

(1921) 11 MAD CK 0030
In the Madras High Court

Muhammad Jehangir Sahib

APPELLANT

Vs

Kajee Mohamad Oli Ahmad Sahib and Others

RESPONDENT

Date of Decision : 29-11-1921

Acts Referred:

Citation : 66 Ind. Cas. 237

Hon'ble Judges : Kumaraswami Sastri, J; Kavi Amir Sahib alias Kaji, J; Devadoss, J

Bench : Full Bench

Judgement

1. This appeal arises out of a suit filed by the first respondent against the appellant and others for recovery of possession of the mosque and Idga mentioned in the plaint. The plaintiff's grandfather and the first defendant's father were brothers. The case for the plaintiff was that the mosque and Idga were places where parsons who formed his father's jama were entitled to offer prayers and perform other religious ceremonies and were in possession of his father till his death; that after his father's death he (the plaintiff) was appointed Kazi, (the business of the office of Kazi being conducted by a deputy during his minority) and was in possession; that the first defendant took wrongful possession of the mosque and Idga under colour of his appointment as Kazi by the Government; and that the plaintiff is, therefore, entitled to possession and mesne profits as claimed in the plaint. The first defendant denied the appointment of the plaintiff as Kazi and pleaded that he was the duly appointed Kazi and Posh Imam and had been doing the necessary duties; that he was entitled to possession of the mosque and idga; that the suit was barred by limitation and that the mosque and Idga were places which all the Muhammadans were entitled to use. The District Munsif dismissed the plaintiff's suit holding that the plaintiff did not prove his title. On appeal the Subordinate Judge was of opinion that both the plaintiff and the first defendant were entitled to possession and management of the mosque and Idga and he passed a decree for joint possession in favour of the plaintiff and the first defendant. Against this decree the first defendant has filed the present second appeal and the plaintiff

has filed a memorandum of objections claiming exclusive possession. We are of opinion that the decision of the Subordinate Judge is right.

2. As regards the mosque and the Idga, it appears from Exhibit H, which is a statement made by the first defendant so long ago as 1805, that the mosque and the Idga were built and dedicated during the time of the Nawabs by the ancestors of the plaintiff and the first defendant. It is not disputed that the mosque and the Idga were in the possession of the ancestors of the parties ever since they were founded. Moideen Sahib, the great-grandfather of the first defendant, Jahangir Sahib, his grandfather, Siraj-ud-Din Sahib, his uncle, and Ghulam Moideen, father of the plaintiff, were in possession and management of the mosque and Idga and also of the in mi lands which were attached to the office of Kazi. Having regard to these facts and to the fact that the mosque and Idga were built and owned by the ancestors of the parties, the reasonable presumption is that the office is hereditary in the family and that possession and enjoyment have been in the family since the foundation. The plaintiff was a minor about 10 years old when his father Ghulam Moideen died. The first defendant thereupon applied to the Government to be appointed Kazi and he was so appointed; but this would not, under the Kazis Act; XII of 1880, give the first defendant any rights as against the plaintiff. In 1863 the inam lands were enfranchised in the name of the plaintiff's father and it appears from Exhibit D that the plaintiff's father was put in possession of the mosque on the 8th of August 1853. That he was in possession till his death is not disputed. He died on the 28th of April 1908 and the first defendant was appointed Kazi in 1904. The attempt of the first defendant to get the patta of the inam lands transferred in his own name was unsuccessful as the Government held that, under the Kazis Act, he had no right to the lands. For some time after the death of the plaintiff's father, plaintiff's first witness Sheik Mohideen Sahib, his brother-in-law, was in possession of and was looking after the mosque and Idga on behalf of the plaintiff. The first defendant, under colour of his appointment as Kazi, applied under the Criminal Procedure Code to the Stationary Sub-Magistrate of Coimbatore and he was successful in keeping Sheik Mohideen Sahib out of the mosque and getting possession. It seems to us that, apart from any other question in the case, the plaintiff who was in possession is entitled to get back possession from the first defendant on the strength of his possessory title unless the first defendant can show an equal or better right. In the former case the plaintiff would be entitled to joint possession and in the latter case he would have no right to retain possession. In *Mustapha Saheb v. Santha Pillai* (1) 23 M. 179, it was held that a person who is ousted by another who has no better right is, with reference to the person so ousting, entitled to recover by virtue of the possession he had held before the ouster even though that possession was without any title and that section of the Specific Relief Act does not take away such right. In *Narayana Row v. Dharmachar* 46 M. 514, it was held that possession is good tide against everybody except the true owner and that the effect of Section 9 of the Specific Relief Act is that a person dispossessed

otherwise than in due course of law is entitled to be reinstated even against the defendant who is a true owner. A similar view was taken in *Vythialinga Padayachi v. Ponnuswami Padayachi* 62 Ind. Cas. 396 . As possession and management of the mosque and Idga were in the family ever since they were founded over 200 years ago, it cannot be said that the plaintiff, who is a descendant of the senior branch, has no right to possession and management of that, the first defendant has trot a better title than the plaintiff. The mere appointment of the first defendant as Kazi by the Government will not give him any superior claim as against the plaintiff. So far as the office of Kazi goes, any person can be appointed Kazi and it has been proved in the present case that the plaintiff bas been performing the duties of the office of Kazi ever since he attained majority. A great deal of confusion has arisen owing to the fact that persons in possession of the mosque were also Kazis. The office of Kazi will not by itself give any right to the mosque or Idga, What really happened seems to be that the offices of Kazi and Muttawali were till recently merged in the same person. We think the Subordinate Judge was right in holding that it may be presumed on the facts of the present case that the members of the plaintiff's family were Kazis and Muttawallis. We are of opinion that, on the facts found by the Subordinate Judge, the first defendant bas no batter right as Kazi than the plaintiff. Evan assuming that the original appointment of the plaintiff as Kazi during his minority was invalid, it has been found by the Subordinate Judge that the plaintiff has been officiating as Kazi for a section of the Muhammadan Community ever since he attained majority and that he bas been solely enjoying the inam lands. There is, therefore, no reason why he should be excluded from the right whish his father and ancestors enjoyed as regards the mosque and the Idga.

3. As regards the memoranda of objections the Subordinate Judge find a that plaintiff has not proved his exclusive rights and we cannot disturb his finding.

4. The appeal and memoranda of objections are dismissed with costs.