

(1899) 11 MAD CK 0014
In the Madras High Court

Janardana Shetty Govindarajan and Others

APPELLANT

Vs

Badava Shetty Giri and Others

RESPONDENT

Date of Decision : 22-11-1899

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : (1900) ILR (Mad) 385 : (1900) 10 MLJ 54

Hon'ble Judges : Subramania Aiyar, J; Moore, J

Bench : Full Bench

Judgement

Subramania Aiyar, J.—The plaintiffs (appellants) along with the defendants 1 to 3 are the adhikaries (managers or trustees of a temple in

British Cochin). The latter improperly appointed the 4th defendant to the office of pattamali under colour of which office the 4th defendant had

been interfering in the affairs of the temple. The appellants sought in their plaint, as it originally stood, for a declaration that the appointment of the

4th defendant is invalid. Subsequently, on the defendants 2 to 4 raising an objection, that the 4th defendant having taken charge of the documents

relating to temple lands, the temple jewels and the utensils specified in the plaint, schedules, a prayer for their surrender also should have been

asked for, the plaint was allowed to be amended accordingly.

2. The Subordinate Judge, being of opinion that the appointment was valid, dismissed the suit. On appeal, the District Judge found upon the

evidence that the appointment was not made in accordance with the usage of the institution at a properly convened meeting of the yogakars--a

general body of worshippers--and the adhikaries and was, therefore, invalid, yet he upheld the Subordinate Judge's Secree on the ground that the

amendment of the plaint was made after the lapse of three years--the period of limitation prescribed for a suit for the recovery of the documents,

&c, to which the amendment related.

3. In ascertaining whether the decision of the District Judge is correct, we must see what the question, arising for determination on the facts

disclosed in the case, is. That question is whether a mere declaration that the appointment is invalid would not be sufficient and whether a prayer

for delivery of the documents, &c, or for injunction restraining the 4th defendant from performing the duties of a pattamali should have been also

included in the plaint. If the declaration would be sufficient, the amendment of the plaint must be treated as surplusage and cannot affect the

plaintiffs' right to the declaratory decree asked for.

4. Now, what is the nature of the suit? It is not one to establish any legal character or any right to any property vested in the plaintiffs, but is, in

effect, one brought by some trustees to have an act done by other trustees in contravention of their duty declared null and void. It is clear that such

a suit will lie. Suppose, instead of asking after the appointment is made for a declaration that the appointment is invalid, the plaintiffs had asked, on

the eve of the appointment, for an injunction prohibiting the defendants 1 to 3 proceeding to appoint a pattamali against the usage of the institution

and in violation of their duty, surely there would be nothing to prevent the Court from granting the injunction. Does it not follow from this that if the

appointment had already been made the plaintiffs may well ask for a decree declaring that the appointment is invalid? There is no reason to

suppose that such decree cannot be granted independently of Section 42 of the Specific Relief Act (compare *Fisher v. Secretary of State for India*

in Council (1899) L.R., 26 IndAp 27. Even if Section 42 is applicable to a case like the present, it is difficult to see how any further relief than

mere declaration either by way of delivery of documents, &c. or of injunction is necessary. Now a person properly appointed to the office of

pattamali is but a servant of the temple and as such has only a servant's custody of the things in his charge. He consults the documents for the

purpose of ascertaining such particulars as are to be found there in respect of the rents due to the temple. He gives the jewels and utensils out from

time to time to the other servants whose business it is to use them, and, on the

articles being returned, keeps them safely in the temple premises.½

This sort of dealing with temple property on the part of a mere servant or one purporting to act as such under the trustees, it is obvious, cannot

affect, in the slightest degree, the possession which in fact and in law remains with the latter. All that a valid appointment as a pattamali would have

conferred on the 4th defendant, and all that he himself claimed throughout was, in the words of Sir Frederick Pollock, "a mere authority or license

to deal with the thing in a certain way." Thus there is nothing to seek delivery from the possession of the 4th defendant, and hence no question of

limitation on that ground arises. When once the pretended appointment is declared invalid, the 4th defendant has to walk out of the temple and to

refrain from exercising the functions of the office. And as no circumstances have been disclosed in the case necessitating the grant of an injunction,

no such remedy is called for.

5. I would, therefore, allow the appeal with costs throughout," reverse the decrees of the lower Court and declare and adjudge that the 4th

defendant was not validly appointed as pattamali of the plaint-mentioned temple. The memorandum of objections is dismissed with costs.

Moore, J.

6. I concur.