

(1945) 01 MAD CK 0047
In the Madras High Court

Kavilpura Ezhuvan Muthu's son Chathunni and Others	APPELLANT
Vs	
Pathiyil Rugmini Amma's son Appukuttan Nair and Others	RESPONDENT

Date of Decision : 11-01-1945

Acts Referred:

Citation : AIR 1945 Mad 232 : (1945) 58 LW 223 : (1945) 1 MLJ 445

Hon'ble Judges : Chandrasekhara Ayyar, J;Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Ayyar, J.—These two second appeals have been preferred by some of the defendants who are members of the Ezhuva

community. The respondents are ½ Nairs by caste. S.A. No. 19 of 1944 arises from the decision in O.S. No. 304 of 1939 while S.A. No. 20 of

1944 relates to O.S. No. 303 of 1939.

2. The main dispute between the parties is whether the Ezhuvas are entitled to bathe in the two tanks attached to the temples named in the plaints.

In O.S. No. 303 of 1939 the Siva temple is known as Puvvakode Siva Kshetram and the tank attached to the temple goes by the name of

Kokkote. In O.S. No. 304 of 1939 the name of the temple is Cherembath Kavuvu and the tank is known as Kavuvu Kulam.

3. Alleging that the temples and the tanks belong exclusively to the Nair community and that the Ezhuvas who were of the theendal caste had no

right to bathe in the tanks or enter the temples, the Nairs brought the two suits for a permanent injunction to restrain the defendants--Ezhuvas from

entering the temples and bathing in the tanks, and for recovery of compensation for the losses incurred by them in connection with the purificatory

ceremonies that had to be performed as the defendants did bathe in the tanks

contrary to usage and mamool.

4. The defendants denied the right claimed by the plaintiffs and pleaded that the temples and the tanks were public institutions and that they had

been as a matter of fact using the tanks for bathing purposes for a long time.

5. Both the lower Courts found that the temples and the tanks were not the exclusive property of the Nair community represented by the plaintiffs

but they belong to the Hindu public. At the same time they held that the defendants had no right to bathe in the tanks as they were properties of the

temple and appurtenant thereto and intended for the use of the higher caste Hindus. While the District Munsiff dismissed the plaintiffs' suit as they

had not made out their claim to exclusive ownership, the Subordinate Judge decreed the suits and also awarded the compensation claimed in

connection with the performance of the purifactory ceremonies.

6. In these second appeals preferred by the Ezhuvas, there is no right claimed to enter the temples for worship but what they want is the privilege

of bathing in the tanks. Their learned advocate Mr. Sitarama Rao took two points on their behalf.

7. One is that though the tanks may belong to the temple and be appurtenant or attached thereto, they are still public tanks on the finding of the

lower Courts and any one can use them for purposes of bathing, especially after the Removal of Civil Disabilities Act, 1938, came into force. The

second is that any infringement of the rights of the worshippers, must be the subject-matter of a complaint by the trustees or Uralans and not by the

beneficiaries.

8. The finding of the lower Courts that the tanks are attached to the temples and are intended for the use of the worshippers who go to the temple

for worship is based on the evidence in the case and has not been challenged. Being appurtenant to the temples, it follows as pointed out by the

learned Subordinate Judge, that the usages as regards the tanks are inseparably mixed up with the customary rights and practices and privileges

prevailing as regards the temples themselves. He states that it is well known that no important temple in Malabar would be without a tank for the

use of the priests of the temple as well as of the orthodox worshippers frequenting the temple. Both the Courts negative the plea that the Ezhuvas

have been bathing in the tanks and have recorded a finding that "they have no

such right by reason of the usages of the institution having the force of law.

9. Section 2 of the Removal of Civil Disabilities Act, 1938, on which reliance was placed for the appellant is of no help to them as it is obvious that the public stream, river, well, tank, pathway, sanitary convenience or means of transport mentioned therein have reference to secular objects of the kind and not religious ones. The words "" or any secular institution "" which follow make this quite dear. The intention apparently was to remove all disabilities with reference to public objects and institutions of a secular nature, leaving religious objects and institutions untouched. The tanks in question are no doubt public tanks in the sense that not only the members of the Nair community but members of other classes of the Hindu public have a right to resort to it but being attached to the temples their use is necessarily governed by the usages which obtain in and appertain to the temples. If the caste Hindus alone have got a right of worship in the temples and have been using those tanks for purposes of bathing such rights must be preserved. The position would be different if they do not belong to or are not attached to religious institutions, for then they will be purely secular and every member of the Hindu public without distinction of caste can use them.

10. There is no substance in the objection that it is the trustees of the temple or the tanks that must have filed these suits. It is the trustees that should complain of a trespass generally speaking and this is what is laid down by the Privy Council in *Saklat v. Bella* (1925) 49 M.L.J. 821 : L.R.

53 IndAp 42 : ILR 3 Rang. 582 , but where the individual or personal rights of worshippers are infringed, they have got their own right of action to prevent the infringement. This is recognised in the very case, where reference is made to the early decision in *Anandarao Bhikaji Phadke v.*

Shankar Dajicharya ILR (1883) Bom. 323, where the claim was set up by the plaintiffs that certain classes of Brahmins were alone privileged to worship in the temple of Bhavanishankar at Agashi and that the defendants who did not belong to the privileged class had no right to enter the temple and perform worship there to the injury of the plaintiffs. This observation of West, J., may be quoted:

Here the plaintiffs say they were personally injured by a pollution of their shrine

in a way which the Civil Courts can readily prevent. They could properly claim protection on making out their case.

In the present case also the plaintiffs stated that the bathing in the tank by the defendants has polluted it and prevented them from bathing in the tank and going to the temple for worship after such bath. Even in the Rangoon case (cited above) we find the following statement at page 603:

It may be that in India it would be convenient in some cases" to allow such a suit, and, the judgment in 7 Bombay series may form a precedent But, if so, the circumstances must be as powerful as in that case. It must be established that the juxtaposition of the two sets of persons is so repugnant to their habits of mind that the entrance of one set into the temple entails the departure of the other, so that it is as it were trespass to the person.

This is exactly What has been alleged in this case and found by the lower Courts to be proceed. Further, there does not seem to be any absolute

rule that the trustees alone can prosecute a suit under such circumstances. If they are not really interested in any such dispute the beneficiaries can

take action. Ordinarily no doubt, the trustee will represent the beneficiaries, and it is not necessary to make them parties; but the Court can order

them to be made parties so that the questions at issue between them and the third persons can be adequately dealt with or gone into. This is

provided for in Order 31, Rule 1 of the Code and the decision in Narayanasami Gurukkal, Vellasamy Tever and Another and Rajah Rajeswara

Dorai Vs. Irulappa Nadan and Others, was under the corresponding Section 437.

11. For the reasons given above, I have come to the conclusion that the decrees made by the Subordinate Judge are right and must be affirmed.

The second appeals will stand dismissed with costs in both as the temples and the tanks are different in the two cases, though the parties are the

same. No leave.