

(1940) 09 MAD CK 0072
In the Madras High Court

Annasami Aiyangar alias Ramaswami Aiyangar and Others	APPELLANT
Vs	
Nithiyapadi Adivarachari and Others	RESPONDENT

Date of Decision : 26-09-1940

Acts Referred:

Citation : AIR 1941 Mad 81 : (1941) ILR (Mad) 275 : (1940) 52 LW 919 :
(1940) 2 MLJ 990

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This appeal came in the first instance before Venkataramana Rao, J, but as the, learned Judge was of the, opinion that its decision involved the consideration of the judgments of this Court in two cases which seemingly were in conflict he adjourned the hearing in order that the appeal might be placed before a Bench. The two decisions referred to by the learned Judge were decisions of Division Benches and in consequence it was deemed advisable that the appeal should be decided by a Full Bench. The two cases referred to by the learned Judge are Ponnu Nadar and Others Vs. Kumaru Reddiar and Others, and Pothukutchi Appa Rao and Others Vs. Secretary of State for India in Council, . They will be referred to in detail presently, but as it appears to us that this appeal involves the consideration of facts which are not common to the other two cases it is necessary to set out in Some detail what the facts are.

2. The suit out of which this appeal arises was filed by the first respondent in the Court of the District Munsif of Chidambaram for an injunction restraining the trustee and the archakas of the Sri Bhuvahaswami temple at Srimushnam from interfering with the performance of the duties of his office of the mantrapushpam of the temple. The suit was dismissed by the District Munsif, but his decision was set aside on appeal by the Subordinate Judge of Cuddalore and the first respondent was held, to be entitled to the relief sought by him. The appellants are the archakas of the temple. The office of mantrapushpam is an hereditary one and the first respondent succeeded to it on the death of his father in 1906.

He is also the Holder of two other hereditary offices in this temple - the offices of kaisika puranam and arulappadu. The appeal is only concerned with the office of mantrapushpam. The holder of the office of mantrapushpam has the right to receive from archakas flowers and tulasi leaves for the purpose of consecration, which is performed by the recitation of mantrams by the mantrapushpakar while he is holding them. After the consecration the flowers and tulasi leaves are handed to an archaka who then proceeds to offer them to the deity. The emoluments of the office of mantrapushpam in this temple consist of a ball of looked rice per diem and twelve annas per month. The first respondent is a Vadagalai and the archakas of this temple are all Thengalais; and here we have the cause of the present litigation and incidentally of other suits. The first respondent has never performed the duties of the mantrapushpam and the reason why he has not done so is also traceable to the animosity between these two sects. The Subordinate Judge has in fact held that the office of mantrapushpam has been in abeyance for over forty years. In 1918 the first respondent decided to take action with the object of preventing interference with the performance, of the duties of his office and in that year he filed O.S. No. 66 of 1918 in the Court of the District Munsif, Vriddhachalam. In that suit the respondent asked for an injunction, restraining the trustee from interfering with the performance by him of the duties cast upon him as the holder of all the three offices. The District Munsif granted him a mandatory injunction on the 30th June, 1920. The trustee appealed to the Subordinate Judge, but the only result was, that the injunction, was changed from mandatory to prohibitory in character. In these proceedings the archakas were not made parties. In 1922 the first respondent filed O.S. No. 178 of 1922 against the trustee and the archakas for an injunction preventing them from interfering with him in the performance of his office of kaisika puranam but in this suit he asked for no relief in respect, of obstruction in the performance of the duties devolving on him as the holder of the, other two offices. The District Munsif granted him an injunction on the 23rd July, 1924, and this was confirmed by the Subordinate Judge on appeal on the 22nd October, 1927.

3. On the 10th January, 1929, the first respondent filed the suit out of which this appeal arises and, as already indicated, here he sought an injunction prohibiting the trustee and the archakas from interfering with his performance of the duties of the office of mantrapushpam. It was denied by the defendants that this office was hereditary and that the first respondent was entitled to it. It was also contended that the suit as framed was bad, because there was no prayer for a declaration. The further plea that the suit was barred by limitation was also advanced. The District Munsif held that the office was hereditary and that the first respondent was entitled to it, but he upheld the other objections advanced by the defendants. He considered that the suit was bad because there was no prayer for a declaration of right to the office and that it was barred by Article 124 of the Limitation Act. In his opinion the archakas had gained a right to the office by adverse possession. The Subordinate Judge agreed with the District Munsif

that the office was hereditary and that the first respondent had a title to it, but he considered that the District Munsif erred in holding that the suit as framed could not be maintained and that it was barred by limitation. With regard to the plea of the defendants that the suit was bad because no declaration was asked for the Subordinate Judge considered that the relief sought did involve a prayer for a declaration. On the question of limitation the Subordinate Judge held that Article 124 had no application and that there was a recurring cause of action. These are the facts as stated at the Bar and the only question which this Court has been called upon to decide is the question of limitation.

4. It will be here convenient to refer to the decisions in Ponnu Nadar and Others Vs. Kumaru Reddiar and Others, and Pothukutchi Appa Rao and Others Vs. Secretary of State for India in Council, . In the first of these cases certain Nadars, in a suit filed in 1923 in the Court of the Additional District Munsif of Tinnevely, claimed that they and their castemen had a right to pass in procession over a certain route composed of public streets in the village in which they lived. The defendants were other castemen of the village who denied this right. In 1918 two attempts were made by the plaintiffs to take marriage processions along this route. In 1900 the Joint Magistrate passed an order u/s 147 of the Code of Criminal Procedure, directing that no organised procession of Shanars or Christians should pass along these streets until a Civil Court had declared their right to do so. The defendants contended that, inasmuch as the suit had been filed more than six years from the date of the order, it was barred by Article 120 of the Limitation Act. The Court held that this contention must prevail and that the plaintiffs' community had forever lost their right to file a suit to establish a right to pass along these streets in procession. The Court also considered the question whether there was here a continuing wrong and decided that there was not. While it may be that the decision to apply Article 120 in that case is open to question - the Court is not called upon to reconsider the decision here - the facts are so very different from the facts in the present⁵ case that we are unable to regard it as having any application.

5. The second case, Pothukutchi Appa Rao and Others Vs. Secretary of State for India in Council, , is also concerned with facts which are very different to the facts in the present case. Pothukutchi Appa Rao and Others Vs. Secretary of State for India in Council, , involved the right to land which had formed the beds of certain tanks. It was held that a bare repudiation of a person's title without an overt act would not make it incumbent upon him to bring a declaratory suit. A party had, it was said, the right to elect when he could bring a suit for vindicating his right after there had been successive denials of his title. In that case an adverse order had been passed by the Collector and no action had been taken on it. The persons affected by the order were still in possession of the land and it was held that they could decide when it was necessary for them to take action to vindicate their title. The only common factor in that case and in the one now before us is the possession of the plaintiffs; in that case the plaintiffs were in possession of the land and in this case the plaintiff is in possession of the office.

Certain observations in *Pothukutchi Appa Rao and Others Vs. Secretary of State for India in Council*, , could be applied to the present case, but in view of the dissimilarity of the two cases in point of fact we prefer not to base our decision upon it.

6. It has been argued by Mr. Ramaswami Aiyar on behalf of the appellants that the Court should hold that in law the first respondent is not in possession of his office because he has not performed the duties thereof, but he has failed to produce any authority in support of his contention. The first respondent is admittedly the lawful holder of the office and it is common ground that he received the emoluments, month by month, until 1927. The archakas admittedly do not claim to be in possession and it is not claimed that they have performed the duties of the office. This has been made quite clear in the judgment of the Subordinate Judge. It seems to us that, where a person is admittedly the lawful holder of an office and he is enjoying its emoluments, he must in law be regarded as being in possession of the office itself, especially where no one else is performing the duties of the office. We do not suggest, however, that the mere performance of the duties of the office by somebody else would constitute the person performing the duties the holder of the office. In our opinion it would not. Article 124 of the Limitation Act has a bearing here. The article says that for a suit for possession of a hereditary office the period of limitation is twelve years from the time when the defendant takes possession of it adversely to the plaintiff, and the explanation which follows says that an hereditary office is possessed when the profits thereof are usually received or (if there are no profits) when the duties thereof are usually performed. Therefore, so far as the Limitation Act is concerned, the plaintiff has only to show that he has been in receipt of the emoluments.

7. In support of his argument that the archakas must be deemed to be in possession Mr. Ramaswamy Aiyar has referred to *Kamalathammal Vs. Krishna Pillai and Another*, , *Ambalavana Pandara Sannadhi v. Sri Minakshi Sundareswaral Devasthanam* (1914) 28 M.L.J. 217, *Suppu Bhattar v. Suppu Sockaya Bhattar* (1915) 29 M.L.J. 588 and *Rajagopala Naidu v. Ramasubramania Aiyar* (1935) M.W.N. 503, but the effect of these cases is that mere possession of the emoluments without the performance of the duties of the office will not give a title by adverse possession. In none of those cases was the Court concerned with the position where the lawful holder of the office is in enjoyment of the emoluments. The first respondent is admittedly, the lawful holder of the office and he has been in enjoyment of the emoluments. In these circumstances how can it be said that he has, not the right to bring a suit at any time when the performance of his duties is interfered with? Mr. Ramaswamy Aiyar admits that Article 124 has no application and relies entirely on Article 120. That article could only apply if the first respondent was bound to take action when in 1921 the archakas prevented him carrying out his duties as the mantrapushpakar. But he was not bound to take action then if it did not suit him. He could abide his time. The interference which the archakas were guilty of did not affect his position as

the lawful holder of the office. If the archakas interfered on another occasion it would only give rise to another cause of action.

8. Many other cases have been quoted in the course of the arguments, but the only one which has any bearing is Jalandhar Thakur v. Jharulc Das (1914) 27 M.L.J. 100 : L.R. 41 IndAp 267 : ILR 42 Cal. 244 . That case was decided by the Privy Council. The widow of a shebait of a temple who had succeeded her deceased husband in the office mortgaged certain immovable property together with her interest in the income of the temple. Thy mortgagee obtained a decree on his mortgage and in the sale held in execution proceedings bought the mortgaged property, of which he got possession in 1892. The widow died in 1900. The suit out of which the appeal arose was filed by the plaintiff for a declaration that he was entitled to receive the share of the temple income as it was inalienable. One defence set up was that the suit was barred by limitation by reason of the provisions of Article 124. This argument was rejected by the Judicial Committee. The suit was not one for a hereditary office. This office could not be held by a non-Brahmin and the defendant who was not a Brahmin was not competent to become the shi-bait and had not taken possession of the office. Adversely taking and appropriating to his own use a share of the surplus daily income from the offerings gave him no title to the office and therefore no right to a share in the income. On each occasion on which he received and wrongfully appropriated to his own use a share of the income to which the shebait was entitled he committed a fresh actionable wrong in respect of which a fresh suit could be brought against him by the shebait. In the same way everytime the archakas of the temple with which this suit is concerned interfered with the first respondent in the performance of his duties as the mantrapushpakar they were guilty of a fresh wrong.

9. We consider that the Subordinate Judge was quite right in holding that Article 120 has no application and that the first respondent was entitled to institute the suit whenever he thought fit. The appeal fails and will be dismissed with costs in favour of the first respondent.