

(1953) 07 MAD CK 0010
In the Madras High Court
Case No : O.S. Appeal No. 96 of 1950

C. Ratnavelu Mudaliar

APPELLANT

Vs

Commr. for Hindu Religious and Charitable Endowments

RESPONDENT

Date of Decision : 17-07-1953

Acts Referred:

Madras Hindu Religious Endowments Act, 1926 — Section 9(12)

Citation : AIR 1954 Mad 398 : (1955) ILR (Mad) 241 : (1953) 66 LW 944 : (1953) 2 MLJ 574

Hon'ble Judges : Rajamannar, C.J; Venkatarama Aiyar, J

Bench : Division Bench

Advocate : T.A. Ramaswami Reddi, for the Appellant; M. Seshachalepathi, for the Respondent

Final Decision : Dismissed

Judgement

Venkatarama Aiyar, J.—The point for decision in this appeal is whether an institution known as the Apparswami Pagoda situated in

Mylapore is a temple as defined in Section 9(12), Madras Hindu Religious Endowments Act. The appellant is the hereditary trustee of the

institution. His contention is that it is only a Samadhi or tomb of one Apparswami and not a temple. The Hindu Religious Endowments Board held

an enquiry u/s 84(1) and passed an order on 1-4-1947 that it is a temple as defined in the Act. The appellant applied in O. P. No. 200 of 1947 on

the Original Side of this Court to set aside that order. The matter was heard by Krishnaswami Nayudu J. and after an elaborate enquiry, he agreed

with the Board that the institution was a temple as denned in the Act and dismissed the petition. This appeal is presented against this judgment.

2. The case for the appellant is that there was a person called Apparswami

belonging to the Vanibar community, that he was buried in this place, that one Chidambaraswami built about 1852 a tomb for him, that Guru pooja is being regularly performed for him and that it is a samadhi and not a temple.

3. It is common ground that it was Chidambaraswami who founded this institution. There is abundant evidence that this institution was regarded by him by the succeeding trustees and By the public as a temple. Exhibit P-7 is a grant made by the Government in favour of Chidambaraswami on 7-

8-1860. Therein, Chidambaraswami is described as the founder of the Apparswami pagoda and not of the Apparswami Samadhi. Exhibit P-1 is

the will executed by Chidambaraswami on 4-5-1871. He therein describes himself as the sole owner and dharmakarthā of the Apparswami

pagoda and as residing in an put-house attached to the said pagoda. He appointed two executors and vested in them all furniture belonging to the

said pagoda and other properties in trust for the said pagoda. They were directed to perform and celebrate all charities connected with the said

Apparswami pagoda including periodical pooja, utsavams, and other celebrations according to Vedanta Sastra or mamool. It may be noted that

the Samadhi is not even referred to in this will. Two persons, Ratnavelu Mudaliar and Annamalai Mudaliar were appointed executors under the

Will. Probate of this Will was obtained and Ratnavelu Mudaliar entered on his duties as trustee under this will. Annamalai Mudaliar having

predeceased him, he continued as the sole trustee, and he was succeeded by his son Doraivelu Mudaliar. The present appellant is the younger

brother of Doraivelu Mudaliar and has succeeded to the trusteeship after the lifetime of his brother.

4. In 1921, two persons, Krishnaswami Mudaliar and Narayanaswami Chetti styling themselves as worshippers of the Apparswami Koil filed a

suit u/s 92, Civil P. C., C. S. No. 480 of 1921, for removing Doraivelu Mudaliar from trusteeship on the ground that he had committed various

breaches of trust. The suit was contested by the defendant. He did not claim that the institution was not a public temple which would have been a

complete answer to the suit, if that were the fact. On the other hand, he admitted that the temple was constructed about the year 1855 to

consecrate the memory of one Apparswami, a Saivite Saint and that he had been

acting as trustee under the Will of Chidambaraswami and that he had not committed any breach of trust. The suit was heard by Kumaraswami Sastri J. He held that Chidambaraswami had constructed the building out of the funds raised by him and that the defendant was not guilty of any breach of trust.

One charge made against the defendant was that he had denied access to the temple to members of the public and the learned Judge held that

there was no truth in this charge, that the temple was being kept open to all reasonable hours for worship by the public and that the pooja was

being regularly performed. Another charge levelled against the defendant was that he had failed to maintain regular and proper accounts. The

defendant in fact produced accounts and the learned Judge held that there was no substance in the objection. A perusal of the record in C. Section

No. 480 of 1921 clearly shows that both the trustees and the public proceeded on the footing that it was a temple which the public had a right to

use as a place of religious worship.

5. In 1946, the Hindu Religious Endowments Board called for reports on the structure and the constitution of the building. Exhibits R-2 and R-3

are the reports submitted by the office. These reports show that the building has got all the normal features of the temple, that it has got Prakaram,

Dhwajastambam, Balipeetam and Nandikeswara, and there are shrines for Bhairavar, Kasi Visalakshi, Chandikeswara, and other deities. There is

a 16 pillared mandapam and there are gopurams all over the shrine, It also appears from the evidence now adduced that festivals are being

regularly performed, the deity is taken in procession, and archanas are performed by the worshippers. On these materials the only conclusion

possible is that the institution has for a long period come to be regarded as a place of religious worship, which the public are entitled to use as a

matter of right, and this being so the institution will be a temple as defined in Section 9(12), Madras Hindu Religious Endowments Act.

6. Mr. K. Rajah Aiyar, for the appellant, argues that at the inception there was only a Samadhi constructed by Chidambaraswami, that a lingam

was installed only as an adjunct to it, that the installation of other deities like Lord Subramania, and performance of utsavams for them were recent

introductions and that they could not convert what was originally a tomb into a

temple. It was also strongly contended that Guru pooja which is the worship of a human being would be put of place in a temple dedicated to the worship of Gods and that as the evidence establishes that Gurupooja was being regularly performed, it must be held that the institution has retained its original character as a Samadhi and that worship of deities like Lord Subramania must be taken to be an adjunct to the worship at the Samadhi.

He relied on the decision of this Court in -- " Veluswami Goundan Vs. Dandapani by next friend and mother Govindammal and Others, . There one Ramaswami Gounden had executed a deed marked as Ex. P-3 conveying certain properties for carrying on worship at a tomb to be erected over his father, Marappa Gounden. The document provided that a temple should be built over it and neivedyam offered to it. The question was whether this deed was valid. The contention in support of the deed was that there was a distinct dedication for a temple, and to that extent the deed was valid. Overruling this contention, Patanjail Sastri J. as he then was, observed as follows:

In the first place, there is no reference in the deed to any Sivalingam installed in the so-called temple, and although the photograph, Ex. D-2 series, show the existence of a Sivalingam there, it appears from the evidence of the appellant that the Lingam was brought from Kasi and installed there sometime in 1937 when the earliest photo Ex. D-2 was taken. The daily worship and offering of neivedyam said to have been conducted by Ramaswami Gounden before the execution of the deed in September 1936, could, therefore, be taken to have related only to the Samadhi of his father. It is indeed admitted by the witnesses called for the appellant that the pooja is done to the Samadhi. As, however, we are of the opinion, for the reasons already indicated that the "temple" was not intended to be an independent object of bounty but is only an adjunct of the Samadhi, the whole dedication fails.

Thus, the basis of the decision was that there was only one gift, and that was to the Samadhi, and everything else was subsidiary to it.

But what are the facts here? There is no evidence here about the scope and nature of the foundation of the Samadhi. On the other hand, it is clear from Ex. P-1, the will, that the temple was regarded as the main institution. The evidence also clearly establishes that the worship of the deity was

considered as the main object of this institution and that the performance of the Gurupooja was a subsidiary matter. On the facts, therefore, the

decision in -- Veluswami Goundan Vs. Dandapani by next friend and mother Govindammal and Others, " is inapplicable. Moreover, the point for

decision in that case was whether a bequest for the purpose of maintaining pooja at a Samadhi was valid, and the decision was that it was a gift for

superstitious purposes and that it was in consequence void. In this case, no question arises as to the validity of a disposition in favour of the

institution. The only point for decision here is whether an institution which is a temple as defined in Section 9(12) of the Act can be held to fall

outside it, if it is shown that it had its origin in a Samadhi and that it continues to retain traces of its origin.

In -- T.R.K. Ramaswami Servai and Another Vs. The Board of Commissioners of the Hindu Religious Endowments, , Viswanatha Sastri J,

observed at page 489 that what were originally memorials for heroes or martyrs had subsequently developed into temples and that they had been

recognised as temples and at the least that is the position here, Even if the institution in question had its origin in a tomb, it is undeniable that for

nearly a century it has come to be recognised as a temple. The fact that Gurupooja is being performed and that it is not in consonance with

orthodox notions of religious practice is again not a ground for holding that the institution is not a temple if it falls within the definition of a temple

under the Act.

In this connection, the following observations of Varadachariar J. in -- " The Board of Commissioner for the Hindu Religious Endowments Vs.

Pidugu Narasimham and Others, may be quoted:

That what the evidence in this case describes as taking place in connection with the institution is public worship can admit of no doubt. We think it

is also religious. The test is not whether it conforms to any particular school of Agama Sastras; we think that the question must be decided with

reference to the view of the class of people who took part in the worship. If they believe in its religious efficacy, in the sense that by such worship,

they are making themselves the object of the bounty of some superhuman power, it must be regarded as religious worship.

As already mentioned, the facts established are that the trustees and the public

have for a long period regarded this institution as a place of religious worship which the public is entitled to use as a matter of right. That brings it within the definition of a temple in Section 9(12), Madras Hindu

Religious Endowments Act.

7. We accordingly agree with the judgment of Krishnaswami Nayudu J. and dismiss the appeal with costs.