

(1991) 10 MAD CK 0034
In the Madras High Court

M. Lakshmiammal and Others

APPELLANT

Vs

K.T.T. Ramalingam Chettiar and Another

RESPONDENT

Date of Decision : 04-10-1991

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 70

Citation : (1992) 2 MLJ 93

Hon'ble Judges : Bellie, J

Bench : Division Bench

Judgement

Bellie, J.—These two appeals arise out of one common judgment rendered by the Subordinate Judge of Ramanathapuram in Madurai, in

O.S. No. 65 of 1969 and O.S. No. 124 of 1969. O.S. No. 65 of 1969 was decreed, while O.S. No. 124 of 1969 was dismissed. As against the

decree in O.S. No. 65 of 1969 A.S. No. 710 of 1981 has been filed and as against the decree passed in O.S. No. 124 of 1969 A.S. No. 828 of

1983 has been filed. O.S. No. 65 of 1969 was filed by one K.T.T. Ramalingam Chettiar against Muthuramalingam Pillai and seven others, the

eighth defendant being the Commissioner, Hindu Religious and Charitable Endowments, Madras, while O.S. No. 124 of 1969 was filed by the

said Muthuramalingam Pillai and six others against the said K.T.T. Ramalingam Chettiar, the plaintiff in O.S. No. 65 of 1969 and that suit was filed

for recovery of possession and for damages. Both the appeals can be disposed of in one common judgment. In both the suits the case of the

respective parties is the same. For convenience sake, as the trial Judge has done, the plaintiff in O.S. No. 65 of 1969 will be hereafter referred to

as plaintiff and the defendants in that suit as the defendants.

2. Now the case of the plaintiff in brief is that, the suit temple which is known as Pazhikkanjia Vinayagar temple at Sivakasi is a public temple. It

was founded by Ayira Vysya Kasukara Chettiars community. It was managed and administered by the plaintiff and their predecessors. The

defendants and their predecessors were only Poosaries in the temple and they had nothing to do with the ownership of the temple. The defendants

filed an application before the Deputy Commissioner, Hindu Religious and Charitable Endowment Department for declaration that the suit temple is

a private temple and that was ordered. The appeal preferred before the Commissioner was dismissed. The plaintiff filed statutory suit u/s 70 of the

Hindu Religious and Charitable Endowments Act for setting aside that order and to declare the suit temple as a public temple.

3. The defendants contended that it is a private temple belonging to the family of the defendants. They also contended that the suit temple was

constructed by their ancestors-Muthulinga Othuvar in his own land and the idol was consecrated as a family deity. The defendants and their

ancestors have been in possession and management of the temple throughout and they are not mere Othuvars.

4. On consideration of the evidence adduced in the case the trial court held by its judgment dated 30.11.1971 that the suit temple is a private

temple. Accordingly it decreed the suit O.S. No. 124 of 1969 filed by the defendants and dismissed the suit O.S. No. 65 of 1969 filed by the

plaintiff.

5. The matter was taken on appeal to this Court and in that appeal, observing that the trial court has not considered properly some of the relevant

evidence in the case set aside the said judgment of the trial court and remitted it back to the trial court for fresh disposal.

6. The trial court by its judgment dated 29.11.1980 in reversal of its earlier judgment, held that the suit temple is a public temple as pleaded by the

plaintiff and not a private temple as contended by the defendants. Accordingly it decreed the suit O.S. No. 65 of 1969 and dismissed the suit O.S.

No. 124 of 1969. As against this, now the defendants have filed these two appeals.

7. Mr. W.C. Thiruvengadam, learned Counsel appearing for the appellants-defendants would contend that the finding of the trial court is quite

contrary to the evidence in the case. He would lay much stress on Ex.82 filed by the defendants. This is a photo of a Silasasanam of the year 1669.

As per the said Silasasanam the temple has been built by Muthusamy Othuvar, the ancestor of the appellants.

8. It is not in dispute that there is such a Silasasanam in the temple. But however it is argued for the plaintiffs that even if this Silasasanam is a

genuine one that alone will not prove that the temple is a private one. No doubt this Silasasanam would show that the temple has been built by

Muthusamy Othuvar, but the question is whether he intended it to be a private temple or public temple. In this connection it may be noted that in

South India excepting Malabar, it is well established now by court decisions that the presumption is that a temple is a public one and whoever

claims the temple to be a private one he must have to prove it. It has been so held by the Privy Council in AIR 1934 230 (Privy Council) and by a

Division Bench of this Court in Sri Chidambareswara Sivagami Ambigai Temple Vs. Commissioner, Hindu Religious and Charitable Endowments,

Madras, .

9. As against this the learned Counsel for the defendants cited a decision of this Court in Soundharathammal Vs. The Tiruchirapalli Mavattam

Mahasuruli Alaya Bakthargal Madya Sangam, , wherein, while considering whether a Samathi is a public place of worship or private place of

worship it is stated that before a temple or shrine or other holy place can be accepted and recognised as a place of public religious worship there

must be evidence of dedication of the same for the benefit of the Hindu Community or a section thereof. This being single Judge decision and the

controversy is with regard to a Samathi and not a temple this decision will not help the plaintiff.

10. One important thing that has to be borne in mind is that admittedly the temple has been built in a poramboke land. If the builder of the temple

wanted it to be a private one it is unlikely that he would have built it in a poramboke land. Therefore the fact that the building is in a poramboke

land gives an indication that quite possibly the builder wanted to dedicate the temple to the public.

11. Mr.Thiruvengadam would however rely on a decision in E. Subbiah Pillai and Anr. v. The Commissioner H.R & C.E. (Admn.) Dept, Madras

77 L.W. 94, wherein it has been held that only because the temple is situated on a Natham it cannot be called a public temple. There is vast difference between Natham and a poramboke land. In that case the temple was built not only adjacent to the plaintiffs' house but the plaintiffs had access and entrance to the temple directly from their house. Further in our case too just for the reason the temple is built on a poramboke land we do not hold that it is a public temple, but, as stated above, this is a strong circumstance probalising that it could be the intention of the builder that the temple was to be a public temple.

12. Then even if at the time of building of the temple the builder had no intention that the public should worship there, it could be that in the course

of time the temple had become a public one by uninterrupted user by the Public. In a Full Bench decision in Subramania Aiyar and Ors. v. Pujari

Lakshmana Goundan and Anr. AIR 1920 Mad. 42 : 1919 M.W.N. 899, a temple built on a private land and exclusively managed by the founder

and his family, was by inference from the acts of the founder and his family members, held that the temple had been dedicated to the public.

13. The next document the appellants would rely on is Ex.832 which is called Cadman leaves written by one Muthusamy Udayar on 11.1.1965.

Therein it is written that,

From this it is argued that as per Ex.832 the suit temple has been established by the above said Muthusamy Othuvar. That may be so, but this

document does not show that the temple was a private temple. It reads that the writer had been doing pooja and service to the deity.

14. The next evidence for the appellants is the oral testimony of first defendant as D.W.1, and D. Ws.2 and 3. The evidence of first defendant

(D.W.1) is an interested one. Therefore the only evidence that can be said to be independent is of D.Ws.2 and 3 who would say that the public do

not worship in the temple.

15. As against this on the side of the plaintiff, Mr. T.R. Srinivasaraghavan, learned Counsel for the respondent-plaintiff would submit that

the defendants' family had been the poosaries of the temple and they were not the owners. In support of their case the plaintiff would first rely on a

grant of maniam Ex.A-14, dated 9.10.1929 by the Government of Rs. 5 and and as 4 only for the purpose of pooja. This grant is in favour of the

temple and not in favour of any individual, not to speak of any of the defendants' ancestors. From this it is submitted by the plaintiff that the

Government believed the temple to be or treated it as a public temple.

16. However it is argued on the side of the defendants that only because the Government has granted maniam it cannot be said to be a public

temple since there is nothing preventing the Government granting maniam to a private temple also. In this connection the learned Counsel would

rely on a Division Bench ruling of this Court in *Thanumalayaperumal Mudaliar and Others Vs. The Commissioner, The Hindu Religious and*

Charitable Endowments (Administration) Department and Others, wherein it is stated that,

The fact that at one particular point of time a small extent of two acres and odd was additionally granted to the deity by some strangers cannot alter

the nature of the initial grant or the character of the institution from a private one to a public one.

But in the instant case there is no question of any strangers granting anything to the deity but it is the Government that has granted the manibam.

Therefore the said decision would not help the defendants. I agree with the trial court that the grant of maniam by the Government is one of the

strong circumstances that would go to show that the suit temple could be a public one.

17. Sivakasi Municipality also has treated the suit temple as a public temple inasmuch as it is not in dispute that it has exempted the suit temple

from payment of tax. As per Ex.A-20 the municipality has levied tax on the properties of the temple and the owner of the property has been

described as Pazhikkanjia Vinayagar temple, and Ex.B-21 is a receipt for payment of tax for the properties of the temple and there too the owner

has been described as Pazhikkanjia Vinayagar temple.

18. Exs.A-1 to A-9 are statements recorded by the Revenue Inspector in connection with the said temple, given by the residents of Sivakasi and

some of them are of 1896 and the others are of 1897. A reading of these documents would show that the residents have complained about the

poosari in the temple i.e. Muthusamy Othuvar stating that he was not properly doing poojas and was misusing the funds of the temple properties.

Therein the residents have stated clearly that the temple had been built by the

people of Chettiar community and now Muthusamy Othuvar was

doing pooja in the temple but he was not doing pooja properly. The genuineness of these documents is not in dispute and these being ancient

documents they have great evidentiary value.

19. Ex.B-14 is an order dated 31.8.1890 issued by the Tahsildar upon a complaint made by one Arunachalam Chettiar against Muthusamy

Othuvar in connection with the temple properties, and in that order the Tahsildar has stated that it appeared that Muthusamy Othuvar had not

appropriated to himself any of the temple properties and therefore the complaint need not be pursued further. This is an indication that it did not

appear then that Muthusamy Othuvar claimed the suit temple as his family temple.

20. Ex. A-26 is a registration copy of a mortgage deed executed by one Vellayan Asariand others in favour of one Vadivel Nadar on 20.2.1874.

Therein the boundary of the property mortgaged has been Stated as

It is not in dispute that this temple mentioned as the boundary is the suit temple. Therefore as per the mortgage deed Ex.A-26 which is also as early

as of the year 1874 the suit temple has been stated to be belonging to the Chettiars.

21. Ex.B-8, dated 28.7.1917 is a partition deed among the then members of the defendants family. Therein they have referred to the private

properties and poosari right in the suit temple. No mention of the temple or temple properties has been made as their private property. This only

shows that according to the members of the defendants' family then the temple was not a private property belonging to their family.

22. Ex. A-11 is a registered copy of sale deed dated 6.1.1919 executed by Mariappa Pillai in favour of one Anaiappa Pillai for Rs. 600. It is a

sale deed by one of the ancestors of the defendants. Therein he has been described as

So the defendants' ancestor has been described as one who did service in the temple. To this effect is Ex.A-12 also which is a cancellation deed

cancelling Ex.A-11. If really the said defendant's ancestor was the owner of the temple he would not have been described as a "panividaidhar".

This description "panrvidaidhar" is incompatible with the temple being a private one belonging to the defendants' family.

23. Ex.A-15 is a copy of the petition given by the first defendant to the Sivakasi Municipal Commissioner on 22.7.1937. Therein, as pointed out

by the trial court, the first defendant has called himself as "Huqdar." of the suit temple. Huqdar means manager, and the suit temple has not been

referred to as the private temple of the defendants' family. This Ex.A-15 is a copy of petition sent by the first defendant complaining against his

uncle (paternal) Shanmugham Pillai in respect of the temple properties. Therein he has clearly mentioned that the temple properties are endowed

properties and that himself or Shanmugham Pillai has no right whatsoever in it. In one place in it he calls himself as the Inamdar of the temple.

These recitals conclusively, by way of admission, prove that the suit temple and its properties belong to the public and not to the family of the

defendants. In my view, in the face of this document Ex.A-15, it is not at all open to the defendants to raise a plea that the suit temple is a private

temple and not a public temple.

24. The first defendant himself as D.W.1 has categorically admitted that people of all communities go to the temple. He would also say that he

used to do pooja daily two times and there will be poojas on festival days, and there will be pooja on the Vinayaga Chadhurthi day. In the face of

this evidence of the first defendant himself the evidence of D.Ws.2 and 3 that the public does not go to the suit temple to worship has to be

rejected as untrue.

25. The plaintiff besides himself as P.W.1 has examined P.Ws.2 to 9. All of them have uniformly deposed that the suit temple is a public temple

and the public go there and worship without any interruption, and no permission to worship in the temple is needed for anybody. This evidence of

P.Ws. has not been seriously challenged in the cross examination.

26. Considering the circumstances discussed above, I am clearly of the view that the suit temple is a public temple and not a private temple as

decided by the trial court.

27. It is next argued by the learned Counsel for the appellants-defendants that in the plaintiffs suit i.e., O.S. No. 65 of 1969 eighth defendant is the

Commissioner, Hindu Religious and Charitable Endowments, Madras and to him no notice u/s 80, C.P.C. has been given and for this reason the

suit is incompetent and is liable to be dismissed. In this connection the learned

Counsel cited a Division Bench decision of this Court in 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 in the very same judgment in paragraph 13 it has been clearly held that the point regarding notice u/s 80, C.P.C. can be raised by the

Government or Public Officer against whom the suit is filed and not by a third party. Therefore this contention of the learned Counsel has no merit.

28. The result is, both the appeals are liable to be dismissed. I order accordingly. In both the appeals the appellants shall pay costs to the respondents.