

(1937) 03 MAD CK 0006
In the Madras High Court

Marudamuthu Poosari and Another

APPELLANT

Vs

The Hindu Religious Endowments Board and Others

RESPONDENT

Date of Decision : 19-03-1937

Acts Referred:

Religious Endowments Act, 1863 — Section 84

Citation : AIR 1937 Mad 653 : (1938) ILR (Mad) 216 : (1937) 45 LW 695 :
(1937) 2 MLJ 175

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This Revision Petition arises out of an application made to the lower Court to set aside the dismissal of a petition which

had been presented to it u/s 84 of the Religious Endowments Act. The learned District Judge was evidently prepared, so far as the merits of the

application went, to hold that there was sufficient cause for restoring the O.P.; but he felt constrained to dismiss the I.A. because he was of opinion

that Order 9, Civil Procedure Code, did not apply to the case before him. I think that this view of the learned Judge rests upon a misapprehension.

2. It is in a sense right to say that the Religious Endowments Act is self-contained, that is, that provisions of the CPC will not by their own force

apply to every enquiry to be conducted by the authorities appointed or constituted under that Act. But when that Act allows suits or applications to

be filed in a Civil Court, in relation to matters arising under the Act, the principle that the Act is self-contained is irrelevant to the question of the

procedure to be followed by the Civil Court in dealing with such applications or suits. This will be clearly realised when one bears in mind that

there are several sections in the Endowments Act relating to suits to be brought

in the Civil Court. I do not suppose anybody will contend that such suits will not be governed by the provisions of the Code, in the absence of a special provision to that effect in the Endowments Act. On the other hand, it seems to me illogical to expect in the Endowments Act a provision to the effect that a suit brought in a Civil Court will be governed by the Civil Procedure Code. I do not see how applications to the Civil Court will stand on a different footing. All that can be said is that in dealing with suits, the Court will follow the procedure applicable to suits and in dealing with applications, the Court will follow the procedure applicable to applications. It is on the principle that once a matter comes before a regular Civil Court its further course will be governed by the provisions of the Code that second appeals have been permitted from the decisions of District Courts in cases under the Rent Recovery Act and in appeals under the Forest Act. Much the same principle was recognised by a division Bench of this Court in *S. Narayana Iyengar, Trustee of Sri Santhanagopalaswami Ranganathaswami Temple Vs. K.V. Desika Chariar*, though other reasons were also given in support of the decision.

3. The learned Counsel for the respondent invited my attention to the decision in *Anantharaju Shetty Vs. Appu Hegade*, . The basis of that judgment is not that the CPC cannot be made applicable at all but it is only the provisions relating to the procedure to be followed by the Court that will apply in such cases but not the provisions relating to appeal, review and so on. It is not necessary for me to say whether this distinction between one part of the Code and another part of the Code is justifiable or not; but that distinction does not affect the decision of the present case.

It must also be remembered that that case related to proceedings u/s 10 of the Old Religious Endowments Act (XX of 1863). Though it has been held that even when exercising the powers under that section, the District Court was acting as a Court and not as a *persona designata*, there can be very little doubt that a proceeding of that kind is substantially different from applications and suits which are provided for in the present Religious Endowments Act. The Full Bench judgment in *Rajagopala Chettiar v. H.R.E. Board, Madras* (1933) 66 M.L.J. 43 : ILR 57 Mad. 271 proceeded on the footing that the provisions of the Code are applicable to these suits and applications, though the right of appeal was negated in respect of

applications u/s 84, on the footing that an order on such an application was not a decree within the meaning of the Civil Procedure Code.

4. The order of the learned District Judge is set aside and he is directed to restore the original petition to file and proceed to dispose of it on the merits. Costs to abide.