

(1971) 12 MAD CK 0017
In the Madras High Court

G. Muthuchami Naicker and Others

APPELLANT

Vs

Senniappa Goundar and Others

RESPONDENT

Date of Decision : 17-12-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9, 92

Citation : (1973) 86 LW 263 : (1972) 2 MLJ 36

Hon'ble Judges : K.N. Mudaliyar, J

Bench : Division Bench

Judgement

K.N. Mudaliyar, J.—The defendants are the appellants. The Second Appeal is directed against the decree and judgment of the learned Subordinate Judge of Madurai in A.S. No. 562 of 1968 confirming the decree and judgment of the learned District Munsif of Palni in O.S. No. 131 of 1965 on his file.

2. The plaintiffs are the residents of the hamlet Nachiappagoundanvalasu in Sindalapatti Village, and they have filed the suit in a representative capacity against the defendants who are Naickers by caste and who are the sole residents of the hamlet Ettimarathupatti which is also the hamlet of Sindalapatti Village. The suit is for a declaration that the plaintiffs and the persons whom they represent are entitled to conduct and perform the annual congregational worship of the Goddess Kalamman in the suit shrine at Nachiappagoundanvalasu in the manner in which they are accustomed to do in the month of Vaikasi and for restraining the defendants by a permanent injunction from in any way interfering with such celebration. They further pleaded that Goundars are the majority community in the hamlet of Nachiappagoundanvalasu. The defendants are the residents of Ettimarathupatti and they are Naickers belonging to Kammavar community, and they are interrelated. There is a Kalamman temple in the hamlet of Nachiappagoundanvalasu. Once in every year, in the month of Vaikasi, it has been the practice and custom of the plaintiffs and others to assemble in the temple along with Kothukara Goundar of their community on the first Tuesday of Vaikasi and fix a date for the actual worship and on the Tuesday

preceding that day fixed for actual, worship, "Swami Sattuthal" namely, proclaiming to the Villagers about the date fixed for the worship would be done and on next Tuesday following the actual worship would be done with the usual functions connected with such worship. The Pandaram of the suit temple residing in Nachiappagoundanvalasu would perform the rituals at the temple. On the date of actual worship, the Villagers of the plaintiff's Village would go in a procession with the Pandaram carrying the Kumbam (new pot supplied by the Village-potter) to the house of Kothukara Goundar of the Village who used to have the custody of the jewels belonging to the suit temple. The procession would then proceed to the Kinathumedu (well) belonging to Chinnimalai Goundar and some others where the water from the well would be filled in the Kumbam and the deity would be adorned with the temple jewels. It is the privilege of this Kothukara Goundar to tie the Kanganam round the right wrist of the Pandaram at the well-site and as such he is given a preferential right to have the first pinch of Viboothi from the Pandaram at the time of Swami Sattuthal, at the time of actual worship and at the time of Neerattuthal and after him, the Viboothi Prasadam would be distributed to others generally. They have further pleaded that from 1948 to 1955 the Sattuthal for the suit temple was not done because of drought condition and in Vaikasi 1955, When the Villagers of Nachiappagoundanvalasu had decided to perform the Swami Sattuthal, the defendants obstructed them from proceeding with the preparations for the worship because of enmity claiming preferential treatment of themselves, viz., they are entitled to second pinch of Viboothi to be given to one of their representatives. In the interest of Law and order situation, both the parties were prohibited from carrying on the worship that year. But the residents of Nachiappagoundanvalasu have been anxious to revive the congregational worship with the customary and usual Swami Sattuthal to avoid famine, disease and poor harvest. But the defendants have again assumed a militant attitude openly saying that they would not allow it unless they are given second pinch of Viboothi. The right of the plaintiffs to worship at the suit temple is a civil right which cannot be interfered with by the defendants. They contended that the claim of the defendants to the second pinch of Viboothi without a claim to any correlating duty or office is untenable. According to them, they have no objection to the defendants joining in the congregational worship as ordinary worshippers like others, but they are not entitled to any preferential treatment.

3. The defendants contended that the suit temple was constructed in 1935 in the Natham poramboke with the common funds collected from residents of Nachiappagoundanvalasu and Ettimarathupatti, that they also used to participate in the annual congregational gathering held in the month of Vaikasi for the purpose of fixing the date for Sattuthal and the subsequent actual worship, etc. that after the first pinch of Viboothi distributed to Kothukara Goundar of the plaintiffs' community, the second pinch should be given to their nominee, that the plaintiffs have no exclusive right to the suit temple and that being so they cannot regulate the conduct of the festival in the temple to the exclusion of the

others from Sattuthal ceremony upto the Neerattuthal ceremony and that it should be done only in consultation with the defendants. They also contended that one Nachiyandi Pandaram of Palamarathupatti is the Poosari of the suit temple and this Poosari has admitted in M.C. No. 12 of 1955 that the defendants-Naickers are entitled to second pinch of Viboothi, that on account of enmity between the plaintiffs and, the senior paternal uncle of the defendants, the plaintiffs-Goundars alone wanted to perform the Sattuthal ceremony in the suit temple to the exclusion of the defendants, that till 1946 the Sattuthal ceremony was done jointly, but after 1946, trouble once again started and that the plaintiffs gave an undertaking that they would settle the dispute in a Court of Law. But without doing so in 1955, the plaintiffs alone wanted to perform Sattuthal ceremony and thereupon the defendants moved the Executive Magistrate of Palni in M.C. No. 12 of 1955 and the festival was stopped and after 1955, there was no Sattuthal at all in the suit temple as the plaintiffs could not establish their alleged exclusive right in any civil Court. They further contended that as the plaintiffs have no exclusive right either in respect of the suit temple or in respect of the conduct of the festival of the temple, beginning with Sattuthal, etc. and as the suit temple is a common one, the suit is not maintainable and is also barred under Sections 9 and 92 of the Code of Civil Procedure.

4. The learned District Munsif gave a finding that the plaintiffs are entitled to sue as representatives of the residents of Nachiappagoundanvalasu. He also gave a finding that the suit temple is a common temple, but not a common of the two Villagers alone. He further held that Section 92 of the Code of Civil Procedure, has no application at all to the case. The learned District Munsif while considering issues Nos. 3 and 4 in paragraphs 9 to 11 made an elaborate discussion and found that the plaintiffs have the right to congregate and celebrate the festival in the Kali temple without the interference of the defendants, and that the suit filed by the plaintiffs is maintainable in view of Section 9 of the Code of Civil Procedure. The learned District Munsif held that the plaintiffs are entitled to the declaration and injunction as prayed for. The suit was decreed with costs as prayed for.

5. The defendants filed A.S. No. 562 of 1968 on the file of the Court of the Subordinate Judge of Madurai. The learned Subordinate Judge by his judgment and decree, dated 5th September, 1969, found that the plaintiffs had the exclusive right to perform the festival. The learned Subordinate Judge held that the jurisdiction of the Civil Court was not-barred. The learned Subordinate Judge, therefore dismissed the appeal with costs. Hence the Second Appeal by the defendants.

6. The learned Counsel for the appellants, Thiru T.P. Gopalakrishnan, invited my attention to the provisions of Section 9 of the CPC and Section 108 of the Madras Hindu Religious and Charitable Endowments Act, (Madras Act XXII of 1969) and contended that the subject-matter of the suit would squarely fall within the

expression "any other matter or dispute" found in Section 108 of the said Act. He drew my attention to Sub-sections (18) and (20) of Section 6 and also relied on Sections 63, 69, 70. He argued that the said Act contained a self-contained machinery for enquiring into and deciding the matters that would fall within Section 63(e) of the said Act. His argument is that the established use of a religious institution would cover the subject-matter of the suit and therefore the jurisdiction of the civil Court is barred u/s 108 of Madras Act XXII of 1969. He relied on certain averments in the plaint, particularly paragraphs 6 to 9 thereof. He also relied on paragraph 3 of the Written statement and contended that the various ceremonies including the "Sattuthal" and "Neerattuthal" would bring out the custom and practice and usage and therefore the second limb of Section 63(e) would cover the established performance of the Vaikasi festival and therefore it is hit by the bar u/s 108. In other words his argument is that the ceremonies would constitute a ritual and that would fall within the ambit of Section 63 of the Act. He relied on the ratio found in *Periyanan Servai and Others Vs. Mahadevan Ambalam and Others*, wherein the learned Judges have observed that a special kind of worship, to which some dignity is attached, but no emoluments of value are attached, cannot be the subject of a suit in a civil Court. But in my view, the suit covered by the Bench decision, was to establish the plaintiff's right to two dignities in connection with a temple. In my view, this decision is not of any substantial assistance to the defendants. Learned Counsel also relied on the decision in *Narayana Mudali and Another Vs. Periya Kalathi Mudali and Others*, wherein it has been held thus:

A general right of worship either in a particular temple or outside it is a civil right which can be claimed in the Courts but they have no jurisdiction to decide matters of ritual except in so far as a decision on such matters is a necessary incident to the decision of the civil right. Generally speaking the rule is that once the general right to worship is conceded or established, the Court will not endeavour to lay down the ritual which is to be followed: nor will they prescribe the manner in which the worship is to be conducted. It is also the rule that when there is no obligation to perform an act of worship, there will be no civil right to claim honours or perquisites or nominal value which ordinarily accompany the ordinary act of worship, except when the perquisites are attached to an office or an obligation. Hence no suit lies for establishing the plaintiffs' right to the performance of a ritual in a public temple like the Kappukattu or to the full return of the deeparathana offered to the deity which relates merely to an honour.

Mr. T.P. Gopalakrishnan argued on behalf of the defendants-appellants that the averments in the plaint involve matters of ritual and therefore civil Courts have no jurisdiction. I am afraid, the crux of the matter for determination before the Courts below was the right to worship per se by the Villagers of Sindalapatti. Mr. Section Mohan arguing for the respondents relied on the decision in *Tirukoilur Sri Viratteswarar Devasthanam v. R.M.M.S.T.C.T. Ramanathan Chettiar* AIR 1955 N.U.C. 1427 wherein Basheer Ahmed Sayeed, J., has observed that merely because a provision is made giving power to the Deputy Commissioner to

enquire into the disputes of the nature described in Section 57, it is too much to say that the civil Court has lost its jurisdiction to try suits in which such disputes arise. Mr. S. Mohan also relied on the reasoning found in the division bench judgment of this Court in *Thirumalai Alwar Aiyangar Swamigal and Others Vs. Lakshmi Sadagopa Aiyangar and Others*, . The learned Judges in that case held that a right to act of worship in a particular manner and with particular incidents attached to it is a right of a civil nature and the civil Court must adjudicate upon any incidents connected with the exercise of such rights. In view of the rationale found in the above decisions, I am of the view that the subject-matter of the present suit is a general right of worship in a particular temple and therefore it is a civil right and can be sued in civil Courts. There is no question of any ritual which is the subject-matter of suit.

7. The rationale of the decision in *Thathachariar and Others Vs. Srinivasaraghava Aiyangar and Others*, was also relied upon by the learned Counsel for the appellants wherein the learned Judges have observed thus:

Mere right of precedence to certain honours or dignity in a temple not attached to any office therein is not a right of a civil nature and a suit in respect of that right is not cognisable by civil Courts. In a suit wherein the plaintiff Claims that certain honours during a festival which he was performing such as theertham, satagopam and thulasi, should be given to him before everybody else, though a right to take part in public worship is a civil right a suit therefore is cognisable by a civil Court and though a right to an office in a temple and a right to emoluments attached to that office are rights of a civil nature, a mere right to perform a festival is not a right to an office and even assuming, what is doubtful, that the right to individual and exclusive worship of a deity is a civil right, the right to honours in the course of such worship is not cognizable by a civil Court, much less the right to precedence in the receipt of such honours.

I am afraid the subject-matter of the present suit is not the right of precedence to certain honours or certain dignity in a certain temple. The prayer in the plaint is for a declaration that the plaintiffs are entitled to conduct and perform the annual congregational worship of the Goddess of Kaliyamman in the suit shrine at Nachiappagoundanvalasu in the manner in which they are accustomed to do in the month of Vaikasi or in any other month they might choose and agree upon to do. In view of the terms of the prayer, I hold that this decision is not apposite.

8. The learned Counsel for the appellants relied on the rationale in the decision in *Srinivasachariar v. Thatha Desika Thathachariar* (1970) 83 L.W. 407 I have already noticed the terms of the prayer of the plaintiff and they do not relate to the question of religious rites and ceremonies. But in the present case, we are concerned with the legal rights of the parties. I am of the view, that this ruling is not of any material assistance to the argument of the learned Counsel for the appellants. Learned Counsel also relied on the decision in *Sri Sinna Ramanuja Jeer and Others Vs. Sri Ranga Ramanuja Jeer and Another*, wherein their Lordships of the Supreme Court held that a suit for a declaration of religious

honours and privileges simpliciter will not lie in a civil Court. But a suit to establish one's right to an office in a temple, and to honours and privileges attached to the said office as its remuneration or perquisites, is maintainable in a civil Court. It is apparent from the averments and the prayer in the plaint that the plaintiffs did not seek for a declaration of religious honours and privileges simpliciter. I am of the view that this decision does not assist the learned Counsel for the appellants.

9. Mr. S. Mohan, learned Counsel for the respondents invited my attention to the preamble of Madras Act XXII of 1959 and emphasised that the Law embodied in the Act relates to the administration and governance of Hindu religious and charitable institutions and endowments in the State, and contended that the subject-matter of the suit does not pertain to the administration or management of a religious institution or any other matter or dispute as contemplated in Section 63(e) and therefore the suit of the plaintiffs is not barred u/s 108 of Madras Act XXII of 1959 or u/s 9 of the Code of Civil Procedure. He placed strong reliance on the reasoning of the Supreme Court in *Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy*, . He relied on paragraph 13 of the said judgment which is as follows:

Under Section 9 of the Code of Civil Procedure, the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is a well settled principle that a party seeking to oust jurisdiction of an ordinary civil Court shall establish the right to do so. Section 93 of the Act does not impose a total bar on the maintainability of a suit in a civil Court. It states that a suit of the nature mentioned therein can be instituted only in conformity with the provisions of the Act, that is to say, a suit or other legal proceeding in respect of matters not covered by the Section can be instituted in the ordinary way. It therefore imposes certain statutory restrictions on suits or other legal proceedings relating to matters mentioned therein. Now what are those matters? They are (1) administration or management of religious institutions; and (2) any other matter or dispute for determining or deciding which provision is made in the Act. The Clause

determining or deciding which provision is made in this Act,

On a reasonable construction, cannot be made to qualify "the administration or management", but must be confined only to any other matter or dispute. "Even so, the expression" administration or management"

cannot be construed widely so as to take in any matter however remotely connected with the administration or management. The limitation on the said words is found in the phrase "except under and in conformity with the provisions of this Act". To state it differently, the said phrase does not impose a total bar on a suit in a civil Court but only imposes a restriction on suits or other legal proceedings in respect of matters for which a provision is made in the Act. Any other construction would lead to an incongruity, namely, there will be a Vacuum

in many areas not covered by the Act and the general remedies would be displaced without replacing them by new remedies.

He also relied on the ratio found in paragraphs 14, 15 and 20 of the Supreme Court judgment. Mr. Mohan also placed strong reliance on the decision in *The Goundars of Vilangathur village and Others Vs. The Udayars of Vilangathur village and Others*, wherein Somayya, J., has held that it is the elementary right of every worshipper of a public temple to have the usual festivals conducted in the usual manner, that the right is a civil right which every worshipper has as an individual, that he would be entitled to the protection of the Court in the exercise of his right and that Section 73 of the Madras Hindu Religious Endowments Act was no bar to the suit. Mr. Mohan also relied on the ruling in *Kattayan Achary v. Rangaswami Achari* (1959) 1 M.L.J. 123 wherein Ramaswami, J., has held thus:

A suit by one Section of a community against a rival Section of that community to enforce their right to participate along With the defendants in the conduct of a ceremony of their tutelary deity from which the plaintiffs have been excluded, and to ask for accounts of a fund constituted out of collections made by all the members of the community, including the plaintiffs to find out whether the terms of the community chest are being carried out cannot be held to be a suit for "administration or management" which is excluded from the jurisdiction of Courts of Law. A dispute of this nature between rival claimants seeking to ensure that the fund earmarked for a particular purpose is being managed properly would not fall u/s 57 of the Act, so as to render a suit regarding such a dispute, a suit for administration or management even in a side sense.

In view of this reasoning, I am of the view that the present suit is not barred from the jurisdiction of civil Courts.

10. Mr. Mohan also relied on the decisions in *Srinivasalu Naidu v. K. Munuswanti Naidu* (1967) 1 M.L.J. 371 *Rattan Singh and Others Vs. Beli Ram and Others*, *Pathanamthitta Majilissae Islamia Vs. Nagoor Meeran Sheik Muhammad and Others*, , *Tirumalaisami Naicker Vs. Villagers of Kadambur and Another*, , *Surianarayanamurthi v. Rama Rao* (1953) 1 M.L.J. 154 and *K. Subbaroya Mudali and Another Vs. K. Velappa Mudali and Others*, and contended that the suit of the plaintiffs is not barred. I am in respectful agreement with the rationale found in the decisions cited supra.

11. The learned District Munsif has bestowed great care and diligence in deciding the real question whether the right claimed by the plaintiffs as representatives of Goundars is a civil right. The learned District Munsif has given very sound reasons for his conclusion that" the plaintiffs have made out a case that they are entitled to the declaration to congregate in the suit temple and fix a date for the Sattuthal and also to perform the other functions without any let or hindrance from the defendants who were insisting that they should also participate in the ceremonies. The learned District Munsif further held that the defendants have not made out that they are entitled to participate in those ceremonies.

The learned appellate Judge has also given good reasons in paragraph 5 of his judgment in support of his finding that the right in dispute is a civil right and that the civil Court alone has jurisdiction and that the jurisdiction of the civil Court is not barred. I express my total agreement With the concurrent finding of the two Courts below.

12. The Second Appeal is without merit. It is, therefore, dismissed. There will be no order as to costs. Leave refused.