

(1962) 02 KL CK 0018
In the High Court Of Kerala
Case No : Appeal Suit No. 509 of 1957

Pathanamthitta Majilissae Islamia	Vs	APPELLANT
Nagoor Meeran Sheik Muhammad and Others		RESPONDENT

Date of Decision : 05-02-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1963 Ker 49

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : S. Bhoothalaingom Iyer, for B. Pocker, for the Appellant;

Judgement

M. Madhavan Nair, J.—This appeal has arisen out of a suit between two sects of the Muslim community of Pathanamthitta, The plaintiff as the secretary and representative of the Majilissae Islamia Association, Pathanamthitta, prays for a declaration that the annual religious festival, known as "Chandanakudam" conducted by the defendants on the suit property on which a mosque is situated is against the tenets of Islam and for an injunction restraining the defendants as representatives of the community in the locality from conducting it any further. It is averred in the plaint that the Association represented by the plaintiff has 218 votaries and they constitute the majority of the Muslims of the locality.

2. Originally, there were only 11 defendants, but in response to a notification under Rule 8 of Order 1, C. P. C. 309 Muslims came forward to get themselves impleaded as additional defendants in the cause, denying the right of the plaintiff's Association to represent the majority of the Muslims of Pathanamthitta and asserting their right to celebrate "Chandanakudam" at the suit property and mosque as a religious festival of the Muslims.

The Subordinate Judge found that the defendants are Muslims of Pathanamthitta, that the Muslims of the locality had several associations among themselves as are evidenced by Exts. D-4, D-5, D-6, D-29 and Ext. P-3, the last being the rules

of the Majilissae Islamia Association represented by the plaintiff, that defendants are greater in number than the votaries of the plaintiff's Association, that Ext. P1 is not binding on non-signatories thereto, that Chandanakudam as a religious festival of the Muslims was being celebrated at the suit property and mosque from immemorial times and finally that the cause of action urged being a cleavage in the religious beliefs and religious services between the conservatives and the reformers in the religious faith did not come within the cognisance of Civil Courts; and therefore dismissed the suit with costs.

3. Mr. Narayanan Potti, the learned advocate submitted that he had no instructions from the respondent and that he does not desire to participate in the hearing of the appeal in this Court; and therefore no assistance was available in the disposal of this case from the respondents, and the case had to be heard *ex parte*.

4. Though many grounds have been taken in this appeal on behalf of the plaintiff, Mr. Moosakutty, the learned advocate, did not press the questions regarding religious tenets and religious services, but pressed that every Muslim has a right to enter the mosque on the suit property to offer his prayers and such right should not be disturbed by the noisy celebration of a festival, though religious as the Chandanakudam, attended by music piping, beat of drums and fire works apt to disturb the worshipper at prayers in the mosque.

5. In *Nar Hari Sastri and Others Vs. Shri Badrinath Temple Committee*, the Supreme Court held the right of entering the Temple not a precarious or a permissive right depending for its existence upon the arbitrary discretion of the temple authorities, but a legal right in the true sense of the expression. It is a clear pronouncement that the right of worship is a civil one and comes squarely within the cognisance of the civil courts of the State.

6. In *Jawahar v. Akbar Husain* ILR All 178 the right to enter a mosque and offer worship irrespective of locality and sect to which he belongs, is held to be a personal right of every Muslim entitled to be exercised without hindrance, and affording him "a right of action against anyone who interferes with its exercise". . In *Queen Empress v. Ramzan* ILR All 461. (474), it is observed :

"Now, it is a fundamental principle of the Muhammadan Law of Wakf, too well known to require the citation of authorities, that when a mosque is built and consecrated by public worship, it ceases to be the property of the builder and vests in God (to use the language of the Hedaya) "in such a manner as subjects it to the rules of Divine property, whence the appropriates right in it is extinguished, and it becomes a property of God by, the advantage of it resulting to his creatures". A mosque once so consecrated cannot in any case revert to the founder, and every Muhammadan has the legal right to enter it, and perform devotions according to his own tenets so long as the form of worship is in accord with the recognised rules of Muhammadan Ecclesiastical Law".

In *Syed Ahmad Vs. Hafiz Zahid Husain and Others*, Niamatufla J. observed :

"A mosque, from its very nature, is dedicated for worship and is open to all Muslims, local and others. It is dedicated for a specified purpose and not to the local Muslims for such benefit as they may choose to derive therefrom. They cannot of right claim to use it for any other purpose however meritorious or beneficial it may be to the members of the local Muslim Community".

In Mohd. Wasi and Another Vs. Bachchan Sahib and Others, , at p. 73 (FB), Malik C. J., delivering the judgment of the Full Bench, observed :

"..... It is now well settled that

- (1) a Mosque is dedicated for the purpose that any Muslim belonging to any sect can go and say prayers therein;
- (2) it cannot be reserved for Muslims of any particular denomination or sect;
- (5) the object of the dedication can neither be altered nor the beneficiaries limited or changed; and
- (6) a Muslim will have a cause of action if he is deprived of his right to say prayers in a mosque or is prevented from doing so".

In Minhaj Et Talibin by Nawawi, the five obligatory prayers that a Muslim has to perform every day are detailed as;

- (1) The mid-day prayer (dhohr)
- (2) The afternoon prayer (asr)
- (3) The evening prayer (maghrib)
- (4) The prayer of the night (isha), and
- (5) The morning prayer (sobh)

Counsel, who is himself a prominent member of the Community, states that about an hour has to be reserved for each of these prayers. As the right to offer prayers in a mosque has been found to be a legal right, for the disturbance of which a Muslim is entitled to seek relief in a Court of law, it is necessary to hold in this suit that the celebrations should be such as not to disturb the rights of Muslims attending the mosque to offer their obligatory prayers. According to Mr. Moosakutty it will be convenient if times according to the following schedule are reserved for the prayers, that is to say;

12-30 P. M. to 1-30 P. M. for the mid-day prayer, 4 P.M. to 5 P. M. for the afternoon prayer, 6 P. M. to 8 P. M. for both the evening prayer as well as the prayer of the night, and

5.30 A. M. to 6.30 A. M. for the morning prayer,

it is declared that the Muslims represented by the plaintiff are entitled to have their daily prayers offered in the mosque on the suit property at the above

periods and that no disturbance shall be caused thereto by the defendants or other Muslims in or resorting to the locality particularly by beat of drums, blowing of pipes, music, or fireworks in connection with a festival, even if it be a religious festival like the Chandanakudam. Subject to the above direction, the question of the right of the defendants to celebrate Chandanakudam as a Muslim religious festival is left open. The appeal is disposed of as above, but in the circumstances there will be no order as to costs here and in the court below.