

(1936) 11 MAD CK 0044
In the Madras High Court

Khaji Dodda Khaji Saib and Others		APPELLANT
	Vs	
Chigamalla Nanjappa and Others		RESPONDENT

Date of Decision : 02-11-1936

Acts Referred:

Citation : (1937) 45 LW 224 : (1937) 1 MLJ 197

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This second appeal arises out of a suit brought on behalf of the Hindu residents of a village in Bellary District for an

injunction restraining the defendants from constructing a Jumma Masjid which they proposed to erect on a plot shown in the plan attached to the

plaint and also for a declaration of the rights of the Hindus to carry certain processions, etc., along the routes indicated in the plan. When the matter

was pending before the Court of first instance, the District Munsiff refused to grant a temporary injunction restraining the completion of the building

and when the matter came on for final disposal before him, he limited the injunction to one restraining the defendants from declaring that building to

be a mosque. He also granted a declaration in respect of the plaintiff's rights as regards processions, etc. The learned District Judge has confirmed

the decree of the District Munsiff. Hence this appeal by the defendants.

2. The second appeal has been pressed only in respect of the injunction restraining the use of the building as a mosque. On behalf of the appellants,

Mr. Narasimhachar, drew my attention to the proposition laid down as early as in *Kasim Ali Khan v. Brij Kishore* (1870) 2 N.W.P. 182 and

Seshayyengar v. Seshayyengar ILR (1880) 2 Mad. 143 that parties are at liberty

to build what structure they please upon their own land and use them for religious worship as they choose. The statement of the rule in *Seshayyengar v. Seshayyengar* I.L.R.(1880) 2 Mad. 143, is qualified by the addition, ""provided that, in the performance of their worship they do not cause material annoyance to their neighbours"". In *Parthasarathi v. Chinnakrishna* I.L.R.(1882) 5 Mad. 304 this view was affirmed, with the further addition to the proviso that ""no public nuisance is caused"". I am unable to accede to the suggestion made on behalf of the respondents that the use of the building as a mosque will ipso facto be a nuisance or amount to an abnoxious user having regard to the character of the neighbourhood; but I am not satisfied that it is only on the ground of nuisance that the Court can impose limitations in a case of this kind.

3. The decisions above referred to are only illustrations of the well-known maxim quoted by the learned District Judge ""Sic uteri tuo ut alienum non laedas"". As observed in *Broom's Legal Maxims* (9th Edition) at p. 260 the principle is one essential to the peace, order and well being of the community, and its application has to be determined with reference to the circumstances of each case and not on mere abstract considerations. I

quite agree with the principle recognised in *Janki Prasad and Others Vs. Karamat Husain and Others* that a Civil Court is not concerned with mere

matters of sentiment or even with danger to the public peace which it is for the magisterial authority to provide against. But it seems to me that in

the proper application of the maxim above referred to these considerations are not wholly out of place. In the decision in *Muhammad Hussain v.*

Baba Sah AIR 1926 Mad. 336 to which the appellants' earned Counsel drew my attention, the learned Judges pointed out that in the absence of

evidence to the contrary they were not prepared to make any presumption that the proposed structure will be improperly used. It must also be

remembered that in that case the Hindu temple complained of was already in existence and all that was proposed was the addition of a mantapam.

In *T. Syed Pitchai Rowther and Others Vs. K. Devaji Rao and Others*, , Horwill, J., laid some stress upon the fact that in the case before him

there was nothing in the evidence to indicate that it would be impossible for both parties to enjoy their respective rights. I wish that in the present

case it had been possible for me to come to the same conclusion. Both the

Courts below have referred not merely to what is known as the general consequence of the erection of a mosque for the first time in a Hindu locality, but to the indications afforded by the evidence in the case as to the attitude taken up by the defendants in respect of rights which the Hindus of the locality had theretofore been accustomed to enjoy. In the face of the findings based upon such considerations, I do not feel I will be justified in interfering with the decision of the lower Court merely upon abstract theories of legal rights.

4. The second appeal therefore fails and is dismissed with costs.

5. Leave to appeal granted.