

**(1957) 04 MAD CK 0028**  
**In the Madras High Court**

G. Bashyam Chetty

APPELLANT

Vs

A. Govindarajulu Chetty and Others

RESPONDENT

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**Date of Decision :** 26-04-1957

**Acts Referred:**

Madras Hindu Religious Endowments Act, 1923 — Section 9(12)

**Citation :** (1957) 70 LW 743 : (1957) 2 MLJ 272

**Hon'ble Judges :** Rajamannar, C.J

**Bench :** Division Bench

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## Judgement

Rajamannar, C.J.—This is an appeal against the Judgment of Mack, J., affirming the Order of the learned District Judge of Chingleput on an application made by the contesting respondents for setting aside an Order of the Madras Hindu Religious Endowments Board, dated 5th August, 1948 and for a declaration that the property constituting the subject-matter of this appeal is a temple within the definition of temple in the Madras Hindu Religious Endowments Act. The learned District Judge set aside the order of the Board and declared the property to be a public temple. On appeal, Mack, J., confirmed the decision. Hence this appeal by the first respondent to the petition.

2. The only question in this appeal is whether the property which is the subject-matter of the appeal, namely, premises No. 37-B, Vilakkadi Koil Street, Little Conjeeveram, Chingleput District, is a temple as defined in Section 9(12) of the Madras Hindu Religious Endowments Act. The following facts emerge out of the evidence adduced by both sides. In 1906, one Purushotham Venkata Ramanuja Chettiar purchased a house bearing D. No. 37, Vilakkadi Koil Street and converted what was a residential house into a temple. He installed the idol of Sri Karvanna Permual (one of the 108 Archa Avatarams of Lord Vishnu) which he obtained from Ulakalandar temple in which that idol was temporarily housed as the original sannadhi had become dilapidated. He also installed other idols and alwars and acharyas and perumal and thayar. He employed a bhattar to carry on the daily worship. There is evidence that the premises came to bear many of the

indicia of a temple. There was a granite doorway and the flooring was of granite. Besides the image of moolavar, there was also utsavar vigraham. There was a separate madapalli or kitchen. There is also evidence that the public used to regularly worship at the shrine. They had free access thereto, prasadam was distributed to the worshippers, and sometimes collections were made from them towards utsavams, and other expenses connected with the deities. It is clear that even by 1925 it was recognised that the premises was a temple dedicated to Sri Karvanna Perumal. In a guide book published that year, it is related that as the sannadhi of this deity was in ruins, the deity was kept in Ulakalandar temple but subsequently the idol was kept in Vilakkadi Koil Street " in a place resembling a bhajanamadam". In 1928 the founder Venkataramanujulu Chetty died. He was survived by his widowed daughter-in-law, one Janaki Animal, and by the two sons of his deceased brother who were the second respondent and the fourth petitioner respectively in the original petition. At a partition effected between the second respondent and the fourth petitioner the property in question was allotted to the second respondent. But the evidence makes it clear that the second respondent was continuing to treat the premises as a public temple. He raised public contributions to improve the temple and he was arranging to instal other Vighrams. The daily puja continued. The institution became well known as a public temple and this is apparent from the documents ranging from 1931 to 1941 describing the property as a temple in the recitals of boundaries of adjoining properties. It is admitted that till 1943 the property was not taxed evidently on the ground that it was dedicated for religious purposes. In 1943 there were unprecedented floods in Conjeeveram. To safeguard the idols from the ravages of the floods they were removed to another local temple, namely, Alagiasingar temple, where they were temporarily housed. As one witness very graphically describes this, the deities became ""refugees". The second respondent, Vasudeva Chetty, though he appears to have been a pious man in the beginning, laterly began to be more wordly-minded and was neglecting the worship and upkeep of the temple. Instead, he occupied a portion of the premises of the temple and set up a loom. The only close relation he had was his mother who died in 1943. With his mother dead and the idols away at a different place, Vasudeva Chetty evidently thought that it was more lucrative to convert this temple into an ordinary residential house. He removed the granite doorway and put up a partition and made other alterations which converted the temple into an ordinary house. Not content with this, he purported to convey the property as his own private property to a sishya of his, the first respondent under Exhibit B-2 dated 15th November, 1943. In 1947 certain worshippers of the temple put in an application u/s 84 of the Madras Hindu Religious Endowments Act before the Board to declare the premises as a temple as defined in the Act. It was opposed by the first respondent who had obtained the property under the gift deed executed by the second respondent. It may be that this application itself was inspired by the second respondent, who it is likely, was not willing to stand by the gift which he had executed in favour of the first respondent. There was an enquiry by the Board and they came to the following conclusion:

All the materials placed before us tend to point out that an ardent worshipper installed certain idols in his house and carried on worship, may be by appointing a separate archaka and by inviting worshippers as well; but his heirs did not continue the same and to-day the premises is a pucca residential building, assessed to property tax and dealt with as such by the owner.

The Board therefore held that the premises was not a temple as defined in Section 9(12) of the Act. It was to set aside this order that the worshippers filed a petition u/s 84(2) of the Madras Hindu Religious Endowments Act.

3. The learned District Judge discussed the entire evidence and held that the institution was a public temple and supported his finding by ten grounds. It is unnecessary to deal at length with each of these grounds. It is sufficient to say that we entirely agree with the learned District Judge that the evidence disclosed that from 1908 onwards the premises was used as a place of public religious worship and that it was only in 1943 by the happening of an extraordinary event, namely, the floods, that the second respondent conceived the idea of converting the temple into a private house. We see no reason to reject the testimony of the witnesses examined on behalf of the petitioners who speak to general public worship at the shrine.

4. The only question which really calls for consideration on this finding is that even assuming that the property in question was a public temple at some time, once it had ceased to be such and it had been converted into an ordinary residential house and there were no idols on the premises and there was no worship at the time when the application u/s 84 was filed before the Court, could it be said that the institution is a temple as defined in the Act. Learned Counsel for the first respondent to the petition who is the appellant before us, relied on the decision of Kumaraswami Sastri, J., in *His Holiness Sinha Sri Vythilinga Pandara Sannadhi Avergal Vs. Sir T. Sadasiva Aiyar and Others*, . The learned Judge held that where there was no temple in existence as a place of public worship when the Act came into force, it was difficult to see how Section 84 could give any power to the Board to call upon the trustees to account for the endowed properties or to apply the income in a particular manner. The learned Judge observed as follows:

Section 9, Clause (12) clearly contemplates a temple in actual existence as a place of public worship

5. In the case before the learned Judge it was not disputed that all that remained were the ruins of a temple which had been practically demolished several years ago. This decision of Kumaraswami Sastri, J., was upheld by a Division Bench in *Board of Commissioners for the Board of Commissioners for the Hindu Religious Endowments and Others Vs. Sreemathi Rukmini alias Kunhikavu alias Kuthiravattath Kongasserai Puthukulangara Amma Neethiyar and Another*, . The following observations of the learned Judges who decided that case are very instructive. The learned Chief Justice said:

The definition of a temple in the Act requires it to be a place which is used; and this temple not only was not used and is not being used but cannot be used unless it is rebuilt. It has in fact been in ruins for many years. I, therefore, think that the learned Trial Judge was perfectly right in holding that the Board had no jurisdiction with regard to its properties.

The observations which follow are particularly apposite to the facts of the present case. The learned Chief Justice went on to say:

The difficulty, however, is in laying down that the building of the temple must actually exist in order to give the board jurisdiction as cases can be imagined where clearly the Board should and must be intended by the Legislature to exercise its control. For instance, a temple may be temporarily non-existent because it may have been washed away by a flood or temporarily submerged or may have been burnt down. Nevertheless the property from which its income is derived may still exist, so may its trustees and the intention may be to rebuild the temple and resume religious worship as soon as it is rebuilt or the waters that have submerged the temple recede. All that is necessary, in my opinion, to say is that the Board has no jurisdiction where the temple clearly is non-existent, not temporarily but permanently, and there is no apparent intention of bringing it into existence again.

Cornish, J., makes the following instructive remarks:

The Act appears, therefore, to contemplate a place having an existence as a temple. It may be, however, that a temple which, at the time when the Act came into force, had been temporarily abandoned as a place of worship for any of the reasons suggested in the course of the arguments, such as destruction by fire or flood, would still be a temple to which the Act applied and be subject to the special powers given to the Board by Section 67 of the Act. But that is a question which would have to be decided upon the facts and circumstances of the particular case.

The learned Judge, however, held that in the case before them all that remained of a temple was a heap of stones and the temple had ceased to be used as a place of public worship at a time long beyond living memory. In our opinion the above decisions have no application to the facts of the case before us. On the date of the coming into force of the Madras Hindu Religious Endowments Act the institution was a place of public religious worship and fulfilled all the requirements of the definition of a temple in the Act. It must, therefore, be held that the institution was a temple to which the Act always applied. The fact that temporarily on account of the floods the deities had to be removed to another place and the opportunity was utilised by selfish persons to convert what was a temple into a residential house could not affect the status of the institution as a temple. In this case there was never at any time a complete obliteration of the temple as such. If for instance when repairs are being effected the idols are removed to another place, it would be preposterous to say that the place ceased

to be a temple. The observations in the two decisions cited above are clear authority for the position that a temple does not cease to be a temple because on account of special circumstances there is a temporary cessor of public religious worship. If the institution was originally a temple as defined in the Act, it will not be open to the trustee to convert it into a private residential house. The Board was evidently impressed with the fact that at the time when the petition was put in before them, there were no idols and there was no worship. Their view is clearly wrong. On the facts set out above we hold that the property in question is a temple as defined in the Act. We agree with both the learned District Judge and Mack, J., and dismiss the appeal with the costs of the petitioners-respondents. The costs of this appeal will be paid by Vasudeva Chetty, the second respondent in the petition before the District Court. The appellant shall bear his own costs. The Board will be entitled to take its costs from the endowment if there is any.