

(1971) 11 MAD CK 0033
In the Madras High Court

Logambal Ammal and Another

APPELLANT

Vs

The Commissioner for Hindu Religious and Charitable
Endowments

RESPONDENT

Date of Decision : 18-11-1971

Acts Referred:

Hindu Religious Endowments Act, 1927 — Section 84(1)

Citation : (1972) 85 LW 198 : (1972) 2 MLJ 612

Hon'ble Judges : R. Sadasivam, J

Bench : Division Bench

Judgement

R. Sadasivam, J.—Appellants claim to be the owners and hereditary trustees of Sri Kailasanathar Samadhi in Padi village. But their claim was negated by the Deputy Commissioner, Hindu Religious and Charitable Endowments Board and their appeal was also dismissed by the Commissioner, Hindu Religious and Charitable Endowments, as evidenced by the order Exhibit A-1. They filed O.S. No. 82 of 1961, on the file of the Sub-ordinate Judge's Court, Chingleput, to set aside the order of the Commissioner, but the suit was dismissed with costs and hence they have preferred this appeal.

2. Sri O.V. Baluswamy appearing for the appellants urged that the suit institution is a samadhi and that in the alternative it is a private temple over which the Endowments Board cannot exercise any jurisdiction under the Hindu Religious and Charitable Endowments Act. The learned Subordinate Judge, who tried the suit, has discussed the evidence in paragraphs 7 and 8 of his judgment and found that the suit institution is not a samadhi, but a temple. He has rightly rejected the evidence of the appellants, who examined themselves as P.Ws. 1 and 2 in the suit. Exhibit B-6 is a photo of the stone inscription found at 190, Thanbu Chetty Street, Madras, in which provision has been made for Nithiya (daily) Kattalai in Padi Sri Kailasanathaswami Temple. It is not disputed that the said temple refers to the suit institution. This grant was made in 1834. P.W. 1 Lokambal Ammal is the widow of Nagiah Bathudu and P.W. 2 Narayana Pathar is

her son. P.W. 1 deposed that her husband Nagiah Bathudu died in Coimbatore and was cremated there and that his remains in the shape of bones were brought and buried near Kailasanathiswami samadhi. She deposed that Kailasanathar and his wife Kamatchi were buried in the suit institution and that they were the ancestors of her husband. She was aged 57 at the time of giving evidence and she was married 40 years prior to the suit when she was aged 17 years. She knows the suit institution only from the time of her irarriage about forty years prior to her giving evidence. Her son Narayana Pathar (P.W. 2) was aged only 22 years, at the time of his giving evidence and his knowledge of the origin of the suit institution is only based on hearsay.

The learned Subordinate Judge rightly rejected the evidence of P.W. 3 Govindaswamy Naicker on the ground that he had received Rs. 2 to come and give evidence, apart from receiving moneys for to and fro expenses and food. In fact, his evidence shows that he does not even know whether there are idols in the suit institution and whether poojas are performed there. He deposed that Kailasanatha died, that his sashes were brought and buried and that P.W. 2's father informed him about it. It is not even clear from his evidence as to who that Kailasanatha is. It could not obviously refer to the existence of any Kailasanatha, who according to the appellants, should have lived prior to the commencement of the suit institution in 1854,. The learned Advocate for the appellants commented on: the observation of the learned Subordinate Judge that it is highly improbable that the bodies would have been allowed to be cremated inside the village without permission being granted by the health authorities and the panchayat and that there is no document to evidence such permission. If really Kailasanatha and his wife were buried in the suit institution prior to 1834, it is difficult to expect any record or document to prove the permission of the public authorities for such an act of burial. In fact, there would not have been any panchayat or municipality at that distance of time. But, as rightly pointed out by the learned Subordinate Judge, there is absolutely no evidence or record to prove that the remains of Kailasanatha and his alleged wife Kamatchi or their descendants were really buried within the precincts of the suit institution.

3. Sri O.V. Baluswamy referred to the evidence of P.W. 4 Rathnavelu Gramani about the suit institution being a samadhi. But it is clear from his evidence in cross-examination that the old samadhi referred to by him. is at the junction of the road and patta and he does not even know who was buried in that samadhi. D.W. 1 Doraiswamy Pillai and D.W. 2 Mimuswami Reddiar are residents of Padi village from the time of their birth and they have given evidence that the suit institution is a public temple in which the public have a right to, worship. D.W. 2 Munuswami Reddiar has stated in cross-examination that the land of the samadhi has been sold away to. Oxygen Company about a year prior to the trial of the suit. The evidence of these witnesses do not go to show that the suit institution is a samadhi.

4. In Ramanasramam by its secretary G. Sambasiva Rao and Others Vs. The

Commissioner for Hindu Religious and Charitable Endowments, Madras, a Bench of this Court has held that Sri Mathrubootheswara Swami Temple is only the samadhi of Sri Ramana Maharishi and is an adjunct of the ashramam and that it is not a temple within the meaning of the Hindu Religious and Charitable Endowments Act, 10,51. In *State of Madras v. Ramanatha Chettiar* 1962 M.W.N. 173, Verkatadri, J., has relied on the above Bench decision and held that the premises of Kambar Samadhi is not a temple and that the worship of Kambar cannot be equated to divine worship. But there is no scope for invoking the above decisions in the present case in view of our finding that the appellants have miserably failed to prove that there was any samadhi of their ancestors within the precincts of the suit institution.

5. On the other hand, there are several strong circumstances to show that the suit Institution is not only a temple, but a public temple also. We have already referred to the stone inscription Exhibit B-6. Sri O.V. Baluswamy produced the Re-settlement Register of 1911 as a public record to show that R. S. No. 307/1 corresponding to old S. No. 307-A was given under an inam title deed to the manager for the time being for the maintenance of the flower garden attached to Sri Kailasanatha Swamiyar temple and similarly R.S. No. 307/2 corresponding to old S. No. 307/3 was given to the manager for the time being of Sri Kailasanatha Swamiyar temple for puja. His contention is that God Sri Kailasanatha would not be referred to as Samiyar, but only as Swami and therefore the above grant indicates that it was to the ancestor of the appellants by nanje Kaila nathaswamiyar. We are unable to accept this contention. In the Padi village, there is the famous TiruValleswarar Temple about which Thirugnana Sambandar and Rama-linga Swamigal have sung songs in praise. The said temple is a Padal Petra Sthalam which is within a half a furlong from the suit institution. It is clear from the entries in the Re-settle-ment Register that in describing the manager of the said temple as pattadar, some entries refer to the temple as Tiruvalleswarar Swami Temple, while other entries refer to it as Tiruvalleswarar Swamiyar Temple. Further, the inam grant to the suit institution made prior to the old settlement in 1870 could only be to a public institution and not for a private samadhi.

6. Exhibit B-1 is a petition filed by Nagiah Bathudu, the husband of the first appellant and the father of the second appellant, u/s 84(1) of the Hindu Religious Endowments Act of 1927, for declaring the suit institution as an excepted temple. The order Exhibit A-3 passed by the then Commissioner of the Hindu Religious Endowments Board shows that the temple was held to be an excepted temple. It appears from the order that Nagiah Bathudu relied on the extract from the Inam Register and the fact of his father and grandfather having acted as trustees of the suit temple in their hereditary right. No attempt has been made by the appellants to explain the conduct of Nagiah Bathudu in putting forward such a claim in respect of the suit temple, which is totally inconsistent with the claim made by the appellants now that it is a samadhi, or in the alternative a private temple. Though the order Exhibit A-3 is not conclusive, it is a relevant

piece of evidence. It is open to the appellants to explain away the conduct of Nagiah Bathudu, but they have not made any attempt to do so. Having regard to the above circumstances, the learned Subordinate Judge has rightly relied on the evidence of D.Ws. 1 and 2 in preference to the evidence of P.Ws. 1 to 4, that the suit institution is a public temple.

7. In *Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others*, , the Supreme Court has observed that if a temple is proved to have originated as a public temple, nothing more, is necessary to be proved to show that it is a public temple, but if a temple is proved to have originated as a private temple, or its origin is unknown or lost in antiquity then there must be proof to show that it is being used as a public temple. It is pointed out in the decision that in such cases the true character of the particular temple is decided on the basis of various circumstances and that the Courts have to address themselves to various questions such as-

1. Is the temple built in such imposing manner that it may prima facie appear to be a public temple?
2. Are the members of the public entitled to worship in that temple as of right?
3. Are the temple expenses met from the contributions made by the public?
4. Whether the sevas and utsavas conducted in the temple are those usually conducted in public temples?
5. Have the management as well as the devotees been treating that temple as a public temple?

It is clear from the decision that though the appearance of a temple is a relevant circumstance, it is by no means a decisive one. In *Commissioners of Hindu Religious and Charitable Endowments v. Shama Rao* (1955) 1 M.L.J. 510, it is observed that the mere fact that the temple appears like the Ordinary public temple or that a paid archaka has been in charge of the temple for the performance of the poojas and other ceremonies would not be sufficient to make the temple a public temple and that something more has to be established to make it a public temple.

8. In *Mukherjee's Hindu Law of Religious and Charitable Trusts*, Third Edition, at page 147 it is stated on the strength of the decision in *Madras Hindu Religious Endowments Board Vs. V.N. Deivanai Ammal by Power of Attorney agent T.V. Mahalinga Aiyar*, , that in the case of a temple built recently, where there is no need of dedication, it could not be held to be a public temple, though it had all the features of a temple such as gopuram and an archaka had been engaged to perform services. But in this case, the suit institution is a very old one. It is clear from the stone inscription Exhibit B-6 that it should have been in existence from prior to 1834. In *Ramaswami Jadayya Gounder Vs. Commissioner, Hindu Religious and Charitable Endowments Administration and Another*, , it has been held by a Bench of this Court that in the case of a very ancient temple whose origin is

unknown, it is not necessary to prove actual dedication and that it is sufficient to prove that the temple was used as a place of public religious worship. In other words dedication can be inferred from such user.

9. Once there is evidence to show that a temple is used as a public place of worship, the presumption in this part of the State is that it is a public temple. In AIR 1934 230 (Privy Council) the Privy Council has held that in the greater part of the Madras Presidency, where private temples are practically unknown, the presumption is that temples and their endowments form public charitable trusts, but in Malabar, where the large tarwads often established private temples for their own use, there is no presumption one way or the other. Sri O.V. Baluswamy relied on the decision of Basheer Ahmed Sayeed, J., in *Commissioners, Hindu Religious and Charitable Endowments v. Shama Rao* (1955) 1 M.L.J. 510, in support of his contention that the presumption cannot be invoked where the burden is on the Board to prove that the temple is a public temple within the meaning of Section 9(12) of the Madras Hindu Religious Endowments Act of 1927. On a consideration of the several facts in that case, Basheer Ahmed Sayeed, J., refused to interfere with the decision of the trial Court in that case that the suit temple is not a public temple. But it is difficult to accept his decision that the presumption cannot be invoked in deciding whether a temple is a public temple as defined in the Hindu Religious and Charitable Endowments Act. In Section 6(20) of the Madras Act XXII of 1959, temple is defined as meaning 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. If a place is used as of right by the Hindu community for public religious worship, it is a temple within the meaning of Section 6(20) of that Act. We fail to see how the presumption referred to by the Privy Council cannot be invoked so long as the facts and circumstances are not opposed to the raising of such a presumption. In *Ramaswami Jadaya Gounder Vs. Commissioner, Hindu Religious and Charitable Endowments Administration and Another*, reliance was also placed on the strong presumption that the temples in this part of the Madras State, unlike those in Malabar, are public temples, in spite of the fact that the question that arose for consideration in that case was whether the suit shrine was a temple as defined in Section 6(17) of the Madras Act XIX of 1951. It is pointed out in the decision that in order to satisfy the requirement of the definition, it must be proved that the place was used and is being used for public religious worship and that it has been dedicated for the benefit of or use as of right by the Hindu community or any section thereof, as a place of religious worship. The decision in *Madras Hindu Religious Endowments Board Vs. V.N. Deivanai Ammal by Power of Attorney agent T.V. Mahalinga Aiyar*, has been relied on in the above decision in support of the position that in the case of an old temple, dedication to the public as a public temple may be presumed from long user by the public as of right. It is true as observed by the Privy Council in AIR 1940 7 (Privy Council) dedication to the public is not lightly to be inferred when it is known at its inception the temple property was acquired by a grant to

an individual or to a family. The same presumption was relied on in the later Bench decision in *Meenakshi Achi Vs. N.M. Manikkam Chettiar and Others*, in the case of a temple dedicated for the use of a particular section of the Hindu community, namely, the Nagarathars belonging to Nattukottai Chettiar community.

10. Strictly speaking, it is not necessary to trace the origin of the ancient temple in this case. The decision in *The Board of Commissioner for the Hindu Religious Endowments Vs. Pidugu Narasimham and Others*, related to an institution originally connected with an historic event of the 13th century relating to a war between two neighboring Kingdoms of the locality in which 66. heroes were said to have been killed and later developed into a place of worship where Kirtu Naivedya Deeparadhana was performed and the public took part in the worship and believed in its religious efficacy. It is pointed out in the decision that the test is not whether such worship conforms to any particular school of Agama Sastras, but whether the worshippers by such worship are making themselves the object of the bounty of some supernatural power. It was held in that decision that the worship was religious and that the institution was a temple within the meaning of Section 9(12) of the Madras Hindu Religious Endowments Act of 1927. The decision in *Pichai Vs. The Commissioner for Hindu Religious and Charitable Endowments (Administration Department), Madras and Others*, related to installation of images of Saints like Nalvars, It has been held in that Bench decision that the dedication of properties by the settlor in favour of the four idols installed in the mantapam of Sri Kalyana-sundareswarar temple is for the benefit of the Hindu community and for the religious worship and that the Hindu community used the said place as of right for public religious worship and that the Deputy Commissioner had power to frame a scheme for the said endowment. It is pointed out in the decision that the installation and consecration of idols with ceremonies like Prana Pratistha etc., prescribed by Hindu sastras is not the sine qua non for public religious worship.

11. It is abundantly clear from the facts and circumstances of this case that the suit institution in which there are idols of Kailasanathar in the form of a lingam with Avudayar, Kamatchi Amman, Vinayakar, Byravar etc., is a place of public worship. It is really unnecessary to refer to some other minor circumstances which are not quite decisive on the point for determination. The learned Subordinate Judge has relied on the fact that there was an Utsavar for Chandrasekarar and that it was taken in procession till it was stolen seven or eight years prior to the suit. But in view of the plea in the written statement that there are no Utsavar idols, we do not attach much importance to the said circumstance. It is clear from the evidence in this case that there is a gurrakkal for the performance of poojas in the suit temple. There can be no doubt that the suit temple is a public temple, irrespective of the nature of its origin. We have already pointed out that the appellants have failed to prove that the suit institution is a samadhi of their alleged ancestor Kailasanatha.

12. The decree and judgment of the learned Additional Subordinate Judge are correct and they are confirmed and the appeal is dismissed with costs.