
(1963) 07 MAD CK 0001
In the Madras High Court
Case No : L.P.A. No. 70 of 1962

Muthuswami Gurukkal

APPELLANT

Vs

Aiyaswami Thevar and others

RESPONDENT

Date of Decision : 09-07-1963

Acts Referred:

Citation : (1964) ILR (Mad) 566

Hon'ble Judges : Ramachandra Iyer, C.J; Ramamurti, J

Bench : Division Bench

Advocate : V.S. Rangaswami Ayyangar, for the Appellant; The Govt. Pleader, Messrs. V.C. Viraraghavan and K. Parasuram Ayyar, for the Respondent

Judgement

Ramamurti, J.—This Letters Patent, Appeal is preferred against the judgment of Jagadisan, J., who confirmed the judgment of the learned

Subordinate Judge, Coimbatore, in O.S. No. 267 of 1956. The said suit was filed by the appellant for a declaration that he and defendants 6 to 12

(members of the family) are the hereditary trustees of three small temples, Sri Thiru Nandiswaraswami Temple, Sri Kailasanathar temple and Sri

Selva Vinayakar temple in Sircar Kannadiputhur in Udamalpet taluk in Coimbatore Dt. and that the order of the Commissioner, Hindu Religious

and Charitable Endowments, appointing defendants 1 to 5 as trustees is invalid and would not affect the rights of the plaintiff. On 20th December

1955, the Assistant Commissioner of Hindu Religious and Charitable Endowments Board appointed defendants 1 to 5 as non-hereditary trustees.

The plaintiff filed a petition under S. 57-B of the Act before the Deputy Commissioner for a declaration that plaintiff and defendants 6 to 12 are the

pujaris and hereditary trustees of the temples. That petition was rejected and an appeal before the Commissioner was equally unsuccessful. The

present suit has been instituted to set aside the order of the Commissioner for the Hindu Religious and Charitable Endowments.

2. The documentary evidence in this case mainly consists of the Inam Fair Register Ex. A-1 and Exs. A-2 to A-4 of Sircar Kannadiputhur. The

entries in the aforesaid document show that the devadayam was granted by the Palayagar of Madurai in favour of the three deities aforesaid and

Subramania Gurukkal, admittedly an ancestor of the plaintiff, was acting as the pujari and managing and attending to the affairs of the temples. It is

clear from the evidence that these three temples do not own any other property except the devadayam grants of a total extent of 6 acres in the

village of Kannadiputhur. Both the learned Subordinate Judge, as well as Jagadisan, J., have found that, for a very long number of years, the

plaintiff and his predecessors-in-title have been in possession and management of the properties functioning as trustees while at the same time

performing the daily puja and also attending to the annual festivals. Evidence also is clear that none of the villagers took any interest in the affairs of

the temples nor interested in any manner with the management of the temples and their affairs and the lands by the plaintiff and his predecessors-in-

title for a very long number of years. In fact on this aspect of the matter both the trial Court as well as Jagadisan, J., had accepted the plaintiff's

evidence. There is no satisfactory rebuttal evidence either. While discussing the evidence the learned Judge has summed up as follows:

The only property which these temples had is an extent of six acres of land in the village. These lands were no doubt in the possession of the

poojaris. Evidence is that they have been receiving the income from these lands, performing daily puja and maintaining themselves from out of the

income..... It is no doubt true that the members of the plaintiff family have been getting the income from the suit temples land's and utilising it for

their own benefit as well as for the upkeep of the temples But this would not be evidence of the management of the temples. The fact of possession

of the inam lands could only be attributed to their functioning as archakas in which right they were in possession of the lands. If this conduct is

consistent with their capacity as poojari it may also be consistent with the right of trusteeship, now put forward. But it cannot be said that there is

such conclusive proof as would enable the members of the plaintiff's family to claim prescriptive right of hereditary trusteeship. This is a peculiar

case in which the mere fact of possession of inam lands will not by itself be sufficient to establish the claim of trusteeship now put forward by the plaintiff.

3. In view of this the learned Judge held that the plaintiff has not made out his right to the trusteeship of the three temples in question.

4. We are with great respect unable to agree with this view of the learned Judge. We are of the opinion that on the evidence in this case and on his own reasoning it should have been held that the strong presumption arising in favour of the plaintiff has not been rebutted at all. In the case of small village temples where the temple property is of insignificant value and the income is hardly sufficient even to meet the routine expenses of the temple, if the archaka or the pujari is left in the management of the temple lands and the affairs of the temple without any interference by any of the villagers for a long number of years, it must be presumed that with the consent and acquiescence of the worshippers of the village the pujari is the trustee as well. This Court has been consistently taking the view that in our parts it is frequently found that the office of archaka and manager of trustee are found united in the same person, that is the archaka.

5. In *Andavar and Others Vs. Periathambi Padayachi and Others*, Balakrishna Aiyar, J., took the view that in the absence of any control or check by the villagers exercised over the management of the properties of the temple or its affairs by the pujaris and in the absence of any demand for and rendition of accounts by the pujaris to the villagers, it must be held that the pujaris themselves have been functioning as trustees with the consent and acquiescence of the worshippers of the temples. The learned Judges followed the decision in *Ramaswami v. Ramaswami* 2 M.L.J.

251.

6. Our attention was drawn to a few recent unreported judgments of this Court in which the same view has been taken. In A.S. No. 76 of 1956 one of us held that whatever may be the position with regard to temples having large endowments, in the case of small temples owning small extent of properties, the pujari himself functions as the trustee. In this decision it was held that the unreported judgment of a Bench of this Court in L.P.A. No. 36 of 1953 is not authority for the position that the office of hereditary trustee and hereditary pujari could not be combined and vested in the

same person, or that it would be illegal for the same individual to be both a hereditary trustee as well as a hereditary pujari. It was pointed out that

there is no such general rule and the matter has to be decided upon the facts of each case.

7. In A.S. No. 300 of 1959, Venkatadri, J., has also taken the same view. In that case the inam lands endowed to the temple known as

Chennarayaswami temple in Chokkarangaragoundanahalli in Dharmapuri Taluk, Salem District, were of an extent of 10½ acres and it was found

that from about 1825 onwards the archaka was in possession and management of the lands of the temple and its affairs without any interference or

control by the villagers. The learned Judge followed the decision in Ramaswami v. Ramaswami 2 M.L.J. 251 and held that there was a strong

presumption that under those circumstances, both the offices were united in the pujari, and that the Bench judgment in A.S. No. 76 of 1956

(unreported) is not authority for the position that it is legally impossible for both the offices to vest in the same person.

8. It may also be mentioned that the learned Judge has followed a judgment of Jagadisan, J. himself in A.S. No. 177 of 1958, in which the learned

Judge has taken the view that there is no legal obstacle in a person functioning both as a trustee and pujari and that in such a situation it is not likely

that the interests of temple will suffer by a person holding both the offices.

9. Very recently Ramakrishnan, J. has also taken the same view in App. Nos. 237 and 244 of 1960. In that case the temples were small village

temples with an endowment of lands about 29 acres in extent with an income of Rs. 1000. The learned Judge followed the aforesaid unreported

judgment and has held that there was nothing illegal in hereditary trusteeship and pujariship being combined in the same person specially in the case

of small temples where there has been no interference or any control by any of the villagers. We are therefore of the opinion that in such cases

there will be a presumption that the pujari himself is the hereditary trustee of the temple, and the note of warning given by Rajamannar, C.J. in the

unreported judgment in L.P.A. No. 36 of 1955 that by reason of conflict between interest and duty it would be a bad precedent for the office of

hereditary trusteeship and pujari to be combined in one and the same person should not be applied to small temples where the villagers do not take

any interest and everything has got to be attended to by the pujari himself. In fact, that judgment itself shows that the Bench has made a distinction

in the case of small temples. We are therefore unable to agree with the reasonings of Jagadisan, J. that where the evidence is consistent with the

pujari having acted as the trustee there should be any "further" or "particular" evidence that the pujari expressly claimed the right of trusteeship as

well. As the evidence shows that for over hundred years the plaintiff and his ancestors have been functioning as pujaris and attending to the

management and affairs of the temples it must be held that the plaintiff has made on his right to the hereditary trusteeship, and that the appointment

of defendants 1 to 5 as non-hereditary trustees is invalid and that cannot affect the rights of the plaintiff and defendants 6 to 12.

10. The learned Judge in his order has made some reference to the fact that the shrine itself is in ruins and that utsavams are not performed

regularly, and that there is some lapse in the performance of the duties on the part of the plaintiff as pujari. In this connection the learned Judge also

noticed that for this state of affairs the plaintiff and the members of the family cannot be blamed as the income from the temple properties is hardly

sufficient to meet the expenses for the puja and also to maintain themselves. The question as to how far and what better attention in the

management of the temples affairs could be secured and how far the plaintiff is guilty of negligence of mismanagement and whether the plaintiff and

the members of his family can at all be blamed are all matters to be considered by the appropriate authorities for taking any action as against

plaintiff and the members of his family by way of appointing others as associate trustees or by exercising more effective check and control over the

plaintiff. In the present case the trustee has admitted that the lands are temple lands and he never set up any rights to them as his own property. For

the above reasons we are unable to concur with the view taken by Jagadisan, J. and we set aside his judgment and decree and decree the

plaintiff's suit as prayed for. The plaintiff will have his costs throughout.