

(1932) 09 MAD CK 0021
In the Madras High Court

Perumal Konan and Others		APPELLANT
	Vs	
Tirumalai Machi Reddiar and Others		RESPONDENT

Date of Decision : 06-09-1932

Acts Referred:

Citation : AIR 1933 Mad 245 : 140 Ind. Cas. 900 : (1933) 37 LW 143

Hon'ble Judges : Bardswell, J

Bench : Division Bench

Judgement

Bardswell, J.—The petitioners put in a petition under Sections 145 and 147, Criminal P. C, asking that it might be declared that they and

their pungalies alone have been in and are entitled to possession of certain temples, and asking that the counter-petitioners may be prohibited from

interfering with the exclusive rights of the petitioners and their pungalies to do puja in the said temples. The petition has been dismissed, and the

petitioners have come in revision.

2. There seems to be no reason whatever for interfering with the order u/s 145. The oral evidence on either side is found not to be very

satisfactory, but the documentary evidence clearly indicates that the petitioners occupied a subordinate position to C.P. 1 who held the post of

trustee. Possession has been found to be with C.P. 1, while such possession as the petitioners had was on his behalf as subordinate to him a such

trustee. The learned advocate for the petitioners on this petition has called to my attention certain authorities, and principally Baboo Reddi v.

Kullappa Nattan (1881) 2 Weir 107, in which it has been held that when there is a dispute between a tenant and a landlord as to actual possession

the point cannot be taken that the possession by the tenant is possession by the

landlord. But this view has nothing to do with the facts of the present case. It is a matter of the possession of a servant or subordinate being the possession of the person who has authority over him. That a trustee has authority over an archaka or pujari, even if his post is hereditary as petitioners claim theirs to be, is shown by the decision in *Seshadri Aiyangar v. Ranga Bhattar* (1912) 35 Mad 631. No authority has been quoted to show that a servant can set up that possession by him for his master or superior is his own possession, or that the master or superior cannot set up that possession is his own, though exercised for him by the servant.

3. The next point is as to the application u/s 147. As to this the Magistrate has passed no order perhaps because he thought that what was applied

for u/s 147 was included in what was applied for u/s 145. As has been pointed out by Sir William Ayling, J., in *Palaniyandi Pandaram v.*

Palaniappa Thevan (1916) 17 Cri LJ 235, when there is a dispute as to the possession of a temple and the right to perform puja therein, the

Magistrate can deal with the claim as to the right to perform puja as part of the larger relief that is prayed for. If however it is not so included in the

major relief, the same decision shows that it is doubtful whether an application u/s 147 can lie merely as to the right to perform puja in a certain

temple. As Ayling, J., had pointed out, the wording of the present Section 147 is different from the language of that section in the old Criminal

Procedure Code. In the present case then there can be no doubt but that it was competent for the petitioners to make the application u/s 147. I

shall therefore refer to it on its merits.

4. As has been stated above, the petitioners claim a hereditary right to be pujaries in the temples in question, though it does not appear that they

were ever formally appointed to that position; but rather the case appears to be that they assumed the position on the removal of certain other

persons who held the office before them though, as they contend, under no right. Be this as it may, the attempt of the petitioners to show that they

have a hereditary right has not been established before the Magistrate. Though the Magistrate holds it to be immaterial for the purpose of this case,

to find whether the first petitioner was an hereditary pujari or not, he has stated that there was no particle of trustworthy evidence to support the

hereditary claim. There he has left the matter. He has also found that the first petitioner-the only petitioner who gave evidence-was such a liar that it

was only by mistake that he ever told the truth. The claim, then, of the petitioners in so far as it rests upon a hereditary right has at any rate not

been made out before the Magistrate. Nor is it a case in which orders such as those passed in *Baboo Reddi v. Kullappa Nathan* (1881) 2 Weir

107 and *Palaniyandi Pandaram v. Palanippa Thevan* (1916) 17 Cri LJ 235 could apply. It is not a case in which the temples have been attached

so that no service can be performed such as the public have a right to expect. Nor again is it a case of some one who, though he cannot claim

possession of the temple, yet has a right to enter the temple to perform puja therein. The petitioners have established no right at all before the

Magistrate. Their case u/s 147 also must therefore fail.

5. The third point taken is the matter of costs. It has been ordered that the petitioners are to pay the costs incurred by the counter-petitioners, in

respect of the witnesses actually examined in Court, and pleader's fee for one advocate at the scale of fees paid to the Public Prosecutor for

Crown work. Considering the number of witnesses examined and the number of exhibits filed, and considering also the opinion which the

Magistrate has held of the petitioners, I think that both the costs have been properly awarded and that the rate of costs allowed is not excessive.

The petition therefore fails throughout and is dismissed.