
(1956) 01 KL CK 0003

In the High Court Of Kerala

Case No : Civil Revision Petition No. 74 of 1955

K.K. Menon

APPELLANT

Vs

Nataraja Moopanar

RESPONDENT

Date of Decision : 03-01-1956

Acts Referred:

Citation : (1956) 01 KL CK 0003

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : N. Krishnaswami Iyengar and V. Sankarasubramonia Iyer, for the Appellant; G. Viswanatha Iyer, for the Respondent

Judgement

T.K. Joseph, J.—This Civil Revision Petition by the executive officer of Thiruchendur Sri Subramonia-swamy Devasthanom is directed against an order refusing to implead the Devasthanom as a party to the suit. The suit was for removal of trustees, for rendition of accounts and for framing a scheme" for a Trust created by the ancestors of the Plaintiffs and Defendants 8 to 13 for the performance of various religious ceremonies in Subramoniaswamy temple at Thiruchendur and in other temples and at the Matom, on certain specified dates. The grounds on which the prayer for impleading was made were that Patta for the properties stood in the name of Subramoniaswamy and that the income therefrom was to be utilised for conducting Mantagapadi during Avani and Masi festivals in the temple of Subramoniaswamy at Thiruchendur. The application was opposed by the Plaintiffs and the Defendants and the court below held that the Devasthanom was not entitled to be impleaded. The application was accordingly dismissed.

2. Though the application for impleading the Devasthanom was opposed by the Defendants also they have not been made parties to this Revision Petition. They are as much interested in the outcome of the litigation as the Plaintiffs. This omission to make them parties to this Revision Petition is sufficient to entail dismissal of the same but I do not propose to do so on that ground. alone.

3. The position contended for on behalf of JKK. Petitioner was that ownership of the proper-MnHs vested in Subramoniaswamy as seen from the PaOta and that the deity should therefore be represented in the suit. The learned Judge has pointed out that the Trust was created for the daily pooja of Sabapathi idols installed in the Matom built by the founders of the Trust, for the performance of Mantagapadi ceremony in Thiruchendur temple on the third day of Avani and Masi festivals, for Maheswara "Pooja and other ceremonies to be conducted at the Matom, for daily Pooja of Uchinimakali Amma in the temple at Aloor. and for the Chirappu in the third Somava-ram of Karthikai in the Mahadevar temple at Aloor. The Patta has to be construed in the light of the decision granting the same and it is clear that performance of the specified ceremonies in the temple of Subramoniaswamy is only one of the objects of the Trust. The Petitioner has no case that the deity was functioning as owner of the properties or trustee in the past. Neither the Plaintiffs nor the Defendants have set up any interest adverse to the deity. This case cannot be considered on a par with" the cases reported in *Pramatha Nath Mullick v. Pradyumnakumar Mullick* and AIR 1933 198 (Privy Council) where the idol was directed to be made a party, in view of the peculiar circumstances of the cases and the contentions of the parties. The following passage from *Bimal Krishna Ghose and Others Vs. Shebait of Sree Sree Iswar Radha Ballav Jiu and Others*, is instructive:

It is perfectly true that in a matter in which the deity is vitally interested the deity should be made a party and if the Shebait has got any interest adverse to that of the deity it is necessary that the idol should be represented by a perfectly disinterested person, as was indicated by Their Lordships of the Judicial Committee in the case mentioned above. Necessity, however, has got to be judged on the facts of each particular case and the controversies to which it gives rise. In 52 Ind. App. 245 : AIR 1925 P. C. 139 (A) the Appellant claimed the right to remove the idol during his term of worship and Their Lordships held the will of the idol as regards location must be respected and the suit was remitted in order that the idol might appear by a disinterested person to be appointed by the court. In 60 Ind. App. 263; (AIR 1933 P. C. 198 (1) (B) there was a suit for possession of a property upon which a Takurdalan was used by the Defendants and an idol called Sri hakurji Maharaj was installed. The Privy Council held that they could not deal with the appeal in the absence of the idol whose interest arose under the Wakf and the case was sent back in order that the question might be decided in the presence of appropriate parties. In the present case it is admitted that none else except the parties to the suit are interested in the deity and it is not suggested that the deity's interest would in any way be affected; by adjustment of the rights of management among the Shebait interest. Up to now, the preliminary decree had dealt only with one substantial question, namely as to whether upon the construction of the Ekrarnama, properties added to the debutter by a particular Shebait should remain under the exclusive management and control of his branch only. For this purpose, the presence of the deity is not necessary. The facts are somewhat similar to those in *Upendra Nath*

Ghose and Others Vs. Baikuntha Nath Ghose and Others, where it was held the learned Judges that the deity was not a necessary party to such a suit. At any further stage of the proceedings where the scheme would have to be finally approved of by the court it might feel the necessity of having the deity before it. In such circumstances it would be open to the trial court to direct that the deity should appear by a proper and disinterested person.

4. In the present case the other deities named in the Patta decision are not parties to the suit and there is no controversy regarding the claims of various deities. As pointed out in the decision cited above, and it is open for the court to bring the deity on the party array at the time of framing the scheme if such a course is found necessary. The order of the court below is, therefore, confirmed the Civil Revision is dismissed.