
(1924) 02 MAD CK 0092
In the Madras High Court

Harihara Aiyar

APPELLANT

Vs

Ukkandan Variar and Others

RESPONDENT

Date of Decision : 27-02-1924

Acts Referred:

Citation : AIR 1925 Mad 207

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—In this case, the appellant is the legal representative of the 1st defendant. The 1st defendant was holding certain lands on a kanom demise under the Eravaimangalam Devaswom in South Malabar. The 1st plaintiff obtained a melcharth and brought the suit to redeem the kanom on the strength of the melcharth.

2. The only plea raised against the plaintiff is that his melcharth is not a valid melcharth. This devaswom is represented by three uralans belonging to three Namburdi Moms in South Malabar. The melcharth was granted by two uralans, as to whose position as uralans there is no dispute, and by the 6th defendant, who is not the senior-most member of the melazhiath illom, one of the Moms in which the uraima right is vested, but is only the second man in the Mom. The eldest man now living, in that Mom is D.W. No. 1.

2. It is contended by the kanomdar that as the eldest man was not consulted in granting the melcharth, it should be held to be not valid and binding on the trust, and the plaintiff's suit must, therefore, be dismissed as not maintainable. The circumstances under which the 6th defendant happened to represent the melazhiath manakkal illom in granting the melcharth are these. The eldest man D.W. No. 1 while he was in management of the Mom affairs as karnavan of the illom and the uralan of this devaswom, was convicted for cheating and sent to jail under a sentence of 2 months' rigorous imprisonment. When he came out of the jail, he does not seem to have been accepted into the caste to which he belonged, namely, the Nambudri caste in South Malabar. Nambudris do not

generally take back into caste men who have been sent to jail and who subsisted in jail, on the jail diet. D.W. No. 1 admits that after he came back from the jail, he did not enter his Mom or touch the tank; he practically did nothing as the karnavan except trying to manage some of the properties and execute some of the decrees in favour of the Mom. As regards the temple what he says is:

I do not go to the temple or touch the temple tank.

I do not enter the Mom house and do not get priests to officiate at the ceremonies.

3. When this man was in jail the management of the illom and devaswom seems to have been taken by the next senior, the 6th defendant, and even after he came back from jail, this management seems to have continued. No doubt the elder man was trying to dispute the 6th defendant's management. But as a matter of fact, there can be no doubt that the 6th defendant was in actual management. The elder man tried to assert his rights in Courts of law, but in the three instances that came before the Courts evidenced by Exhibits B, C and D, he failed to get recognised as representing the illom.

4. In Exhibit B, the question raised was expressly as to his right to represent the devaswom. It was held by the District Munsiff then that the fact that he had gone to jail and that he had suffered in consequence loss of caste, prevented him from continuing as a trustee and he, therefore, refused to recognise him as an uralan and rejected his application for the execution of the decree and allowed the application by the other two uralans. In Exhibit O again, another District Munsiff held that he could no longer be treated as an uralan as he could not perform the duties of an uralan at all on account of his loss of caste.

5. Again in Exhibit D, it, was said that he could not be treated any longer as the uralan representing the Mom in this devaswom. It is true that, in one case which is evidenced by Exhibit V, where the question referred to was the management of the properties of his Mom, the Subordinate Judge held that:

On account of his loss of caste, he did not lose his right of management of Mom properties." But that referred purely to his property rights in the illom, and to the management of the properties of the Mom. It did not deal with his position as karnavan or with his position as uralan. It seems to me that a Nambudri who has lost his caste can hardly be permitted to insist upon his continuing as an uralan of a devaswom, the duties of which office he could not properly perform and, where his position as a Nambudri is a primary factor in having him as an uralan. In *Pathumma v. Raman Nambiar* AIR 1921 Mad. 224 Wallis, C.J., while deciding that a person's right to the properties of his tarwad would not be lost by his losing caste or by his conversion to another religion stated that he expressed no opinion about his right to succeed the office of karnavan for that would involve other considerations, Mr. (now Sir) Justice Kumaraswami Sastri observed that a difficulty would arise if a karnavan becomes a convert and refuses to ask for partition or give up office, or when a hereditary dharmakarthā becomes a

convert. The question will turn on whether the office is a right which falls under Act XXI of 1850 and whether community of religion is an essential requisite to eligibility or continuance so as to entitle the other parties to claim supercession or removal.

6. It seems to me the continuance in caste would be an essential requisite of a Nambudri continuing as an uralan of a devaswom, when he is chosen as an uralan because he is a Nambudri. I, therefore, agree with the lower Court in thinking that in the circumstances of this case the fact that D.W. No. 1 was not consulted by the other uralans in executing the melcharth to the first plaintiff but the next man in seniority, the 6th defendant, was consulted, does not render the melcharth invalid at all. The melcharth, is valid and binding on the trust. It is not suggested that there is any other infirmity in the melcharth, as being against the interests of the trust.

7. Even if I am wrong in thinking that the 6th defendant was properly the de jure uralan of the temple, in the circumstances that have happened, I have no doubt that the lower Court is right in thinking that the 6th defendant did act as de facto karnavan and uralan and represented his illom, and the melcharth executed in consultation with such de facto uralan cannot be held to fall under the ruling *Matamulla Manikoth Pattan Chandu v. Kuttiyil Royiru* AIR 1922 Mad. 2.

8. The action of de facto holders of office has been recognised in several cases quoted before me by the learned Vakil for the respondent. See *Sudindra v. Budan* (1886) 9 Mad. 80 *Saminatha v. Purushottama* (1893) 16 Mad. 67 *Sheo Shankar Gir v. Ram Shewak Chowdhri* (1897) 24 Cal. 77 Second Appeal No. 1136 of 1914 and Appeal Suit No. 170 of 1919. In that view also, it seems to me that the lower Court's decision is right that the melcharth cannot be attacked as invalid.

9. One other point has been taken in this second appeal and that is that the 3rd plaintiff, who was the appellant in the lower Court, was not competent to maintain the appeal against the decree of the first Court. The 1st plaintiff died and the 2nd plaintiff was brought on record as his legal representative without any objection by the defendants. Subsequently, 2nd plaintiff transferred his right to the 3rd plaintiff and the 3rd plaintiff was brought on record as the assignee of the 2nd plaintiff. Objection is taken that the 2nd plaintiff himself had no right to the 1st plaintiff's melcharth as the second plaintiff was not his heir but only half brother of his, there being a full brother of the 1st plaintiff alive.

10. It seems to me that it is not open to the defendant to object to the 2nd plaintiff's status as legal representative after he had been put on record as such without objection : and 2nd plaintiff was entitled to ask that a decree should be given to the 3rd plaintiff as assignee of his rights. At any rate, when the third plaintiff appealed to the lower Court, no objection seems to have been taken in that Court. If such an objection had been taken there, it could have been met by the 2nd plaintiff who was already on record as a respondent being made an appellant. It seems to me that the objection cannot be allowed in second appeal

considering that no objection was taken in the lower Court on this point. I reject this objection.

11. In the result, the second appeal will be dismissed with costs.