

(1909) 07 MAD CK 0026
In the Madras High Court

A. Subramania Aiyer

APPELLANT

Vs

P. Nagarathna Naicker and Others

RESPONDENT

Date of Decision : 14-07-1909

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 30

Citation : 5 Ind. Cas. 901

Hon'ble Judges : Ralph Benso, O.C.J.; Sankaran Nair, J

Bench : Division Bench

Judgement

1. The suit is filed by the plaintiffs u/s 30, CPC of 1882, for a declaration that the land in suit is the property of the temple of Bala Vinayagar and that the alienation of that land by the defendants Nos. 1, 2 and 3, the trustees, to the 4th defendant, is invalid, and for possession to be delivered to the trustees on behalf of the temple. It was contended by the defendants that the temple and the land alleged to belong to it was the private property of the defendants Nos. 1, 2 and 3. The Judge has found, and his finding is not impeached in appeal, that the temple in question is a public temple and the defendants Nos. 1 and 2 are the trustees thereof. The Judge has also held that the alienation in favour of the 4th defendant is invalid. But being of opinion that defendants Nos. 1 and 2 have been guilty of mismanagement he has directed possession to be delivered to the plaintiffs.

2. It is contended before us that the plaintiffs, who are only worshippers, are not entitled to possession, nor have they prayed to get possession. The Judge's decree for possession, therefore, it is said, must be set aside.

3. We are of opinion that as defendants Nos. 2 and 3 are now trustees, the 1st defendant having died since the institution of the suit, they are entitled to the possession of the property. But we see no reason to agree with the contention of the appellant that such possession cannot be awarded to them in this suit. It is admitted that, after the declaration that the alienation in favour of the appellant is invalid, he is not entitled to retain possession of the property, and in a properly

framed suit the trustees would be entitled to recover possession on behalf of the idol or temple. This suit is really brought to enforce the claim of the temple against the person who holds temple property without title, and we see no reason why the trustees should be referred to a separate suit to obtain possession on its behalf when possession may be given to them in this suit. We accordingly modify the decree of the Court below and decree that possession be given to the 2nd and 3rd defendants as trustees. As they will hold possession not on their own behalf but only as trustees, it is unnecessary to issue any injunction as prayed for. As the appellant has substantially failed, he will pay the respondents' costs.