

(1891) 04 MAD CK 0007
In the Madras High Court

Paningapalli Ramasami

APPELLANT

Vs

Pentakota Ramasami

RESPONDENT

Date of Decision : 08-04-1891

Acts Referred:

Citation : (1892) 2 MLJ 251

Judgement

1. The District Munsif has found the plaintiff is the Archaka and that it is with his permission that the sites of houses in the village of Ramagiri are occupied. There is also an averment in the plaint that 1st defendant built a house on the plaint site No. 2 on condition of quitting it when desired by plaintiff. In the absence of any other trustee, the Archaka may be doing the duties of Dharmakarta, as is urged by appellant's pleader to be the case here. If either the averment in the plaint or the allegation that plaintiff has been doing the duties of Dharmakarta be true, plaintiff is entitled to maintain the suit. The Calcutta case relied on by the District Judge is not in point, as the object (sic) the plaintiff in that suit is stated to have been to oust the M(sic)wali, got herself appointed in his place and have the properties vested in her,"" Latifunissa Bibi v. Nazirun Bibi I. L. R 11 C 36; whereas the present suit is brought for the purpose of recovering property on behalf of the temple by one who professes, and is found by the District Munsif, to have been managing the affairs of the temple all along. The cases cited on. behalf of respondent, Wajid Ali Shah v. Dianatullah Beg I. L. R 8 A 31, Raghubar Dial v. Kesho Ramanuj Das I. L. R 11 A 18 are also not in point, as the plaintiff in neither of those cases sued as trustee. If, as found by the Munsif, plaintiff has been managing with the knowledge and privity of the worshippers, the presumption is that he has

been Dharmakarta as well as Archaka of the temple, and this view of the case the judge has overlooked.

2. We may also observe that in some minor temples in this Presidency the offices of Archakan and manager are found united in the same person.

3. It is not clear to us how the judge came to dismiss the suit as a whole when the only appellant was the 2nd defendant, who disclaimed all interest

in item No. 2.

4. We set aside the Lower Appellate Court's decree and remand the appeal for replacement on the file, with the direction that the judge do come

to a finding as to whether appellant has been also the manager of the temple as held by the District Munsif; and in case of his agreeing with the

District Munsif on this point he will proceed to dispose of the case on its merits with regard to item No. 1. As regards item No. 2 the decree of the

District Munsif will stand.

5. The costs hitherto incurred will be provided for in the revised decree.