

(1991) 04 MAD CK 0009
In the Madras High Court
Case No : A.S. No. 506/81

Krishna Rao

APPELLANT

Vs

Commissioner, Hindu Religious and Charitable En-dowments,
Madras and Assistant Commissioner, Hindu Religious and
Charitable Endowments, Kumbakonam

RESPONDENT

Date of Decision : 29-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1991) 04 MAD CK 0009

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Advocate : G. Subramaniam for Sri Mukundan, for the Appellant; P.M. Bhaskaran, for the Respondent

Judgement

Abdul Hadi, J.—Plaintiff is the appellant in this appeal against the judgment and decree dated 13.3.1981 in O.S. No. 91/77 on the file of the

Subordinate Judge, Kumbakonam. The suit is to set aside the dismissal order of the first defendant-first respondent-Commissioner, H.R. & C.E.

Madras dated 20.4.1977 in A.P. No. 182/76 and for a declaration that the suit institution is not a religious institution or a temple coming within the

purview of Tamilnadu Hindu Religious and Charitable Endowments Act (T.N. Act 22/59), hereinafter referred to as Act, and for consequential

injunction. The suit is under S.70 of the Act and the above said A. P.No. 182/76 is the appeal by the plaintiff against the dismissal of his petition,

O.A. No. 59/74, on the file of the second defendant 2nd respondent-Deputy Commissioner, H.R. & C.E. Tanjore for a declaration that the suit

temple is not a temple coming under the Act and that it is a private temple and the H.R. & C.E. department has no control over the same. Both the

respondents 1 and 2 and the trial court have concurrently held that the suit temple is not a private temple, but a public temple coming under the Act.

2. Now, in this appeal, the learned senior counsel for appellant, Mr. G. Subramaniam, initially argued that the burden of proving that the suit temple is a public temple is on the respondents only. But this contention, is absolutely without any merit. The decision reported in T.V. Mahalinga Iyer v.

State of Madras AIR 1980 A.C. 2036 has also held,

It is undisputed law that so far as Tamil Nadu is concerned, there is an initial presumption that a temple is a public one, it being up to the party who

claims that it is a private temple, to establish that fact affirmatively. Of course, this initial presumption must be rebutted by clinching Testimony and

the crucial question is as to whether the public worship in the temple as of right Ordinarily. There may not be direct evidence regarding the exercise

of such right and Inference has to be drawn from a wealth of circumstances....The dedication to the public need not be by a deed and may be spelt

out of the circumstances present. The right of the public to worship again is a matter of inference.

(emphasis supplied)

3. So, it is only to be seen whether the plaintiff has discharged this burden. The Learned Counsel for the respondents drew my attention to the

following passages in the plaintiffs petition in the aforesaid O.A. No. 59/74, itself

The several poojas and Utsavams are purely for the Madhva Community to which the founder and the successors belong..... It is only the Madhva

Community which participated in the Poojas and festivals narrated in paragraph 3 above.

The abovesaid petition is part of the file of the second respondents department and in the said file, another part, namely, the evidence recorded in

the said petition before the second respondent, was alone marked as Ex. B1 in the present suit. On this ground, the Learned Counsel for the

appellant sought to argue that the said petition, having not been marked as an exhibit separately, should not be looked into. But, there is no merit in

this contention, since the said petition in O.A. No. 59/74, is virtually a part of the very record of the present case. So, when in the said petition

itself, the plaintiff alleges that the poojas and Utsavams in the temple are purely for the Madhva Community and only the Madhva Community

participated in the poojas and festivals of the temple, it is clear that the temple is dedicated for a section of the public, namely the Madhva

Community. It is settled law that if the temple is even for a section of the public, it is only a public temple. Vide Deoki Nandan Vs. Murlidhar,

endowment must be held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or sections

thereof

(Emphasis supplied).

4. Further, as pointed out by the trial court, there is nothing to show, in Ex. A1, the oldest document of 1910 exhibited in the present case, that the

public should not participate in the poojas of the temple or should not worship in the temple. Though in Ex. A2 the trustee appointment deed dated

13.10.55 it is mentioned for the first time that the suit temple has been treated as family private temple it is significant to note that it is also

mentioned therein that in the event of failure on the part of the trustee concerned to nominate his successor, the Government shall intervene and

appoint the successor from the members of the family.

5. So, there is no difficulty in holding that the plaintiff has not discharged his burden of proving that the suit temple is not a public temple, but only a

private temple belonging to the family of the plaintiff.

6. The Learned Counsel for the appellant, no doubt also argued that there is no acceptable evidence on record to prove that there is dedication of

the suit temple as public temple. He drew my attention to S. 6(2) and S. 6(18) of the Act. S. 6 (18) defined the term "religious institution" as a

math, temple or specific endowment. S. 6 (20) defines the term, temple, as a place, used as a place of public religious worship and dedicated to,

or for the benefit of, or used as of right by the Hindu community or any Section thereof, as a place of "public religious worship". So a "temple" is a

religious institution and it should satisfy two ingredients, namely (1) it is used as a place of public religious worship and (2) (a) it is dedicated to, or

for the benefit of, the Hindu Community or any section thereof, as a place of public religious worship or (b) it is used as of right by the Hindu

Community or any section thereof as a place of public religious worship. This is

also reiterated in Chennammal Vs. The Commissioner, for Hindu

Religious and Charitable Endowments, cited by the Learned Counsel for the appellant himself. In the present case, from what is stated in the very

petition O.A. 9/74 there is no doubt that the suit temple is used by Madhva Community, a section of the Hindu Community, as a place of a

religious worship. Since it is so used, it can be said to be used, by public and so, used as a place of Public religious worship. So, the first ingredient

is satisfied. Next, on the same reasoning, it can be safely inferred that the suit temple was also dedicated for the benefit of Madhva community, a

section of the Hindu Community as a place of public religious worship. Even otherwise, from what is stated in the above referred to petition O.A.

No. 59/1974 it can certainly be concluded that the Madhva Community people used this suit temple as of right as a place of public religious

worship. So, the second ingredient is also satisfied. In the light of the above conclusion, the other passages cited by the Learned Counsel for the

appellant, taken out from Deoki Nandan Vs. Murlidhar, , and dealing with Sankalpa, Uthsarga etc., in the matter of dedication of a temple, do not

assume any importance in their application to the present case. Likewise, the other decision cited by him namely The Commissioner for Hindu

Religious and Charitable Endowments Vs. A.P.S. Sethurama Pillai and Others, also has no application to the present case. The said decision has

only held that when there is no proof that any dedication of the temple to the public, has been made or that the public worshipped in the temple as

of right at any time, the institution is a private temple only. But, in the present case, as I already pointed out, the plaintiff himself stated in his above

said petition that the suit temple was for the benefit of the Madhva community and only the said community people participated in the poojas and

festivals therein. Madhva Community being a section of public, it is clear in the present case, the temple is a public one. The Learned Counsel for

the appellant has also pointed out that the respondents have not examined any member of the public in the present case to give evidence that the

members of the public are worshipping in this temple as of right. In this connection, he has relied on S. Krishnan v. Commr. HR & CE Madras

1989 1 L.W. 348 particularly para 12 therein. But, this attack cannot be made in this case in view of the above admission by the plaintiff himself in

the petition in O.A. No. 59/74. Under the above circumstances, the dismissal of the suit is justified and this appeal has to be dismissed.

7. The Learned Counsel for the respondents also argued relying on The Executive Officer, Arulmigu Ranganathaswami Devasthanam Vs. His

Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math, Hereditary Trustee of Vedantha Desikar

Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others,) that the suit itself is not maintainable since notice under S. 80,

C.P.C. has not been given. On the other hand, the Learned Counsel for the appellant contended that this question cannot be raised for the first

time in this appeal by the respondents in view of the observations made in Commissioner for Hindu Religious and Charitable Endowments (Admn.)

Department Vs. Kanniappa Naicker (since deceased) and Others, . which is a decision rendered subsequent to The Executive Officer, Arulmigu

Ranganathaswami Devasthanam Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math,

Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others, But, I don't think it

necessary to go into this question since I have already held on facts that the suit temple is not a private temple, but a public temple, coming within

the definition under S. 6(20) of the Act and that hence the appeal has to be dismissed. Therefore, this appeal fails and is dismissed with costs.