

(1906) 08 MAD CK 0011
In the Madras High Court

Kooni Mohamadan Meera Sahib Tharagan and Another	APPELLANT
Vs	
M. Mamadu Meera Sahib Tharagan and Others	RESPONDENT

Date of Decision : 24-08-1906

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 147

Citation : (1907) ILR (Mad) 15 : (1906) 16 MLJ 471

Judgement

1. This case has been disposed of on the pleadings, and we take the material averments in the plaint to be that the plaintiffs who are Shan

Muhammadans resident in Thenkasi, have a right to bury their deceased relations in the mosque mentioned in the plaint and situated in the same

town. That in the usual course of burial the body is taken into the compound of the mosque to the enclosure in front of the prayer hall, then certain

prayers are said over the body by the relations of the deceased or persons selected by them, and the body is afterwards removed to the place of

sepulchre and interned; that the 1st defendant who claims to be entitled to the office of Labbai denies the right of the deceased relations or their

delegates to recite the prayers and asserts an exclusive right to do so in himself.

2. The lower Courts have dismissed the suit on the ground that it is one relating to mere rituals which it is not competent to the Civil Courts to entertain.

3. That in suits relating to ritual or religious observance only the Civil Courts in this country have no jurisdiction is undeniable. On the other hand, it

is equally clear that Courts of Justice are bound to enquire into questions of religion or ritual which are material for the determination of civil rights,

in dispute between the parties. Compare Anandrav Bhikaji Phadke v. Shankar

Daji Charya ILR 22(1883) B. 323 and the Privy Council case

there cited.

4. When the matter is of a mixed spiritual and temporal character, the question will depend upon the nature of the connection between the facts,

and will be, in fact, whether the spiritual question is so intrinsically connected with the temporal as to be inseparable from it. If such is the case, it

would be the duty of the courts in trying the civil disputes to enquire into the spiritual matter thus intimately related.

5. Turning to the present case, there can be no doubt that the right of burial is a civil right. Compare *Ram Rao v. Rustum Khan* ILR 22(1901) B.

198, and if as alleged on behalf of the plaintiffs, the recitation of prayer at a particular spot in the mosque is a necessary part of the burial, and the

plaintiffs are hindered from exercising their right in accordance with the law and usage of the community to which they belong, the interference by

the defendants with reference to the recital of the prayer to the extent to which they claim the right to interfere would, in effect, be an invasion of

their right.

6. We are unable to accede to Mr. Sivaswami Aiyar's suggestions that as the defendants' objections are limited to that part of the burial ceremony

which consists in the recital, of prayers, such denial would not constitute an infringement of the civil right and that the dispute relates only to a

matter of ritual.

7. In our opinion, the matter cannot be reasonably split up in this manner. We think the plaintiffs were entitled to go into the question, whether

according to the law and customs governing their community, their right of burial was exercisable in the way alleged by them.

8. From the plaint it does not appear how the dispute between the contending faction arose on the present occasion. There is no statement that in

any particular instance the defendants interfered to prevent a burial in the manner alleged to be customary. In such circumstances it would be for

the courts to consider whether the declaration sought ought to be given, with reference to the discretion vested in the courts in this regard by the

Specific Belief Act, but for the order of the (Head Assistant) Magistrate passed u/s 147 of "the Code of Criminal Procedure on the 27th July

1903. By this order the plaintiffs were restrained from employing their own

priests for performing funeral ceremonies inside the mosque compound until they should obtain the order of a competent court entitling them to do so.

9. So long as the order continues in force, it would prevent the plaintiffs from the exercise of their right of burial according to the alleged usage. A

determination of the matter by the court has therefore become imperative.

10. We must, therefore, set aside the decrees of the courts below and remand the suit for disposal on the merits, such issues being raised as may

be found necessary.

11. Costs will abide and follow the result.