

(1966) 03 MAD CK 0039
In the Madras High Court

Ponnuswamy Padayachi and Others

APPELLANT

Vs

Nallamuthu Padayachi and Others

RESPONDENT

Date of Decision : 25-03-1966

Acts Referred:

Citation : (1966) 2 MLJ 371

Hon'ble Judges : M. Anantanarayanan, O.C.J.

Bench : Division Bench

Judgement

M. Anantanarayanan, O.C.J.

1. This Criminal Revision Case involves a question of interest, upon the degree to which a Magistrate can proceed into the basis of a certificate by a Deputy Commissioner in the prescribed form u/s 101 of Madras Act XXII of 1959, setting forth the finding that the property in question belonged to the concerned religious institution, and directing delivery thereof to a petitioning party, by the party in possession. Incidentally, the entire question involves a clarification of certain basic principles of law, which do not appear to have been directly adverted to, in the few precedents that have been cited at the Bar.

2. Admittedly, Section 101 is a kind of summary procedure, whereby a person appointed as trustee, or to discharge functions of that character, can summarily obtain possession of the alleged properties of the religious institution, from an obstructor, on the basis of a certificate issued by the Commissioner. The implementation of this certificate is also provided for in the section, and the concerned trustee may apply to any Presidency Magistrate or Magistrate of the First Class of requisite jurisdiction, virtually to execute the certificate by directing delivery. Upon the nature of this proceeding, there have been certain decisions of this Court, and it may be convenient to refer to them immediately before going further.

3. In Shanmugham Archagar v. Munuswami (1959) 1 M.L.J. 144 Ramaswami, J., had to deal with Section 87(3) of the earlier Act XIX of 1951, which is by

concession a parallel provision of the prior enactment. After referring to several precedents, the learned Judge observed that the Magistrate giving effect to the certificate was in the position of an executing Court, and could not go behind the order or certificate issued by the Commissioner. He has no power to entertain any objection to the validity, legality or correctness of the order. The only remedy of the aggrieved party is to file a suit, as specifically provided for by means of the last proviso to Section 87. In that particular case, the learned Judge held that a plea to the effect that the temple was a private temple could not be raised or entertained before the Magistrate, after the Commissioner had issued the certificate.

4. In *In Re: S.R.M.S. Chidambaram Chettiar*, the learned Judge again observed that proceedings for delivery u/s 87 were in the nature of execution proceedings, and that the executing Court, here the Magistrate, had no jurisdiction to question the correctness, legality or propriety of the decree.

5. In *Rathinasamy Moopanar and Another Vs. Subramania Udayar and Others*, Kunhamed Kutti, J. referred to the provisions of Section 101 and following *Shanmugha Archagar v. Munuswami* (1959) 1 M.L.J. 144 pointed out that the Magistrate executing the certificate or implementing it in an application u/s 101 for delivery was in the position of an executing Court. He cannot entertain any objection to the validity, legality or correctness of the order.

6. In *Abboyi v. Suranna* (1962) 2 An. W.R. 140 : (1962) M.L.J. 408 a learned Judge of the Andhra Pradesh High Court has made certain observations on the same lines, and laid it down that a certificate issued by the Commissioner was of the nature of a decree for possession, and that the Magistrate is bound by this. Ramakrishnan, J., appears to have followed this line of reasoning in a recent case *Crl. R.C. No. 1776 of 1964, Crl. R.P. No. 1747 of 1964* which has not been reported so far.

7. In *Subbarayalu Mudaliar v. Nackimuthu* (1965) 1 M.L.J. 359 : (1965) M.L.J. 199 Kailasam, J., pointed out that if there was a person claiming possession of the temple, or properties in his own right, independently of any trusteeship, he will be excluded from the purview of the section on the very language used. But a person who is entitled to administer as a trustee and is liable as such, will be bound by Section 101.

8. But, though the general situation at law may thus be regarded as well settled, it clearly needs the addition of a refinement in one important respect. Even the dictum that the executing Court cannot go behind the decree that it is asked to execute, is neither without exception nor absolute. I think it is sufficient to refer, in this context, to the Full Bench decision in *Mohan Ram and Others Vs. T.L. Sundararamier and Others*, to which I was a party. The Full Bench held that the power of an executing Court to go behind the decree, because it is opposed to public policy or it offends a statutory prohibition, is upon another plane altogether. The Court can go behind the decree in such an instance.

9. A very brief reference to the facts of the present case, will be necessary to elucidate the particular principle that is in issue. As will be seen from a glance at Section 101, it is not every person who may be in possession of the properties of a religious endowment, against whom a proceeding can be taken under this provision of law. On the contrary, the provision is explicitly restricted to a person in possession who is a trustee, office-holder or servant of the religious institution, or one who has been dismissed or suspended from such office, or any person claiming or deriving title from such trustee, office-holder or servant. This is a positive limitation. Not merely this. There is also a negative limitation, in that a person who could claim in good faith to be in possession on his own account, or on account of some person not being such a trustee, office-holder or servant, is definitely excluded. It is clearly not enough that there is a finding that the property belongs to the religious endowment in question. The Commissioner, or Deputy Commissioner, must find that the person from whom delivery is sought comes within the terms of Section 101. If there is no such finding, the order is null and void, in the sense that it lacks one essential decision or finding that alone makes it capable of implementation before a Magistrate. It will be like a decree that deals with property situate in another country, or which deals with some property or right in a manner that is prohibited by law, and thus goes to the root of the jurisdiction of the Court which passed the decree. As I noted earlier, the principle that an executing Court cannot go behind the decree will hold good in most instances; but it will not hold good where the decree *ex facie* cannot be executed by the Court, and is opposed to law, or so defective as to be incapable of implementation.

10. Apart from the Full Bench decision that I have already referred to, we have the decision of Ramaswami Goundar, J., in *A.V. Subbu Chetty Vs. C.V. Munuswamy Chetty and Another*, which has not been dissented from, to my knowledge, and which rightly lays down, if I may say so with respect, that the person in possession must be found by the Commissioner to be a person against whom an order can be made u/s 101. Otherwise, treating the certificate as a decree, it will be void because even, on the face of it, it is essentially defective in the sense that it does not find that the party against whom it purports to be made comes within the scope of Section 101 of the Act. It is indisputable, I think, for instance, that an order u/s 101 cannot be made against a trespasser, who claims to have perfected title to the property in his possession against the religious institution, by adverse possession.

11. On the facts of the present case, it is clear enough that the respondents claim to be in possession of these lands in their own right, quite independently of the temple, denying that they were lessees of the temple as alleged, and further claiming that their right to the lands was based upon ancestral enjoyment in the context of a different private temple, though the deity thereof was the same deity as regards nomenclature (Mariamman). The Deputy Commissioner has found, on the evidence, that the present properties are lands of the suit religious institution. So far, his finding must be respected, and the Magistrate cannot go

behind it, however, erroneous the Magistrate may think it to be. But the Deputy Commissioner has not found, and I can discover not a trace of such a conclusion in the annexure to his order, that the respondents, or any of them, fall within any category of persons against whom an order could be obtained u/s 101. He has not even applied his mind to this aspect, when the respondents explicitly claimed that, in good faith, they were entitled to possession of the properties independently of the religious institution and adversely to it. In other words, this is practically tantamount to a decree in which there is a basic defect which prevents its implementation, such as absence of the name of the party against whom the decree is passed. Further, the defect is not in the certificate, but in the judgment or order giving reasons, so that the defect cannot be cured by any mere verbal amendment.

12. Under these circumstances, I think that the learned Magistrate was perfectly correct in coming to the conclusion, which is virtually what he has done, that he could not implement the certificate and that he had necessarily to dismiss the application u/s 101. The revision proceeding is dismissed; of course it is perfectly open to the revision petitioner to apply again to the Commissioner for a certificate u/s 101, when, no doubt, the respondents will make their appearance, and the entire question will be gone into, on the merits, whether the respondents fall within any of the categories of persons described in Section 101 against whom a valid order for delivery could be made. No order as to costs.