

(1936) 10 MAD CK 0052
In the Madras High Court

K. Govinda Chettiar and Others	Vs	APPELLANT
A.N. Muniswami Chettiar and Others		RESPONDENT

Date of Decision : 28-10-1936

Acts Referred:

Citation : AIR 1937 Mad 315 : (1937) 45 LW 398

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is a petition to revise the order of the learned District Judge of Chingleput declining to grant restitution of the possession of a certain temple called Sri Kalatheeswaraswami in Chunnambukulam village together with all the keys, articles of worship, jewels, vahanams, etc., appurtenant thereto. The view taken by the learned District Judge is that no question of restitution arose, because there was no delivery of the property in pursuance of any order of Court. It seems to me that this view is sound. The case of the petitioners is that there was an order for a temporary injunction made in the suit at the instance of the plaintiffs and taking advantage of that order, the plaintiffs without notice to defendants forcibly took possession of the temple and its properties by breaking open the locks of the temple; this was according to them on or after 18th March 1935 when the lower Court made the said order of temporary injunction in the plaintiffs' favour. On 1st May 1935, in pursuance of an order of the High Court suspending the said order, the defendants applied for restitution of the said properties. The learned District Judge by his order dated 4th May 1935 without notice to the plaintiffs passed the following order:

The temple and its appurtenances will therefore be delivered to the defendants through Court and the police will be addressed to help the Court if necessary to do so and the lock of the outer door broken open if necessary.

2. In pursuance of this order the Amin broke open the locks and delivered to the defendants possession of the temple and its articles on or about 5th May 1935.

On a revision petition preferred against the said order being C.R.P. No. 802 of 1935, K.S. Menon, J. set it aside and directed the said petition for restitution to be re-heard after giving the plaintiffs an opportunity of representing their case. The question is whether the order of the learned District Judge on rehearing in declining restitution is correct. It is contended by Mr. Bhashyam that possession was taken of the temple and its properties by the plaintiffs in pursuance of the order of injunction and therefore the application for restitution properly lies. I think this contention is untenable. In my judgment in A.A.O. No. 169 of 1935 which is an appeal against the order granting the said temporary injunction, I pointed out that the nature of the relief sought therein was to assert the individual right of the plaintiffs to perform the Kalasandhi and Sayarakshai pujas and to restrain the defendants from interfering with the said right and to have a Gurukkal of their own to do the said pujas. What was granted by the lower Court was the said reliefs as prayed for. This is clear from the order dated 18th March 1935. If in pursuance of the said order, delivery of the said properties was given through Court Mr. Bhashyam may be right in his contention, but if in excess of what was granted, they, the plaintiffs, unlawfully took possession of the temple and its properties, it is not a matter for restitution at all. In Periyasamy Thevan and Others Vs. Karuthiah Thevan and Another, , where the plaintiffs taking advantage of an order of injunction unlawfully took possession of certain properties to which they were not entitled, it was held that the proper remedy for persons aggrieved by the said action was by suit and not by way of restitution. The learned Judges observe thus:

In the present case defendants did not lose their possession because of any action taken under the decree, but by an act of violence on plaintiffs" part, independent of it and inconsistent with the case on which it was obtained. In respect of such an act the defendants" remedy is by suit.

3. This is the view taken by the learned District Judge in the Court below and I therefore overrule the contention of Mr. Bhashyam and dismiss the application but in the circumstances I make no order as to costs.