
(1921) 09 MAD CK 0005
In the Madras High Court

P. Baba Sah and Others

APPELLANT

Vs

K.G. Mahomad Husain Sahib and Others

RESPONDENT

Date of Decision : 22-09-1921

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144

Citation : AIR 1922 Mad 123 : (1922) 15 LW 68 : (1922) 42 MLJ 179

Hon'ble Judges : William Ayling, O.C.J.;Odgers, J

Bench : Full Bench

Judgement

William Ayling, Officiating C.J

1. The Officiating Chief Justice.--The facts of the case are so succinctly stated in the first paragraph of the judgment of the learned Trial Judge that

I cannot do better than quote therefrom.

The plaintiffs are the trustees of a Hindu temple and the defendants are the worshippers at a neighbouring Muhammadan mosque. Between the two

buildings there were formerly a land and some other buildings. The latter have been acquired by the temple-trustees who desire to adapt and use

these buildings, for religious purposes. The worshippers at the mosque who by the plaintiffs' acquisition of the intervening buildings, have been

brought into proximity to the temple " O.S.A. No. 31 of 1920, 22nd September, 1921, complained to the Police of the acts of the plaintiffs in

connection with the new buildings acquired by them. The Police took action u/s 144, Criminal Procedure Code. Orders were passed by the

Magistrate and notifications were made by the Local Government under Sub-Section 5. These orders and notifications are set out in para. 22 of

the plaint as constituting the plaintiff's cause of action together with certain

further proceedings under the Magistrate's order.

2. The reliefs claimed by plaintiffs are .:

1. A declaration that they are entitled to use the plaint property in any way they like for purposes connected with the temple.

2. A perpetual injunction restraining defendants from interfering with them in so doing.

3. A declaration that the orders of the Chief Presidency Magistrate and Government are ultra vires and illegal.

3. The suit has been dismissed on the grounds (i) that plaintiffs have no cause of action and (2) that the validity of the orders of the Presidency

Magistrate and Government cannot be enquired into in a suit to which only plaintiffs and defendant are parties.

4. As far as the third prayer is concerned the dismissal of the suit is certainly justified. The orders in question were passed u/s 144, Criminal

Procedure Code; and if they were illegal or ultra vires the proper way to question them was by a Criminal Revision Petition to the High Court. A

perusal of them shows that they were passed in the interest of the public peace and without particular reference to the civil rights of the parties to

the dispute; and even if it were possible to question their validity in a properly framed suit to which Government and its officers were parties, it is

clearly impossible to do in the present array of parties.

5. But with all respect it seems to me that the dismissal of the suit altogether is not justified. I do not think it can be said that plaintiffs have no cause

of action : or that the existence of the criminal orders justifies a refusal on the part of the court to enquire into the civil rights of the parties. .

6. It is not denied that the orders u/s 144 were passed on the representations of the defendants; and their effect is to absolutely stand in the way of

the exercise by plaintiffs of the rights they claim. It is to my mind impossible to hold that defendants are not persons denying or interested to deny

plaintiff's title to the right sought to be declared in their first plaint prayer : and the Full Bench decision in Velan Pakkiri Taragan v. Subbayan

Samban 36 M.L.J. 79 (F.B.), seems to me authority for treating the orders referred to as a good cause of action.

7. Mr. V.V. Srinivasa Iyengar for respondents has argued rather tentatively that there has been no denial by defendants of plaintiffs' rights in spite

of their representation to the Magistrate that those rights should be interdicted. I do not think this position tenable. It is clear from Ex. W. a

magisterial order, dated 25th May 1909, in the early stage of the dispute that the Muharnmadans then proposed themselves to file a civil suit

against the temple Dharmakarthas, obviously to restrain the latter from erecting a mantapam on the plaint site : and though this was never done, yet

the fact that this intention was recorded and the passing of orders delayed for sometime to enable the suit to be filed, shows that the defendant's

party were actually denying plaintiffs' right. In the present suit we have in paragraph 20 of the plaint an assertion of plaintiff's right to use the

property for any purpose connected with the temple. This right is specifically denied in paragraph 18 of the written statement : and on this denial

issue 4 has been framed in the suit :--Have the plaintiffs acquired the right claimed in the plaint in respect of the use of the temple properties as

against the defendants. ? In these circumstances the view of the learned Trial Judge that ""Defendants do not in fact, deny the right of the plaintiffs to

act in that manner if it is otherwise "", i.e., apart from the orders u/s 144, Criminal Procedure Code, ""lawful to do so"" appears to be wrong.

8. It seems clear that before they secured the orders u/s 144, Criminal Procedure Code, in their favour, defendants did, in fact, deny plaintiffs'

right to use the property in the manner desired by them; and that they still do so even in the present suit.

9. Lastly, it is argued that the grant of declaration is always discretionary and that in the present case in the face of the orders u/s 144 it would be

waste paper. I do not agree with this. It is quite true that the orders u/s 144 will still remain in force unaffected by any declaratory decree in this

suit. But such orders are always open to reconsideration by Government, and if the result of this suit should be to establish plaintiffs' right, it will be

open to plaintiffs to go to Government and ask that it should be reconsidered whether in view of this adjudication, the interest of the public

tranquility demand their permanent deprivation of the said right. I do not presume to say what answer would be given; but neither can I assume that

the application would necessarily be infructuous.

10. We have been referred to Madhab Chandra Guho v. Kamala Kant Chuckerbutty (1871) 6 Beng L.R. 643, as authority in defendants' favour

on this point. I have carefully considered the judgment in that case : and note that it proceeds very largely on the distinction between the bridge

which had been removed under the magisterial order and subsequently bridge which the plaintiff in that case might erect. That is a possible ground

for distinction : but in so far as the judgment is relied on as laying down a principle applicable to the present case, I must respectfully dissent from it.

11. I am therefore of opinion that the dismissal of the suit should be set aside and that it should be remanded for trial as regards prayers (a) and (b)

only.

12. The costs of this appeal should be provided for in the decree to be passed.

Odgers, J.

13. I agree. There has clearly been no decision on the rights of the parties in the orders issued by the Chief Presidency Magistrate and by the

Government and there is equally no doubt that these rights have been put in issue in the suit under appeal. (Of. plaint paragraph 20 and written

statement para. 18)

14. I think the case decided by the Full Bench in Velan Pakkiri Taragan v. Subbayan Samban I.L.R (1918) Mad. 271 is clear authority that the

existence of the magisterial orders which, as here, the plaintiffs contend, constitute an infringement of their civil rights gives a cause of action. With

regard to the case in Madab Chandra Guho v. Kamila Kant Chuckerbutty I which does not appear to have been considered by the Full Bench of

this Court in Velan Pakkiri Taragan v. Subbayan Samban I.L.R(1918) Mad. 271 I think this case may be distinguished from the present.

Macperson, J., seems to have decided the case on the ground that a mere declaratory decree giving no consequential relief and from which in fact

no relief could be obtained should not be given and a suit for that purpose would not lie. Mookerjee J. was of opinion that as the Magistrate's

order was passed with jurisdiction it could not be questioned in a civil suit and the latter should have been dismissed. With this latter I agree and it

may well be that a declaration which is discretionary should not be made whereas in the Bengal case it would be useless. In the case before us,

however, I am not clear that a declaration would be useless especially as it is coupled with a prayer for consequential relief (i. e.) an injunction.

This is sufficient to distinguish that case from the present.

15. I therefore think the learned Trial Judge was wrong in dismissing plaintiffs' suit and it must be restored and go back on prayers (a) and (b) only.