

(1993) 08 MAD CK 0019
In the Madras High Court

Pastor Anandraj and Others

APPELLANT

Vs

Sadhu Jesudasan and Others

RESPONDENT

Date of Decision : 02-08-1993

Acts Referred:

Constitution of India, 1950 — Article 25, 26

Citation : (1993) 2 LW 515 : (1994) 2 MLJ 180

Hon'ble Judges : Mishra, J

Bench : Division Bench

Judgement

Mishra, J.—Facts of the case giving rise to this appeal are somewhat unusual in the sense that a church is said to be in existence at No. 22,

Rangarajapuram, Nagarjuna Nagar 2nd street, Kodambakkam, Madras-24, but, according to the plaintiffs/appellants, it, "was formed by Pastor

G. Sam Daniel, in the year 1969", a Christian by birth and who turned to pantecost subsequently, and according to the defendants/respondents,

who have entered appearance and contested the interlocutory applications, the first respondent, Sadhu Jesudasan, who is a born Christian and has

renounced the worldly life, started prayer houses by putting up small thatched sheds at several places, "established a prayer house at Arcot Road,

kodambakkam, Madras, in the year 1969. After some time, the vacant site at No. 22, Nagarjuna Nagar 2nd Street, Rangarajapuram,

Kodambakkam, Madras-24, was taken on lease. Subsequently, this property was acquired by way of settlement and sale for the Kirupasanam

Church of Christ represented by the 1st respondent as its Founder and President".

2. Plaintiffs have claimed that they are the devoted and dedicated servants of God, engaged in the preaching of Christianity and they are attached

to the "Kirupasanam Church" situated at No. 22, Rangarajapuram, Nagarjuna Nagar 2nd Street Kodambakkam, Madras-600024, which was

formed by Pastor G Sam Daniel in the year 1969. Sam Daniel, a Christian by birth, and who turned to pantecost subsequently devoted his life for

the sake of Jesus Christ and His Gospel. Attracted by his preachings and his devotion and dedication in the service of god, plaintiffs 2 and 3 joined

the Kirupasanam Church of Christ as early as in the year 1970, leaving their lucrative positions, the first plaintiff being a M.B.B.S., Doctor and the

plaintiff 2 and 3 being teachers by profession.

According to the plaintiffs, Sam Daniel, who had been functioning at the Kirupasanam Church at No. 22, Nagarjuna Nagar 2nd Street,

Rangarajapuram, Kodambakkam, acquired properties at Ennore, Santhome, Annanur (near Ambattur), Rajiv Gandhi Nagar at Sakkadu and in

North Arcot Ambedkar District for the purpose of establishing prayer houses. Plaintiffs, however, contributed finance for acquisition of such

properties. The property at No. 22, Nagarjuna Nagar 2nd Street, Madras-24, however, has been one donated by M. Nansi Ahmed, but, for all

purposes remained in the hands of Sam Daniel, who administered the Churches, prayer houses and properties thereof. Sam Daniel wanted to

nominate his successor to look after the functions of a pastor after his demise, and ordained the first plaintiff (appellant No. 1) at a function held on

4.8.1991. The other two plaintiffs (appellants Nos.2 and 3) were also ordained to look after the ministry of work at the same function. Sam Daniel

passed away on 25.4.1992. The first plaintiffs succeeded him and with the help of other two plaintiffs conducted the work of church as a pastor.

The plaintiffs have alleged.

...annoyed and agitated by the growing name and fame of the plaintiffs and the Church, certain disgruntled elements, in cited by the first defendants,

solely with a view to damage the reputation of the plaintiffs, and to grab the properties of the Kirupasanam Church, have started projecting as if

they are the custodians of the properties of the Kirupasanam Church and its welfare activities and are trying to meddle with the affairs of the

Kirupasanam Church. The plaintiffs, being persons who are concerned with the spiritual activities, are very much perturbed by the attitude of the

defendants, as the defendants 1 to Therein, are bent upon driving the plaintiffs

out from doing their services to God in the Kirupasanam Church at Kodambakkam, Madras-24, and also at other places, wherever the plaintiffs go for doing service to God. The plaintiffs state that they have been threatened by the defendants of forcible eviction from their place of worship.

The case of the plaintiffs before this Court is that the third defendant, in particular, spoiled the unity of the Kirupasanam Church at Kodambakkam with the assistance of the 2nd defendant and formed a Church at Adambakkam, Madras and

After this incident, he separated himself from the Churches run by Pastor G.Sam Daniel. Now, after the demise of Pastor G.Sam Daniel, he started

his attempts to divide the believers into groups and instigated them to join with him. The plaintiffs state that especially, in Santhome Kirupasanam,

Madras, the 3rd defendant and the believers to divide themselves into groups and also prevented the plaintiffs from servicing and worshipping. The

plaintiffs submit that the 3rd defendant, with the assistance of his men and also with the assistance of the 6th defendant, forcibly entered the room

occupied by the 2nd plaintiff.

The plaintiffs have said about the 2nd defendant as follows:

The plaintiffs humbly submit that the 2nd defendant posing himself as an authority stopped the first plaintiff from conducting the Special Meetings

and Services at the Kirupasanam Church, Kodambakkam, Madras, by locking the Church premises. He also lodged a complaint with the police

about the first plaintiff, when the first plaintiff was praying in his room with new souls. But, the police authorities were not fully convinced about "the

merits of the complaint given by the 2nd defendant warranting any action against the 1st plaintiff. Now, also the 2nd defendant is not allowing the

first plaintiff to conduct service in the churches at Kodambakkam (Madras) and other places.

About the 4th, 5th and 6th defendants, the plaintiffs say (1) the 4th defendant, during a Special Meeting conducted by the Church on 30.10.1992 at

Santhome Church, manhandled the first plaintiff; (2) the 5th defendant brought some letters purported to have been written by the 1st defendant to

the plaintiffs and to the Church and thereby created confusion in the minds of the worshippers, the 5th defendant claimed to have formed a

committee and with the help of defendants 2, 3 and 7 tried to evict the plaintiffs

from the Churches run by them; and (3) the 6th defendant was sent out of Kirupasanam, Salem, since he had bad remarks touching his conduct and character, yet, with the help of defendants 2 and 3 he has been conducting services at Churches at Kodambakkam and Santhome. He has also forcibly occupied the room which the 2nd plaintiff has been occupying (later removed with the help of police).

3. The case of the defendants is found stated in the counter affidavit filed in Application No. 156 of 1993 in C.S.No. 235 of 1993 before the learned single Judge. They appear to say that the first defendant who was interested in the Gospel of the Lord Jesus Christ from his childhood began his spiritual work in the year 1946 at on thatched shed in Kanjiracode and Puvancode in Kanyakumari district In course of time, many people in Tirunelveli and Kanyakumari Districts and in Kerala were attracted by his teachings, prayer and power to heal the sick people's wounds, they became his followers and, ""In the circumstances, he founded and established the ""Kirupasanam Church of Christ"" under the divine guidance of Jesus Christ to serve better the people who have faith in Jesus Christ. Among other places, he established a Prayer House at Arcot Road, Kodambakkam, Madras, in the year 1969. After some time, the vacant site at No. 22, Nagarjuna Nagar 2nd Street, Rengara-japuram, Kodambakkam, Madras-24, which is the 1st item of the suit property, was taken on lease. Subsequently this property was acquired byway of settlement and sale for the Kirupasanam Church of Christ represented by the 1st respondent as its founder and President. The recitals contained in the settlement deed and the sale deed relating to this property will clearly and clinchingly establish that the 1st respondent founded and established the Church at Kodambakkam and not late Sam Daniel under whom the applicants seek title. They have denied altogether the case of the plaintiffs about the Sam Daniel being a pastor or he having ever baptized or conducted the plaintiffs into the faith in any position and said that Sam Daniel was attending the services of the Kodambakkam Church was a worshipper. Only in the year 1973 he expressed his desire to join the Kirupasanam Church asa gospel workerand hence he was taken into the service of the church. It was the first defendant who authorised him to look after the affairs of the Kodambakkam Church. The most important part of

the case of the defendants is that a society known as

"Kirupasanam" Church of Christ was formed and registered at Palaymkottai on 14.3.1977 under the Tamil Nadu Societies Registration Act,

1975, under Registration No. 33 of 1977, the object of the society being, among Other things, to establish prayer houses where there is no such

houses in order to spread the Gospel of the Jesus Christ. The administration of the said society is vested with an Executive Committee consisting of

7 members which included the President, Vice-President, Secretary, etc. The 1st defendant is the Founder President of the society. The society

being a registered body, "all the properties including the suit property vest with the Executive Committee". It is this Committee, according to

defendants, which has got the power to appoint any servant of the Church including Pastor, if necessary. The committee never appointed late Sam

Daniel as pastor; he was only a Gospel worker.

4. The plaintiffs have sought the relief of a declaration that the first plaintiff is the duly ordained pastor for the Kirupasanam Church, situated at

Kodambakkam, Santhome, Ennore (Madras) and also situate at Rajiv Gandhi Nagar, Sakkadu and plaintiffs 2 and 3 are the sisters attached to the

aforesaid Churches situate at Kodambakkam, Santhome, Ennore (Madras) and also at Rajiv Gandhi Nagar, Sakkadu and consequential injunction

of restraining defendants, their men, servants, agents, or any other person or persons claiming through them or authorised by them, from interfering

with the peaceful possession and status of the plaintiff's as Pastor and Sisters respectively of the Kirupasanam Churches at above premises, and

preventing the plaintiffs from worshipping and administering the kirupasanam Churches of any other spiritual activities carried on at the

Kirupasanam Church, 22, Nagarjuna Nagar 2nd Street, Kodambakkam, Madras-24 or at Santhome, Ennore Rajiv Gandhi Nagar, Sakkadu,

Madras-72, and Annanur (near Madras) or any other Kirupasanam Churches.

5. In the course of the hearing of the injunction petition, it appears, the court granted and ex parte interim injunction on 2.3.1993. The appellants

herein thus got some sort of a status during the period of interim injunction as pastor and sisters respectively of the Kirupasanam Church. When the

defendants/respondents however appeared and objected as above the trial court has said that the plaintiffs/appellants are not entitled to any

injunction order. It appears, however, as the facts were represented before the learned single judge, the appellants were treated as claiming the

properties set out in the Judge's summons and that the appellants were in the administration and control of the properties as Pastor and Sisters of

Kirupasanam Church, whereas the respondents claimed to constitute a society under which alone the control upon the assets of Kirupasanam

Church vested and accordingly slightly misplaced contention for adjudication for the purposes of interim injunction came up before the court, in the

words of the trial Court's judgment itself,

The only question therefore revolves into is whether the plaint institutions form a distinct independent group and managed by the

plaintiffs/petitioners as contended by them or whether they form part of Kirupasanam Church founded by the first respondent and later registered

into a society and controlled by an Executive committee as urged by the respondents.

We have taken notice of the facts in controversy only to fathom the depth and breadth of the controversy between the parties. Neither party has

claimed any affiliation to any known order of Christianity. While the appellants have stated that certain Sam Daniel started a congregation and

organized prayer and other activities akin to a church and baptised many other people in the name of Jesus Christ and his gospel, the defendants

have attributed this idea of a new kind of church activity to the first defendant/respondent-Sadhu Jesudasan. They appear to agree that activities at

No. 22, Rangarajapuram, Nagarjuna Nagar Ind Street, Kodambakkam started in the year 1969. But, according to the appellants, it is started at

the instance of Sam Daniel, according to the defendants, it has been an extension of the activities of the Kirupasanam Church of Christ founded by

Sadhu Jesudasan. The defendants, however, accept that Sam Daniel was one of the workers attached to the church, who had no capacity to

baptise any person. He was, according to the defendants, only a gospel worker. He, therefore, had no authority to appoint any one as pastor to

succeed him or even as gospel worker in any ministerial service. According to them, to regularise activities of such services only as desired by all

concerned a society was formed and registered on 14.3.1977 and one property in the schedule upon which it appears that the church activities

have been going on since 1969 was duly transferred by the owner thereof to the society.

6. It would be necessary when a property right is not claimed by any individual or a legal person but is conceded in a plurality to notice whether

such a right comes under the Constitutional guarantee under Articles 25 and 26 of the Constitution of India or not, which extend to freedom of

conscience and the right freely to profess, practise and propagate religion, to establish and maintain institutions for religious and charitable

purposes, to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and to administer such property in

accordance with law. The condition however precedent for such a right is that of persons who belong to that denomination and are equally entitled

to freedom of conscience and the rights freely to profess and propagate religion to have established and maintained institutions for religious and

charitable purposes and acquired movable and immovable properties for the benefit of these rights of the denomination. If they have done so and

are accordingly determined as a religious denomination, it is they, that is to say, all who constitute the denomination or any section thereof, who

shall have a right in common with each other to establish and maintain institutions for religious and charitable purposes to manage its own affairs in

matters of religion to own and acquire movable and immovable property and to administer such property in accordance with law. The basic things

in such a situation are : (1) who constitute the religious denomination or a section thereof and whether the properties whether movable or

immovable belonged to the denomination. In the instant case, there is some controversy as to how the church activities, started and who started the

church activities, but, there is no dispute to the fact that Sam Daniel remained associated with the activities of the church and perhaps he was

associated with its activities ever since 1969, (although the respondents say he got attached to the church concerned in the year 1973 only). There

has absolutely been no controversy of any kind during the life time of Sam Daniel but it seems either the appellants started claiming what they do

not possess or the respondents wanted to expel the appellants altogether and the controversy started and it became necessary for the parties to get

decided who shall represent and administer the church. We, however, do not propose to go into the facts any further before we take notice of the

law which we must follow in deciding whether to grant injunction or not.

7. Rules that are invariably adopted by the courts in cases of interlocutory injunctions in aid of the plaintiff's right are that the courts usually consider

whether the case is so clear and free from objection on equitable grounds that it ought to interfere to preserve property without waiting for the right

to be finally established. This depends upon a variety of circumstances and it is stated in para 763 and 764 of Halsbury's Laws of England, 3rd

edition, Vol. 21. it is impossible to lay down any general rule on the subject by which the discretion of the court ought in all cases to be regulated.

The courts however adopt the rule that no interlocutory injunction is granted as of course, but it is granted when the three cardinal tests are fulfilled

viz., (1) prima facie case; (2) balance of convenience and (3) irreparable or serious injury. For the purpose of prima facie case, however, it is not

necessary that the courts should find a case which would entitle the plaintiff to relief at all events. It is quite sufficient if the court finds a case which

shows that there is a substantial question to be investigated and the matters ought to be preserved in status quo until the question can be finally

disposed of. It is found in para 765 in Halsbury's Laws of England, 3rd Edition Vol.21:

Where the plaintiff is asserting a right, he should show a strong prima facie case, at least in support of the right which he asserts....

Where any doubt exists as to the plaintiff's right or if his right is not disputed, but its violation is denied, the courts, in determining whether an

interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the

defendant, on the one hand, would suffer if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff on

the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right. The burden of proof that the inconvenience

which the plaintiff will suffer by the refusal of the injunction is greater than that which the defendant will suffer, if it is granted, lies on the plaintiff.

The above has been the rule adopted in India almost without any exception from the earliest days of the courts in India since the administration of

justice. One learned Judge of the Calcutta High Court in the case *oilrail v. Shamsheer Rahman* ILR 41 Cat 436, after giving details as to the facts

of the case, specifically said what should be the test applied by the courts for grant of any prayer of injunction, and quoted with approval a passage

from a judgment of the Judicial Committee in the case of Walker v. Jons (1866) L.R. 1 P.C. 50.

The real point is not, how these questions ought to be decided at the hearing of the cause, but whether the nature and difficulty of the questions is

such that it was proper that the injunction should be granted until the time for deciding them should arrive.

It is in this context that the courts in India also frequently quote a passage from a judgment of the King's Bench Division in the case of Jones v.

Pasava (1911) 1 KB. 455:

It is quite sufficient if the court finds a case which shows that there is a substantial question to be investigated and that matters should be preserved

in status quo until that question can be finally disposed of.

The above view has also been expressed in a Division Bench judgment of the Patna High Court in the case of State of Bihar and Others Vs.

Thakur Manmohan Deo, , it will be difficult in the above situation of facts and the law to say that there is no prima facie case. Without there being a

specific answer to the issues of fact who founded the congregation/church/prayer house and when now properties were acquired, from where

came the considerations for such properties, who constituted (he society aforementioned and how the society became a representative body of the

denomination concerned or acquired the right to hold that properties that belonged to the denomination, etc., no verdict can go either in favour or

against the plaintiffs. The instant case is one in which the rule of balance of convenience will embrace not only the interests of the plaintiffs and the

defendants but also the interests of all such persons who have shown faith in the alleged church and if they have made contributions for the

acquisition of the property, etc., have proprietary interests as well. It will be of course necessary to also keep in mind that the right to administer a

property in itself is a property right but in case of a religious denomination or a section thereof such a right by dint of the constitutional mandate

shall not be found in any individual but in the plurality of what is called the denomination or the section thereof. Those who shall come thus to

administer such properties shall necessarily have a representative capacity

unless that representative capacity is found in them, they cannot be dint of their claim alone be accepted as persons entitled to administer such properties belonging to the denomination or the section thereof. When we look, to the controversy as such it is difficult to accept that the plaintiffs/appellants have alone the entitlement to administer the church and the church properties. It is equally difficult to accept the case of the defendants that since they stand in the name of a society they have this right and none else. The only person entitled to administer however is sought to be ignored by both the plaintiffs and the defendants viz., those who have entered the congregation and who constitute the religious denomination concerned. Their interests cannot be allowed to be jeopardised by any act of either the plaintiffs or the defendants in the suit and it shall cause no injury to either the plaintiffs or the defendants if they (the denomination) are alone asked to devise their own method of administration of the properties of the denomination. This can be achieved by keeping the claim of both the plaintiffs and the defendants aside and entering into an arrangement under which the denomination gets the opportunity to devise its own administration. With this, in our mind, we put in particular pointed questions to the learned Counsel for the parties and asked them to categorically state whether the parties are ready to accept such an arrangement under which the denomination/congregation concerned shall elect a committee of two persons who shall administer their properties, lead the congregation and do all such acts as the congregation is required to perform in course of its professing, practising and propagating their religion. Learned Counsel for the respondents has stated before us that the respondents has stated before us that the respondents shall have no objection if a specific direction is given to those who are baptised and accordingly admitted to the denomination by Sam Daniel and thereafter by such other person, who had the authority to baptise, to elect their two representatives and accordingly permitting the two representatives elected by them: (1) to administer the properties of the denomination, and (2) to receive donations, contributions etc., provided any such donation/contribution is credited immediately in the name of the church and no amount of such contribution is appropriated or withdrawn by them without prior permission of the court except in so far as the congregation/denomination at a meeting approved/

approves. Learned Counsel for the appellants has, however, expressed the appellant's position and said that it will be going beyond the

preservation of the properties etc. of the church in status quo if the appellants are not allowed to administer as they were doing from before.

8. In the facts, as above, it is a fit case, in our opinion for injunction/direction which shall on the one hand, cause no substantial injury to either party

and on the other hand protect the interests of the community at large. This can be achieved in our opinion, by permitting the members of the church

to reassert themselves and decide afresh as to who shall lead their congregations and prayers and who shall receive any contributions/charities

grants, etc., on behalf of the church and administer all and any property that the church possesses/will possess. We are, for the said reason,

inclined to order as follows:

(1) Both the sides, the plaintiffs and the defendants are restrained from exercising any control or dealing with the properties of the church in any

other manner;

(2) Both sides, their representatives, agents and/or any other person claiming through them, are restrained from exercising any preeminent right to

lead the congregation or the prayers in the church and accordingly restrained from exercising any such right.

(3) All the followers of the church, however, may at their next assembly elect one or more that one person to lead the congregation and the prayer

at the church, to administer the properties, and other affairs of the church and accordingly be in custody of the properties of the church. Person or

persons so elected by the congregation, however, shall have no authority to do any act on behalf of the church except that which is specifically

granted by the congregations of the followers of the church at a meeting and without obtaining prior permission of the court.

(4) The defendants and/or any other person including the person authorised by the followers of the church to administer the properties of the

church, etc., shall, however, not remove plaintiffs 1 and 2 with the present accommodation and shall not deny to them accordingly food and shelter

that they have been receiving from the church in the past. The congregation, however, shall be free to provide accommodation/shelter and food to

others in the same way as plaintiffs 1 and 2 are entitled to receive, but without in

any manner affecting plaintiffs 1 and 2.

(5) This order shall be in force until the disposal of the suit and shall be subject to the result of the suit.

To achieve the above, however, it is necessary to ensure that elections are held at the earliest and conducted by someone, who can have the trust

of all concerned. We are informed at the bar that Mr. Calvin Jacob, who is a fairly senior advocate of this Court and professes a religion akin to

the religion of the instant church, can be a suitable person to conduct the elections and carry out the directions of this Court by calling a meeting of

the congregations, after verifying the membership of each person and on being satisfied about the membership of all such persons at the earliest and

accordingly conduct the elections of one or two persons as the congregation may decide at the first instance and then accordingly to hand over

possession of the properties of the church to such person/persons elected by the followers at their meeting. We see no objection to this course and

accordingly we appoint Mr. Calvin Jacob, Advocate, as the Commissioner on behalf of the court to call a meeting of the members of the church/

followers, to verify and accordingly satisfy himself about the membership of each individual and conduct election by such procedure that the

congregation may decide by a voice-vote within ten days from the date of the warrant of appointment issued and served upon him.

9. The appeal is allowed, the impugned order is set aside and C.M.P. No. 7434 of 1993 is disposed of in terms as directed above. There will be

no order as to costs.