

(1985) 03 MAD CK 0052
In the Madras High Court
Case No : S.A. No.1100 of 1980

K. Periakali Poosari and Others

APPELLANT

Vs

M. Periakali Poosari and Others

RESPONDENT

Date of Decision : 01-03-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 9
Specific Relief Act, 1963 — Section 34

Citation : (1985) 03 MAD CK 0052

Hon'ble Judges : Satbiadev, J

Bench : Single Bench

Advocate : T.L Rammohan, for the Appellant; E. Padmanabhan, K. Jayaraman and M.R. Venkataraman, for the Respondent

Judgement

Satbiadev, J.—Appeal against the decree of the Principal Subordinate Judge, Salem in A.S No. 41 of 1979 preferred against the decree of the Additional District Munsif, Sankari at Salem in O.S. No. 294 of 1977.

Defendants 1, 2, 4, 5, 9 and 10 have preferred this Second Appeal and 9th defendant having died, his legal representatives have been brought on record. Plaintiff is, the first respondent and defendants 3, 6, 7 and 8 are the other respondents.

Plaintiff filed a suit for declaration that he is entitled to do pooja in Sri Badrakali amman Temple, Mecheri, for the first 15 days after the five days in hoisting and dehoisting of the flag in the month of Masi and for the second 15 days in the month of Vaikasi in the Chinnapoosari's Murai, and for permanent injunction restraining the defendants from interfering with his rights. Briefly put, his case is that there are six families of Chinna-poosar's out of which defendants 1, 2, and 10 form the first group, plaintiff and defendants 3 and 4 form the second group and defendants 5 to 9 form the third group. Plaintiff's father Madurakali Poosari and third defendant's father Kuppakali Poosari are brothers. In respect of the temple there are two groups called as Periyapoosari group and Chinnapoosari

group. Both the groups were doing poojas by a turn system. Plaintiff's father and third defendant's father were doing pooja in the months of Masi and Vaikasi, each having one half in their Murais. A muchalika was entered into between them on 13th August, 1941. There were earlier proceedings which ultimately resulted in Periapooosaris doing pooja for one year and Chinnapoosaris doing the next year, i.e. alternate years As between plaintiff's father and third defendant's father, each was having half share in their Murais and in the past three decades this practice had continued. Plaintiff's father died one year prior to the suit and third defendant's father died two years ago. As between the three groups in what months they have been doing pooja is stated in Paragraph 4 of the plaint. Consequent to defendants putting forth a different system as having come into force with effect from 28th December, 1974, he had to institute the present suit.

2. On behalf of the defendants, it was admitted that there were two groups called Periapooosaris and Chinnapoosaris and subsequent to earlier proceedings they were taking their turn during alternate years, that there were six families of Chinnapoosaris and that there are three group as stated by the plaintiff. They have no knowledge of the muchahka, dated 13th August 1941, and the year for Murais begins from first of Thai. The claim about flag hoisting for five days is not correct and it will be for eight days and all Chinnapoosaris will do poojas in common on those days. This system was followed only upto 28th December, 1974, on which date the six families of Chinnapoosaris entered into a registered agreement to revise the pooja murais as between them and, thereafter, the earlier practice as claimed by the plaintiff was not obtaining. Third defendant's father who had been representing the plaintiff and his father in the earlier proceedings had signed the document on their behalf, and hence it is binding on the plaintiff. This agreement was acted upon in 1975 by plaintiff and third defendant and hence the suit deserves to be dismissed.

3. Both the Courts below concurrently held that the registered document, dated 28th December, 1974 Ex.A1 is not binding on the plaintiff and it was not acted upon by him and, therefore, decreed the suit. Hence. in this second appeal, it is claimed that the following substantial questions of law arise for consideration:

(1) Whether Ex.A.1 is binding on the plaintiff since D.3 had signed the document and since he has not questioned the document?

(2) In any event, the right to participate in the pooja enduring in favour of the plurality of the individuals, whether the principles laid down in *Meenakshi Achi v. Somasundara Pillai* 14 L.W. 188: ILR 44 Mad.205, can be extended to this case?

(3) Whether, in the absence of pleadings in the plaint that there is any compellable duty corresponding to the right claimed by the plaintiff, the right claimed by the plaintiff is a civil right cognizable by the Civil Court under S. 9, C.P.C.?

(4) Whether in any event the transaction under Ex, A.4 could be construed as a family arrangement and whether the same arrangement is binding on junior

members of the group notwithstanding their not being conominee parties to the document.?

4. On the first point, it is indisputable case of the parties that neither the plaintiff nor his father nor the third defendant had signed Ex.A1. On behalf of the defendants, fourth defendant is the only witness who had been examined to speak about this agreement. The other witness D.W.2 is a (sic) (fit person) who has been appointed by Government on 10th June, 1976. Hence, the one and the only witness who had deposed about Ex A1, is the fourth defendant. Ex.A1 states that eight persons mentioned therein have agreed upon to the terms and conditions incorporated therein. Even though there are eight executants, only one had come forward to speak about it. Attesting witness is not examined. The scribe of the document being a retired Sub Registrar had not been examined. The original document is not forthcoming to verify whether third defendant's father aged about 98 years on the date of execution had really signed the document or not. It is not recited in the document that he was representing plaintiff and his father. He had not signed to the effect that for himself and on behalf of plaintiff and his father he had signed the document. It is not even recited therein that representing the second group he was signing it. The defendant would claim that in all the earlier proceedings, third defendant's father having represented the interests of plaintiff and his father, and more particularly in C.R.P. No, 920 of 1945, Ex.B1, he had the necessary authority to represent that branch. In the said C.R.P., the dispute was not as among the Chinnapoosaris but it was a proceeding in which the contest was between the Periyapoosaris and Chinnapoosaris. The plaint filed in O.S. No. 248 of 1943 is not available, but there is nothing to infer that he had such an authority to represent the interests of plaintiff's father, for any and every action taken by him. Even if any such authority had been given for the earlier suit, it would not confer upon him a right to represent his interest in any other agreement or document. No power of attorney given either by plaintiff's father or plaintiff in his favour had been filed. Third defendant had not chosen to examine himself to claim that his father had the authority. Even though the question framed by the appellants herein reads as if third defendant had signed Ex.A1, it is the claim made by them that it was the third defendant's father who had signed it. In paragraph 4 of first defendant's written statement, it is claimed that at the time of discussion and when the document was prepared and executed, plaintiff and his father were present, and they agreed to its contents. If they were present, why their signatures were not taken is not explained satisfactorily. The only excuse trotted out is that third defendant's father was representing their interests. It is not known as to why eight of them ought to have signed it, when only six families are interested. If third defendant's father was to represent the second group, then in respect of the other two groups, only their eldest member ought to have signed. More startling is the claim made that Panchayatdars have mediated. Who are those Panchayatdars, nowhere is it disclosed. They have not been called upon to sign as attesting witnesses. When and where the Panchayat had been

held and whether the decision about the revised turn system was incorporated in any minutes, are unknown. D.W.4 would not state as to why not one of the Panchayatdars could not be examined. When so many such infirmities have been taken into account, and on a question of fact, Courts below having arrived at a concurrent finding, it is disappointing that in spite of S. 100, C.P.C., being amended, these points are agitated at length. There is no (sic) of evidence to hold that third defendant's father had the authority to execute Ex. B.1. Even if he had done it, it cannot bind the plaintiff's father or the plaintiff. Hence, the first point does not involve any substantial question of law.

5. On the second point, Mr. G. Subramaniam, learned counsel for appellants, would state that the rule of primogeniture prevails and, therefore, third defendant's father who was then aged about 98 years had the right to represent his group In *Meenakshi Achi v. Somasundoram Pillai* 14 L.W.188= ILR 144 Mad 205, it was held that, in the absence of a custom to the contrary, the right of management of public charity descends on all the heirs including females, and that if any senior most male member claims right unto himself alone, he has to prove that such a special custom prevails. On finding that no evidence exists as to the plea of custom, it was rejected therein. In the instant case, if third defendant had acquired rights by primogeniture, then he would have never shared his right with plaintiff's father. He permitted fourth defendant also to have his turn. The fourth defendant admits as D.W. 1 that he was one among the members of the said group. If so he would not have conducted any pooja and only third defendant's father would have exercised the rights throughout. The very fact that every member in the group had been allowed to do pooja during the different periods, admittedly prior to 1974, by itself speaks that the concept of primogeniture was never applied regarding the suit temple. Hence, this point also fails.

6. On the third point reference is placed on the decision in *Narayana Mudali v Kalathi Mudali* AIR 1939 Mad 494 : 49 L.W.295 to contend that the Civil Court has no jurisdiction to try matters of rituals, and hence the suit as framed is not maintainable. Unless perquisites are attached to the office or obligation and a compellable duty is attached thereto, a right to a ritual is not of a disputed civil nature falling within S. 9 C.P.C. In support of this plea raised, the decision in *Thathachariar and Others Vs. Srinivasaraghava Aiyangar and Others*, and *Sri Sinna Ramanuja Jeer and Others Vs. Sri Ranga Ramanuja Jeer and Another*, are referred to for contending that, if religious rites and ceremonies are only claimed, then they are not maintainable in a Civil Court as they do not deal with the legal rights of parties. On behalf of plaintiff, reliance is placed on Exception 1 to S. 9 C.P.C., and on the principles laid down in *Sri Sinna Ramanuja Jeer and Others Vs. Sri Ranga Ramanuja Jeer and Another*, The essential condition is that the person holding office should be under legal obligation to discharge the duties attached to the office and for which non-observance he may be visited with penalty. In the light of the principles enunciated thereunder, it is futile to dwell any further on the scope of S- 9, because, defendants themselves by relying upon Exs. B4 and

B5 would plead that emoluments have been distributed to Dharmakarthas, and D.W. 1 would state that for conducting poojas, once in a year they receive payments. The fit person also had deposed about such disbursements. As the temple is covered by Tamil Nadu Act 22 of 1959, under S. 56, disciplinary action could be initiated, and S. 57 therein contemplates apportionment of archana fees itself. In that context S. 34 of the Specific Relief Act is also relied upon to show that as plaintiff is entitled to a legal right, he has the right to institute the suit for declaration of such a right. Defendants themselves would state that in respect of the murai in the temple, there were earlier litigations, and that the right to murais claimed is integrated with the right to secure emoluments. Therefore, it is obvious, and regarding which no dispute could be claimed that it is not open to the defendants to state that the right claimed in the suit is not coupled with a compellable duty, nor any emoluments are attached to it. Hence, the suit as filed is cognizable under S. 9, C.P.C.

7. On the last point taken, though it is mentioned as Ex. A4, it could only be Ex. A1, as plaintiff's have filed only two documents. This point is in essence no different from what had been considered under Point No. 1. In the written statement, there is no pleading to the effect that the eldest member of each branch had the authority to represent the group. Though reference is made to the agreement dated 15th May, 1973, in the written statement of first defendant and in Ex. A1 it is not filed. To find out whether any such system came into existence, as pointed out in M.N. Aryamurthy and Another Vs. M.D. Subbaraya Setty (Dead) through L. R. and Others, in the absence of any pleading relating to family arrangement, and the plea of primogeniture it cannot be claimed that plaintiff being the son of Madurakali Poosari, is bound by Ex. A1, which was not even signed by his father. One other aspect which came up for consideration was, whether Ex. A1 was acted upon or not. Here again, both the Courts have concurrently held, by relying upon Exs. B4 to B9 that there are no entries therein to show that either the plaintiff or his father had ever acted upon the terms contained in Ex. A1. D.W. 2, the fit person, by reference to the registers produced by him would categorically state that neither the plaintiff nor his father had ever signed nor had received any payment from him. He could speak only about what had happened subsequent to June, 1976, and not for the earlier period. When such concurrent finding had been arrived at by taking into account pertinent evidence, it cannot be interfered with to hold that plaintiff as a junior member of the family, in spite of not being a party to the document, is bound by the terms and conditions in EX. A1.

8. Yet another contention taken by Mr. G. Subramaniam, learned counsel, is that by amendment effected to the plaint, it has brought into existence a different cause and, therefore, the suit claim deserves to be dismissed. The plaintiff has stated as follows in the plaint, as originally framed, in para 9 (1): the plaintiff will be entitled to do pooja in Sri Badrakaliamman temple, Mecheri, for the first 15 days after the 15 days in hoisting and dehoisting of the flag in the month of Vaikasi in the Chinnapoosaris Murai year.

Though the plaintiff has claimed that he is entitled to conduct pooja in the month of Masi, there is no reference to this month in the relief as originally claimed. This only shows the careless and indifferent manner in which plaints are drafted and filed, and only at the time of hearing the suit plaintiff's counsel realises the mistake he has committed. The judgment was delivered by the Trial Court on 9th February, 1978 and this amendment was effected on 18th January, 1971, and P.W.I was examined on 20th January, 1978. Hence, only when the suit was taken up for hearing, he had realised the grave error committed by him. This happens mainly because Courts liberally allow amendments to be effected at any point of time. No action is taken for such gross negligence.

When plaintiff had been repeatedly pleading that he was having the right to conduct pooja in the months of Masi and Vaikasi, relief was confined only to the month of Vaikasi. Such omissions, mistakes, negligences, etc. galore in spite of Procedural Codes having been in force for nearly a century. Those who commit these patent errors are never taken to task, and the litigant public are subjected to undergo considerable risk, delay in culmination of proceedings and wastage of funds. In each and every matter in which amendments are allowed by Court, unless it was the outcome of an act committed by the litigant, in respect of amendments allowed due to omission or error by counsel, automatically it should be taken up by the Bar Council and dealt with sternly. If the earlier practice on this aspect is revived, it would go a long way in preventing indefiniteness in the conduct of proceedings and also avoid protraction which invariably sets in. On an ill drafted plaint, the defendants will have to put forth a defence which may not fit in with the amended plaint later on, and invariably they are granted the shortest time for filing a supplemental written statement, which quite often puts them to considerable handicap. In para 4 of the plaint itself, the right of the plaintiff in the month of Masi having been spelt out crystal clear, and the amendment having been allowed, there is no scope to hold that the suit deserves to be dismissed because the amendment is not proper.

Even the amended plaint is highly incongruous. If the first five days in the month of Masi is covered by the period when the flag is hoisted, and plaintiff is to get 15 days subsequent to it, then, on his own showing third defendant cannot get the other 15 days. A month has only 30 days and not 35 days. He states in Paragraph 4 of the plaint, after starting about the hoisting of flag for five days, as follows:-

The rest of the period in the month of Masi is the Pooja Murai of the plaintiff, the defendant three. The plaintiff's and third defendant will each do for half a month. The plaintiff will do pooja in the first 15 days in the month of Masi and the second 15 days in the month of Vaikasi. The third defendant will do pooja in the second 15 days in the month of Masi and the first 15 days in the month of Vaikasi.

It is, therefore, clear that third defendant is entitled to clear 15 days in the month of Masi. If so, the prayer, as framed, leads to an incongruity of providing

in all for 35 days in Masi in executing the decrees. It is unfortunate that, in decreeing the suit claim, both the courts below have not applied their mind to find out how the relief, as granted, would fit in with the plea made in Paragraph 4 of the plaint and in the deposition of plaintiff himself. The counsel who drafted plaint ought to have realised the fact that there cannot be 35 days in the month of Masi. Yet, the suit claim does not fail, because, in spite of the negligence of the counsel, plaintiff, fortunately for himself, in the course of his deposition, had safeguarded his interests by precisely stating that the fixed period of his entitlement is as follows:

In the earlier part of his evidence, he had also stated as follows :

In the light of such clear out and honest claim made by him, limiting his right to the period mentioned above, Courts below ought not to have granted the relief beyond what he had thus limited it. Hence, the second appeal is allowed, only to the limited extent of modifying the relief which plaintiff is entitled to, by holding that he will be entitled to do pooja in Sri Badrakaliamman temple, Mecheri, for the first fifteen days in the month of Masi and for the second fifteen days in the month of Vaikasi, and that, during the first fifteen days of Masi, when the Tairuvizha" is held for five days during which the flag would be hoisted, all the defendants along with plaintiff would be entitled to conduct pooja as per the Chinnapoosaris Murai. Except for this slight modification, in other respects, the second appeal is dismissed with costs payable by each one of the appellants to the plaintiff. Counsel fee to be paid by each, fixed at Rs. 250, taking note of the fact that this appeal had been argued before three learned Judges of this Court and considerable judicial time had been taken over an insignificant matter.