

(1927) 03 MAD CK 0007
In the Madras High Court

(Paruchuru) Sudarsanacharyulu

APPELLANT

Vs

Kotimarla Suryanarayana and Another

RESPONDENT

Date of Decision : 21-03-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 93

Citation : AIR 1928 Mad 205 : (1928) 27 LW 42

Judgement

1. This appeal arises out of a scheme which has been settled by the Subordinate Judge of Bapatla with reference to the temple of Sri Venugopala

Swami. There are several items of property mentioned in the plaint. The finding of the Subordinate Judge is that the temple owns only item 1 and

that the income is about Rs. 360 per annum and that items 2 to 10 are the separate properties of the archakas. The archakas-contention was that

even item 1 was a gift to them burdened with the expenses of the temple. The Subordinate Judge found that it was a gift to the God and not to the

archakas burdened with any trusts. He framed a scheme appointing trustees. Against this decree the appellant, one of the archakas, raises certain

contentions. His main grounds are that the suit is bad as the plaint at present filed does not conform to the sanction given by the collector. Secondly

that there is no necessity for a scheme being framed and thirdly that "the amount given for expenses is too small. A memorandum of objections has

been filed by the respondents objecting to the judgment in so far as it declared that items 2 to 10 do not belong to the temple and also objecting to

Rs. 25 a month for the archaka's service. So far as item 1 is concerned it is clear from the inam statement and the register that the property was

treated as the property of the God. There is no suggestion that it was property given to the archakas burdened with any trust. We think that the

judge was right in holding that it was the property of the temple and not of the archakas.

2. The next contention is that the suit ought to have been dismissed as it did not conform to the sanction given. The sanction given is filed as Exs. B

and B1. and the petition for sanction is filed as Ex. IV. The petition states that the property item 1 which is 30 acres and 50" cents is in the

possession of the Archaka, Paruchum Sudarsana Charyulu, that the yearly income is Rs. 488, that Rs. 8-4-0 is paid to the sircar every year

towards cess; that the total balance of this amount is being saved by the archaka and he is using the same for seri lands etc., in his private account

and that he is not using the same for the temple purposes. The petition also refers to some nominal dharmakarthas of the temple, and states that

they do not take any interest in the temple affairs. It also refers to the ruined nature of the temple premises and the prayer is that permission should

be granted to them to file a scheme suit against the dharmakarthas nominally appointed for the temple and the archaka. The order Ex. B is that

permission u/s 93, Civil P.C., is granted to two individuals mentioned therein to file a scheme suit in respect of the inam lands attached to the

temple of Sri Venugopala-swami Varu. Ex. B1, is the supplemental order which says,

the petitioners are informed that all suit reliefs may be prayed for in their plaints and there is no necessity to include them in orders issued from this

office.

3. This was in answer to the petition asking the collector to specify the reliefs which should he asked for in the plaint. It is argued that Ex. B1 is not

a proper order, because it purports to be signed only by the sheristadar and not by the collector. It is suggested that it was the sheristadar who

made the order and not the collector. If the order was really passed by the sheristadar then there can be little doubt that such an order is invalid.

Somchan Bhikhabhai v. Chhegamlal [1911] 35 Bom. 243, will be a case in point. But B1 purports to be an order passed by Mr. Rutherford. All

that Ex. B1 shows is that it was signed by the sheristadar for collector and above the signature of sheristadar appear the words ""by order."" There is

no evidence to show that the sheristadar passed the order without reference to the collector. Having regard to the fact that Ex. B1 mentions the

name of the collector, Mr. Rutherford as the person who passed the order, it is impossible to hold that the sheristadar passed the order suo moto

without reference to the collector. Ex. B1 shows that it is signed by the sheristadar under the orders of the collector. The collector is not bound to

sign every order that is issued to third persons and there is nothing wrong in the collector delegating his power of signing the order to the

sheristadar, and such an official act of the shertadar is presumed to have been done properly until the contrary is proved. The order as it stands is

perfectly valid.

4. The more substantial objection is that the plaint does not strictly conform to the order granting sanction, that the lands comprised in the plaint do

not cover those in the petition and that the nominal trustees mentioned in the petition have been omitted in the plaint. So far as the properties added

are concerned they are distinct properties and as regards those properties the Subordinate Judge has dismissed the suit holding that they are not

properties which belong to the temple.

5. As regards the nominal trustees mentioned in the petition it does not appear who they are and the question is whether the omission of those

trustees in the plaint is fatal to the plaintiff's case. The contention of the appellant's vakil is that any omission is sufficient to invalidate the suit filed in

pursuance of the order and reliance is placed on Srinivasa v. Venkata [1888] 11 Mad 148, and (Allabaksh Mira) Mohadeen Saheb and Others

Vs. Setti Chinna Fakruddin Saib, . It seems to us that in dealing with cases when there is an omission as regards certain reliefs which are

sanctioned, the test is to be whether such omission is a material omission: from which it can be said that it so alters the scope or character of the

suit that if this matter was before the collector when the sanction was given he would in all probability not have sanctioned suit in the form in which

it is ultimately brought. For example, there may be cases where some of the main reliefs for which sanction has been given were omitted owing to

collusion or fraud or other reasons and such an omission is not in the interest of the temple. In such cases of course, there is a ground for holding

that a suit so framed which contains an omission so material that in all probability sanction would not have been given if a prayer had been made to

the collector or to the Advocate-General to frame a scheme with only prayers

ultimately stated in the plaint would vitiate the proceedings as not being in substantial compliance with the sanction given. But it seems to us that there is no principle or reason in holding that any omission which is immaterial and which would not affect the interests of the temple would be sufficient to vitiate the proceedings and the plaint filed in pursuance of the sanction. If *Srinivasa v. Venkata* [1888] 11 Mad 148 or (*Allabaksh Mira Mohadeen Saheb and Others Vs. Setti Chinna Fakruddin Saib*, , decided anything more than what we stated above, we would respectfully express our dissent.

6. As regards the addition "of claims the position is different. The addition of a claim may be treated as a claim made without sanction and "as such it is liable to be dismissed. There is no reason why the mere addition of a claim should render the whole suit liable to be dismissed. It can be no worse than a case of misjoinder where the parties will be confined to such portion of the claim as is not open to objection. In the present ease there is no such omission as would render the whole proceedings invalid.

7. The third point is that the scheme is quite unnecessary. We think that such a scheme is necessary especially when we look into the contentions of the archakas that the property is their own property burdened with a trust. In all these cases it is better to have a separate trustee who can supervise the work of the archakas and see that the temple affairs are properly conducted. There may be cases when the archakas have by a long custom acquired the position of trustees. But in the present case there is not such proof. Under these circumstances the appeal fails and is dismissed with costs.

8. As regards the memorandum of objections we do not think there is sufficient evidence to support the view that items 2 to 10 have been acquired out of the surplus income of the temple land of item 1. We have to note that the archakas have to be remunerated for their services and the income of the temple is not shown to be such as to leave a surplus out of which lands could be purchased. We think that the Subordinate Judge was right in holding that items 2 to 10 are not the properties which belong to the temple, especially when we find in the petition for sanction that item 1 alone is set out as the temple property.

9. It is next argued that Rs. 25 per month for the archaka is too high having

regard to the income of the temple and also in view of the fact that the temple is to be repaired. The Subordinate Judge grants Rs. 25 a month on the footing that the income is Rs. 360 a year. If the income should be less in a particular year, the decree provides that there should be a proportionate reduction in the salary of the archakas. So this sum of Rs. 25 does not represent the permanent salary of the archaka burdened on temple income which would prejudice the interests of the temple. If any repairs are to be done to the temple, we think there is nothing to prevent the trustee from applying to the public for donations and repair the same. We do not see any reason to interfere with the discretion of the Subordinate Judge as regards the Rs. 25 granted to the archaka as salary. The memorandum of objections fails and is dismissed with costs.