

(1945) 12 MAD CK 0026
In the Madras High Court

Ayiri Parambil Chozni and Another

APPELLANT

Vs

Kolengot Devaswom Urlandar N. Parameswaran Nambudiri
and Others

RESPONDENT

Date of Decision : 18-12-1945

Acts Referred:

Citation : AIR 1946 Mad 369 : (1946) 59 LW 250 : (1946) 1 MLJ 358

Hon'ble Judges : Yahya Ali, J

Bench : Division Bench

Judgement

Yahya Ali, J.—The first and second defendants who are the appellants here, are the kanom tenants under the plaintiff, who is the jenmi. The plaintiff is an Uralan or trustee of a Devaswom and he sued in that capacity to evict the appellants from the kanom lands u/s 20 of the Malabar Tenancy Act (herein called the Act). The ground for eviction that was urged in the plaint was that the property was required bona fide for cultivation on behalf of the Devaswom.

2. The appellants raised two main contentions. The first was that the plaintiff, being only a trustee, was not entitled to institute an action for eviction on behalf of an idol, which not being an animate or sentient being, could not have required the property for its own cultivation as provided under Clause 5 of Section 20 of the Act. The second objection was that, as a matter of fact, the land was not required for the purpose of cultivation bona fide. The learned District Munsiff found against the plaintiff with regard to both the objections and consequently dismissed the suit. He held that the plaintiff in seeking to evict the appellants was not actuated by good faith. He also observed that the plaintiff in his own private capacity was a wealthy person and hence there was no justification for his saying that he required this small piece of land, from which very little additional produce can be expected, for his own cultivation. He also referred to another circumstance. The plaintiff had, with reference to another piece of land forming part of the trust, instituted a similar suit for eviction, but apparently on settling terms with the tenant subsequently withdrew the suit. From this

circumstance also the inference was drawn by the trial Court that the land in suit was not required by the plaintiff for his own cultivation. On appeal, the learned District Judge reversed the decree of the District Munsiff and found that an idol can cultivate its property through its agent, the trustee and that, in the present case, the trustee did require the property for cultivation on behalf of the idol. He also held that the requirement of the trustee was bona fide and in view of the decision of this Court in *Narikkal Chathan of Muthuvannacha Amsom and Desom Vs. Veethiyottillath Kesavan Namboodiri Karnavan* and manager of his illom of Muthuvannacha Amsom and Desom, , he decreed the plaintiff's suit for the eviction of the appellants. In that decision, it had been held by this Court that having regard to the language of Clause (5) of Section 20, if the landlord proved that he required the land for his own cultivation and that requirement was bona fide the landlord is entitled, without reference to any other circumstance to a decree for eviction against the tenant. The present appeal is brought against the order of the District Judge.

3. The same two questions have been pressed before me by Mr. Govinda Menon on behalf of the appellants. He has particularly stressed the first objection and contends that Clause (5) of Section 20 is intended for the sentient human beings and is not applicable to the case of a Hindu idol or an institution. This argument strikes me as being repugnant to the well-settled and recognised notions of Hindu religion and Hindu law. The idol, according to the Hindu law, is a juristic entity who can hold property and enjoy the same. If it can do so, it can lease out its properties or can cultivate its own properties, the only disability being that, being virtually in the position of a disabled person it has necessarily to exercise its acts of management or administration through an agent, viz-, the trustee. The real contention is that the idea of maintenance of an idol is inconsistent in the case of a being that is not animate. Even here, it seems to me that the argument overlooks the fact that a Hindu idol requires as large a measure of maintenance as a human being does. Maintenance, ordinarily, means the provision of food, raiment, lodging, etc. and all these are daily required, according to the ideas of Hindu religion, by an idol. Next, distinction was sought to be made as between a public trust and a private trust. The learned District Judge has referred to that aspect of the matter, although I apprehend that he has not been quite accurate when he stated that in the case of a private temple the trustee would be practically the owner of the temple. So far as the fiduciary character of the trustee is concerned and so far as his representative capacity is concerned, there is essentially small difference between a trustee of a public trust and the trustee of a private trust and he is competent to declare on behalf of the idol of which he is the duly constituted trustee that a certain property belonging to the idol is required for cultivation on behalf of the idol. The question then is whether in the capacity of a trustee the plaintiff was competent to maintain this suit, because that is, in effect, the main argument of Mr. Govinda Menon in this case. His contention virtually is that as Clause (5) of Section 20 of the Act is worded, no trustee of a temple can ever exercise the privilege that is

conferred under that provision. I am not in a position to agree with this sweeping argument. As pointed out by the learned District Judge, the clause specifically confers that power upon every " landlord " and that expression has been defined in the Act to include a jenmi and "jenmi " in turn as defined in the Act would include a trustee. Mr. Govinda Menon contends that these definitions are inclusive ones and if from the context it appears that the concept of a trustee is incompatible with the particular provision, then it should be held that the word " landlord," for the purpose of that clause, does not include a trustee. I see nothing in the context, which excludes expressly or by compelling implication the class of trustees from the expression " landlord " occurring in that clause. If the Legislature intended to exclude the whole body of trustees from the benefit that they were conferring upon landlords under Clause 5 of Section 20, it would have done so expressly and, in the absence of any such direct exclusion, I am not prepared to incorporate such an exclusion in the clause by any process of inference or implication. This objection of the appellant must, therefore, be negatived.

4. The next question bears upon a question of fact. After the decision in Narikkal Chathan of Muthuvannacha Amsom and Desom Vs. Veethiyottillath Kesavan Namboodiri Karnavan and manager of his illom of Muthuvannacha Amsom and Desom, was given, Clause 5 of Section 20 of the Act has been amended by Madras Act XXIV of 1945, which came into force on 11th December, 1945. As amended, Section 20(5) would read thus, so far as material to the present case:

No suit for eviction of a kanomdar shall lie at the instance of his landlord except on the following grounds:

(5) that the period of the kanom has expired and there has been no renewal and the landlord needs the holding bonafide for the purpose of raising crops or other produce for his own maintenance or for that of any member of his family, or tarwad, or tavazhi who has a proprietary and beneficial; interest in the holding.

By Section 4 of the amending Act this change has been given retrospective effect with the result that the provision as amended becomes applicable to the present case. In the plaint it was specifically contended in paragraph 9 that there were not sufficient funds in the Devaswom for the performance of " Kazhagam and-Shanti" (temple service worship) and that, consequently, the defendants should be evicted and the property in their possession should be surrendered for bonafide-personal possession and cultivation by the Devaswom. This allegation was denied by the first and second defendants (the appellants) in their written statements.. The issue that was settled for the trial of this question was whether the plaintiff requires the property bonafide for cultivation and the learned District Munsiff found that the plaintiff did not require the property bonafide for cultivation. Under the amended Act, the idea of requiring bonafide for cultivation has been displaced by the principle that the landlord should need the holding bonafide for the purpose of raising crops or other produce for his own maintenance. Since the amended Act: had not come into force and, the pre-

amendment clause prevailed, the question) that was tried was different. But now it will be necessary to try the issue that, arises under the amended clause, viz., whether the plaintiff Devaswom needs the holding bona fide for the purpose of raising crops or other produce for its own maintenance. Since the parties had no opportunity to adduce evidence upon this particular issue and since there is no finding on it, the matter will have to be sent back to the trial Court for a fresh enquiry on this question and fresh disposal of the suit in accordance with its findings upon that issue, subject to the finding given in this judgment on the first objection raised by Mr. Govinda Menon.

5. The learned District Judge also considered the further question whether the trial Court was right in disallowing the revenue claim from 1896 to 1938-39 and agreed with the view taken by the trial Court on that question. There was no appeal or objection by the plaintiff with regard to that finding and hence it has become final. That question is therefore no longer open.

6. In the result, the two appeals are allowed pro tanto and the suit and the application for renewal, which is the subject-matter of C.M.S.A. No. 300 of 1944, are remanded to the trial Court for disposal according to law in the light of the directions given in the judgment. Costs throughout will abide and follow the result. Court-fee will be refunded.