
(1915) 09 MAD CK 0064
In the Madras High Court

Ayya Raghunatha Thathachariar and Others	APPELLANT
Vs	
Thirumalai Echambadi Thiruvengadachariar and Others	RESPONDENT

Date of Decision : 24-09-1915

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109(c)

Citation : 31 Ind. Cas. 46 : (1915) 2 LW 992

Hon'ble Judges : Sadasiva Aiyar, J; Napier, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—This is an application for the grant of a certificate that the case is a fit one for appeal to his Majesty in Council from the judgment of this Court in Appeal No. 175 of 1910 See 28 Ind. Cas. 604--Ed.. The application as amended is filed u/s 109, Clause (c), of the CPC read with Order XLV, Rules 2, 3 and 8. I think the more accurate way of describing the application is that it is filed under Order XLV, Rule 2 alone. The ground stated in the application is that though the case does not fulfil the requirements of Section 110, it is otherwise a fit one for appeal to His Majesty in Council and hence comes within the last sentence of Order XLV, Rule 3, Clause 1, the power to appeal being given by Section 109, Clause (c). As was pointed out by my learned brother in the course of the arguments, there is no express section or Order in the CPC directing the Court to issue a certificate when it finds that an applicant under Order XLV, Rule 2, has established grounds entitling the applicant to a certificate. Order XLV, Rule 7 seems, however, to imply that the Court should grant a certificate where proper grounds are shown for such grant and where the opposite party to whom notice goes under Order XLV, Rule 3, Clause 2, has failed to show cause against the grant of the certificate.

2. In *Motichand v. Ganga Prasad Singh* 29 I.A. 40 : 6 C.W.N. 362 their Lordships of the Privy Council state at page 177: "But then Mr. Mayne suggests that their Lordships ought to give special leave to appeal. Now, the practice of this Board in advising His Majesty to exercise His prerogative and to give special leave to

appeal, is well known, and this Board does not advise His Majesty to exercise His prerogative in that manner unless there is some substantial question of law of general interest involved." Then at page 178 their Lordships say: "Their Lordships think it is a good rule to lay down that where a party comes for special leave to appeal, the case being under appealable value, and, therefore, not an appeal as of right, he should in the first instance apply to the High Court for leave to appeal, on the ground that it is otherwise a fit one for appeal to His Majesty in Council." It seems to me that when the High Court has to consider the question whether it is otherwise a fit one for appeal to His Majesty in Council," it might legitimately look to the criterion of fitness laid down by the practice followed by their Lordships in advising His Majesty to give special leave to appeal, the Legislature in the CPC having itself given no indications as to the criterion of fitness to be adopted by the High Court under Order, XLV, Rule 3, Clause 1. I do not, of course, mean that our powers are so wide as those exercised by the Board in granting special leave but that where the Privy Council states a guiding principle, we can safely adopt that.

3. Jenkins, C.J., seems to have followed that rule in the case in *Bombay Burmah Trading Corporation v. Dorabji Cursetji Shroff* 5 Bom. L.R. 348 he says : "It is, however, obvious that the financial and commercial position of the company may be seriously affected by the questions at issue, and having regard to that and to the importance to Indian Companies generally that these rights should be precisely defined in relation to the point that has arisen in this case, I think that we ought to certify that the case is a fit one for appeal to His Majesty in Council." Though Sir Lawrence Jenkins does not refer in his judgment to *Motichand v. Ganga Prasad Singh* 29 I.A. 40, that case was cited before him in the course of the arguments. See the report at page 416.) Again in *Sadagopa Chariar v. Krishnamoorthy* Row 4 A.L.J. 333 : 11 C.W.N. 585 : 9 Bom. L.R. 663, their Lordships of the Privy Council through Lord Macnaghten made the following pronouncement: The High Court refused leave to appeal on the ground that the matter in dispute was below the appealable value. Special leave, however, was granted on the representation that the appeal raised questions of law of general importance touching the rights of religious bodies in India in regard to public processions, and the right of one religious body to prevent a rival sect and an alien deity from invading precincts apparently public but devoted or appropriated from time immemorial to the observance of its own peculiar ritual and worship; and at the same time involved the consideration of the effect of previous decisions on similar questions between members of different sects of one and the same community." At page 190 their Lordships say: "Their Lordships may observe that it (the suit) does not seem to involve such far-reaching issues as were put forward in the petition asking for special leave to appeal."

4. I am, therefore, clear that unless in this case there is some substantial question of law of general interest involved, we ought not to certify that this is a fit one for appeal to His Majesty in Council, it being admitted that the case is below the appealable value.

5. In coming to a conclusion on the above question, I might be permitted to remark in the first place that neither myself nor my learned brother was a member of the Bench (Sir C. Sankaran Nair and Oldfield, JJ.) who decided the case of Tirumalai Eachambadi v. Royadurgam Krishnasami (1915) M.W.N. 281. Both these learned Judges are now on leave and one of them is not returning to this Court. This is rather unfortunate, as the applicants' learned Vakil interpreted the judgment of this Court as imposing more stringent restrictions on the actions and the rights of the applicants (defendants Nos. 2, 4, 5, 6 and 9) and of the Vadagalai sectarians represented by them than the law allows, while the "respondents" Vakil argued that the said interpretation of the judgment by the applicants' learned Vakil was inaccurate.

5. After hearing full arguments, I think that the learned Judges' decision involved the following findings and issues:

(a) The Vadagalai defendants are entitled to recite any portion of the Tamil Vtdas, called Prabhandham either at the time of the processions within the temple or at other places in the temple of Varadarajah Swami at Conjeeveram where the Thengalais do not carry on the worship. There is nothing in the law to prevent any Vadagalai from worshipping the deities consistently with the equal rights of other worshippers. There is nothing to prevent any Vadagalai from reciting any portion of the Prabandham separately and as an act of personal devotion. But it would be an interference in the regular poojah or worship within the temple between the time of its commencement (with the ringing of the bells) and its close (with the distribution of Thirtham and Prasadham) and it would be a violation also of the Tengelai plaintiffs' mirasi Adyapakam office right if the Vadagalais form a goshti or a congregation of their own and repeat a portion of the Tamil Vedas which is different from that portion of the Tamil Vedas which is being recited as a part of the regular temple worship by the Tengelai mirasidars during the time of such worship within the temple.

(b) That when a procession is taken along the public streets outside the temple according to the temple customary practice, that procession is a compact organised procession from the front portion of that procession, which begins at the spot in front of the carved image of the deity where the Tengelai miras office-holders recite in a congregation the Tamil Vedas, up to the point behind the vehicle of the image where the Vadagalai office-holders recite the Sanskrit Vedas.

(c) That the Vadagalais are entitled to join the Tengelai goshti reciting the Tamil Vedas and join that chanting with the Tengelai office-holders but should not chant a different portion of the Tamil Vedas (similarly as regards the right of the Tengelais to join the Vadagalais' Sanskrit Veda, reciting goshti in the rear-subject to similar restrictions).

(d) The Vadagalais should not, however, form an organised congregation or ghosti of their own between the front end and back end of the religious procession and chant the Tamil Vedas as a separate group, as that will be setting

up a rival right as against Tengelai miras office-holders and will be an interference with such rights, whereas the recital by an individual Vadagalai devotee of a stanza or stanzas in the Tamil Vedas is a bona fide devotional act of private worship even when he has joined the procession as an individual worshipper, and it would not be an interference with the congregational recitalled by the Tengelai miras officials.

(e) There is nothing to prevent the Vadagalais from even forming an organised goshti and reciting Tamil Vedas or anything they like at a reasonable distance in front of the Tengelai Tamil Veda-reciting coshti which begins the procession, or at a reasonable distance behind the temple procession which ends with the Sanskrit Veda-reciting goshti.

7. On these conclusions, the learned Judges (Sankaran Nair and Oldfield, JJ.) passed a decree modifying slightly the decree of the Court of first instance.

8. In this application for a certificate to appeal 28 grounds of attack are mentioned. But most of them are either general attacks or recitals of facts and repetitions and may be ignored. The only grounds, therefore, which need be set out are grounds 8, 9, 18 and 20, which are as follows:

8. The learned Judges have proceeded on the assumption that the right of any individual Vadagalai to worship the deity without interfering with others by the recital of any appropriate mantras or Prabhandhams, &c, in a temple is very different from the right to form a goshti or congregation of his own sect and recite anything different from the Prabhandams which are recited by the mirasidars. The learned Judges have not explained in what the difference consists. There can in law or in fact be no such difference provided the recitation in combination of a set of individuals does not cause any physical interference to the Tengelais reciting, such recital stands on the same legal footing as recital by any single individual or separate recitals by several separate individuals.

9. The learned Judges should have held that provided there is no physical disturbance to the performance by the Tengelais of Conjeeveram of their duty of reciting the Prabhandhams, there is nothing in law to prevent Vadagalais or any others from reciting as ordinary worshippers the Prabhandams or any other hymns as they choose at any time.

18. The learned Judges have dealt with the question as to the temple processions in the public streets as if they were Tengelai processions. They are clearly not Tengelai processions and it is not the Tengelais who carry the idol in the procession. On the other hand, they are temple processions common to all in which Tengelais are only entitled to join in Adhyapakam service.

20. The learned Judges seem to consider that the question in regard to the street procession in this suit was something different from the one which came up for decision in *Viyiaraghava Chariar v. Emperor* 13 M.L.J. 171, while in fact the question is in substance identical. The procession being a common procession in

which both Vadagalais and Tengarais and also all Hindus take part, the question is whether any recitation at a particular part of the procession can be an actual interference with the exercise of the Tengarais' right of joining and marching along in procession in front. On the other hand, the learned Judges have dealt with it as if the question were whether the Vadagalais were entitled to join in and form part of the procession, assumed to be a Tengarai procession.

9. The question is whether these grounds really arise out of the judgment and if so, whether they raise such substantial question or questions of law of general interest as would justify our issuing a certificate of fitness for leave to appeal to His Majesty in Council. After giving my best considerations to the matter, I have come to the conclusion that they do not raise any such questions. There seems, no doubt, to be some ambiguity of expression in two places in the judgment where the procession is spoken of as a Tengarai procession. I think that what the learned Judges meant was that that length of the procession which was occupied by the Tengarai Tamil Veda official reciters (who led the chant) and those worshippers who joined them might be referred to as the Tengarai procession. The decision in *Vijiaraghava Chariar v. Emperor* 13 M.L.J. 171 was given in a case which arose out of criminal proceedings and the valuable judgments given in that case have to be read in the light of the judgment of their Lordships of the Privy Council in *Sadagopa Chariar v. Krishnamoorthy* 4 A.L.J. 333. I am not satisfied that the learned Judges of this Court, whose decision is sought to be appealed against to the Privy Council, committed any error of law in their consideration of the due effect to be given to the decision in *Vijiaraghava Chariar v. Emperor* 13 M.L.J. 171.

10. Far from the questions being of general religious interest to the community, I am satisfied that the litigation is the result of the action of a small though influential faction of Vadagalai sectarians residing in Conjeeveram. The bigotry of this faction and the not less rigorous bigotry of a town have been responsible for the continuous Conjeeveram Temple litigation, which has never ceased from where it began from 60 years ago. The rights of general worshippers, if I may say so with respect, have been fully safeguarded by numerous other decisions and have not been, in my opinion, affected by any of the observations found in the judgment in question. It is only the claim of this faction among the Vadagalais to introduce innovations into the customary practices during the period of the regular official worship in the temple and into and within the organised processional body during the carrying on of the customary processions outside the temple and their attempts to create disturbance to the public peace that have been properly, if I may say so, restrained by the judgment.

11. The contentions of the applicants that they only rely on the rights of ordinary temple worshippers, that they are anxious to safeguard the rights of the general public using the public highways seem to me to be patent pretences. It seems to me, therefore, that no question of law of general interest is involved but only the question whether the Courts should encourage the never-sleeping ingenuity of a

certain temple faction, which is continually inventing fresh sources of Criminal and Civil litigation and new ingenious ways of interference with the exercise of temple office rights and discharge of temple office duties vested in the mirasi temple office-holders, who belong to the rival Tengalai sect. I would, therefore, dismiss this application for the grant of a certificate. The applicants will pay the respondents' costs.

Napier, J.

12. I entirely concur. I have nothing to add.