

(1974) 08 MAD CK 0002
In the Madras High Court

N.K.S. Sankarakumara Nadar and Others	APPELLANT
Vs	
The Assistant Commissioner for Hindu Religious and Charitable Endowments	RESPONDENT

Date of Decision : 01-08-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Constitution of India, 1950 — Article 26

Citation : (1975) ILR (Mad) 415 : (1975) 88 LW 348 : (1975) 1 MLJ 12

Hon'ble Judges : Venkataraman, J

Bench : Division Bench

Judgement

Venkataraman, J.—This is an appeal by the plaintiff, whose suit has been dismissed by the learned Subordinate Judge of Tirunelveli. The

plaintiffs filed the suit in a representative capacity under Order I, Rule 8 of the CPC for a declaration that a particular temple in their village,

Sivagurunathapuram, belongs exclusively to the community of the plaintiffs residing in that village, namely, Hindu Nadars, and that it is a

denominational temple within the meaning of Article 26 of the Constitution of India. The suit was necessitated by the fact that the Hindu Religious

and Charitable Endowments Department (defendant in the suit) was trying to interfere with the management of the temple by the plaintiffs and was

seeking to appoint some trustees. The plaintiffs contend that the defendant is not entitled to interfere with their management and they seek the

necessary declaration and injunction.

2. The defendant filed a written statement disputing the claim of the plaintiffs that the temple was a denominational temple. They further contended

that, even if it was a denominational temple, they were entitled to exercise

supervisory control. An enquiry was pending u/s 49 of the Act (1959)

and it was contended that, because the enquiry was still pending, the suit was premature. No other contention was specifically raised that the suit

was not maintainable under any of the provisions of the Act. But at a later stage, on 23rd January, 1969, an issue was framed, apparently on the

oral submission of the defendant, to the following effect:

Whether the suit as framed is maintainable by virtue of the provisions of Act XXII of 1959?

The other five issues which had already been framed were these:

1. Whether the Muppudathi Amman Temple of Sivagurunathapuram is a private temple belonging exclusively to the Hindu Nadars of

Sivagurunathapuram?

2. Is it a public temple and are other community people and people of other places entitled to any right in the said temple?

3. Whether the plaintiffs are the hereditary trustees of the said temple and are they entitled to be in sole management thereof?

(4) Whether the defendant has any right to interfere with the management or affairs of the said temple?

5. To what reliefs and costs are the plaintiffs entitled?

3. Evidence was adduced on issues 1 and 2, and second plaintiff was examined as P.W. 1. A number of documents were marked on the side of

the plaintiffs. The defendant did not mark any document and did not adduce any oral evidence. The second plaintiff's evidence was to the effect

that the temple belonged to the religious denomination called Sivagurunathapuram Hindu Nadars, that it was an ancient temple, that other

communities had no right or interest in the said temple and that similarly people from other places too had no right or interest in the temple. He

swore that the management of the temple was exclusively with Hindu Nadars from ancient times and that the trustees were elected unanimously by

the Hindu Nadars of Sivagurunathapuram. The cross-examination did not really shake the above evidence. The learned Judge (Thiru D.S.

Alexander), who tried the suit, accepted this evidence and recorded the following findings on issues 1 and 2:

Under the issues it is found that the Muppudathi Amman Temple of Sivagurunathapuram, hamlet of Surandai village, belongs exclusively to the

Hindu Nadars of Sivagurunathapuram village, who constitute a section of the public, and hence it is a public temple. But, it does not belong to

other community people and people of other places. The issues are accordingly found.

He then went on to discuss additional issue 1 framed on 23rd January, 1969 and observed:

In view of the discussion and finding on issue 1, it follows that the suit temple is a public temple belonging exclusively to the Sivagurunathapuram

Hindu Nadars, who constitute a section of the public. Therefore, the Madras Hindu Religious and Charitable Endowments Act, XXII of 1959,

applies to the institution in question. The remedy of the plaintiffs is to exhaust the remedies provided for under the Madras Act XXII of 1959, and

then approach the civil Court. In T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others, , it has been held

that, when the applicability of the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1959 to a temple is challenged, the

Deputy Commissioner has jurisdiction to decide that question u/s 63 (a) of the Act and consequently a suit filed in a civil Court claiming certain

reliefs on the basis that provisions of the Act do not apply to the suit temple and as such is outside the purview of the Act would be barred by

Section 63 (a) read with Section 108 of the Act. The claim of the plaintiffs is that the provisions of the Act do not apply to the temple in question

and this claim could be decided by the Deputy Commissioner and, therefore, this suit is not maintainable. The issue is accordingly found.

4. In view of his findings on issues 1 and 2 and additional issue 1, the learned Judge left issues 3 and 4 open. On issue 5, in view of his findings on

issues 1 and 2 and additional issue 1, he held that the suit was barred by Section 63 (a) read with Section 108 of the Act and dismissed the suit.

Aggrieved by the dismissal of the suit, the plaintiffs have preferred this appeal.

5. The submission of Mr. T.R. Ramachandran, learned Counsel for the plaintiffs (appellants), is that the learned Judge is wrong in holding that the

suit is barred by the provisions of Section 108 read with Section 63 (a) of the Act. Section 63 (a) says:

Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into and decide the following

disputes and matters:

(a) Whether an institution is a religious institution.

Section 108 says;

No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for

determining or deciding which provision is made in this Act shall be instituted in any Court of law except under and in conformity with the

provisions of this Act.

The submission of learned Counsel is this.

6. The plaintiffs proceed on the footing that the institution belongs to a section of the public, viz., the Hindu Nadars of Sivagurunathapuram village.

It is a temple as defined in Section 6 (20) of the Act which defines temple as:

"Temple" means a place by whatever designation known used as a place of public religious worship and dedicated to or for the benefit of or used

as of right by the Hindu community or any section thereof as a place of public religious worship.

Therefore, it is a religious institution within the meaning of Section 6 (18) which says:

Religious institution"" means a math, temple or specific endowment.

7. Thus the plaintiffs themselves admit that the temple in question is a religious institution and no question falls to be decided by the Deputy

Commissioner u/s 63 (a) of the Act whether it is a religious institution,--because that is a matter of concession. The real question for determination

by the Court is whether it is a denominational temple under Article 26 of the Constitution of India. If it is a denominational temple, Section 107 of

the Act would restrict any power of interference by the Department. The plaintiffs' suit seeking a declaration that it is denominational temple is not

one that is contemplated by Section 63 (a) or other provisions of the Act, and, therefore, the normal forum viz., the civil Court, will continue to

have jurisdiction u/s 9 of the Code of Civil Procedure.

8. In support of this submission, learned Counsel refers to the decision of a Bench of this Court (Satyanarayana Rao and Rajagopalan, JJ.) in Rao

Saheb Dr. Ananda Baliga Vs. Srimat Ananteswar Temple, Manjeswar and Others, , He further contends that the learned trial Judge misapplied the

decision of Ismail, J., in T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others, , and that even Ismail, J., has

expressly stated in that decision that his decision would not cover a case where the relief claimed is a declaration that the particular temple is a

denominational-one. Learned Counsel then referred to the decision of Ramanujam, J., in Muthuswamy Mudaliar v. Sutbbarayan (1971) 84 L.W.

91, where in a similar case the learned Judge followed the decision of Satyanarayana. Rao and Rajagopalan, JJ. aforesaid and referred to the

observations of Ismail, J. that he was not dealing with a case where the declaration claimed is that a particular temple is a denominational one.

Learned Counsel also submitted that actually the decision of Ismail, J. in T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama

Chettiar and Others, , was reversed by Kailasam and! N. S. Ramaswami, JJ. in L.P.A. Nos. 58 of 1968 and 31 of 1969 (dated 27th June, 1973),

and that the learned Judges-in the said Letters Patent Appeal have held in that case also that the actual declaration sought was that the temple was

a denominational one and that the suit for such a declaration would not be hit by the provisions of Section 63 (a) of Act XXII of 1959. The learned

Judges followed the decision of Satyanarayana Rao and Rajagopalan, JJ.

9. It seems to us that the argument of Mr. Ramachandran is sound and must be accepted. If we read the plaint, it is clear that it is definitely averred

that the suit temple is a denominational temple belonging exclusively to the Hindu; Nadars of Sivagurunathapuram Village, (the word

"denomination" always being used in the sense of Article 26 of the Constitution of India). The plaintiffs' specific case is that with such an institution

the defendant Department tried to interfere, at any rate substantially. The decision of Satyanarayana Rao and i Rajagopalan, JJ. in Rao Saheb Dr.

Ananda Baliga Vs. Srimat Ananteswar Temple, Manjeswar and Others, clearly shows that such a suit would not be barred at all under the

provisions of Sections 108 and "163 of Act XXII of 1959. It is true that it was a case under Act II of 1927, but the provisions were similar. The

provision corresponding to Section 63 was Section 84 (1) which ran as follows:

If any dispute arises as to

(a) whether an institution is a math or temple as defined in this act;

(b) whether a trustee is a hereditary trustee as defined in this Act, or not, or

(c) whether any property or money endowed is a specific endowment as defined in this Act, or not,

such dispute shall be decided by the Board and no Court in the exercise of its original jurisdiction shall take cognizance of any such dispute.

10. The provision corresponding to Section 108 was Section 73 (4), which provided:

No suit or other legal proceeding claiming any relief provided in this Act, in respect of such administration or management shall be instituted except

under and in conformity with the provisions of this Act.

11. There also the plaintiff proceeded on the footing that a particular temple belonged to the Gowd Saraswat Brahmin community in South Kanara.

The Board contended that the suit was barred under the provisions of Sections 84 and 73 aforesaid. This contention was upheld by the trial Court.

The plaintiff preferred the appeal. The appeal was allowed on this point. The learned Judges extracted the definition of "temple" which was similar

to the definition in the present Act, and observed:

The argument is, if a question arises whether a temple is owned by the Hindu community as a whole or whether it is owned only by a section of

that community, the dispute would then be one which can aptly be described as raising the question whether the institution is a temple or not within

the meaning of Section 84 (1) of the Act. In our opinion, if this section is so construed, it would be placing a strained construction upon it and we

think that the language of the section does not warrant such an interpretation. The section is intended to give jurisdiction to the Board to decide a

dispute, when a dispute is raised, whether a particular institution is a math or temple as defined" by the Act; and not a dispute which admits the

institution to be a temple-but that the temple is owned by a particular religious denomination such as the Gowd Saraswat Brahmin community and

not by the Hindu Community as a whole. Section 84 (1) (a) of the Act, therefore, in our opinion, does not cover the dispute raised in : the present

suit, and, therefore, the prohibition against the exercise of the jurisdiction by the civil Court u/s 84 (1) does not come into-operation.

12. This decision has been followed" by Kailasam and N. S. Ramaswami, JJ. in L. P. A. Nos. 58 of 1968 and 31 of 1969. There also the suit was

essentially for a declaration that the temple was a denominational one, though

the plaint was not happily worded, and the learned Judges held that such a suit was not hit by Section 63 of the Act. They observed; Nowhere in the plaint is there any allegation that the temple is not a religious institution as defined under the Act. The very averments in the plaint go to show that it is a temple as defined in the Act and it is conceded that the members of the particular community had a right of worship in the temple. The learned Judge seems to have understood the pleadings in the plaint as saying that the temple in question was a private temple. But there is nothing in the plaint to show that the plaintiffs claimed the temple as a private temple not coming under the definition of the terms "religious institution or "temple" under the Act. If the question really is as to whether the temple is a religious institution as defined under the Act or not, naturally it would be a question exclusively within the jurisdiction of the Deputy Commissioner as per the provisions of Section 63 of the Act. But as a matter of fact that is not the question to be decided in the suit because from the very averments it is clear that the plaintiffs concede that it is a religious institution as defined under the Act. All that they claim is that it is a denominational temple entitled to the protection contained in Article 26 of the Constitution, though it is not so specifically stated in so many words. Under these circumstances, we are of the view that the civil Court has jurisdiction to entertain the suit regarding the main prayer also.

13. It is of interest to note that even Ismail, J. has expressly stated in T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others, , that he was leaving open the question whether a suit for a declaration that a temple was a denominational one would be maintainable in the civil Court. There are, no doubt, some observations suggesting that the validity of the Bench decision in Rao Saheb Dr. Ananda Baliga Vs. Srimat Ananteswar Temple, Manjeswar and Others, , would be somewhat shaken by the decision of the Supreme Court in State of Madras Vs. Kunnakudi Melamatam and Another, . But the decision of the Supreme Court did not touch this question at all.

14. Mr. Kumaraswami Pillai, learned Additional Government Pleader, invited us to hold that the decision requires reconsideration and referred in this connection to Section 51 of the Act, which says:

In making appointments of trustees u/s 47 or Section 49, the Commissioner or

the Area Committee, as the case may be, shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the institution concerned is chiefly intended or maintained.

15. The argument is that Section 51 would show that it is open to the Commissioner to appoint trustees even in the case of a denominational temple. Assuming that this is the scope of Section 51, it has no bearing on the construction of Section 63 (a) of the Act on the question whether a suit for a declaration that a temple is a denominational temple is not maintainable in the civil Court. In our opinion, such a suit is outside the purview of Section 63 (a) and can be tried only by the civil Court. The question as to the extent of the Commissioner's powers of interference would arise after the decision of the Court, at a subsequent stage and it is no bar to the maintainability of the suit. The scope of the Commissioner's powers of interference is raised by issues 3 and 4 in this case and will not arise at the present stage.

16. We, therefore, reverse the finding of the learned Subordinate Judge on additional issue 1, and hold that the suit is maintainable. "

17. We now turn to issues 1 and 2. The reason why the learned Judge apparently tried those issues was that, if the plaintiffs had not been able to make out a case that the suit temple was a denominational one, it would be idle to try the question whether the suit would be maintainable.

(Instructions of this Court prohibit a preliminary disposal on a pure point of law.) Though issues 1 and 2 proceed on the basis that the question at issue was whether the temple was a private temple and therefore not governed by Act XXII of 1959, it is clear that that was not really the question raised by the pleadings. Though in paragraph 3 of the plaint it is stated (wrongly) "It is a private temple belonging to this denomination", a reading of the allegations in the plaint, as a whole, clearly shows that the case of the plaintiffs was that it was a denominational temple within the meaning of Article 26 of the Constitution, and that the Department was not entitled to interfere. That is how the plaint was understood by the defendant in their written statement and they disputed the claim of the plaintiffs that it was a denominational temple. Thus, despite the wrong wording of the issues, the real question at issue was understood by both the parties and they proceeded to trial. We would also refer to the observations of the Supreme

Court in Nagubai Ammal and Others Vs. B. Shama Rao and Others, , to show that though issues 1 and 2 were not correctly drafted in this case,

that would not matter, since the parties understood the real issue for determination and went to trial. Their Lordships refer to the observations of

Lord Dunedin in AIR 1930 57 (Privy Council) that ""no amount of evidence can be looked into upon a plea which was never put forward,"" and

proceed to observe:

The true scope of this rule is that evidence let on issues on which the parties actually went to trial should not be made the foundation for decision of

another and different issue, which was not present to the minds of the parties and on which they had no opportunity of adducing evidence. But that

rule has no application to a case where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been

framed thereon, and adduce evidence relating thereto.

18. The only available evidence is that of P.W. 1. There is no reason to reject his evidence, and that evidence, if accepted, clearly shows that the

temple is an ancient temple, that it belongs exclusively to the Hindu Nadars of Sivagurunathapuram Village and that throughout it has been managed

only by them. Mr. Kumaraswami Pillai, the learned Additional Government Pleader, appearing for the defendant Department, invited us to hold

that the evidence of P.W. 1 would not be sufficient to establish the claim of the plaintiffs. We were referred to the decision of Ramamurti and

Ganesan, JJ. Appeal No. 645 of 1963 (dated 31st July, 1970), wherein it was stated:

In order to establish that the temple in question is governed by the provisions of Article 26 (a) and (b) of the Constitution, it behoves the plaintiff to

establish that the temple in question belongs to the Sowrashtta Hindu community of Madurai, that the said Sowrashtta community is a religious

denomination and that the said community has the right to manage the affairs of the temple.

Learned Counsel submitted that in that case there was much better evidence than is available in the present case and that that was why the learned

Judges held that the temple in that case was a denominational one. In our opinion, however, the quantity and quality of evidence which is necessary

is bound to vary from case to case and that, so far as this case is concerned, the

criteria laid down, by the learned Judges have been satisfied.

19. We therefore confirm the finding of the learned Subordinate Judge on issues 1 and 2, viz., that the suit temple is a denominational temple

belonging exclusively to the Hindu Nadars of Sivagurunathapuram village and that it is governed by Article 26 of the Constitution of India and

Section 107 of Act XXII of 1959.

20 Issues 3 and 4 raise the question whether, even on the finding that the temple is a denominational one, the defendant-Department can interfere,

and" if so, the extent of that interference. As already seen, the learned Subordinate Judge has left these questions open, and" Counsel on both

sides before us agree that we may remand the suit for decision, on those issues.

21. We accordingly set aside the finding : of the learned Subordinate Judge on. additional issue 1 and hold that the suit is maintainable. We confirm

the finding on issues 1 and 2. We remand the suit : for decision on issues 3, 4 and 5.

22. The parties will bear their own costs, in this appeal. The Court-fee paid on the memorandum of appeal will be refunded.