

(1927) 08 MAD CK 0050
In the Madras High Court

A. Chinnaswami Thathachariar and Others	APPELLANT
Vs	
Srirangam Nallan Chakravarthi Singarachariar	RESPONDENT

Date of Decision : 25-08-1927

Acts Referred:

Citation : AIR 1928 Mad 377

Hon'ble Judges : Srinivasa Aiyangar, J;Curgenven, J

Bench : Full Bench

Judgement

Srinivasa Aiyangar, J.—Three points have been raised and argued by the learned vakil for the appellants, Mr. K. Balasubramania Iyer, in this second appeal. The suit from which this appeal has arisen was instituted by one Srirangam Nallan Chakravarthi Singara-Chariar for a declaration that he is the legal holder of the office of what is called third arulapad or third thirtham in the temple of Sri Devaraja Swami at Coneeveram and for an injunction restraining the defendants, trustees for the time being of the temple, from interfering with the discharging of his office and also for the recovery of emoluments for a period of six years prior to suit. In the Court of first instance the District Munsif granted the decree in favour of the plain- tiff. The same was confirmed by the lower appellate Court with some slight modifications; And hence this second appeal.

2. The first point that was argued was that it has not been proved by the plaintiff that there is in connexion with the suit temple an office of the kind. It was argued by the learned vakil that all that was set out in the schedule to the plaint was in the nature of mere honours and emoluments, that there were no duties really indicated as those liable to be discharged by the holder of any such office and that therefore in modification of the view of both the lower Courts we should come to the conclusion that the existence of no such office in this temple has been established. If the matter were res integra, no doubt we should have experienced considerable difficulty in coming to a conclusion on the facts whether what has been alleged by the plaintiff really constitutes in its true nature an office. An office in connexion with such institutions must really be regarded as a

bundle of duties liable to be performed by the same persons under a particular designation and carrying with it certain emoluments. In this case it has been undoubtedly found by both the lower Courts that one of the duties of the office is to be present at the performance of religious ceremonies especially at the beginning and at the end. There is a considerable body of evidence on the record to show that such presence at the performance of religious ceremonies was not only usual, not only in the nature of a right, but also distinctly an obligation or duty.

3. It is therefore not a case in which the lower Courts have come to the conclusion without any evidence whatever. I consider there is considerable evidence, and at any rate some portion of the evidence is undoubtedly of a reliable character. Nor is there anything in the nature itself of the act required to be performed which may lead me to suppose that it cannot possibly be regarded as a duty or obligation. The presence at the performance of religious ceremonies of persons who are or may be supposed to be well versed in the rituals and the manner of performance may be regarded as not only useful but necessary in the interests of the institution. Though undoubtedly if one has regard only to the origin of these honours and emoluments one cannot help thinking that they must have been at any rate at one time merely intended for the purpose of showing particular distinction to the members of special families either on account of their learning or on account of their services-rendered by them to the institution, still there can also be no doubt that in course of time certain specific duties have become at any rate engrafted on to these honours and emoluments, and having regard to the course of decisions in this Court it is impossible at the present day to hold that, even though the performance of obligation or duty of such character may not possess all the aspects of a regular office, still it does not constitute an office of such a nature as to make it a Civil claim with regard to which civil Courts will have jurisdiction. There is at least one duty, therefore, attaching to this third arulapad or thirtham which both the lower Courts have found and no reason has been shown why or how that finding is not correct. If therefore there is, at least one specific duty and there are also emoluments, it follows that it must be regarded as an office.

4. The second question that was raised was with regard to the proof afforded by the plaintiff of his title to the office. As regards this it seems to me that the finding of both the Courts is based on legal evidence and it is not for us, sitting in second appeal to question the conclusion of fact arrived at by both the lower Courts. No question of misdirection or law arises with regard to it.

5. The third and the last question that has been raised is one of limitation. The learned vakil for the appellant argued that the claim of the plaintiff must have been held to have become barred by the law of limitation. He contended that the plaintiff's action must be regarded as one for the recovery of the office and therefore the learned vakil referred to Article 124 of the Schedule to the Limitation Act. If we take into consideration the terminology used in the three

columns of that Article of the Limitation Act it is clear that the nature of the suit intended to be covered by that Article must be a suit filed by a plaintiff who claims the office from a person who at that time holds the office himself. The term employed in the third column makes the position abundantly clear. Here the plaintiff has not alleged that the office is now being held adversely to him by any other person. The suit is only against the trustee of the Devasthanam for the recovery of the emoluments. Incidentally, of course, it is also for a declaration because the circumstances were such that his title to the office was denied and it was denied even in the suit itself by at least some of the defendants. Therefore there is no question with regard to limitation with reference to Article 124. If not that, what is the Article that can be regarded as applicable to the present case? None at all because if the plaintiff had not lost the office by adverse possession of it by somebody else the only way in which he could have lost the office would be by dismissal from office by the trustees. No such thing has ever been suggested and therefore there is no reason whatever to suppose that the plaintiff has in any manner lost the office provided the finding is accepted that he has been the holder of the office. If then he has not lost the office, how could he be regarded as having lost the right to emoluments? The right to emoluments accompanies the office as it is incidental to the office.

6. No doubt it might be open to the trustees to have pleaded that the plaintiff not having discharged his duties he was either suspended or dismissed or that he was fined, and as the proper services have not been rendered by him he has no right to sue for the recovery of the emoluments. If such question had been raised it would have been then for the Court to decide whether on such allegations the plaintiff would still be entitled to the emoluments. But though the defendants came into Court as trustees representing the Devasthanam they raised no such plea and there are no allegations whatever of any failure on the part of the plaintiff either by himself or by his deputies to perform the prescribed duties of his office. The defendants have only to thank themselves if they have not raised the necessary pleas which have enabled the Court to pronounce upon it one way or another. In these circumstances it follows that there is really no substance at all in the plea of limitation set out on behalf of the appellants anywhere in the written statement. These are the only three questions. It follows that the second appeal fails and must be dismissed with costs.

7. The learned vakil for the appellants also raised a question about the order of both the lower Courts that the costs awarded to the plaintiff as against them should be paid by them personally and not from and out of the temple funds. I was at one stage inclined to consider that having regard to the conduct of the plaintiff himself in not having really performed the duties of his office at least personally for a considerable time there was some justification for the defendants-contesting the suit. But it turns out on an examination that the appellants for whom Mr. Balasubramania Ayyar appears are the present trustees of the temple and there is no representation here on behalf of the other appellants who were trustees at the time and against whom alone the order for

payment of costs personally has been made. It could, not possibly be regarded that with reference to this matter the same-learned gentleman could appear for both sets of appellants because there is conflict of interests and it is clearly in the interests of the institution that the order for costs made against the trustees personally should if possible be sustained. In these circumstances, it has become clearly unnecessary to consider that question. The second appeal is therefore dismissed with costs.

8. There is a cross-appeal, S. A. 1548 of 1923, on behalf of the respondent. That relates to four matters. The first three; of these are matters relating to the honours and emoluments to which the plaintiff is entitled, and they have been dealt with by the lower appellate Court. The objection taken in the appeal to the decree of the lower appellate Court is that the learned Judge was wrong in disallowing to the measure he has disallowed items 1,15 and 16 in the schedule. As regards all these matters I do-not see any reason to interfere. I have not been persuaded that the learned. Judge in the Court below came to a wrong conclusion even on facts with regard to these matters. In any case no question of law can be regarded as capable of being raised with regard to them. I therefore come to the conclusion that in respect of these three matters the view taken by the lower appellate Court was right.

9. The other matter, however, is on a different footing entirely. That relates to an omission in the decree as drafted by the Court of first instance with regard to item 6 claimed in the schedule to the plaint in the list of honours and emoluments. It was really allowed in its judgment by the Court in favour of the plaintiff but for some reason or other, very probably owing to some clerical error or mistake, it came to be omitted in the copy of the decree which I understand was furnished to the plaintiff. No question was raised with regard to this matter in the lower appellate Court as it might have been and no application was made to the Court of first instance for rectification of the decree on the ground that it was merely due to discrepancy between the judgment and the decree. But as the mistake has been pointed out I think it is necessary that the decree should be amended. The decree therefore passed will, if necessary, be amended by including in it item 6 "that is set out in the schedule. But having regard to the fact that the plaintiff-appellant in this second appeal might have obtained the same relief very easily even by an application to the District Munsif's Court, I think it is a case in which there should be no order as to costs.

10. Otherwise the second appeal is dismissed with costs.

Curgenven, J.

11. I agree that S. A. No. 1363 of 1923 should be dismissed with costs and to the order proposed by my learned brother in S.A. 1548 of 1923.