

(1970) 07 MAD CK 0038
In the Madras High Court

K.R. Narayana Iyengar (died) by L.Rs.	APPELLANT
Vs	
K.K. Ranganatha Iyengar and Others	RESPONDENT

Date of Decision : 28-07-1970

Acts Referred:

Citation : (1970) 83 LW 703 : (1971) 1 MLJ 62

Hon'ble Judges : M.M. Ismail, J

Bench : Division Bench

Judgement

M.M. Ismail, J.—The legal representatives of the second defendant in O.S. No. 607 of 1962, on the file of the Court of District Munsif, Goimbatore, are the appellants before this Court. The subject-matter of of the suit related to the right to do the poojari service in Sri. Ranganathaswami temple at Karamadai for the first 15 days in a month. The first respondent herein instituted the suit for a direction to the Trustee and the Executive Officer of Sri Ranganathaswami temple to permit the first respondent to exercise his right as poojari in the suit temple and to direct defendants 2 and 3 by means of an injunction to stop them for serving as poojaris for those 15 days. For the purpose of understanding the case of the plaintiff as well as the defence of the defendants it is necessary to state certain facts. Admittedly, the poojari service of the temple was hereditary and under a partition arrangement between the parties one Srinivasa Iyengar was entitled to do service for the first 15 days and defendants 2 and 3 to the suit were entitled to do the service for the second 15 days in a month. However, Srinivasa Iyengar had no male issue and by a will, dated 27th March, 1938, he bequeathed his right to do the service to the first respondent herein who was his son-in-law. However, it appears that even during the lifetime of Srinivasa Iyengar, by Exhibit B-5, dated 14th July, 1938, the managing trustee appointed the second defendant in the suit to do the poojari service for the first 15 days also. Srinivasa Iyengar died on 18th July, 1941. It is admitted that never once the first respondent did the poojari service for the said 15 days in a month in the suit temple. However, he filed O.S. No. 103 of 1956 on the file of the Court of the District Munsif, Coimbatore for a declaration that he Was the successor to the

deceased Srinivasa Iyengar as per his will, dated 27th March, 1938, to do the service for the first 15 days in a month in the suit temple. To this suit, only the managing trustee was imp-leaded as a party. The managing trustee remained exparte. That suit was decreed on 8th March, 1956. Even subsequent to the decree in the said suit, the first respondent did not perform the service even for a single day. It is thereafter, the defendants 2 and 3 in the present suit instituted O.S. No. 1789 of 1956 on the file of the Court of the District Munsif, Coimbatore for an injunction restraining the first respondent herein from interfering with their rights of doing pooja in the plaint temple as hereditary archakas even for the first 15 days. This suit was dismissed on 13th November, 1957, and an appeal thereon also failed. It is thereafter the present suit was instituted by the first respondent herein.

2. The defence of the defendants 2 and 3 in the suit was that the present suit of the first respondent was barred by limitation and that they have perfected title by adverse possession to perform the services even for the first 15 days in the month. The learned Principal District Munsif of Coimbatore by judgment and deciee dated 6th September, 1963, upheld this contention of defendants 2 and 3 and dismissed the suit. Against this judgment and decree the first respondent preferred an appeal to the learned District judge, Coimbatore and the learned Second, Additional District Judge by his judgment dated 20th December, 1965, allowed the appeal and decreed the suit of the first respondent herein. Hence the present Second Appeal by the legal representatives of the second defendant in the suit. The sole question that arises for determination in the second appeal is whether the suit by the first respondent was barred by limitation. The learned Principal District Munsif, in paragraph 9 of his judgment stated:

It is not disputed that a right to perform a particular kind of worship in a Hindu temple can be acquired by prescription. In this case there is absolutely nothing to show that the plaintiff was allowed to perform pooja even for a single day after the death of Srinivasa Iyengar on 18th July, 1941. From Exhibit B-5 it is seen that the 2nd defendant herein who was appointed by the trustees of the suit temple to perform the pooja even on 14th March, 1938, and in the suit in O.S. No. 1789 of 1956 it was his case that he and the 3rd defendant herein were performing poojas for first 15 days also in the suit temple by virtue of the appointment made by the managing trustee of the suit temple.

3. Thus it is clear from the above that even from 14th july, 1938, the scond defendant alone is performing the service even for the first 15 days in a month by virtue of the appointment made by the managing trustee and that happened even during the lifetime of Srinivasa Iyengar and that even after his death on 18th July, 1941, on which date his will came into effect, the first respondent did not function as a poojari of the suit temple for the first 15 days in a month. Thus it is clear even by the time O.S. No. 103 of 1956 was instituted by the first respondent heiein, the first respondent had not been in the office and had not been performing the poojari service for more than 15 years. Under these

circumstances, the learned District Munsif, applying Article 124 of the Limitation Act, 1908 and following the decision of this Court in Ayya Krishnaswami Thathachariar Vs. Veeraswami Mudali and Others, , came to the conclusion that the first respondent's suit was barred by limitation. On the other hand, the learned Second Additional District Judge reversed the conclusion of the learned District Munsif on this point on a very narrow ground. What the learned District judge thought was that the second defendant was admittedly performing the services even for the first 15 days only by virtue of an order of appointment by the managing trustee and therefore it must be said to be a permissive possession of the office and therefore such possession cannot be said to be adverse to the claim of the first respondent herein. I am of the view that his assumption is clearly wrong. The permissive possession that is contemplated for the purpose of avoiding adverse possession is the possession permitted by the owner of the right and if the possession is permitted by somebody else other than the owner of the right that permission itself will constitute an act adverse to the real owner of the right. Therefore the conclusion that the second defendant in the suit was performing the service for the first 15 days in a month also by virtue of the order of appointment by the managing trustee cannot in any way take the case out of the rule of adverse possession as far as the first respondent is concerned. But the point to be noticed is that the managing trustee appointed the second defendant and the second defendant pursuant to the appointment acted not in recognition of the right vested in the first respondent but in derogation and repudiation of the right claimed by the first respondent herein. As a matter of fact the very order of appointment, itself will constitute the deprivation of the right vested in Srinivasa Iyengar in 1938, and subsequently in the first respondent in 1941, and therefore if the first respondent had allowed the second defendant to exercise the right for a period of more than 12 years, certainly the suit instituted by the first respondent was barred by limitation. It is not contended before me that any article other than Article 124 in the first schedule to the limitation Act, 1908, can be applied to the present case. If, so, I am clearly of the opinion that the assumption of permissive possession introduced by the learned District Judge is wholly wrong and the fact that the second defendant was performing the poojari service pursuant to the appointment made by the managing trustee does not in any way affect the question of adverse possession because the combined result of the managing trustee appointing the second defendant and the second defendant performing the services will constitute an assertion of right adverse to that of Srinivasa Iyengar, in the first instance and after his death adverse to that of the first respondent herein. Hence I am of opinion that the suit by the first respondent was clearly barred by limitation and that the conclusion of the learned District judge to the contrary is not correct. Therefore, the second appeal is allowed and the judgment and decree of the learned Second Additional District judge are set aside and the judgment and decree of the learned District Munsif are restored. There will be no order as to costs. No leave.