

(1927) 12 MAD CK 0043
In the Madras High Court

(Mele Pottozhi) Kunhi Krishnan Nair

APPELLANT

Vs

Kunnath Kunhahmad

RESPONDENT

Date of Decision : 19-12-1927

Acts Referred:

Citation : AIR 1928 Mad 488 : (1928) 28 LW 58

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—This civil revision petition arises in the following circumstances: The plaintiff is the petitioner. He instituted a suit for the recovery of Rs. 61 under an oral agreement entered into by the defendant. The learned District Munsif taking evidence" with reference to the claim dismissed the plaintiff's suit. It appears from the affidavit filed by the plaintiff, that at the time when the case was taken up for disposal the defendant offered to be bound by an oath of the plaintiff with respect to that claim. The oath agreement completely covers the points for decision in the case. The plaintiff was to take the oath in the Mulayankavu temple and the defendant was to pay the oath expenses. The plaintiff went to the temple to take the oath, but the defendant insisted on approaching the inner entrance of the temple to place the oath fees at the front mantapam and hear the oath. The authorities could not administer the oath to the plaintiff as the defendant who is a Mahomedan cannot be allowed to enter into the Hindu temple. Mentioning these facts the temple kariasthan sent up a return to the District Munsif. The Munsif's judgment does not refer to this incident at all, but, as I have said, it disposed of the case on the evidence adduced by the parties.

2. It is now argued before me by the plaintiff-petitioner that effect should be given to the agreement entered into between the parties and that, inasmuch as the defendant made it impossible for the plaintiff to take the oath in the prescribed form, he is entitled to a decree. In support of this position reliance is placed on Thukhu Goundan v. Kuppauda Goundan [1912] 12 M.L.T. 613. That

decision does not support the petitioner's contention in its entirety, but I think it does support him to this extent that the Court should insist on the enforcement of the agreement entered into between the parties. It appears to me that this case comes within the principle of the ruling in *Thukhu Goundan v. Kuppauda Goundan* [1912] 12 M.L.T. 613. As in that case so in this one also, the enforcement of the oath was made impossible by the obstructing party attaching new conditions to the original agreement. As pointed out in that case:

There is no provision for a case where a party who offers to be bound by the oath made by another person afterwards refused to be so bound. There is no reason why the contract which he entered into should not be held to be binding on him. In such a case, if the oath be taken by the other party in accordance with the agreement originally entered into, it must furnish conclusive proof of the facts to which "the evidence given on oath relates.

3. The learned Judge, therefore, sent back the case for administering oath to the defendant " in the manner originally agreed upon between the parties," stating that

if he does so, the evidence so given will be conclusive evidence of the facts to which the evidence relates and that if he refuses to do so, then the District Court must proceed to hear "the appeal on the merits.

4. This view is supported by the decision in *Thoyi Ammal v. Subba Royya Mudali* [1899] 22 Mad. 234.

5. The defendant insisted on his going inside the temple to make the oath and this made it impossible for the plaintiff to take the oath and so the oath was not taken. It is, therefore, necessary that the plaintiff should be given another opportunity to take the oath in the manner originally agreed upon by the parties. If he does so take the oath, the District Munsif, irrespective of the evidence he has already taken in this case, will give a decree to the plaintiff. Mr. Ramaiyar, who argued the case before me, states that his client will pay the oath fees in case the defendant refuses to pay that to the temple. The District Munsif will, therefore, issue fresh notice to the parties and have the oath administered in the way agreed upon between the parties. I, therefore, set aside the decision of the District Munsif and remand the case to the lower Court for disposal according to law in the light of the observations above made. Costs will abide the result.