

(1928) 03 MAD CK 0033
In the Madras High Court

Peria Muniyan and Another

APPELLANT

Vs

Peria Payyan alias Muniyan and Others

RESPONDENT

Date of Decision : 08-03-1928

Acts Referred:

Citation : 110 Ind. Cas. 702

Hon'ble Judges : Waller, J;Madhavan Nair, J

Bench : Division Bench

Judgement

Defendants Nos. 1 and 2 are the appellants. This Letters Patent appeal arises out of a suit instituted by the plaintiffs for the cancellation of the order of suspension passed against them and defendants Nos. 3 to 5 by the 10th defendant as a member of the Temple Committee of Uttankarai Taluk.

The plaintiffs and defendants Nos. 1 to 5 are pujaris in the Vedyappan temple in the village of Kallavi. By an arrangement the right of performing the puja has been divided into two turns, defendants Nos. 1 and 2 having a turn of one and a half years and the other pujaris having a turn of two years by rotation. The turn of defendants Nos. 1 and 2 ended on the 26th January, 1915, when the turn of plaintiffs and defendants Nos. 3 to 5 started. The plaintiffs alleged that, purporting to be acting under the order passed by the 10th defendant suspending them from office, defendants Nos. 1 and 2 obstructed them from entering the temple and exercising their functions. Amongst other things, the plaintiffs contended that the Temple Committee had no jurisdiction over the temple, that the order of suspension is unjustifiable inasmuch as the lands alienated by the plaintiffs and defendants Nos. 3 to 5 did not belong to the temple, that the Committee had no right to suspend the pujaris directly except through the intervention of the dharmakarthas; and that the order itself was bad as it was not issued on behalf of the entire Temple Committee. All these contentions were controverted by the defendants. For the purposes of this appeal it is not necessary to state in greater detail the contentions raised by the parties.

The District Munsif dismissed the plaintiff's suit. The Subordinate Judge reversed

it and give the plaintiffs a decree, declaring that the order of suspension is invalid and illegal and that the plaintiffs shall be placed in possession of the pujaniship for themselves and on behalf of some of the defendants, By the decree defendants Nos. 1 and 2 were also restrained from interfering with the enjoyment of the pujaniship by the plaintiffs. As against this decree a second appeal was filed by defendants Nos. 1 and 2, but this was dismissed by Krishnan, J., on the preliminary ground, viz, that defendants Nos. 1 and 2 have no right of appeal, that the Temple Committee has not appealed, and that the decree does not affect the turn of management of defendants Nos. 1 and 2. The present Letters Patent Appeal has been filed by defendants Nos. 1 and 2 against the judgment of Krishnan, J.

We think that the learned Judge was wrong in dismissing the second appeal on the preliminary objection. It is clear that there was a decree against defendants Nos. 1 and 2 and that they were aggrieved, inasmuch as it disturbed the sole right of pujaniship which has accrued to them consequent upon the order of the Committee. In our opinion, therefore, defendants Nos. 1 and 2 were entitled to nonsuit the plaintiffs by sustaining the order of the Committee, Overruling the preliminary objection that no appeal lies at the instance of defendants Nos. 1 and 2, we have to see whether the decree of the Subordinate Judge reversing that of the District Munsif is right in law.

It was first argued before us that the Subordinate Judge's conclusion, that the suit temple did not come under the control of the Committee is wrong, We have been taken through the evidence in the case on this point and certain decisions were also quoted to us to show that the learned Subordinate Judge misdirected himself in law in examining the evidence relating to this point. It is not necessary for us to discuss this question in detail. Nor is it necessary to consider some of the other arguments which were addressed to us at great length by the learned Vakil for the appellants, for in the view that we take of this case, the Letters Patent appeal can be disposed of on a very short ground and it is this; It is undisputed that the order of suspension passed by the 10th defendant, alleged to be on behalf of the Committee, was issued directly to the pujaris. If there are no dharmakarthas in the temple and the pujaris were themselves; dharmakarthas, no exception could be taken to this procedure; but if, on the other hand, there are dharmakarthas, then the committee has in law no jurisdiction to suspend the pujaris directly without the intervention of such dharmakarthas. Assuming, for purposes of argument, that we accept all the contention raised by the appellant's Vakil, if he cannot satisfy us that there were no dharmakarthas in this temple, then this Letters Patent appeal will have to be dismissed. The question is considered by the learned Subordinate Judge in para. 10 of his judgment. The temple servant is under the superintendence and control of the trustee or manager. It is well settled that if the Temple Committee wants to control the servants of the temple, it can act only through the trustee and not directly: see *Seshadri Aiyangar v. Ranga Bhattar* 10 Ind. Cas. 548 ; 35 M.631 ; 21 M.L.J. 580 ; 10M.L.T.14 *Tiruvengadath Ayyangar v. Srinivasa, Thachariar* 22

M.361 ; 8 Ind.Dec 58 and Sitharam Chetty v. Subramania Aiyar 32 Ind. Cas. 211; 39 M. 700 ; 30 M.L.J. 20 ; 19 M.L.T. 25 ; 3 L.W.43. The question is whether the suit temple. Has trustees, or whether the pujaris themselves are the trustees of the temple as is contended for by the appellants. Apparently it seems to have been conceded in the lower Court that the temple was not without trustees, for We do not see any discussion of the evidence On the point in the Subordinate Judge's judgment. However, the evidence in the case suggests that the temple must have been managed by trustees. Exhibits III, IV, X and XI support the argument of the respondents that there must have been trustees in this temple, for we find in them references to a trustee. No doubt, Exs. VII and IX refer to pujaris themselves as dharmakarthas, but these are statements by the pujaris. Defendant's Witness No. 5 says that, at the time of an enquiry in the suit temple in connection with mahazar, the person supervising the temple affairs was the 6th defendant. Apparently there must have been a manager apart from the pujaris To some extent the arguments of the appellants that the Temple Committee has superintendence over this temple, also assume the existence of a trustee or manager who looks after the ordinary affairs of the temple. On the whole, we are inclined to think on the evidence that the suit temple is not without a trustee. The order of suspension, therefore, passed by the 10th defendant is illegal and invalid. In this view it is not necessary to express any definite opinions on the various other questions argued before us.

In the result, we dismiss this Letters Patent Appeal with costs of respondents Nos. 1 to 4 and 9 and 10.