

(1938) 04 MAD CK 0023
In the Madras High Court

Pichandhi Murugappa Mudali and Another	APPELLANT
Vs	
Kuppuswami Mudali and Others	RESPONDENT

Date of Decision : 06-04-1938

Acts Referred:

Citation : AIR 1938 Mad 819 : (1938) 48 LW 267 : (1938) 2 MLJ 375

Hon'ble Judges : Lakshmana Rao, J

Bench : Division Bench

Judgement

Lakshmana Rao, J.—The appellants are residents of Kandappar Koil Street in Ayyampet Village and the suit out of which the Second

Appeal and Memorandum of Objections arise was instituted by them on behalf of the residents of that street for a declaration of their right to

perform the Surasamharam festival of the Subramaniaswami of Kandappar Koil in front of the Mokambari Amman Temple on the Shashti day in

Arpasi month and an injunction restraining the defendants from interfering with the performance of the festival. Their right to perform the festival in

the public highway in front of the Mokambari Amman Temple was declared by the District Munsiff without specifying that it is subject to the

directions of the Magistrate and the rights of the public, and the defendants were restrained from interfering with the performance of the festival. An

appeal was taken and the suit was dismissed by the Subordinate Judge on the ground that the right to perform festival in the public highway was

not claimed in the plaint and that even otherwise such a right is not recognised by law.

2. The plaint is comprehensive enough to include the public highway which is in front of the Mokambari Amman Temple and the Privy Council has

laid down in (1925) ILR 47 151 (Privy Council) that in India there is a right to conduct a religious procession with its appropriate observances through a public street so that it does not interfere with the ordinary use of the street and subject to lawful directions by the Magistrates. A religious festival does not stand on a different footing and the view of the Subordinate Judge that such a right is not recognised by law is untenable. The right is of course subject to the directions of the Magistrate and the rights of the public, and it is for the Magistrate to regulate the order and manner of performance of the festival though it is found by the Courts below that the festival of Subramaniaswami of Kandappar Koil used to be celebrated before the festival of Balasubramaniaswami of the temple of the defendants. The decree of the Subordinate Judge is therefore set aside and the decree of the District Munsiff is restored with the modification that the right of the appellants to perform the festival will be declared to be subject to the directions of the Magistrate and the rights of the public. The order of the District Munsiff regarding costs will stand and the parties will bear their respective costs in the lower appellate Court and here.