

(1893) 02 MAD CK 0004
In the Madras High Court

Muthu and Another

APPELLANT

Vs

Gangathara

RESPONDENT

Date of Decision : 03-02-1893

Acts Referred:

Citation : (1894) ILR (Mad) 95

Hon'ble Judges : Arthur J.H. Collins, C.J.;Parker, J

Bench : Division Bench

Judgement

1. The first contention raised by the appellants, both at the grant of sanction and at the hearing of the suit, was that the provisions of Act XX of

1863 do not apply to the plaint temple. The District Judge overruled this objection, on the ground that it was not denied that the public have a right

of service in the plaint temple.

2. The suit was disposed of without taking any evidence, and we can find no note of the Judge or anything else on the record to show that any such

admission was made. On the contrary, the second paragraph of the written statement commences with a denial that the temple is a common place

of worship, either for plaintiff or other Kammalas or for other Hindu castes. It does not appear that the trustees were nominated by or subject to

the confirmation of the Government or any public officer. Unless, therefore, the endowment was one which would have fallen under the provisions

of Regulation VII of 1817, it will not fall under the provisions of Act XX of 1863. See Fakurudin Sahib v. Ackenil Sahib ILR 2 Mad. 197 and Jan

Ali v. Bam Nath Mundal ILR 8 Cal. 32 We do not think this case can be disposed of without recording evidence. We must, therefore, set aside

the decree of the District Judge and remand the suit for rehearing. The costs will

follow the result.