

(1999) 08 MAD CK 0011
In the Madras High Court
Case No : Appeal Suit No. 1029 of 1985

D. Ravi and Others

APPELLANT

Vs

S. Vellathan and Another

RESPONDENT

Date of Decision : 10-08-1999

Acts Referred:

Specific Relief Act, 1963 — Section 42

Citation : (1999) 08 MAD CK 0011

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : T.P. Manoharan, for the Appellant; S. Mahimai Raj for R1 and Mr. S. Sabari Perumal for R2, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajan, J

1. The first respondent/plaintiff filed a suit in O.S.No.25 of 1984 on the file of the second Additional Subordinate Judge, Pondicherry, to pass a

decree declaring that the plaintiff is the absolute owner of the immovable properties in the school premises and has absolute right in the

administration of the school and in the school premises by name King Solomon English School at Kadirkaman, that for permanent injunction

restarting the defendants 1 to 3 and their henchmen from entering with the administration of King Solomon English Medium School at the schedule

mentioned premises and for costs. It is the case of the plaintiff that the said school was organised in the year 1981. On 1.7.1981, the defendants 1

and 4 and one Chandrasekaran entered into an agreement to run the said school. Under the deed of partnership, the fourth defendant was

appointed as the Manager and correspondent of the school. On 16.8.1981 the

said Chandrasekaran retired from the partnership and subsequently on 21.9.1982 the said partnership was dissolved by executing a document between the first and fourth defendant and thereby the fourth defendant has become the absolute owner of the properties and exclusive administrative control over the school.

2. The fourth defendant on 9.11.1982 sold the ownership in the said institution to the plaintiff. Simultaneously, the fourth defendant had executed a release deed in favour of the plaintiff with respect to his executive right in favour of the plaintiff. Subsequently, the fourth defendant executed another document in favour of the first defendant, but it was obtained illegally under threat and duress of the defendants 1 to 3. According to the plaintiff, they have been in possession and control over the school and the first defendant with the help of defendants 2 and 3 try to trespass into the school and therefore the plaintiff has filed the suit.

3. The first defendant filed a written statement and contested the suit. It is the case of the first defendant that the fourth defendant while deciding to dissolve the partnership agreed to relinquish his right in favour of the plaintiffs after getting Rs.2500/- and a document was also entered into to that effect. Ultimately, the first defendant purchased the right of the school on 13.3.1983. On that basis, the first defendant claims that the plaintiff is not entitled for any relief sought for in the suit.

4. The trial Court framed as money as five issues and found that Ex.A3, the dissolution deed in favour of the plaintiff is valid and the fourth defendant was the absolute proprietor of the school subsequent to the dissolution, the plaintiff is administering the school cannot be correct.

Consequently, the trial court granted the decree only with reference to the declaration aspect and with respect to the prayer for injunction to lower court rejected the suit. The trial Court also gave liberty to the plaintiff to file a suit for recovery of possession. The defendants 1 and 3, aggrieved by the decree declaring the plaintiff's right to administer the school, the above appeal has been filed.

5. It is not in dispute that the plaintiff/1st respondent filed the suit for declaration and for injunction. Though the defendants took the specific plea that they are in management of the said school, the plaintiff did not take any steps to amend the prayer, namely for recovery of possession. The

plaintiff had taken the risk and ultimately the trial Court found that the 1st defendant was in management of the said school at the time of filing the

suit and so the plaintiff is not entitled for the decree for perpetual injunction, though the plaintiffs ownership over the movables and his right to

administer the said school has been declared by the trial Court.

6. On that basis the learned counsel appearing for the appellants/defendants 1 to 3 has submitted that when the plaintiff/1st respondent had taken

the risk and not amended the prayer for possession and when the trial Court has come to the conclusion that the 1st defendant is in management of

the said school, the trial Court ought to have dismissed the suit as not maintainable as there is no prayer for possession. I find some force in the

said argument.

7. The plaintiff who is asking to declare his right to the office and who is not in possession of the said school by reason of Section 42 of the Specific

Relief Act, shall be non-suited. I seek support from the full bench decision of this Court in Kandaswami Thambiran Vs. Vagheesam Pillai,

wrongfully styling himself as Ponnambala Desikar, In the said case, the plaintiff tiled the suit for declaration that the 1st defendant is not entitled to

be in office mentioned therein and is entitled to its head ship or at least to be in charge of the math. The plaintiff sought for perpetual injunction

against the 1st defendant. When the case was taken up, in view of the conflicting judgments of this Court in Rathnasabapathi Pillai v.

Ramaswamiyer, 33 Mad. 4525 I.C. 630 = 20 M.L.J 301 = (1910) M W N 112, and in Swaminatha Iyer v. Ramier, 4 M L J 671 = 20 L.W.893

=(25) 12 AIR 1925 Mad 421 = 80 I C 1053, the matter was referred to Full Bench. The full Bench approved the judgment in 33 Mad 452 as

rightly decided and held judgment in 47 M L J 671 = 20 L.W.893 was not. In the judgment in 33 Mad 452, a trustee of a temple who had been

ousted by this co-trustees sued for a declaration that his dismissal from trusteeship was invalid and for an injunction restraining his co-trustees and

the temple committee from interfering with the exercise of his right as a trustee. No consequential relief is sought for in the nature of an order for

possession against the co-trustees. While dealing with the said case, it was held that the suit was not maintainable. While dealing with the same, the

Full Bench of this Court has held as follows:-

In the face of these decisions it is not feasible to accept the judgment in 47 M L J 671 in preference to that in 33 Mad 452. Moreover it has to be

borne in mind that it is not possible to separate the office from the properties which form the endowments of the office. This has been very clearly

laid down by the Privy Council. In 23 Mad 271 (1900) 23 Mad 271; 27 I A 69: 10 MLJ 29: 7 Sar 671 (PC), Ganana sambanda

Pandarasannadhi v. Velupandaram which concerned the right to the office of trustee of a certain temple, Sir Richard Couch in delivering the

judgment of the Board said: Their Lordships are of opinion that there is no distinction between the office and the property of the endowment. This

was emphasised by Lord Shaw in delivering the judgment of the Board in 43, Cal 707, ('16) 3 AIR 1916 P C 256 : 33 I C 583 : 43 Cal to 707

43 I A 73 (P C) Ram Prakash Das v. Anant Das. When referring to the position of a Mahant Lord Shaw said:

He sits upon the gadi, he initiates candidates into the mysteries of the cult he superintends the worship of the idol and the accustomed spiritual rites;

he manages the property of the institution; he administers its affairs; and the whole assets are vested in him as the owner thereof in trust for the

institution itself.

In delivering the judgment of the Privy Council in I L R (1940) 1 Cal 266, ('40) 27 AIR 1940 P C 24 185 1C 616 : I L R (1940) 1 Cal. 266 :

ILR (1940) Kar P C 47 : 67 I A 32 (P C), Satish Chandra Giri v. Dharni Dhar Singha. Mr. Jayakar quoted this passage from the judgment of

Lord Shaw and went on to say:

The two capacities are thus closely intermingled and a proper and efficient discharge of the one depends on the control of the other. The mahanta

must have authority over the funds and income of the institution to be able to discharge his religious duties efficiently, in conformity with the

customary and traditional obligations of the office and to the satisfaction of those who claim the benefit of the worship. He necessarily enjoys large

patronage in the discharge of his religious functions. He cannot, in consequence, depend, for the due performance of such duties, on the mercy or

caprice of another functionary, with separate or co-ordinate authority over the funds of the institution. Any division of the two capacities would

lower his prestige, as also impair the efficiency of his religious functions.

Here the appellant is endeavouring to separate the office from its endowments. This he clearly cannot do and as he is asking for a declaration of his

title to the office and is not in possession of its properties he must by reason of S.42, Specific Relief Act, ask for possession. His failure to do so

vitiates his suit. It may be regrettable that a person who has been ousted wrongly from an office and the control of the properties attached to it

should be required to pay a court-fee based on the value of the properties before he can file a suit to remedy the wrong, but the Court cannot take

such hardship into consideration when deciding the effect of S.42, Specific Relief Act. When a court fee fixed by the Court fees Act is unfair, it is

for the Legislature to interfere. The Court cannot do so. We consider that 33 Mad 452 was rightly decided and that 47 M L J 671 was not.

Consequently the answer which we give to the reference is that the present suit cannot be maintained by reason of the fact that the plaintiff has

failed to ask for possession of the math properties"

8. The Apex Court had an occasion to deal with similar issue in Ram Saran and Another Vs. Smt. Ganga Devi, . and in Vinay Krishna v. Keshav

Chandra, AIR 1993 S.C. 1957 In these decisions, the Apex Court has come to the conclusion that where the defendant is in possession of some

of the suit properties and the plaintiff in his suit does not seek possession of those properties but merely claims a declaration that he is the owner of

the suit properties, the suit is not maintainable.

9. S. Thangaraj., J., in S.A.Nos. 192 and 193 of 1984, and myself in S.A.No. 931 of 1984 took the similar view. In view of the above finding that

the defendants 1 to 3 are in possession and enjoyment of the said school, the plaintiff/1st respondent should have taken steps to amend the plaint

before the trial Court for recovery of possession. But, unfortunately, the plaintiff did not do so. When the suit itself is not maintainable, the question

of giving liberty to the plaintiff to file a suit for possession will not arise. So, the plaintiff cannot take advantage of the relief given to him by the trial

Court to file a suit for possession and submit that the plaintiff can file a suit even now. Since the suit itself cannot be maintained in view of the

abovesaid decided cases, I am not inclined to go into the question regarding the plaintiff's entitlement to file a suit for possession, as suggested by

the trial Court. In view of the above reasonings, the judgment and decree of the

trial Court cannot be sustained. Hence they are set aside, on the ground that the suit is not maintainable. Consequently, this Appeal is allowed. No costs.