

(1939) 07 MAD CK 0003
In the Madras High Court

K. Chinnaswami Udayar and Others

APPELLANT

Vs

Narasimha Bhattar and Another

RESPONDENT

Date of Decision : 24-07-1939

Acts Referred:

Madras Hindu Religious Endowments Act, 1923 — Section 43

Citation : AIR 1940 Mad 28 : (1939) 2 MLJ 661

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal involves a consideration of the effect of a decree in a suit of 1896 wherein the holder of the archaka office in

the suit temple obtained a declaration that he was entitled both to the office of archaka and paricharaka and to appoint fit and proper persons to

the office of paricharaka, and to dismiss them and generally control the paricharaka so appointed in the temple during his term. By virtue of this

decree the first respondent (the archaka) appointed an individual as paricharaka. The appellants, trustees, were dissatisfied with the conduct of this

paricharaka and ejected him from office. Thereupon the first respondent brought an application, claiming that the appellants should be punished for

disobedience to the decree of 1896. When the application was actually heard, the only relief claimed actually was a recognition of the first

respondent's right under the decree and costs. Both the Courts below have held that by virtue of the decree of 1896 the archaka is solely entitled

to appoint, control and dismiss the person who performs the functions of paricharaka.

2. In appeal it was contended that even under the terms of the decree this sole right was not vested in the archaka but that the general powers of

the trustee enabled the trustee also to exercise disciplinary control. I cannot accept this contention. The decree seems to me to be perfectly plain as

conferring the right of appointment, dismissal and control solely on the archaka.

3. It remains, however, to consider whether this decree is in full force and effect, having regard to subsequent judicial and statutory changes. In a

suit of 1912 there was a scheme framed for the temple where under powers of appointment of non-mirasi servants and punishment of mirasi

servants were vested in the additional trustee. This scheme appears to have been referred to in the proceedings in the Court below but the actual

instrument was not exhibited. It is not, however, necessary to go in detail into the effect of the scheme decree, for there has been a subsequent

statutory enactment which has substantially the same effect. Section 43 of the Madras Hindu Religious Endowments Act provides that:

All office-holders and servants attached to a temple or in receipt of any emolument or perquisite from the temple shall be under the orders and

control of the trustee; and the trustee may fine, suspend, remove or dismiss any of them for breach of trust, etc.

4. Section 79 of the same Act provides that:

Save as otherwise expressly provided in or under this Act, nothing herein contained shall affect any established usage of a mutt or temple, etc.

5. It is argued that Section 79 has the effect of saving this decree of 1896 which is not expressly affected by any provision of the Act. I cannot

accept this contention. It seems to me that the terms of Section 43 contain an express provision vesting solely in the trustee a power of disciplinary

control which is entirely inconsistent with, and abrogatory of, the power given under the decree. It is argued that the paricharaka is not an office-

holder but a mere deputy for the archaka in whom the paricharaka office is vested. This argument seems to me to ignore the facts. The person who

actually performs the functions of the paricharaka office is the person who has been ejected from office by the appellants. It is true that he was

admitted into the office owing to the appointment by the first respondent. But having been so appointed, so long as he performs the functions of the

paricharaka office, it being certainly an office attached to the temple, he is an office-holder attached to the temple and by virtue of Section 43 of

the Act the power of punishment and dismissal in respect of that office-holder

vests in the trustee. It cannot, I think, be contended that the inconsistent power of control based on the decree of 1896 can any longer have force in view of the express statutory provision u/s 43 of the Hindu Religious Endowments Act. In this view I allow the appeal and dismiss the execution petition with costs throughout as against the first respondent here.