
(1992) 10 AP CK 0013
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 126 of 1981

Commissioner, Andh. Pra. Charitable and Religious Institutions and Endowment Dept., Hyderabad and another

APPELLANT

Vs

Vijendra Kumar and others

RESPONDENT

Date of Decision : 27-10-1992

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966
— Section 2, 2(26)
Evidence Act, 1872 — Section 114

Citation : AIR 1993 AP 55 : (1993) 1 ALT 213

Hon'ble Judges : Immaneni Panduranga Rao, J

Bench : Single Bench

Advocate : A.G, for the Appellant; M.S.K. Sastry, for the Respondent

Judgement

1. The defendants are the appellants in this appeal. The respondents filed a suit for declaration that the order of the Deputy Commissioner, Endowments, Guntur, dated 28-2-1977 in O.A. No. 66/75 holding that the Hanuman Temple situated at Bade Chowdi, Sultan Bazar, Hyderabad (hereinafter referred to as the Temple") is a public temple, is null and void, inoperative and that the entry dated 11-11-1342 Fasli registering the temple in the Books of Endowments and the subsequent publications made are null and void, unauthorised, illegal and not binding on the plaintiffs.

2. The case of the plaintiffs in brief is that their grand-father, Ram Harak Tiwari has purchased the site on 18-12-1302 Fasli from one Kondaiah under Ex.A-42, sale deed, constructed a super-structure with tin roof, which is used as his residence and has installed Hanuman idol in the said premises bearing No. 170, Residency Bazar, Hyderabad, which is now re-numbered as Municipal No. 4-2-123, Sultan Bazar, Hyderabad. According to the plaintiffs, the plaintiffs' grandfather during his lifetime and after his death the plaintiffs' father Gorakhnath Tiwari performed pooja and that after the death of plaintiffs' father the plaintiffs are performing the pooja since 1969 and are managing the temple;

they have re-modelled and re-shaped the super-structure by replacing R.C.C. roof with the permission of the Municipal Corporation of Hyderabad.No donations were collected and no offerings are accepted from the public and the temple has not been dedicated to the public. Therefore they claim it to be a private temple, but not a public temple. Consequently they pray for a declaration that the decision of the Deputy Commissioner, Endowments, Guntur, dated 28-2-1977 in O.A. No. 66/75 is erroneous and is liable to be set aside.

3. The defendants opposed the suit by pleading that the grandfather and father of the plaintiffs and the plaintiffs are only the poojaris of the temple; they have no rights in the temple; that large number of devotees daily visit the temple and worship the deity; that the temple is not used as a residential place and that therefore it is a public temple as defined u/S. 2 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act (hereinafter referred to as the "Act*"). They denied the allegation that the plaintiffs have constructed the temple with their personal monies and that they are in management of the temple as poojaris. Since the temple was entered and registered in the Book of Endowments as long back as in 1342 Fasli in pursuance of which Munthakab has been issued and has been duly published in the Hyderabad District, they contend that the order of the Deputy Commissioner Endowments, Guntur in O.A. No. 66/75 is perfectly-correct and the suit is liable to be dismissed.

4. The learned Chief Judge, City Civil Court, Hyderabad on a consideration of the oral and documentary evidence adduced before him, came to the conclusion that the Hanuman temple in question is a private temple, but not a public temple and therefore the order of the Deputy Commissioner, Endowments, Guntur, dated 28-2-1977 passed in O.A. No. 66/75 is liable to be set aside. The Chief Judge further held that till 1965 the Endowment Department did not bother about the supervision of the temple and the plaintiffs admittedly continued to treat the suit property as their private property by paying the Municipal tax and remodelling the structures in the temple after getting due permission from the Municipal authorities and therefore the entry in the Book of Endowments made on 19 Mehar 1345 Fasli as a public temple, is null and void. Basing on those findings the learned Chief Judge has decreed the suit as prayed for. Challenging the said decision, the defendants have preferred the above appeal.

5. Sri Krishna Kowndinya, the learned counsel, representing the learned Advocate General argued that the plaintiffs' contention that the temple is located in the residential premises of the plaintiffs' family is denied; that the temple is located on foot-path but not on private property; that large number of devotees attend and offer prayers without obtaining the permission and without restrictions; that there is ample evidence that Utsavams are performed and that therefore the temple has got all the necessary ingredients of a public temple. Therefore he argued that the order of the learned Chief Judge is liable to be set aside. The learned counsel for the respondents plaintiffs, on the other hand, argued that there is a clear finding that the site was purchased by the

grandfather of the plaintiffs under Ex.A-42, an un-registered sale deed, executed in 1302 Fasli; that the plaintiffs' grandfather has constructed a house and has installed the idol of Hanuman in his residential premises; that House No. 170 was originally allotted to the house and that various facts of ownership and possession as disclosed in the evidence clearly establish that the temple is a private temple but not a public temple. He further submitted that merely because the neighbours happen to visit the temple and offer prayers it does not convert the temple into a public temple in the absence of clear proof of dedication.

6. On the grounds urged and the arguments addressed before me, the only point that arises for consideration in this appeal is;--

"Whether the Hanuman Temple situated at Bade Chowdi, Sultan Bazar, Hyderabad is a public temple or a private temple?"

7. The Point:-- It is no doubt true that Ex.A-42 shows that an extent of 150 sq. yards, including a room and the adjacent land was purchased by Ram Harak Tiwari for a consideration of Rs.95/-. Though the document recites that the property conveyed there: in includes a room, the door number is not mentioned therein. From the mere fact that the property conveyed under Ex.A-42 is described as located in the Residency, Sultan Bazar, it cannot be said that the document relates to the property in which the temple is located i.e. either old Door No. 170 or present Door No. 4-2-123.

8. The oral evidence adduced by the plaintiffs is that of the 1st plaintiff as P.W. 1. P. W. 2, is the resident of Badi Chowdi, P.W. 3 a resident of Sultan Bazar and P.W. 4, who is a retired member of the Board of Revenue, Hyderabad. The evidence of P.Ws. 2 and 3 is that people visit the temple only with the permission of P.W. 1. P.W. 4, who is a retired member of the Board of Revenue, Hyderabad deposed that he knows the plaintiffs' family and the temple from a long time; that he is a constant visitor of the temple and that the entry into the temple was with the specific permission of the plaintiffs' family. P.W. 4 further deposed that while he was in service, he passed an order that the Endowment Department should not interfere with the temple as it is the private property of the Tiwari family. In the cross-examination he admitted that during the period he was the in-charge member of the Endowment Department, Sri Raja Triambaklal was the Director of Endowment Department. He stated that the order for non-interference by the department in the temple affairs was passed by him on an application by a member of the Tiwari family. He does not remember that any official of the Endowment Department was present when he passed the said order. The order passed by P.W. 4 in favom of the temple is thus behind the back, of the Endowment Department and does not bind the department. At any rate, the said order has not been marked as an exhibit. The very fact that P.W. 4 who was not the Director of the Endowment Department has passed an order on an application received from the Tiwari family shows that he is interested in the plaintiffs and no weight can be attached to his oral testimony. He further deposed

that the plaintiffs' family never took any offerings.

9. This evidence of P.Ws. 2 to 4 is contradicted by the oral evidence of D.Ws. 1 to 4. D.W. 1, a practising advocate, who resides at a distance of about 200 yards from the temple deposed that he is a regular visitor of the temple; that it is situated in a public place and can be visited by one and all; that he saw a number of other devotees visiting the temple; that P.Ws. 1 to 3 are the Poojaris of the temple; that the poojaris reside opposite to the temple; that every year Hanuman Jayanti is performed and that there is a temple car attached to the temple. D.W. 2, who is a gold-smith residing at Sultan Bazar and D.W. 3, who resides opposite to the temple corroborated the evidence of D.W. 1. The evidence of D.W. 4, who is another resident of Sultan Bazar and who regularly visits the temple on Saturdays and offers coconuts after pooja, establishes that money is being collected for performing poojas like Ashtotharana-marchana and Sahasranamarchana at Rs. 4/- and Rs. 8/- respectively; that no permission is necessary to visit the temple and that Hanuman Jayanti is performed by taking the idol in a procession. The evidence of D.Ws. 1 to 4 thus establishes that the public visit the temple in their own right without any permission from the plaintiffs and that some charges are also collected by the plaintiffs for performing Ashtotharanamarchana and Sahasranamarchana. It is also established by their evidence that the temple owns a car which is used for taking Hanuman idol in a procession and that Hanuman Jayanti is performed every year. The evidence of D.W. 2 shows that on every Saturday about thousand devotees worship in the temple.

10. From the judgment of the lower court it appears that the learned Chief Judge has been "carried away by the fact that the plaintiffs and their predecessors have obtained sanctioned plans from the Municipal Corporation of Hyderabad for re-modelling the building from time to time. Ex.A-6 is the plan sanctioned by the Municipality in 1969 with regard to the drainage arrangements. The other piece of documentary evidence which appears to have influenced the mind of the learned Chief Judge is the prior litigation between the plaintiffs or their father on one hand and their neighbours on the other in which a dispute was with regard to a common passage and the compromise entered into by the parties. The third circumstance which seems to have influenced the mind of the learned Chief Judge is Exs. A-15 to A-21 and A-37 to A-40, tax receipts and bills evidencing payment of property tax and Exs. A-20 to A-38, electricity bills and receipts in respect of electricity consumption charges and installation charges of meter for the suit premises of the residence of the plaintiffs. Basing on the above evidence the learned Chief Judge concluded that the suit property was originally purchased by the grandfather of the plaintiffs Ram Harak Tiwari; that he installed an idol in the premises; that the family members of Ram Harak Tiwari continued to perform pooja to the idol and that at no time the Endowments Department exercised their authority over the temple.

11. But in arriving on that finding the learned Chief Judge has overlooked the

fact that the public are visiting the temple and are offering prayers to the Deity and that they were even giving offerings by way of Dakshina and coconuts. Even the plaintiffs admit that the public were visiting the temple, but they contend that they were doing so with their permission. The learned Chief Judge in i para 17 of his judgment did not disbelieve the contention of the defendants that the public were entering the temple in large numbers and were offering prayers and that they were also offering coconuts and Dakshinas. The learned Judge held that assuming it to be so, it would not convert a private temple into a public temple because the owner of a private temple, for sentimental reasons, cannot object anybody entering into the premises and offering prayers to the Deity.

12. That finding of the learned judge that the fact of considerable number of public v(siting the temple and the plaintiffs not objecting for such entry, does not convert a private temple into a public temple, is not correct. This, in fact, is one of the main tests to determine whether a temple is a public temple or a private temple.

13. A Division Bench of the Madras High Court in Sri Chidambareswara Sivagami Ambigai Temple Vs. Commissioner, Hindu Religious and Charitable Endowments, Madras, held that there is a presumption that temples in South India are public and the onus of proof is on the party asserting its, private nature to prove that it is a private temple. The test laid down by the learned judges to determine whether a temple is a public temple or a private temple is to show whether the members of the community worship in the temple as of right. Another Division Bench of the Madras High Court in Nanjappa Chettiar v. Commr. H.-R. & C.E (1966) 1 M LJ 149 held that the well known tests to decide whether a temple is a private temple or public one is to see whether the temple is located inside a private house or a public building, whether the idols are permanently installed on pedestals inside the temple, whether there are permanent archakas appointed for performing puja in the temple, whether the deity is taken out in public in procession periodically and public make offerings on that occasion.

14. The Supreme Court in Deoki Nandan Vs. Murlidhar, , held that the distinction between a private and a public endowment is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. In that case the learned judges of the Supreme Court observed that the performance of ceremonies at the consecration of the temple (Prathista), the user of the temple and other evidence in the case showed that the dedication was for worship by the general public. The decision of the Supreme Court shows that there need not be a specific dedication of the temple in favour of the public and such dedication can be inferred from the user of the temple and the worship of the general public in their own right without the permission of the plaintiffs.

15. Their Lordships of the Supreme Court in Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others, held that the fact that the temple had the appearance of jhe residential house does not in any manner militate against the

contention that the temple in question is a public temple. In that case it was established by evidence that the public were asked to enter the temple only after the Maharaj had finished his worship. Their Lordships held that even that circumstance is of no consequence in determining whether the temple is a public temple or a private temple. According to their Lordships, the above usage pleaded by the appellant in that case was not inconsistent with that temple being the public temple. Though an attempt was made to prove that certain individuals were forbidden from entering into the temple, the learned judges of the Supreme Court observed that such a plea was not satisfactorily established and that the evidence was only that certain individuals were kept out of the temple because of some act of indiscipline on their part. Relying upon the overwhelming evidence that the members of the public are entitled to worship in the temple as of right, the learned judges came to the conclusion that it is a public temple.

16. A Division Bench of this Court in *E.G. Anjaneyaswami Temple v. L. N. Murthy* (1978) 1 A LJ 359 held that in order to determine whether a particular temple is a public one or not what is material is, whether the temple is for public religious worship and whether it is for the benefit of or used as of right by the Hindu community or any section thereof. Applying these tests to *Sri Anjaneyaswamivari Temple at Maddur*, the learned judges came to the conclusion that it is a public temple.

17. Applying the tests laid down in the decisions referred to above by the appellants to the facts of this case, it is clearly established by the evidence of D.Ws. I to 4 that the public enter the temple as a matter of right on every day and at all times; that especially, "on, Saturdays there is heavy congregation at the temple numbering about a thousand devotees, that the devotees offer coconuts and Dakshina and that the plaintiffs collect charges for performing Asthothara and Sahasranama pujas. The above facts disprove the contention of the plaintiffs that the premises in question is only a puja room of the plaintiffs' family but not a temple. On the other hand, there is overwhelming evidence that the public exercise their right of entry into the temple as of right and without the permission of anybody in general or the plaintiffs in particular.

18. To contradict the decisions referred to by the learned counsel for the appellants, the learned counsel for the respondents has relied upon a decision in *Hari Bhanu Maharaj of Baroda Vs. Charity Commissioner, Ahmedabad*, . The point for decision in that case is whether Laxman Maharaj Math or Ramji Mandir, Baroda is a private property or the public temple. On the facts established in that case the learned judges no doubt held that the burden of proving that the math is a public trust is on the department. That is a case arising under the Bombay Public Trusts Act. The provisions of that Act are not placed before me to show whether the statute lays down that the burden of proof should be on the department when an application is filed u/S. 18 of that Act for declaration. Whatever may be the position of Maths and Temples situate in the State of Gujarat, so far as the South Indian States are concerned, as held by the Division

Bench of Madras High Court in Sri Chidambareswara Sivagami Ambigai Temple Vs. Commissioner, Hindu Religious and Charitable Endowments, Madras, , there is a presumption that the temples in South India are public and the onus of proof is on the person asserting it to prove that it is a private temple. Therefore the observation of the Supreme Court does not apply to the temple in question which is situated in South India. That apart in that case paragraph 11 shows that the family was residing in a part of the premises adjoining the room wherein idols are installed. The learned Judges of the Supreme Court observed that whenever a dispute arises as to whether a Mandir is a public or a private temple-, one of the features to be taken into consideration by the Court for deciding the issue is the location of the Mandir with reference to the residence of the persons claiming rights of private ownership. Their Lordships have found as a fact that the Mandir which is the subject-matter of dispute before their Lordships is within the precincts of residential quarters of the appellants which fact was not given due consideration by the High Court. Moreover it is also established in that case that the devotees were not visiting the temple all through the year, but only during the festival of Ram Navami. Basing on that fact the learned Judges observed that public come to the Mandir only on invitation, but not as a matter of right. It is in those circumstances that the Supreme Court on the facts of that case held that the Mandir of Laxman Maharaj is a private temple.

19. The above decision of the Supreme Court depends upon the facts of that particular case. From the mere fact that as evidenced by Ex. A-44 it is shown that G. N. Tiwari, the father of the plaintiffs was issued a licence under the Motor Vehicles Act describing his address as H. No. 170, Sultan Bazar, one cannot necessarily reach to the conclusion that he was actually residing in that premises. Being a Poojari of the temple it is quite possible that while applying for licence under the Motor Vehicles Act he has given that address for issue of licence. That does not clinchingly establish that H. No. 170 is his residential premises.

20. The evidence of P. W. 1 that the plaintiffs are residing in a portion of the temple premises is contradicted by the evidence of D.Ws. 2 and 3 to the effect that the plaintiffs were residing in different premises, but not in the temple. The facts established by D:Ws. 1 to 4 that Utsavams like, Hanuman Jayanti are performed and that the idol of Hanum is taken in procession in the temple car and the fact that thousands of devotees who visit the temple especially on Saturdays, perform Asthotharanamarchana and Saha-sranamarchana on payment of Rs. 4/- and Rs. 8/- respectively amply establish that the beneficiaries of the temple are the people belonging to Hindu community in general, but not the members belonging.to the plaintiffs" family only.

21. The mere fact that the plaintiffs! obtained permission from the Municipality and made alterations from time to time and paid property tax to the premises does not show that it is a private temple. It may be true, as observed by the learned Chief Judge, that being a public temple the plaintiffs might have claimed

exemption from payment of property tax. That is a right vested in the plaintiffs to have claimed such an exemption from the property tax and the mere fact that they have not exercised that right by claiming exemption from the payment of property tax does not take the temple away from out of the character of, a public temple. The payment of electricity charges by the plaintiffs is not relevant to determine whether the temple is a public temple or a private temple.

22. It is brought out in the evidence that as long back as in 1345 Fasli the suit premises was entered in the Book of Endowments as evidenced by Ex. B-6. It is stated in Column No. 14 that the entry was made as per the orders of the Minister for Religious Affairs and by virtue of the proceedings of the Secretary for Home, the said entry was made in the Book of Endowments. The learned counsel for the appellant tried to attack that entry by arguing that no notice was given to the predecessors of the plaintiffs before making that entry. There is no such allegation in the plaint. Whatever it is, the said entry was made by virtue of an official act and illustration (e) to S. 114 of the Evidence Act empowers the Court to draw a presumption that the official acts have been regularly performed. It is, therefore, not open to the learned counsel for the respondents to challenge the said entry on the ground that notice was not given to the predecessors of the plaintiffs before making that entry.

23. From the above discussion and relying upon the decisions referred to above I find on this point that the Hanuman temple is a public temple, but not a private temple as held by the learned Chief Judge, City Civil Court, Hyderabad.

24. The appeal is accordingly allowed setting aside the judgment and decree of the learned Chief Judge, City Civil Court, Hyderabad in O.S. No. 58/87 and declaring that Hanuman Temple situated at Bade Chowdi, Sultan Bazar, Hyderabad is a public temple. I direct the each party to bear its own costs.

25. Appeal allowed.