
(1932) 09 MAD CK 0029
In the Madras High Court

Katamreddi Ramireddi

APPELLANT

Vs

(Paderala) Sreeramulu Reddi and Others

RESPONDENT

Date of Decision : 09-09-1932

Acts Referred:

Citation : AIR 1933 Mad 120 : 140 Ind. Cas. 826

Hon'ble Judges : Pandalai, J

Bench : Division Bench

Judgement

Pandalai, J.—This petition arises out of an order passed u/s 78, Hindu Religious Endowments Act 2 of 1927 by the learned District Judge of

Nellore. The petitioners before him were the non-hereditary trustees of the temple of Sri Kothandaramaswami at Kovur which is under the

superintendence of the District Temple Committee, Nellore. They were holding office when the Act came into force, and are therefore persons

who must u/s 51(4) of the Act be deemed to have been appointed under it on the date the Act came into force. The petition was directed against

persons holding certain lands of the temple under two leases executed by members of the archaka family for one-half of the lands each. One lease

was for 15 years from 20th October 1919, and the other was for 11 years from 22nd March 1919, and the rent reserved was 10 rooms of grain

per acre per year. The trustees stated that the archakas had no authority to lease the temple lands as the lands were given to them for enjoyment as

remuneration for services rendered by them as archakas. They stated that other arrangements had been made to remunerate the archakas for their

services, that the archakas had accepted those arrangements and consented to the temple taking possession of the lands and executed a karar or

agreement to that effect on 14th July 1927; but that the counter-petitioners, the lessees, refused to give up the lands, and therefore they, the

petitioners, were directed by the Temple Committee to take steps u/s 78 of the Act to get possession.

2. The learned Judge dismissed the petition on two grounds. The first ground is that the petitioners are incompetent to maintain the petition, as they

are not trustees appointed by the Committee to whom alone Section 78 applies. In his opinion although the petitioners are declared by Section

51(4) to be deemed to have been appointed under the Act on the date the Act came into force, still as they were not in fact appointed by the

Committee they do not come within the section. In my opinion this was not a sound distinction. The effect of Section 51(4) is to make the

petitioners for the purposes of the Act in all respects the same as if they had been appointed by the Committee on the date when the Act came into

force. In the face of this express provision, the fact that they were not again appointed by an order of the Committee is irrelevant, the statute having

given them the authority of persons who are so appointed. The learned advocate for the counter-petitioners here drew attention to the fact that

Section 78 requires production of the order of the Board or Committee appointing the petitioners and urged that as these petitioners cannot

produce an order of appointment they are not competent to apply. The answer to this is that Section 51(4) dispenses with a separate order of

appointment. No other order need be produced when the statute has made a declaration which gives the petitioners the status and privileges of

persons in fact appointed by the Committee. The other ground on which the learned Judge thought the petition incompetent was that Section 78 is

not applicable to proceedings against third parties holding adversely to a temple or other religious endowment but only to proceedings against

trustees, temple servants or others holding for and on behalf of the endowment. For this opinion the learned Judge refers to the objects and

reasons of the original Bill of 1922, and to a note on Clause 24 of that Bill corresponding to the present Section 78 to the effect that clause is

intended to operate against dismissed trustees and others who prove refractory.

3. The learned Judge was not entitled to refer to this document to determine the proper construction of the section. It must be determined on the

words as they stand, having regard to the general scope and object of the legislation as determined by this and the other provisions contained in it.

The advocate for the respondents referred to the preamble of the Act as to the scope and object of the legislation. It says that it is expedient to

provide for the better administration and governance of certain Hindu religious endowments, and from this he argued that powers could not have

been intended to be given to the Board, Committee and Trustees under the Act to proceed against those who were not concerned with the

administration, or governance of the endowment but with third parties. There is some force in the argument. But the words of operative sections of

an Act must be given effect to irrespective of inferences to be drawn from a preamble if the words themselves are clear and capable of only one

meaning. Reference was also made to Section 73 of the Act which abolishes the use of Section 92, Civil P.C., and substitutes a new procedure for

suits which fall within Section 92, and it was argued that as such suits relate only to internal matters, Section 78 also must be directed against

persons concerned with the internal management of a temple. Section 73 of the Act of 1919 has, in my opinion, no connexion with the present

point, as it is only concerned with suits for which Section 92, Civil P.C., had provided. The meaning of Section 78 must be determined without any

analogy to be drawn from the class of suits to which Section 73 refers.

4. The principal point is the language of the section itself. It says that where a Committee has appointed persons as non-hereditary trustees of a

temple or where the Board or a Committee has appointed a person to discharge the functions of a hereditary trustee and such person is resisted in

or prevented from obtaining possession of the mutt or temple or of the endowment connected therewith or of any title-deeds or other documents

relating thereto, the Court may on application by the person so appointed and on production of the order of the Board or Committee appointing

him, order the delivery to such persons of the possession of such property as may be specified therein.

5. It will be noticed that nothing is said as to who are the persons against whom the application is to be directed. It is certainly the case that in the

vast majority of cases the application will be directed against ex-trustees or temple servants or other refractory persons connected with the

administration who refuse to give up the property of the temple into the hands of the newly appointed trustees. But there is nothing in the section

itself which limits the application to such persons; and it is impossible by mere inference and as a matter of construction to read into the section

some such words as "from any person who is not holding the same under any title or claim adversely to the institution." If that was intended, it was

perfectly open to the legislature to say so. They have not done so; and it is impossible by mere construction to add words which limit the operation

of the general language of the section. Reference was made to Section 41, English Charitable Trusts Act of 1853, which limits the power of a

Judge when acting u/s 28, and prohibits him from trying or determining title to any property or interest therein as between any charity or trustee

thereof, and any person holding or claiming such property or interest adversely to such charity. It was urged that Section 78 must be read as if that

was expressed in it. But construction by analogy is totally inadmissible and I am bound to give effect to the words of the Indian enactment as they

stand. I therefore come to the conclusion that there is nothing in the section itself which debars the jurisdiction of the Court to which an application

is made under it from trying any question which may be appropriate as between a religious endowment and strangers provided the question be

relevant to the possession of the mutt or temple or its endowments or title-deeds or documents, that is the immediate right to possess the same.

6. But the section only confers a discretion, because the words are ""the Court may"" which show that the Court is not bound to make an order

under the section in circumstances in which a difficult question of title may arise and prolonged investigation be involved. The scheme of the section

would appear to be much like Section 4, Provincial Insolvency Act, which confers wide jurisdiction on the Court but makes it discretionary in

cases which are not obvious. I myself am of opinion that the Court will order a separate suit where the dispute is between a temple and a third

party who has a genuine and hostile claim.

7. That leads to the only other point, namely, that in this case, the learned Judge has in the exercise of his discretion stated that he would not, even

if he had the power, make the order. This was an exercise of jurisdiction with which I do not see any ground to interfere. The respondents are

persons who had been on the date of the petition lessees of property from the then apparent managers although they were only archakas for eight years. Whether the original lease was or was not prudent and binding on the temple was a question which the Court u/s 78 might justifiably leave for determination in a separate suit. The learned Judge having decided so to leave it, I am not prepared to question that discretion. The petition therefore must be dismissed and with costs.