
(1981) 07 MAD CK 0057
In the Madras High Court
Case No : S.A. No. 2451 of 1977

Muniandi Kone and Others

APPELLANT

Vs

Sri Ramanatha Sethupathi, Hereditary Trustee of Arulmigu
Mangalanathaswami Temple and Another

RESPONDENT

Date of Decision : 06-07-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1982 Mad 170 : (1981) 94 LW 771 : (1982) 1 MLJ 20

Hon'ble Judges : Sethuraman, J

Bench : Single Bench

Advocate : T.R. Mani and S. Chandramouli, for the Appellant; P. Narasimhan and S. Muthu, for the Respondent

Judgement

1. The plaintiffs in O.S. No. 102 of 1975 in the court of the District Munsif, RamariathaDuram are the appellants.
2. The suit was filed for a declaration that the plaintiffs were entitled to take Arulmigu Mangaiperumal deity in procession on the tenth day of Chitrotsavarn festival and for a permanent injunction restraining the defendant from preventing the plaintiffs in taking the deity in procession and also for a mandatory injunction directing the defendant and his son to take the deity from the sanctum sanctorum for the said procession on every Chitra Pournami day.
3. In Uthirakosamangai village, there is a temple called Mangaleswari Samastha Mangalanathaswarni temple. The temple is managed by the Raja of Ramnad as a hereditary trustee. In the same temple, there is a deity of Vishnu called Mangai Perumal. In the month of Chitrai i.e April-May every year, a festival for ten days is celebrated in the temple. On the tenth day festival which corresponds to the Chitra Pournami day, the plaintiffs claim, that they used to take the said Mangai Perumal deity from the main temple in the morning in Kuthirai vaganam to another temple called Govindasami temple belonging to the plaintiffs. In Govindasami temple, pooja other services would be done to the deity and the

deity would be returned to the main temple in the evening. The plaintiffs claim that they had been exercising this right for a long time from time immemorial. In or about 1973, there appears to have been a faction between the plaintiffs, who are Yadavas, and Pillaimars in the said village and the main temple under the management of Raja of Ramnad is predominantly worshipped by the Pillai community. As their right to worship in this customary way was denied, the plaintiffs came forward with the present suit.

4. The defendant denied the existence of any such custom or any right in the Yadavas taking the Mangai Perurnal deity to the Govindasami temple. The defendant also contended that the claim of the plaintiffs was not a civil right which could be adjudicated by a civil court.

5. The learned District Munsif, after considering the oral and documentary evidence, held that the right claimed by the plaintiffs was a civil right and that the jurisdiction of the civil court was not excluded. A decree was, therefore, granted in favour of the plaintiffs as prayed for. On appeal, the learned Subordinate Judge held that the right claimed by the plaintiffs was only in the nature of a right to perform a ritual and that the civil court cannot interfere in such matters. He, therefore, dismissed the suit. The present second appeal has been filed by the unsuccessful plaintiffs.

6. Mr. T. R. Mani, learned counsel for the appellants contended that the right to take the deity in procession to the Govindasami temple in the present case was a civil right and that the civil court had jurisdiction. He relied on several decisions to be noticed presently. For the respondent, Mr. Narasimhan contended that there was no right to take any deity from the main temple to the Govindasami temple, that there was no proof of the custom as pleaded and that the civil court did not, therefore, have jurisdiction.

7. It is not in dispute that if the present right claimed by the plaintiffs can be characterised as a "ritual", then the plaintiffs cannot seek their reliefs in civil court and they will have to go before the appropriate authorities constituted under the Tamil Nadu Religious and Charitable Endowments Act ? 1959. The word "ritual" means "Pertaining or relating to, connected with, rites . The word "rite" is "a formal procedure or act in a religious or other solemn observance, . The question whether a right to carry the deity and worship it is a civil right or not has been examined in decisions of this court.

8. In *Narayana Mudali v. Periakalathi Mudali*, AIR 1939 Mad 494 the question relating to an observance known as Kappu Kattu has been dealt with. Kappu Kattu is a rite whereby unmarried boys of a particular caste go through a sort of initiation which consists in the tying of a sacred string round the wrist as preparatory to their taking part along with others in the festival, In Sanskrit it is known as Raksha Bandan, The plaintiffs in the case before Wadsworth J. claimed a right of Diparathana also which consisted in the making of offerings of coconut, betel and fruits to the God on the occasion of the festival with camphor also

being burnt. The learned Judge held that the courts will not endeavour to lay down a ritual which is to be followed in the worship. The position would, however, be different where there are perquisites attached to an office. On the facts of that particular case, it was held, that Kappu Kattu was a ritual which could not be the subject matter of a civil suit. As far as Deeparathana also was concerned, it was held, there was no difference. The civil court was thus held to have no jurisdiction in determining such a question.

9. In *The Goundars of Vilangathur village and Others Vs. The Udayars of Vilangathur village and Others*, , there was a dispute between the Vanniars or Gounders and the Udayars in a village called Vilangathur. Out of 80 houses, Vanniars live in about 40 and the other communities including Udayars in the rest of them. There is a Perumal temple in that village and there were two festivals, one in February-March and the other in August-September every year. According to the Vannia or Gounder community, both the common, ties were offering worship to the temple and conducting the festivals. As Vanniars were denied their rights, they came forward with a suit in a civil court. It was held by Somayya J. that a suit by one set of villagers against an aggressive set of other villagers, who prevented the plaintiffs from peacefully carrying on the processions and worship of a deity in a temple did not fall within S. 73 of the Madras Hindu Religious and Charitable Endowments Act, 1927 and that the right of an individual to worship in a particular form, as in the past, was a civil right. The plaintiffs were held to have been entitled to the protection of the court in exercise of their civil right.

10. The difference between these two cases may be noticed. In the case before Wadsworth J. it related to a ritual and in the case before Somayya J. it related to worship. The right to worship has always been taken to be a civil right.

11. In *Ugamsingh and Mishrimal Vs. Kesrimal and Others*, , the dispute was between the Svetambaries and Digambaries of Jain sect. The Svetambaries contended that they had a right to place the Chakshus, Dhvajadand or Kalash according to their right. The Digambaries would not worship the idol which had Chakshus. The result would be, if Svetambaries were to have their right, the Digambaries would be excluded from the worship. It is in this connection that the question whether the right claimed by the respective sect was a civil right or not was gone into by the Supreme Court. It was held that a right to worship was a civil right interference with which raises a dispute of a civil nature though disputes which are in respect of rituals or ceremonies alone cannot be adjudicated by civil courts if they were not essentially connected with civil rights of an individual or a sect on behalf of whom a suit is filed.

12. In *Sri Sinna Ramanuja Jeer and Others Vs. Sri Ranga Ramanuja Jeer and Another*, , the dispute related to a right to first theertham. In the Alwar Thirunagari Temple in Tirunelveli Dt. Subba Rao J. as he then was, brought out the principles at page 516 (of SCR) : (at P. 1724 of AIR) in the following passages -

"Section 9 of the C. P. Code describes the nature of suits which a court has jurisdiction to entertain. It can entertain every suit of a civil nature excepting suits of which its cognisance is either expressly or impliedly barred. As a corollary to this, it follows that a court cannot entertain a suit which is not of a civil nature *prima facie*, suits raising questions of religious rites and ceremonies only are not maintainable in a civil court, for they do not deal with legal rights of parties. But the Explanation to the section accepting the said undoubted position says that a suit in which the right to property or to an office is contested in a suit of civil nature notwithstanding that such a right may depend entirely on the decision of a question as to religious rites or ceremonies. It implies two things, namely, (i) a suit for an office is a suit of a civil nature; and (ii) it does not cease to be one even if the said right depends entirely upon a decision of a question as to the religious rites or ceremonies. It implies further that question as to the religious rites or ceremonies cannot independently of such " a right form the subject matter of a civil suit. Honours shown or precedence given to religious dignitaries when they attend religious ceremonies in a temple cannot be placed on a higher footing than the religious rights or ceremonies, for they are integral part of the said rites or ceremonies in the sense that the said honours are shown to persons partaking in the ceremonies."

13. In *V. Srinivasachariar v. Thata Desika Thathachariar*, (1970) 83 Mad LW 407 the Vadagalies alleged that according to tradition, it was an established custom and usage to take the idol of Sri Vedantha Desikar on His birthday round the shrines of Alwars and Acharyas and the verses composed by Sri Desikar both in Sanskrit and Tamil would be recited at the time of the Mangalasasanam in Varadarajaswami Temple at Kanjeevaram. The contesting defendants resisted the suit denying the custom and usage alleged by the plaintiffs and stated that only Thenkalai mantrams, Prabliandams and Vazhi Thirunamam would be recited. The suit was also resisted as not being maintainable. In *Subbaraya Mudaliar v. Vedantachariar*, ILR (1905) Mad 23, it was Pointed out that a right to recite sacred texts in a temple is a matter of ritual or ceremony in a religious matter with which a civil court has nothing to do. But where the right to worship itself is denied, a suit to establish such an ordinary right would be a suit of a civil nature, as was held in *Kadirvelu Chetti v. Nanjundaiyer*, (1916) 3 Mad LW 512: AIR 1917 Mad 868. Following these decisions, it was held in the above case that what was claimed by way of recitation of verses of Vedanta Desikar pertained to ritual and - so the Civil Court cannot go into it. At page 414 the learned Judges observed thus-

"Prima facie suits raising question of religious rites and ceremonies only, are not maintainable in civil courts, for. they do not deal with the legal rights of parties. Even so Explanation to S. 9 provides that a suit in which the right to property or to an office is contested is a suit of civil nature, notwithstanding that, such right may depend entirely on the decision of a question as to religious rites of ceremonies. Two aspects under lie the scheme of S. 9 C. P. C. The first is, that a suit asserting a right to an office is a suit of a civil nature and the second is that

it does not cease to be one of civil nature even if the said right depends entirely upon a decision of a question as to the religious rites or ceremonies. There is a further implication that questions as to religious rites or ceremonies cannot independently (underline added) of such a right to an office form the subject matter of a civil suit

14. Thus, the well established legal position is that suits relating to rites or "rituals in a temple are not of a civil nature. However, the right to worship is a civil right which can be agitated in a civil court. In the present case, the question is whether to take the deity from the main temple to the Govindasami temple is a civil right or not.

15. The Yadavas or Vaishnavas by persuasion had worshipped the deity" Vishnu. The idea behind this festival is to have this deity worshipped in their own temple viz. Govindasami temple. Taking of a deity from one temple to another cannot be classified as a ritual Transporting a deity is not doing any: thing to the deity as such. There is no ritual in carrying the deity. The worship is to be done at the other place. viz., at Govindasami temple. It is this right to worship which was not granted by the defendant and so the plaintiffs had to agitate the matter in a civil court. As seen earlier, a right to worship is a civil right and the civil courts have jurisdiction to adjudicate on it.

16. The learned counsel for the respondent pointed out that there was no unconditional right available to the plaintiffs or their community and that the matter had not been considered as a matter of right much less a customary right. Usage and custom are not synonymous and they must be distinguished. Usage, when it has force of law, rises into a custom-see Srinivasachariar v. Thatha Desika Thathachariar, (1970) 83 Mad LW 407 the essentials of a custom are that it should be ancient or of remote antiquity or long established, certain, invariable, uniform and continuous and reasonable and not open to objection on the ground of public policy or otherwise and not opposed to statute. The custom to be valid must also be obligatory or compulsory in the sense that it must not be in the option of any person whether he would conform to it or not - See P. R. Ganapathi Iyer's Treatise on Hindu Law, 1915 Edn. at page 321, and Srinivasachariar v. Thatha Desika Thathachariar, (1970) Mad 83 LW 407.

17. In the present case, the customary right claimed is contested on the ground that there have been some breaks in some years and that only on payment of Re. 1, the deity is allowed to be taken so that it cannot be construed to be unconditional and absolute. The prerequisite for the payment for Re. 1 before the deity is taken is part of the customary right and cannot be divorced from it. It is not clear as to why this payment of a nominal amount is insisted upon. But, in this payment, the plaintiffs' community has been allowed to take the deity to their temple for all long period. This customary right was not exercised in certain years because of a dispute that the amount had not been paid in time. When the exercise of a right is conditional on a payment and the payment cannot be divorced from the right, then, if the payment was not made, the temple

authorities would be" justified in not permitting the deity to be carried out. After all, a customary right has to be exercised with all its obligations too. This does not however, mean that the temple authorities can refuse to receive the amount and prevent the plaintiffs community from exercising the right. Having considered the nature of the custom in the present case, I am satisfied that it fulfils all the, requisites which are considered in the context of a valid custom.

18. The question when there is a break or gap in the exercise of a right would justify the denial of the right itself has come up for consideration in K.A. Srinivasa Ayyangar Vs. S. Ramanujachariar and Others, . In that case, the Thengalais had a right to conduct certain festivals in a temple uD to 1909. The Vadagalais exercised such a right from 1910 to 1914. In 1914, when the Thengalais wanted to exercise their right to conduct the festival, there was an order under S. 144 Cr. P. C. from 1914 to 1927, neither conducted the festival. On 3-1-1930, a suit was filed by the Thengalais for a declaration that an order under S. 144 Cr. P. C., which the Vadagalais had obtained, was illegal and that the Vadagalais were not entitled to exercise any right in connection with the temple in Thirukkannamangai in Tanjore district. It was held that the interference by the Vadagalais with the right of the Thengalais to hold the festival not having been sufficiently long to give the Vadagalais any title, and the infringement, being a recurring infringement, the Thengalais did not lose their right merely because they did not institute a suit in respect of the first infringement. Similarly, in the present case, the gap did not result in the lapse of their right by the Yadavas.

19. Taking into account the facts I here, I hold that the plaintiffs have established a customarv right to worship the deity by taking it from the main temple to the Govindasami temple on the tenth day of Chitrai festival. As the matter pertains to a civil right, the plaintiffs will have a declaration and the other prayers incidental to that declaration which have been asked for in the plaint will have to follow. The trial court rightly granted the decree and the lower appellate court was not justified in reversing the judgement of the trial court. The second appeal is accordingly allowed but in the circumstances no order as to costs.

20. Appeal allowed.