
(1952) 03 MAD CK 0026

In the Madras High Court

Case No : Second Appeal No. 949 of 1948

Kannaganti Suryanarayanamurthi and Others

APPELLANT

Vs

Pidugu Rama Rao and Another

RESPONDENT

Date of Decision : 07-03-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (1953) 66 LW 122 : (1953) 1 MLJ 682

Hon'ble Judges : Chandra Reddi, J

Bench : Single Bench

Advocate : N.V.B. Sankara Rao, for the Appellant; R. Venkatasubba Rao and A. Rangarayakulu, for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddi, J.—The respondents herein filed a suit in the Court of the District Munsif of Tenali for a declaration that they have exclusive

right to hold the lighted torch, Sannidhikola inside the Chariot during the Radhotsavam of Sri Agastheswara Swamj at Nandivelugu and for a

permanent injunction restraining the defendants from interfering with their right. The basis of the suit was that, ever since the inauguration of the car

festival, the ancestors of the plaintiffs & the plaintiffs have been exercising exclusive right of holding the lighted torch inside the chariot and that this

right was being exercised till they were obstructed by the defendants in the year of 1945.

2. The suit was resisted by the defendants, Who are the trustees of the temple mainly on two grounds. The exclusive right of the plaintiffs to hold

the Sannidhikola was denied; and ft was also pleaded that the suit was not cognisable by a civil Court as the right claimed related only to a religious

honour or dignity.

3. The trial Court, while holding that the plaintiffs have proved their exclusive right to hold the lighted torch, though for -a few years before the

institution of the suit they did not exercise this right, dismissed the suit on the ground that the right claimed by them was a mere religious honour

and, as such, could not be enforced in a civil Court. On appeal, the Subordinate Judge, while confirming the judgment of the Court of the first

instance with regard to the right of the plaintiff to hold the lighted torch, reversed it on the point whether the right claimed was not cognisable by a

civil Court. In the opinion of the lower appellate Court, the right to hold the lighted torch can be deemed to be attached to a service or an office

and that it was, in any event, a mode of worship, which could be enforced through a Court of law. In the result, he decreed the suit.

4. The defendants, who are dissatisfied with this judgment of the Subordinate Judge, have preferred this second appeal. In this appeal, the

conclusion of the learned Subordinate Judge is challenged by Mr. Sankar Rao for the appellants as being erroneous. He urges that the view of the

lower appellate Court that the right to hold the lighted torch inside the chariot is one that is attached to a service or an office is not correct and

secondly that the lower appellate Court erred in holding that it was a mode of worship when the plaintiffs did not seek to enforce the right as a

mode of worship.

5. The sole question for determination in the second appeal is whether the right claimed is one that could be agitated in a civil Court. To appreciate

this question, it is necessary to refer to the terms of Section 9, Civil P. C. Section 9, Civil P. C., lays down that

the Courts shall (subject) to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their

cognizance is either expressly or impliedly barred,

Explanation: A suit in which the right to property or to an office is contested is a suit of a civil nature notwithstanding that such right may depend

entirely on the decision of questions as to religious rites or ceremonies.

6. I have, therefore, to see whether the present suit is a suit of a civil nature within the meaning of Section 9, Civil P. C. As I have already stated,

the lower appellate Court rests its decision on two grounds (i) that it is a right

attached to a service or office and (ii) that it is a mode of worship.

First I will dispose of the second ground ""of decision as it does not present any difficulty. It must be observed that the plaintiffs did not claim the

right as a mode of worship. They stated categorically that it was an office to which they have been entitled from time immemorial. This question

was not raised in the pleadings nor was an issue raised about it. So, the lower appellate Court could not base its judgment on a ground, which was

not raised in the pleadings. It is, therefore, unnecessary for me to consider whether the right to hold the lighted torch inside the chariot is a mode, of

worship.

7. Turning now to the question whether the right amounts to an office within the meaning of the explanation to Section 9, Civil P. C., I will first

consider whether there is any support for the view of the learned Judge, in the two decisions cited by him. In -- "Srinivasa v. Tiruvengada", 11

Mad 450 (A), the suit was for an-injunction to prevent the trustees of a temple from interfering with the right to distribute sacred water and serving

satagopam, i.e., gold crown to "Adyapakas" during a particular festival. A Bench of this Court consisting of Colline C. J. and Parker J. held that

the right claimed by the plaintiffs was cognizable by a civil Court. The learned Judges propounded the following test for deciding whether the suit is

of a civil nature or not.

The ordinary test is whether there is any specific pecuniary benefit attached to the office claimable in the nature of wages however small that

benefit may be. If there be, the right to such benefit is a question which the Courts are bound to entertain.

"Thirumalal Alwar v. Lakshmi Sadagopa Aiyangar", AIR 1917 Mad 903 (B), is an instance of a right to conduct worship in a particular mode

claimed by the Mandapamdars and upheld by a Court of law. Spencer and Krishnan JJ. held that such a right comes within the ambit of Section 9,

Civil P. C., as, in their opinion, it was an act of worship in a particular mode and with particular incidents attached to it. The learned Judges

classified cases relating to religious services into four kinds, which come within the purview of Section 9, Civil P. C.

In the language of the learned Judges,

One class of cases comprises those in which a plaintiff sues to establish his

individual right of public worship from which he has been wrongfully excludedWith these are closely associated cases in which a right of access to religious objects is sought to be established as these generally involve questions of caste status and as that is a matter of civil right..... In a different category fall suits brought by worshippers under Act 20 of 1863 to compel the performance of acts of worship In which there has been neglect of duty on the part of a trustee or manager of a temple or other religious institution.....The next class includes suits to establish a claim to an office with emoluments. It has always been held that such suits will lie because the right to emolument;, is a civil right connected with property, although the determination of it may involve the decision of questions of religionAn extension of this principle appears in certain cases when what is claimed is not emoluments of any pecuniary value but honours attached to an office in lieu of emoluments.

8. The reason why according to the learned Judges civil Courts will not take cognizance of suits in which the claim relates merely to receive religious honours and emoluments unconnected with any office is

The duty of individuals to submit to and perform certain religious observance in accordance with the ritual or conventional practice of their race or sect is, in the absence of express legal recognition and provision, an imperfect obligation of a moral and not a civil nature.

9. Applying the test propounded by the learned Judges to that case, I am afraid the right claimed by the plaintiffs should be held to be outside the scope of Section 9, Civil p. C. It is thus seen that the two decisions relied on by the learned Judge, far from lending any support to the conclusion, go to show that such a right, as claimed in the present case, is not a right attached either to an office or a mode, of worship.

10. The case very much in point is -- Ramaswami Goundan and Others Vs. Lakshmana Reddi and Others, . There a person claimed the right to lead -a horse on a particular festival day in a temple whenever that festival was performed, the festival being performed only whenever the funds of the temple permitted it. It was found that the plaintiff could not be compelled either to bring the horse or to lead it if he did not choose to do so. It was decided by Leach C. J. and Somayya J. that the right claimed was not an office within the meaning of Section 9, Civil P. C., as it was a mere

honour. The "ratio decidendi" was that the right claimed would not amount to an office as there was no corresponding obligation to perform duties.

The learned Judges quoted with approval a passage from -- "Srinivasa that hachariar v. Srinivasa Iyengar", 9 M L. J. 355 (D) :

The term "office" in the sense with which we are concerned, implies, of course, a duty in the office-holder to be discharged by him as such--see if

authority were necessary, Kent's Commentaries-- where it is pointed out, offices consist in a right and correspondent duty, to execute a public or

private trust and to take the emoluments belonging to it.

With respect I am in entire agreement with the principle laid down by the learned Judges in this case.

11. To the same effect are the observations of Madhavan Nair J. in -- Chitti Babu Mudaliar Vs. A. Venkatasubbu Mudaliar and Another, ,

To constitute an office, I think it will be essential to have some duties attached to it which the office holder will be under a legal obligation to

perform, the non-performances of Which will be visited with penalties.

12. Applying the principles enunciated in, the case above, I must hold that the right claimed in this case is not an office, which could be enforced in

a Court of law as there is no corresponding compellable duty. On their own showing, the plaintiffs cannot be compelled to hold the torch. It was

argued by the learned counsel for the respondent that the trustees were at liberty to have the Sannidhikola carried by someone else whenever the

plaintiffs or any member of their family was unwilling to do it and thus indirectly compel them to perform the duty. I do not think that this can in any

way amount to a compellable duty. The plaintiffs' witnesses admitted that the plaintiffs could not be compelled to hold the lighted torch if they are

not willing to do so. In view of the several admissions by the P. Ws. I do not think that the holding of the torch can be held to be a compellable

duty. In my opinion, the right such as the one claimed in this case is a religious honour or dignity, which is excluded from the purview of the Civil

Courts and not an office within the meaning of Section 9, Civil P. C. This is a case in which no emoluments are attached to the office or at least any

honours in lieu of the emoluments, however trifling they might be. As such, I fail to see how such a right can relate to an office or to a service. It

follows that the decision of the lower appellate Court is wrong and ought to be

set aside & the judgment and decree of the trial Court restored.

13. In the result the appeal is allowed and the suit is dismissed. I direct each party to bear their own costs throughout. (No leave).