

(1937) 09 MAD CK 0034
In the Madras High Court

Kovalakudi Singam Aiyangar and Others	APPELLANT
Vs	
K. Kasturiranga Aiyangar and Others	RESPONDENT

Date of Decision : 29-09-1937

Acts Referred:

Citation : AIR 1938 Mad 250 : (1938) 47 LW 94 : (1937) 2 MLJ 931

Hon'ble Judges : Venkatasubba Rao, J;Newsam, J

Bench : Full Bench

Judgement

Venkatasubba Rao, J.—The learned District Judge has in respect of almost every question of fact decided in favour of the plaintiffs, but has

come to the conclusion that the suit is not maintainable by reason of Clause 3 of Section 73 of the Hindu Religious Endowments Act (Madras Act

II of 1927). The question to be decided in the appeal is, whether the view of the learned Judge that the suit is barred by the provision referred to

above, can be sustained.

2. The suit has been brought by certain five worshippers in the Sri Ranganathaswami temple at Srirangam with the con sent obtained of the Board

of Commissioners. The object of the suit is to get a declaration in respect of a class of persons known as Sukhavis. The plaintiffs complain that

these Sukhavis have been asserting a claim to a certain fixed share of the Prasadams offered to the deity, and that in assertion of that right, they

have gone the length of claiming a cash pay ment in lieu of their share of the Prasadam when that is not available. The questions which the learned

Judge had to decide were: (1) whether the Sukhavis had been in enjoy ment of the allowances, as alleged by them, continuously for such a

period, as would serve to raise a presumption of a legal origin, and (2) whether

the emoluments were attached to the performance of any religious office, service or duty in the temple in question. On both these matters, the learned District Judge in a lucid and closely reasoned judgment, has recorded" findings, as already stated, against the defendants. We may incidentally observe here that the word "Sukhavasi" means "one who lives in comfort without any particular employment (Tamil Lexicon published by the University of Madras).

3. The respondents" counsel has not challenged these findings of fact, and the question that now has to be decided therefore is one of law, namely, whether or not the suit is barred u/s 73(3) of the Act.

4. The lower Court has, in our opinion, been misled by the clumsy drafting of some of the paragraphs in the plaint. There were three sets of defendants impleaded first, the trustees of the temple; secondly, the members of the Trichinopoly Hindu Devasthanam Committee; and thirdly, the Sukhavasis. On a close examination of the plaint, it is perfectly clear that it is not sought to fetter the discretion of the trustees in doling out the offerings to such persons as they think deserving; the Sukhavasis are under no particular disability, and they may, like any other worshippers or pilgrims, receive, and be given the Prasadam. It is the right put forward by the Sukhavasis to a fixed share that has been objected to. To claim a right to charity is a contradiction in terms, and what the Sukhavasis have been getting according to them, are not charitable doles but perquisites, which could be claimed as a matter of right, attached as they are, to the performance of certain services. Unfortunately however, the wording of the plaint seems to suggest that the suit was intended to prevent the Sukhavasis getting any charity whatsoever, as though they were marked out for some special penalty.

5. A brief reference to the facts that immediately preceded the institution of the suit, will serve to make the prayers in the plaint clear. The Sukhavasis are of the Vadagalai persuasion, and their claim to a fixed share was generally looked on with disfavour by the Tengalais. The plaintiffs suggest that in dealing with the claim put forward by the Sukhavasis, the trustees or the members of the committee are generally swayed by sectarian motives. It seems unnecessary to go into this question, nor would it be right on the material before us to say that the plaintiff's complaint is

justified. What really happened however was this: In several judicial proceedings the right of the Sukhavasis was negated. In 1926 the Religious Endowments Board likewise refused to recognise the right. In 1927 the Devasthanam Committee, when considering the budget proposals, also declared against the right claimed ; but in 1928 they revised their decision and resolved to make provision in the budget for payments to the Sukhavasis. Four out of five trustees of the temple dissented from the committee's view; and the plaintiffs, as worshippers, claim in the suit several reliefs including an injunction restraining the trustees and the members of the Devasthanam Committee from recognising the right put forward by the Sukhavasi defendants. There is also a declaration that has been prayed for, but the prayers have been so worded as to suggest, as already stated, that the Sukhavasis are to be deprived of any share in the offerings.

6. Now that the misapprehension has been got rid of, does the provision referred to oppose any bar to the maintainability of the suit? Section 73

was in some respects recently amended; but the provisions in force when the suit was filed, was as it stood before the amendment. For the present

purpose, this makes little difference, and as the learned Judge rightly points out, the reliefs mentioned in the section, do not cover any of the reliefs

claimed in the suit. It has been held by the Judicial Committee in *Abdur Rahim v. Muhammad Barkat Ali* (1927) 54 M.L.J. 609: L.R. 55 IndAp

96: ILR 55 Cal. 519 that the words-"further or other relief in Section 92, Civil Procedure Code, must on general principles of construction be

taken to mean relief of the same nature as those described in clauses (a) to (g). Both the reasoning and the conclusion of their Lordships apply to

the provision in question, which has been modelled on the aforesaid section of the Code. It has been further held in the same case, that in enacting

Section 92, the legislature could not have intended to include relief against third parties under the general words "further or other relief.

7. Applying the same reasoning, the question we have to decide is, whether the words of the present provision can have the effect of abolishing or

extinguishing substantive rights possessed under the law. As was pointed out in *Vaidhyalinga Pandara Sannadhi v. Ranganatha Mudaliar* (1933) 66

M.L.J. 98: ILR 57 Mad. 362 to which one of us was a party, there is a marked difference between the wording of the relevant part of Section

73(3) and the corresponding portion of Section 92(2). Under the latter provision, the suits contemplated are those filed claiming any of the reliefs

specified in the section. But the words in the present Act are much wider and more comprehensive, for what is declared is, "" No suit in respect of

the administration or management of a religious endowment shall be instituted"", except as provided by the Act.

8. The learned Judge has held that as the reliefs claimed are not covered by those in the section, the suit does not lie. The short answer to that

argument is, that the present suit is entirely outside the scope of Section 73. The suit, if the scope is properly understood, is not " in respect of the

administration or management" of the temple in question. The right of the trustees or the committee to make charitable doles--including the giving of

doles to the Sukhavasi defendants--is not questioned; it is not sought to fetter their discretion in any way whatsoever. No question has been raised

involving the "administration or management" of the temple either by the trustees or by the committee. What the plaintiffs seek is, to have their right

declared as against certain third parties, that is to say, strangers to the trust (that being the true position of the Sukhavasis). Such a suit, it seems to

us, does not come within the purview of Section 73 and cannot be said to be barred by its provisions. The further relief prayed for that the trustees

and the members of the committee shall be restrained from giving, and the Sukhavasis from receiving, is merely ancillary to and consequential upon

the declaration. That, in our opinion, does not alter the main character of the suit. In this view the obtaining by the plaintiffs of the sanction of the

Board was a superfluous act; but that makes no difference.

9. The appeal is allowed and the plaintiffs will have a decree in the terms mentioned above.

10. As to costs, the order made by the lower Court will stand, and in this Court the only order we propose to make is, that the plaintiffs will be

paid a consolidated amount of Rs. 350 (Rupees three hundred and fifty only) as costs of the appeal from the temple funds.

11. The memorandum of objections is dismissed. No costs.

Newsam, J.

12. I agree entirely. There is nothing in Section 73 of Act II of 1927 to preclude the Court from granting a decree declaring that ""Sukhavasis"" are

not as of right entitled to receive a fixed share of the Prasadams and an injunction restraining the trustees from allowing such a claim by making cash payments to them as such or in lieu of any so-called vested interest in the offerings. On the findings of the learned trial Judge, which are unchallenged and which we accept, the plaintiffs must at least succeed to this extent. But obviously no decree can be passed restraining the right of the trustees to distribute Prasadams by way of charity to any persons whom in their discretion they deem to be worthy recipients. Section 73, as I understand it, limits the powers of the Court to interfere with the administration and management of Religious Endowments, and restricts the right of suits of persons interested to such matters as appointing and removing a trustee, vesting property in a trustee, determining what sum should be allocated to a particular purpose, and kindred matters. But for obvious reasons Courts are prevented by this section from accepting any invitation to interfere with the details of administration or to fetter the discretion of trustees in minor matters. The machinery is provided in the Act itself for the control of trustees of temples by Committees and by the Hindu Religious Endowments Board.

13. I respectfully agree with my learned brother as to the terms of the decree which should be passed in this suit.