

(1925) 03 MAD CK 0015
In the Madras High Court

K.G. Muhammad Hussian Sahib and Others	APPELLANT
Vs	
P. Baba Sah and Others	RESPONDENT

Date of Decision : 10-03-1925

Acts Referred:

Citation : AIR 1926 Mad 336 : 91 Ind. Cas. 595

Hon'ble Judges : Kumaraswami Sastri, J; Krishnan, J

Bench : Division Bench

Judgement

Kumaraswami Sastri, J.—This is an appeal against the judgment of the Chief Justice restraining the defendants by an injunction from

proventing the plaintiffs from building upon their lands. The plaintiffs are Dharmakarthas of the Balasubramaniswami temple in Pudupet situation

Narayana Naicken Street. The defendants are interested in a mosque which was separated from the temple by three houses and a road which was

about 16 feet broad where it took off from Narayana Naicken Street and was tapering off. It was about 13 feet broad by the time it reached the

end of the mosque. The temple originally was in a small building but subsequently the Dharmakarthas acquired three houses which brought the

temple property to the street which separated the mosque from the three houses. Having purchased the property the Dharmartkarthas wanted to

erect a mantapam after demolishing the three houses which adjoined the original temple. In this they were obstructed by the Muhaminadans who

were interested in, the mosque.

2. There were Police proceedings and the plaintiffs had to go to Court because they were restrained by the order of a Magistrate from building

upon the temple property. The suit was originally tried by Mr. Justice Bakewell

who thought the plaintiffs had no cause of action and dismissed it.

On appeal it was remanded by Justices Ayling and Odgers and the suit finally came on for trial before the Chief Justice. There was no evidence let

in on remand and, so far as the evidence in the case goes, there is no evidence that the building proposed to be erected would necessarily be a

nuisance. In the plaint which was filed in the suit all that is said in para. 10 is with a view to meet the essential requirements of the temple and its

worshippers, the plaintiffs demolished the house marked B just next to the temple with a view to build on its side a mantaparri to be used for

various purposes connected with the temple "I said before there was no evidence to show that this building, if erected, would necessarily amount to

a nuisance so as to entitle the Court to prevent the building in anticipation of a nuisance that was likely to be caused. Mr. Narasimha Iyer argues

that the very fact that a temple is going to be built necessarily would be a nuisance to the adjacent inhabitants owing to the music and the tom-tom

and other accompaniments of a temple. I do not think we can hold in the absence of evidence that the mere fact that a temple is built would justify

us in assuming that the temple, if built, would be an actionable nuisance to the neighbours of the locality; much less can we hold that the building of

a mantapam annexed to a temple would be such a nuisance. The temple according to the plaintiffs and it is not found against, was an old temple

which existed for several years. It was about three houses off this mosque and any tom-tom must have been a nuisance for several years. There is

no objection now to the worship which is conducted in the temple but it is complained that the building of that mantapam will create such an

actionable wrong as to justify its prevention. As I said before, I do not think we can hold in the absence of any evidence that it will be a nuisance.

Several cases were cited by Mr. Narasimha Iyer but they were all cases where there was evidence that there was a nuisance or that the propose

building was of such a character as necessarily to amount to a nuisance if completed, but in the case before us those elements are wanting. We

think that Justice Coutts-Trotter has correctly defined the rights of the parties. He says in his judgment the Dhurmakarathas are entitled to alter and

extend the present temple building marked A in any lawful manner they choose and to erect on the sites marked B, C, D and E any buildings which

shall conform to the requirements of the Municipal Law now or hereafter to be in force and that the defendants are not entitled to interfere in any

way with such acts of the plaintiffs". This is the sole declaration which the learned Judge says he makes As regards the argument that it may be a

nuisance, later on the Judge observes ""I am not going to make any declaration touching the user of the building, and when I restrain the

Muhammadans from interfering I mean from interfering by physical acts. It is difficult to see how any objection can be taken to the injunction as

actually granted by the learned Judge or to the decree in which that injunction is embodied unless we can hold that the mere-budding would be such

an act as necessarily to amount to a nuisance as to which there is no evidence whatever. In these circumstances, I do not think there is any reason

for interfering with the judgment of the learned Judge who has confined the injunction to legitimate limits so far as the plaintiffs rights are concerned.

The appeal, therefore, fails and is dismissed with costs.

3. The plaintiffs have filed a memorandum of objections but I do not think there is anything in it. 80 far as the orders of the Magistrate are

concerned, the learned Judge was right in saying he could not interfere with those orders. They were passed by the Government and the

Magistrate in the exercise of their discretion. 80 far as the costs are concerned I do not see any principal which the Earned Judge violated. The

plaintiffs expressly asked in their plaint prayer C to set aside the orders and the learned Judge held that he had no power to do so To that extent

the claim failed and the learned Judge was right in giving the defendants some benefit in respect of the reliefs which the plaintiffs asked in-

fructuously The memo of objection a tails and is dismissed with costs.

Krishnan, J.

4. The facts of this case are all set out m the judgment of the learned Chief Justice and also by my learned brother who has just delivered his

judgment. The appellants" argument 13 based on the contention that the building of a temple is in ?itself a nuisance to the neighbourhood as there is

likely to be some music and other noises emanating from the temple when the worship in the temple goes on. The appellants" Vakil, therefore,

wanted us to hold that the building of a temple, particularly in street in a city like Madras, must be treated as in itself a nuisance and be inhibited by

an injunction order, I am entirely unable to agree with the learned Vakil for the appellants that the building of a temple can be treated as in itself a

nuisance. If afterwards in the way in which the temple authorities use the temple an actionable nuisance is committed by them, it will be time enough

for the appellants then to take action. The declaration that has been given by the learned Judge in this case will not prevent their rights being: put

forward in any Court if they do have any such rights resulting from the action of the plaintiffs. So far as I can see the declaration that has been given

to the plaintiffs is one that cannot be objected to at all. The learned Judge declares that plaintiffs are entitled to build in a lawful manner whatever

building they like to put upon the site they have acquired and that is a right which every owner of property has got. It is not pretended that the

building in this case will in any way interfere with the light and air or other rights of any neighbouring owners there is no ground whatsoever for

objecting to the declaration granted. The learned Judge says expressly in his judgment that he was not going to make any declaration touching the

user of the building and, as I say, if the user proves to be a nuisance, it will be time enough for the defendants to take action.

5. In the memorandum of objections, it was urged by the plaintiffs that nothing is said in decree about their right to build a gate. Although there may

be nothing expressly in the decree the learned Judge has stated in his judgment that ""the plaintiffs can build what they like; they can build a gate if

they like"". Evidently the right to build a gate is included in the right to build given by the decree. There was no object in filing the memo, of

objections on that point. As regards the costs I agree that this is not a case in which we can properly interfere with the discretion exercised by the

Trial Judge. The appeal fails as also the memorandum of objections and they are dismissed with costs.