

(1916) 02 MAD CK 0007
In the Madras High Court

M. Rangachariar and Others

APPELLANT

Vs

Souri Battachariar and Soma Battachariar

RESPONDENT

Date of Decision : 15-02-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32

Citation : 33 Ind. Cas. 561

Hon'ble Judges : Sadasiva Aiyar, J; Moore, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—The decree-holders are the appellants. They obtained a decree enjoining the defendants Nos. 4, 5 and 6 (some of the

judgment-debtors) by an injunction from taking the thirtham after the daily pujas and on other specified occasions before giving that holy water to

the thirthakars (the plaintiffs and defendants Nos. 7 to 23) and also directing these judgment-debtors to confer on the plaintiffs the mariyadas

specified in the plaint schedule, one of those mariyadas being that garlands should be thrown on the necks of the decree-holders after they are

given the thirtham. The present Execution Petition No. 33 of 1913"" was presented against the defendants Nos. 1, 2, 4, 5 and 6, but in these

appeals the 4th and 5th defendants alone are respectively the respondents.

2. The relief prayed in the execution petition against them is that they might be imprisoned and their property might be attached under Rule 32 of

Order XXI of the CPC in order to enforce two of the injunctions which were granted against them and which they are alleged to have disobeyed.

3. The particulars of the disobedience are thus set out: (I) They have, since 31st December 1912, been taking thirtham first before serving the

same to the plaintiffs and defendants Nos. 1 to 23 on every day on the occasions mentioned in item (1) of the plaint schedule" in violation of the

decree and in spite of the protests of the 1st plaintiff:

2. They have been making a paricharaka to garland the plaintiffs and the defendants Nos. 7 to 28 instead of themselves doing so and have thus

acted in violation of the decree.

3. Now, the counter-petition or answer to the execution petition admits that the defendants Nos. 4. and 5 did take the holy water just before

offering it to the first thirthamdars and justifies it on certain grounds which I shall set out as they are found in the counter-petition:

4. The petitioners admittedly have the right to the thirtham only after the puja is over, the puja including the seva and the sathumurai. The High

Court, did not dispose of the contention urged on behalf of the archakas, that the thirthamdars who were entitled to the thirtham after the

conclusion of the puja cannot object to any change in the puja which would be in accordance with the Sastras requiring or permitting the archakas

to sip the sacred water as a part of the ceremonial of the puja. With regard to this contention their Lordships observed as follows: If the trustees or

the archakas have a right to introduce such an innovation and if in the assertion of such right they introduce it, it will then be time to consider

whether the plaintiffs on account of their right to the first thirtham can object to any change which would have the effect of postponing their getting

the thirtham- until the, archakas have taken it. As already stated this was not the case of the defendants in the lower Court.

Their contention was not that they introduced an innovation but that the practice which (hey in no way violated allowed the archakas to take the

sacred water first. On that question the findings of the lower Courts are conclusive and must be accepted.

5. The petitioners have no right to interfere with the puja provided it is in accordance with the Sastras. The trustees have every right to regulate the

worship of the temple and to correct any irregularity or impropriety in the puja, if such irregularity or impropriety is forbidden by the Sastras or IS

opposed to them.

6. Learned men well versed in the Vyghanasagama and other Sastras have been consulted by the trustees and the archakas and they have

expressed the opinion that the puja will be incomplete and devoid of religious merit if, as a part of the puja, the archaka does, not sip the sacred water.

7. With a view to improve the puja and to make it accord with the Sastras' injunctions, the trustees of the temple have, relying upon the opinions of the pundits, directed the archakas to sip the sacred water as a part of the ceremonial of the puja. In obedience to the order of the trustees the respondents have, since the date of the said order, been taking the puja sacred water as part of the puja.

8. Such taking of the puja sacred water by the respondents is not in violation of the injunction granted by the decree.

4. I shall try to make clear the above contentions by mentioning a few more facts. Before Saint Nadamuni's time, the puja to the deity ended with

the final waving of camphor light before the image. Saint Nadamunigal introduced the singing of some hymns from the Tamil Veda (and other minor

recitals) as an offering to the deity after the camphor light offering and these supplemental rights were called sevakalam and sathumurai. He seems

to have introduced this innovation only in one of the famous Vaishnava Temples, but Sri Ramanuja introduced it in his time generally in all the great

Vaishnava Temples. (The temples in Malabar were not affected and the small temples of Vishnu in the villages were not also affected then and

many of them are still not affected.) The institution of their thakars who recite these Tamil hymns at the time of sevakalam and sathumurai was also

introduced about the time of Sri Ramanuja. Thus instead of the camphor-light offering being the end of the puja, the sevakalam and sathumurai

offerings became the final part of the puja. The plaintiffs claimed in the former suit the distribution of the holy water first to themselves as thirthakars

before the archakas and the general body of devotees assembled in the temple hall took the thirtham. Their rights were established and decreed in

the suit, notwithstanding the contention of the archakas that according to the Sastras they (the archakas) are entitled to receive the thirtham first at

the end of the puja. This contention they set up on the strength of certain texts filed as Exhibits in this case In Exhibit 10(a) it is said that the priest

should at the end of the divine worship partake first of the holy water and should then cause it to be given to ascetics of Lord Vishnu. See also

Exhibit 11(a). Then in Exhibit 12(2) it was said that the puja-maker should first take the holy water at the end of the puja. He should also cause the same to be given to ascetics, Brahmins and others. The High Court, however, held that these texts were not of such authority as to override the custom in this temple that at the end of the puja, that is, immediately after the sevakalam and sathumurai, thirthakars should be given thirtham first in preference to the archakas.

5. Now, the ingenious contention of the 4th and 5th defendants is that the sipping of the thirtham by themselves and other archakas has now been made to be the final act of the puja by the order of the trustees and as the plaintiffs are entitled to first thirtham only after the end of the puja, their taking the thirtham as part of and as the finale to the puja does not involve any disobedience of the High Court's decree. The learned District Munsif says on this point, ""The very object of the suit was to establish the plaintiffs' right to take the thirtham prior to its being sipped by the archakas."" Then the District Munsif holds that the decree which gave the plaintiffs the above relief which, was their object, would be rendered of ""practically no value"" if the contention of the contesting defendants was to be upheld, namely, that the decree left open the trustees' right to make the archakas sip the holy water as a part of the puja and as the finale to the puja. He, therefore, ordered the attachment of the properties of the defendants Nos. 4 and 5 under Order XXI, Rule 32, of the CPC and ordered them to pay the decree-holders' costs.

6. I must here add that, on the other question of garlanding, the District Munsif held that, as the decree referred to Clause 1 of the schedule as containing the mirasidars and as that Clause (.1) of the schedule, according to its grammatical construction, implies that the garlanding should be done by the archakas who distribute the holy water, who place the Satagopam on the person of the worshippers and who distribute the thulasi leaves, the decree intended the garlanding to be done by the archakas and not by the paricharakas.

7. On appeal, the District Judge reversed the order of the District Munsif on the following grounds: (1) ""The judgment of the High Court left open the question of the right of the trustees and the archakas to introduce an innovation in the customary puja by which the archakas may be

empowered to sip the water first as part of the puja itself." (2) "The decree does not say by whom the garlanding is to be done and the plaint

schedule, to which the decree refers, does not say so either. The fact that the respondents conceded that other acts coupled in the schedule with

this garlanding had to be performed by the archakas themselves is not of any help." If the schedule and decree are not clear it is the duty of the

holder of the decree to get it made clear.

8. I take it to be the settled law that it is open to a Court executing a decree to construe it in the light of the plaint and the judgment if there is any

ambiguity. See Upadhayayulu Yegnanarayana v. Kottalanka Makayya 31 Ind, Cas. 478. Assuming (which I do not grant) that there is an

ambiguity in the decree, I am unable to accept the learned District Judge's view that the judgment of the High Court in this case empowers the

judgment-debtors to add to the puja as its finale the sipping of the holy water by the archakas and thus to nullify the decree which gave the plaintiffs

the right to get the first thirtham at the end of the customary puja. The very texts quoted by the contesting defendants were to the effect that it was

after the ending of the puja that the archakas had to take the water first. The learned Judges of the High Court were merely meeting an argument

advanced by the Vakil for the contesting defendants that the trustees were entitled to make the sipping a part of the puja. The way in which the

learned Judges met that contention was by pointing out the fact that that was not the case of the defendants in the lower Courts and they would,

therefore, not consider that contention till and if it was necessary to do so. Speaking for myself, I might be permitted to say, with the greatest

respect, that I think it rather unfortunate that in this case (which is typical of factious temple cases) an unnecessary observation as to hypothetical

contingencies should have been made. As I said in one of these regrettable temple suits Veeraraghava Thatharharia v. Krishnaswami

Thathacharia 31 Ind. Cas. 769 "it is well known that this famous temple intended for God's worship has been in a large degree converted into a

field for the sowing of a crop of continual litigation, both civil and criminal, (such litigation being mostly of a childish and trivial, though of a very

intricate and ingenious, character)." "I fear there is no use in hoping that (what Mr. Justice Moore has characterised in his judgment in the second

appeals of 1902 as) "these unfortunate and foolish disputes which have worked so much injury to the temple for many years past" will terminate

with this case." Ingenious brains, both legal and lay, are continuously at work in these temple disputes (about honours, precedence and petty so-

called emoluments) and in trying to unsettle what might be deemed to have been settled by prolonged and exhaustive litigation, and hence Courts

cannot be too anxious about seeing that no loophole is left for the exercise of such ingenuity.

9. It is clear to me beyond reasonable doubt that the story of the trustees and of the archakas, learned pandits having found out that the sipping of

the archakas should become part of the puja and be the finale to the puja, is all a pretence to nullify the rights obtained by the plaintiffs after a hot

contest and I would not give countenance to such attempts at evasions of decrees. [See *Indrajit Prasad v. Richha Rai* (1892) A.W.N. 113 which

was a much weaker case than the present.]

10. As regards the garlanding, I agree with the District Munsif that the decree is reasonably clear when read with the plaint that the archaka who

distributes the thirtham should garland the thirthakars and I am unable to agree with the learned District Judge that the decree is so obscure that the

plaintiffs are not entitled to execute it without having it rectified and made clear.

11. In the result I would set aside the order of the District Judge and restore that of the District Munsif with costs to be paid by the respondents to

the appellants in all the Courts.

Moore, J.

12. I entirely agree.