

(1965) 02 MAD CK 0026
In the Madras High Court
Case No : L.P.A. No. 104 of 1963

Muthiah Asari and others

APPELLANT

Vs

P. Madasami Asari and others

RESPONDENT

Date of Decision : 11-02-1965

Acts Referred:

Constitution of India, 1950 — Article 26, 26(d)

Citation : (1965) 02 MAD CK 0026

Hon'ble Judges : Natesan, J;Anantanarayanan, J

Bench : Division Bench

Advocate : S. Sitarama Ayyar and S. Rajaraman, for the Appellant; U. Somasundaram, P. Kothandaraman and R. Sitaraman, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayanan, J.—This letters Patent Appeal is by the appellants in S.A. 551 of 1960, before Kunhamed Kutti, J. They were also the plaintiffs in O.S. 40 of 1956 on the file of the learned District Munsif, Srivaikuntam. They sought for a declaration that the Pancha Brahma Ambika Mutt Sri Subramaniaswami Temple situate in Sattankulam Kasba, and endowments or properties attached thereto, belonged to members of the Pancha Brahma Viswa Brahmin community residing in five named villages, and that that community as a body was entitled to manage the institution and its properties free of interference by the Commissioner for Hindu Religious and Charitable Endowments, the first defendant in suit, or of the other defendants inclusive of trustees nominated by the Area Committee. The suit was originally decreed by the trial Court, on the basis that the temple was a denominational institution and that the Commissioner (first defendant) or the Area Committee had no right to appoint trustees either to manage the religious institution or to administer the properties. Ultimately, after certain vicissitudes of trial that need not concern us, the suit was dismissed by the learned Subordinate Judge in first appeal. Kunhamed Kutti, J. went into the facts in detail, and also the relevant provisions of law that could

apply to the controversy, inclusive of Art. 26 of the Constitution and came to the conclusion that the first appellate Court was correct, and that the second appeal should be dismissed. However, leave was granted by the learned Judge and hence the Letters Patent Appeal by the unsuccessful plaintiffs is now before us. With regard to the actual facts, there has been some difficulty, and it appears to us that some degree of vagueness and confusion is evident in the record. However, when arguments were submitted before us by the Learned Counsel for the appellants, and the learned Government Pleader, it became fairly clear that the main conclusion of fact could not be disturbed in second appeal, and that it is specific in character. We do not think it is necessary to set forth here the decisions of the Supreme Court to the effect that this Court, in exercise of its jurisdiction with regard to second appeals, will really have no power to interfere with an explicit finding of fact based on the appreciation of evidence ; that is the case, even if this Court might have felt inclined to arrive at a different conclusion on the merits, on an independent appreciation of the evidence ; in other words, even if this Court were of the view that the finding of fact was erroneous. In certain decisions, the matter has even been expressed in the acute form that this Court would have no jurisdiction, in second appeal, to interfere with a finding of fact, pure and simple, though deemed to be erroneous. We think it is sufficient, here, to set forth the main finding of fact in this suit in the very words of the first appellate Court. Those passages are as follows:

Thus the exclusive right of the five village people has not been established and the right of the Viswa Karma Brahmin community of the District has not been negated even by the trial Court as there is no evidence at all to that effect.

Again,

All the members of the Viswa Karma Brahmin community are entitled to have an interest in the suit institution.

2. Thus, we may take it as established on the evidence that this religious institution, though indisputably denominational in character, does not belong merely to the Viswa Karma Brahmin community members of certain villages, or of five named villages but to the members of that community in the district as a whole. Undoubtedly, it is this corporate body which will have the right to manage the temple and to administer the endowments presumably through the elected trustees; undoubtedly, the rights of this body will be entitled to protection under Art. 26 of the Constitution particularly Sub-Clause (d). The right of any corporate body, with regard to a denominational religious institution, to have its functions preserved from invasion, under Art. 26 of the Constitution, has been statutorily embodied in S. 107 of the Madras Act 22 of 1959.

3. It is really not necessary for the present restricted purpose, to deal with the case-law at any great length. The learned Judge himself referred to the following decisions as relevant. The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., 1005 Ratilal Panachand

Gandhi Vs. The State of Bombay and Others, , and Indian Metal and Metallurgical Corporation Vs. Industrial Tribunal, Madras and Another, In addition our attention has been drawn to two decisions of importance upon the actual principle, one of which is Durga Committee v. Hussain Ali AIR 1961 S.C. 402 (1416), and the other is Mukundaraya v. State of Mysore A.I.R 1950 Mys. 18, a Bench decision. Actually the last decision deals with the precise point whether, with regard to a denominational temple, which belongs to a corporate body like the members of a defined community, the State would be within its power in applying a provision like S. 41 of the Madras Hindu Religious and Charitable Endowments Act, 1951, corresponding to S. 49 of Act 22 of 1959, and thereby enabling the Area Committee, an external body, to nominate trustees to the management of such denominational religious institution, or for the administration of its properties.

4. We might very briefly state that, in the present case, we are not deciding the wider question whether S. 49 is ultra vires the powers of the Legislature, if sought to be applied to denominational temples or religious institutions, in the light of Art. 26(d) of the Constitution. It is sufficient for us to observe that both in the Mysore decision that we have earlier referred to, and in Tobacco Manufacturers (India) Ltd. Vs. The Commissioner of Sales-tax, Bihar, Patna, the relevant criterion has been expressed in explicit language. In the Mysore case, the Bench observed that if the effect of certain provisions was to totally take away the right of administration from the hands of the religious denomination and to vest such right in other authorities, this would be a violation of rights guaranteed under Art. 26 of the Constitution. In the Supreme Court decision, it is stated:

If the right of a denomination or a section of such denomination is adversely affected by the statute, the relevant provision of the statute must be struck down as a whole, and in its entirety or not at all... In other words, the infirmity or the vice in the statute cannot be cured by confining the members of the proposed committee to the denomination.

5. We think it is sufficient to point out the position at law for the facts of the present case make it abundantly clear that there is no need, in the immediate context, to strike down any provision of law in the 1959 Act as ultra vires in view of rights guaranteed under Art. 26 of the Constitution. Certainly, the fact that the Area Committee purported to nominate members of the particular religious denominations, will not be enough to cure the vice or infirmity, if otherwise the rights guaranteed to this body under Art. 26(d) are effectively taken away by the nomination. But the matter seems to be academic at the moment, since the terms of the members who were previously functioning as trustees, we shall assume as de facto trustees, have come to an end. The temple, we must reiterate, belongs to the entire body of the Viswa Karma Brahmin community of the district, and not merely to members of the five named villages or certain villages. The interim powers of the Commissioner or the Area Committee to make arrangements for the day-to-day administration of the temple and its

endowments are not in dispute. Hence, we direct that such arrangements be made, as appear feasible, and expedient. In the meantime, it is obvious that an electoral roll has to be prepared of the members of this community in the district, which form a corporate body in whom are vested relevant rights under Art. 26 of the Constitution. If such a roll is prepared, some kind of an electoral meeting has to be convened, or an electoral college has to be formed and two or three trustees, as convenient, will have to be elected by the electorate. Certainly, the Area Committee and the Commissioner will have discretion to decline to accept the elected candidates who suffer from any specific unsuitability or infirmity unfitting them from office ; in that case, election may have to be held again in that particular respect. But, subject to this restriction, it is the corporate body that has to elect trustees for the administration and management of the temple and its properties. Such arrangement may be carried out by the authorities under the directions of the Commissioner (first defendant) after the proper interval of time ; in the meantime, the interim arrangements will continue to be enforced. With this clarification, we allow the Letters Patent Appeal to this restricted extent. It is otherwise dismissed. The parties will bear their own costs throughout.