

(1925) 03 MAD CK 0048
In the Madras High Court

Muchumarri Malliah and Others

APPELLANT

Vs

Yerravalu Ganganna and Others

RESPONDENT

Date of Decision : 26-03-1925

Acts Referred:

Citation : AIR 1926 Mad 830 : 94 Ind. Cas. 226

Judgement

1. In this case we called for a finding on the issue

Whether the plaintiffs have a right by custom to carry on their procession along the public streets on the occasions mentioned in the plaint with daylight torches as claimed by them

2. A finding has been returned by the District Judge against the plaintiffs; he has held that it is not proved that the plaintiffs have made out such a custom as alleged by them. Ordinarily on this finding the appeal would have been allowed and the suit directed to be dismissed, but it is argued by Mr. Ramachandra Ayyar for the plaintiffs who now appears for the first time in the case that we should go back upon what we held on the last occasion and hold that the plaintiffs have a right as members of the public to use public roads in any manner that they can lawfully use them and that it is not open to any other member of the public to prevent them from so doing unless they infringe some particular right of the other or they infringe any magisterial orders or police regulations or cause injury to any member of the public by so using. This argument was not urged before us at the time when the case was heard by us and we called for findings. In fact as stated in our judgment it was expressly admitted by the learned vakil who then appeared for the plaintiffs that the plaintiffs based their right to take processions with the accompaniments named only as a matter of customary right and if they were not able to establish such a customary right they would not be entitled to a declaration.

3. It is contended on behalf of the plaintiffs that the learned vakil who appeared then was acting beyond his authority and the admission being on a question of law is not binding on the clients ; but the argument overlooks the nature of the

suit. The plaint says that by immemorial custom the plaintiffs in this suit and their castemen have the right from time immemorial to conduct processions in these streets with music and daylight torches. The Kapus the defendants denied this customary right and they stated that it was merely an attempt made by the plaintiffs to make themselves equal to the Kapus in caste status by carrying daylight torches and that the Kapus alone were entitled to this privilege and that on that ground they objected to the declaration being granted. The issue was worded like this:

Whether the plaintiffs have not the right to carry daylight torches in procession as claimed by them.

4. It was admitted before the Subordinate Judge, as noted by him in para 7, that the suit was for the vindication of a dignity, i.e. for a declaration that the plaintiffs were entitled to carry torches during daytime on ceremonial occasions. He declined to give the plaintiffs a declaratory decree as prayed for holding that the case was one for a declaration of a mere dignity or honour unconnected with any office or temple and he was of opinion that the right was not one which civil Courts ought to recognize. Before the appellate Court the District Judge starts his judgment by saying that the suit was for a declaration of the customary right of the Gollas of Thathireddipalli to go to their temple in procession through certain public streets with music and torches during daytime on marriage and other ceremonial occasions and for an injunction. In the course of his judgment no doubt he treated the right claimed as not different from the inherent right of every citizen to use the public streets in a lawful manner and said:

Admittedly the streets in question are public streets. All members of the public have, therefore, equal rights in them. Apart from any custom every citizen has an inherent right to conduct processions, civil or religious, through a public street, so as not to obstruct the use of it by other and subject to "any directions a Magistrate may lawfully give to prevent obstructions of throughfare or breaches of public peace.

5. It was objected before us on the former occasion that this view of the case was not permissible considering the way in which the suit was framed, the suit being to vindicate a customary right. It is not without due care and deliberation that the plaintiffs confined their case to a vindication of what they call a customary right for the plaintiffs Gollas would have no doubt objected to the Malas and Madigas and other low castes exercising a right such as the one in question now. If the right is to be claimed as a right inherent in every citizen the Malas and Madigas would be equally entitled to the right of carrying daylight torches in their processions but the Gollas in their evidence carefully deny that any but the Kapus and themselves have got that right; so that it is clear that here we have not got to deal with the general question as to what the right of a member of the public is on the public road. It is in view of this contention that the learned vakil for the plaintiffs who appeared on the last occasion admitted that unless he was able to establish his customary right his case must fail. We do

not think, therefore, that it is open now to the plaintiffs or to the learned vakil who appears for them to put his case upon a general inherent right of the public on public roads. The recent decision of the Privy Council reported as AIR 1925 36 (Privy Council) has put the matter beyond controversy that any member of the public has got the right to use a public street in any lawful manner and a declaration can be granted if he is prevented from so doing without proof of any special damage. This was the view taken by the Madras High Court and the Privy Council has accepted the Madras view as correct. But that case has no bearing on the present case because such a case as this must necessarily fail when the custom is not proved. Any right that the plaintiffs may conceive themselves to have, based upon their position as citizens, they will have to vindicate by another suit, if they are so advised and if they find it necessary to do so. Mr. Ramchandra Ayyar has quoted some cases to show that so long as this case is pending before us it is open to us to reconsider the decision already taken if we find that that decision is not correct to put matters right. It may be that the parties have no right to insist upon re-opening questions that had been decided before calling for a finding but I am clearly of opinion that it is open to the Court to do so if it thinks fit and it cannot be said to act without jurisdiction if it goes back upon the position taken by it previously so long as the case is not out of its hands. It is not necessary however to decide this point, for the point that has now been taken by Mr. Ramchandra Ayyer we have held is not open to him on the frame of the suit. We must, therefore, accept the finding of the District Judge, as against his finding nothing has been urged, and we hold that the customary right is not proved. In this view the appeal must be allowed and the suit dismissed with costs.