performing the said charitable performances, the Devasthanam was entitled to question the same. He also consented for transferring the patta as a trustee of the properties in the name of the deity. These recitals clearly indicate that the donor wanted the right of mangement of the donated properties to be entrusted to his second wife along with her heirs after the lifetime of the donor. It is obvious that the properties belong to the temple. A mere right of managing the properties, as a trustee, by collecting income therefrom and for utilising the same for performing the religious ceremonies and charitable performances as laid down in the Gift Deed was entrusted to his second wife along with her heirs. It is pertinent to note that this mere right of management as a trustee did not confer any proprietary right in the property donated to the temple. The only proprietary right was to collect an amount of Rs.2/- per month as remuneration for performing the duties of a trustee entrusted to his second wife along with her heirs. It is also necessary to note that this mere right of management as a trustee charged with the duty to perform religious and charitable performances was the kattalai grant to donors second wife along with her heirs. It is pertinent to note that the donor, who is the settlor, had not entrusted the right of management as successor trustees to any of his heirs or lineal descendants. He, on the contrary, chose to select his own second wife and her heirs for discharging this obligation. It is, therefore, not possible to agree with the contention of Shri Sampath, learned counsel for the appellants, that the aforesaid recitals in the Gift Deed conferred any life interest or widows estate to the donors second wife, after his demise. On the contrary, the right of management and to act as trustee for the same without any proprietary interest in the donated properties was only conferred on his second wife along with her heirs.

In this connection, we may usefully refer to the observations of learned author B.K.Mukherjea on The Hindu Law of Religious and Charitable Trusts - Fifth Edition by A.C. Sen, Eastern Law House in connection with Kattalai grants in South India. The learned speaker in one of his lectures reproduced in the aforesaid book at pages 198-200 observed as under:

XIV. KATTALAI GRANTS IN SOUTH INDIA 4.55. Kattalai or special grant.- Before I close this chapter one thing requires to be noticed and that is a special grant for religious services in a temple which is in vogue in Southern India and is known by the name of Kattalai. As Muttusami Aiyyar, J. explained in Vythilinga v. Somasundara, in ordinary parlance, the term Kattalai as applied to temple means endowments and signifies a special endowment for

certain specific service or religious charity in the temple. Ardajama Kattalai or endowment for midnight service is an instance of the former and Annadan Kattalai or an endowment for distributing food to the poor is an example of the latter. In this sense the word Kattalai is used in contradistinction to the endowment designed generally for the upkeep and maintenance of the temple. Persons who endow properties for kattalais are entitled to appoint special trustees to administer them, and the general trustees of the institution have no right to dispossess them. And if under the terms of the grant, the special trustee has to utilise the income for specified services in the temple, the general trustee has the right, as the person in charge generally of the temple, to require the special trustee to hand over the income to him. But the special trustee is, in respect of the management of the kattalai properties, under the same obligations as a trustee, and an alienation by him of those properties would be void, unless it is for necessity or benefit. In the case of some important temples, the sources of the income are classified into distinct endowments according to their importance. Each endowment is placed under a separate trustee and specific items of expenditure are assigned to it as legitimate charges to be paid therefrom. Each of such endowments is called also a Kattalai and the trustee who administers it is called the Kattlaigar or stanik of the particular Kattalai. The import of this expression was discussed in detail by Sesagiri Aiyyar, J. in Ambala Vana v Sree Minakshy. According to him, this expression is used with reference to three different kinds of endowments. Properties may be endowed- (a) for the performance of pujas in the temple, or (b) for the performance of certain festivals in the temple, or (c) for the performance of Archanas to the deity in the name of the donors. (a) Ordinarily, the puja is not performed in the name of the donor, and consequently, supplementary grants are made by pious persons in order that the service should be more efficiently performed. Instances of this type of grant are to be found in the famous temple at Chidambaram, where almost all the necessary daily services are conducted by means of Kattalais endowed by pious donors. (b) It also happens that where lands for funds in respect of particular service or festival at temples are not sufficient for conducting them on the original scale, new donors come forward to supplement these funds. (c) For Archana, however, no supplementary grant by other donors is possible. It is intended solely for the spiritual benefit of the grantor and it is not the concern of third parties to help in his performance if the funds are for any reason not found sufficient. Whatever the exact nature of Kattalais may be-and that must depend upon the usages of particular temples-one fact ought to be remembered in this connection, and that is that when the grant is to the deity and the income of particular funds is earmarked for special services which are entrusted to special trustees, if there is a surplus which cannot be spent on these services, it would be a case for the application of the cy pres doctrine and the special trustee can, on no account, claim the surplus. This has been held by the Judicial Committee in an appeal from the Madras High Court.

These observations clearly indicate that the grantee of such special endowment derives his or her right of management from the appointment by the settlor and could not be treated to be having independent proprietary right in the subject matter of the grant.

Once this conclusion is reached, it becomes obvious that the right of management as a trustee which inhered in donors second wife - Pitchammal after his death could be independently exercised by her along with her heirs. Now it is not in dispute that she had no issues or lineal descendants. Therefore, the phrase along with her heirs on that score became redundant and she had every right to mange on her own the donated properties as a trustee. Even alternatively, as submitted by learned senior counsel for the contesting respondents, it could be held that her heirs may even include her testamentary heirs. In either way Pitchammal, the second wife of the settlor, had every right to select successor trustee in her place by her Will. That is precisely what she did by executing her Will (Ex.B-26) dated 27th January, 1924 in favour of Sivasankaran Pillai, father of appellant no.1. It is not in dispute that even prior to the said Will, the said Sivasankaran Pillai under the General Power of Attorney dated 3rd August, 1922 from Pitchammal, was managing the trust properties as her agent. But on the death of Pitchammal on 24th June, 1950 the Will (Ex.B-26) became operative in his favour and he became the successor trustee and manager of these properties charged with the obligation to carry out the religious and charitable performances as directed in the Gift Deed of the settlor. It has also to be kept in view that the said entrustment of trusteeship rights by Pitchammal in favour of Sivasankaran Pillai by her Will (Ex.B-26) dated 27th January, 1924 is not in dispute between the parties. However, Shri Sampath, learned counsel for the appellants, tried to put a gloss over this will by submitting that even otherwise Sivasankaran Pillai, the legatee under Pitchammals Will, was himself the lineal descendant of settlor Palanivelayutham Pillai and can be said to be the heir of Pitchammal. It is difficult to appreciate this contention. The Gift Deed of 18th February, 1907 nowhere mentioned, as noted earlier, that the donor wanted trusteeship and management of properties to go to his lineal heirs. That Sivasankaran Pillai got the right of management and trusteeship only because of the Will of Pitchammal who had every right to will away the said trusteeship in favour of anyone she liked unfettered by any restrictions found in the original Gift Deed conferring right of management to her for the first time.

In view of the aforesaid finding of ours, it is equally not possible for us to accept the contention of Shri Sampath that when Sivasankaran Pillai wanted to make Will in connection with the right of management of the temple properties, he ought to have and should have preferred only his own sons and not a stranger like Defendant no.9. In fact, that was the main contention of learned counsel for the appellants. He submitted that the Will (Ex.B-487) of Sivasankaran Pillai, favouring Defendant no.9 dated 1st July, 1955 was, in any case, unauthorised and illegal as the testator Sivasankaran Pillai could not have willed away the right of management of temple properties to Defendant no.9 who was not his lineal descendant but was a stranger to the family being, his son-in- law. This submission is totally devoid of any force. Sivasankaran Pillai, by his impugned Will (Ex.B-487) dated 1st July, 1955 in his turn selected an appropriate manager for the trust properties charged with the obligation of trusteeship to carry on the charitable performances. The said Will itself shows that he was acting as per the directions and demands of Pitchammal and because

of his bad health he was unable to continue the said charitable performances and, therefore, he was bequeathing the said right in favour of Defendant no.9, his son in law. It has to be kept in view that it was a mere right of management and not a proprietary right which inhered in the testator Sivasankaran Pillai pursuant to the earlier Will of Pitchammal in his favour. He, as a successor trustee and manager, had to select the best available person of his choice to act after his demise as trustee and manager of the temple properties with a view to continue the charitable performances as originally entrusted by donor in favour of his second wife Pitchammal and under whose directions he was acting during her lifetime and had to act under her Will after her demise. To recapitulate, as the original settlor had not reserved the right of management and trusteeship of these properties donated by him to the temple for his lineal descendants and, on the contrary, had handed over that right to his second wife and had further left the said management to her, along with her heir, such absolute right being conferred on her by the settlor could be well utilised by her in selecting a successor of her choice. That is precisely what was done by her by her Will of 3rd August, 1922 and in exercise of the same right conferred on Sivasankaran Pillai, he in his turn as her representative validly executed the impugned Will in favour of Defendant no.9. It cannot, therefore, be held that the Will (Ex.B-487) of 1st July, 1955 was in any way unauthorised or illegal. It has to be kept in view that Pitchammal herself was not appointed by her husband as a shebait of the properties. She had a mere right to manage the properties on which she had every right to bequeath to any person of her choice unfettered by any other restrictions in this connection. It is the very same unfettered right which got transmitted from her to Sivasankaran Pillai by her Will dated 27th January, 1924 and which further got transmitted by him in favour of Defendant no.9 by the impugned Will (Ex.B-487) dated 1st July, 1955. It is, therefore, not possible to agree with the contention of Shri Sampath, learned counsel for the appellants, that Sivasankaram Pillai was bound to entrust the management and trusteeship qua the temple properties to any of his sons and could not have selected a stranger like Defendant no.9. It has to be kept in view that mere right of management of trusteeship unfettered by any direction of the original settlor could be entrusted by Sivasankaran Pillai in his turn to any competent person of his choice, only for the limited purpose of management not backed up by any proprietary right in connection with the trust properties which, admittedly, belong to the deity.

Reliance placed by Shri Sampath, learned counsel for the appellants, in the case of Kalipada Chakraborti & Anr. v. Sm. Palani Bala Devi and Ors. AIR (40) 1953 SC 125 cannot be of any assistance to him. In that case, B.K.Mukherjea, J. speaking for the three-Judge Bench observed in this connection about Shebaitship as under: (b) Hindu Law Religious endowments Shebaitship. Whatever might be said about the office of a trustee, which carries no beneficial interest with it, a shebaitship, combines in it both the elements of office and property. As the shebaiti interest is heritable and follows the line of inheritance from the founder, obviously, when the heir is a female, she must be deemed to have, what is known, as widows estate in the shebaiti interest. It is quite true that regarding the powers of alienation a female shebait is

restricted in the same manner as the male shebait, but that is because there are certain limitations and restrictions attached to and inherent in the shebaiti right itself which exist irrespective of the fact whether the shebaitship vests in a male or a female heir.

It must be kept in view that in the light of the recitals in the Gift Deed of 18th February, 1907, as noted by us earlier, it cannot be said that the settlor had given any shebaitship rights to his second wife nor had he laid down any line of inheritance qua such shebaitship in his Gift Deed. It was a mere right of membership entrusted to his second wife with a further right given to her to execute the office of trusteeship along with her heirs and without any reference to the settlor or his heirs. The aforesaid decision, therefore, on the facts of the present case, does not get attracted. On the contrary, in an earlier judgment of this Court in the case of Ram Gopal v. Nand Lal & Ors. AIR (38) 1951 SC 139, the same learned Judge B.K.Mukherjea, J., speaking for the Court, while dealing with the right of hindu widow in connection with the gift of property, made the following pertinent observations: The mere fact that the gift of property is made for the support and maintenance of a female relation cannot be taken to be a prima facie indication of the intention of the donor, that the donee was to enjoy the property only during her lifetime. The extent of interest, which the donee is to take, depends upon the intention of the donor as expressed by the language used, and if the dispositive words employed in the document are clear and unambiguous and import absolute ownership, the purpose of the grant would not, by itself, restrict or cut down the interest. The desire to provide maintenance or residence for the donee would only show the motive which prompted the donor to make the gift, but it could not be read as a measure of the extent of the gift.

It is, of course, true that the aforesaid observations were in connection with the absolute gift of properties in favour of a hindu widow. But the principle laid down therein can squarely get attracted while interpreting and giving effect to the recitals in the Gift Deed of 18th February, 1907. The settlors intention is very clear that he wanted to entrust right of trusteeship and management to his second wife along with her heirs without any fetter or restriction on her power to appoint successor manager after her demise. For all these reasons above, the third point for determination, therefore, also is answered in the affirmative in favour of the contesting respondents and against the appellants. That takes us to the consideration of the last point.

POINT NO.4: Learned senior counsel for the respondents was right when he contended that the scheme of administration settled by the Board of Commissioner for Hindu Religious Endowments, Madras on 13th September, 1945 was not highlighted or relied upon before the Trial Court or even before the High Court. However, it cannot be forgotten that such an Order of the Commissioner is already on the record of the case and that Order was rendered during the lifetime of Pitchammal when Sivasankaran Pillai was also very much in the management of the endowed properties as a General Power of Attorney holder of Pitchammal. A mere look at the Order shows that for this very endowment of kattalai, a scheme of administration was settled under Section 57 of

the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927). It would be binding on Sivasankaran Pillai as General Power of Attorney holder of Pitchammal and after her death also, as the legatee and manager of the kattalai properties, Sivasankaran Pillai would be bound by the said scheme and similarly, whoever is the successor trustee appointed by him under the Will (Ex.B-487) of 1st July, 1955 would also be bound by the said scheme and similarly any further trustee appointed for management of the kattalai properties would also be bound by the said scheme so long as the scheme is not altered by the competent authorities. It cannot be disputed that Defendant no.9 would be bound by the said scheme as legatee of the right of management under Will (Ex.B-487) of Sivasankaran Pillai dated 1st July, 1955. Similarly any further entrustment of the said right of management by Defendant no.9 in favour of Defendant no.10 by his Will will also be subject to the binding settled scheme of 1945 and she will have to act under the directions of the Executive Officer as per the scheme settled for this very kattalai endowment as per the Order of 13th September, 1945. Even the Executive Officer of the Devasthanam, who is governed by the said Order, is a party to the proceedings being Defendant no.11. Learned counsel for Defendant no.11 submitted before us that relevant provisions of the scheme were not effectively implemented till now because the authorities were awaiting the decision of this Court as to who will be the kattalai manager. Once that dispute is resolved and proper kattalai trustee is indicated all the provisions of the scheme as per Order dated 13th September, 1945 will be enforced. In this connection, we may usefully refer to what the High Court has to say in the impugned judgment. In para-31 of the judgment, the High Court observed as under:

> 31. We wish to add one thing. The performance of the charities ordained in Ex.B.506 shall be carried out by the defendants who are obliged to do so, under the supervision of the 11th defendant.

The said direction is well sustained. We only want to make it clear that the aforesaid directions of the High Court to 11th defendant for supervising the working of the charities ordained in Ex. B-506 will also have to be carried out in the light of the Order of the Board of Commissioner for Hindu Religious Endowments, Madras dated 13th September, 1945. Defendant no.10, who is now the legatee of the management rights as per the will executed by Defendant no.9 in her favour, will also be bound by these directions. Point no.4, therefore, is answered in the affirmative in favour of the appellants and against Defendant no.10.

As a result of the aforesaid discussion, the appeal fails and is dismissed subject to the further directions contained in our decision on point no.4. In the facts and circumstances of the case, there will be no order as to costs.