
(1983) 09 MAD CK 0033
In the Madras High Court

R. Mayaperuaml and Another

APPELLANT

Vs

Azhagappan Nadar (died) and Others

RESPONDENT

Date of Decision : 01-09-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1984) 97 LW 507 : (1984) 2 MLJ 422

Hon'ble Judges : S. Padmanabhan, J

Bench : Division Bench

Judgement

S. Padmanabhan, J.—The short question that arises for consideration in these Letters Patent Appeals, which are directed against the common judgment of a single Judge of this Court in A.S. Nos. 473 of 1973 and 282 of 1974 is whether the Azhakianayagi Amman temple situated in S. No. 14020 in Neendakara B village, Agasteeswaram taluk, Kanyakumari district, is a public temple and whether the provisions of the Hindu Religious and Charitable Endowments Act, 1959 (for short the Act) apply to the said temple. Since that is the only question that has been argued before me, it is unnecessary to refer to the detailed facts of the case except to state that the suit was filed by the respondents-plaintiffs for a declaration that the said temple was a private temple and would fall outside the purview of the Act and also to set aside the order passed by the statutory authorities holding that the said temple was a public temple and would attract the provisions of the Act. O.S. No. 42 of 1971 was originally filed by the plaintiffs without issuing a notice to the Commissioner, H.R.&C.E., u/s 80 C.P.C., and O.S. No. 27 of 1972 was filed for the same relief after the notice was issued. The suits were filed u/s 70 of the Act. The trial Court dismissed both the suits. On appeal by the plaintiff, Sethuraman, J., by his common judgment and decree dated 15th December, 1977 set aside the judgment and decree of the trial Court and decreed the suit holding that the said temple was a private temple and consequently the provisions of the Act would not be attracted.

2. L.P.A. Nos. 113 and 114 of 1978 have been filed by the Commissioner, H.R. &

C.E. and L.P.A. Nos. 6 and 7 of 1978 have been filed by Mayaperumal, the second defendant in the suit.

3. Mr. K.S. Bakthavatsalam, on behalf of the Commissioner, H.R. & C.E., the appellant in L.P.A. Nos. 113 and 114 of 1978 and Mr. Ram Mohan on behalf of the appellant in L.P.A. Nos. 6 and 7 of 1978 contended that the learned Judge was not correct in holding that the temple belonged to the family of the plaintiffs and was a private temple falling outside the purview of the Act. According to the learned Counsel, the presumption is that the temples in Tamil Nadu are public temples. There is absolutely no evidence on the side of the plaintiffs that the temple belonged to the family of the plaintiffs. The physical features of the temple and the fact that persons other than the members of the family of the plaintiff worship in the temple would conclusively prove that the temple is a public temple. Even on the evidence available the plaintiffs' relations are spread over seven villages and since they constitute a section of the Hindu community, the temple must be declared to be a public temple. The learned Counsel also stated that there is evidence to show that the public have made donations to the temple.

4. The only question, as already stated, is whether the suit temple is a public temple as contended for by the appellants. The test to determine whether an institution or a temple is a public religious institution or a public temple or a private one has been the subject-matter of decisions of the Supreme Court and of this Court. It is unnecessary, therefore, to refer to all the citations referred to by the learned Counsel for the appellants except to call out the well laid guidelines on which a decision one way or the other could be rendered on the question. Kanyakumari district originally formed part of the State of Travancore until 1956 and consequent on the reorganisation of States the said district got merged with the State of Tamil Nadu. It is well recognised that in Kerala many temples have been established by private individuals and families unlike in Tamil Nadu and the State recognised the ownership of private temples. It has been held by the Privy Council as early in 1934 in AIR 1934 230 (Privy Council) , that in the case of temples in Kerala there is no presumption that the temples are public temples. On the other hand, only in the case of temples in South India, other than Kerala, there is a presumption that the temples are public. This has been accepted by a Bench of this Court in Sri Chidambareswara Sivagami Ambigai Temple Vs. Commissioner, Hindu Religious and Charitable Endowments, Madras, . The learned Counsel on behalf of the appellants sought to make a distinction between Malabar area and Kanyakumari district which now forms part of the State of Tamil Nadu and argued that the said presumption would not be available to temples in Kanyakumari district which formed part of erstwhile State of Travancore. The learned Counsel are not right in their submission. The same principle laid down by this Court in Chidambareswara Temple v. Commissioner, H.R.&C.E. (1966) 1 M.L.J. 109 : I.L.R.(1965) Mad. 404, has been applied to temples situated in Kanyakumari district by a Bench of this Court in Thanumalayaperumal Mudaliar and Others Vs. The Commissioner, The Hindu

Religious and Charitable Endowments (Administration) Department and Others, , Ramaprasada Rao, J., (as he then was) has observed as follows:

In the State of Travancore, there were a number of temples under private management and there were other temples in which the Sarcar had been exercising the right of supervision in exercise of its sovereign power. It was always possible for the Sarcar or the Government under the then regulations in force which were to provide for the better administration of Hindu Religious Endowments in Travancore to assume management of the same in case of mismanagement.

5. A Bench of our High Court in Sri Chidambareswara Sivagami Ambigai Temple Vs. Commissioner, Hindu Religious and Charitable Endowments, Madras, , recognised the existence of private temples in Travancore and would not invoke the usual presumption that in the case of temples in South India, they are public unless the person, who asserts it is private, discharges the onus of proof which is on him to the satisfaction of the judicial authority.

They observed:

It is now well-settled that unlike, the temples in Kerala, there is a presumption that temples in South India are public and the onus of proof is on the person asserting it to prove that it is a private temple.

We have referred to the judgment only to show that in Kerala under the regulations concerning religious endowments then in force, there were many private temples in the State of Travancore as it then was and that the State recognised such private ownership of religious institutions.

The above decision lays down three guidelines to enable the Courts to decide whether a particular religious institution comes within the scope of the meaning of the definition of a temple u/s 6, Clause 20 of the Act viz., that it should be a place of public worship, that there should be acceptable proof of dedication for the benefit of the Hindu community or a section thereof and incidentally it should also be established that the worshippers have been using as of right the religious institution as a place of public religious worship. The other norms have been summarised by Ramaprasada Rao, J., with reference to decided cases in the following terms:

(a) The existence of Moolasthanam, Mahamandapam, idols of chief and other deities, utsavamurthis, daily poojas, special poojas and procession during festive occasions, worship by the local public belonging to different communities without any let or hindrance, are all factors which give the impression that the temple is a public one.

(b) If the temple is being used as a place of public religious worship, if there is no dedication of the temple to and for the benefit of the Hindu community or any section thereof, if it is not used generally by the Hindu community as of right as a place of public religious worship, if there is no hundi and no collections are

made from the public for the performance of any festival connected with the temple or for its maintenance and no member of the public has come forward to say that he has contributed any amount for the maintenance or any of the related poojas to the deity therein, the temple will not be a public temple, but a private one.

(c) The origin of the temple, the manner in which its affairs are managed, the nature and extent of the gifts received by it, rights exercised by devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple, are factors that go to establish whether a temple is a public or a private one and in each case both the documentary and oral evidence have to be considered as is whole while keeping in view the above principles.

(d) An inference whether a religious institution is a public one or a private one can be drawn from the usage and customs of the institution or from the mode in which the properties have been dealt with as also the other established circumstances.

(e) The essential sine qua non to make a temple a public temple appears to be that the public should claim the right to worship the deity installed therein as of right. If the origin of the temple is very well-known as a private temple, then the clearest possible evidence is necessary for converting that temple into a public temple. As worshippers, are naturally welcome and as the sentiment of a Hindu would not prevent another from making offerings or to turn away a worshipper and as there is an innate desire in persons in charge of private temples not to discourage popularity of the deity, the mere circumstance that the people in the locality were visiting the temple and were worshipping the deity may not take away the character of the temple from a private temple to a public temple. In all such cases worship of outsiders is referable to the leave and licence granted by the owner and cannot be indicative of any dedication to the public.

(f) A temple will not be a public temple within the scope of the Act because in the absence of an express dedication for the benefit of the public, user by the public as of right must be established and such user as of right is far different from the trustees being willing to welcome the public to come and worship in the temple. If a temple had no garbagraham, mahamandapam and if there was no dwajasthambam, no prakaram, no hundi and if no kanikai or any collection was made by the temple and if the utsava idols were not taken in procession in the street then the temple is not a public one.

(g) If the public do not worship the idol as of right and simply because some poojas are performed in a temple and certain members of the public are allowed to participate in the pooja, the temple cannot be said to be a public temple.

It is in the light of the above principles we have to consider the oral and documentary evidence. In this case, there is absolutely no evidence regarding the dedication of the temple to the public. Reliance was placed on the fact that in

the settlement enquiry patta was granted in favour of the deity. The fact that patta stands in the name of the deity does not in any way detract from the temple being a private temple. Any private individual desiring to consecrate a temple will naturally put the properties in the name of the deity and not retain the property in himself. It was not disputed at the Bar that even in the settlement enquiry it was directed that the patta should be handed over to Veeramarthandam, an ancestor of the plaintiffs. The other pieces of evidence relied upon by the learned Counsel for the appellants are certain admissions said to have been made by P. Ws. 1 and 2 and Exs.B-12, 13, 14, 15 and B-1 to B-8. In our opinion, there is no admission in the evidence of either P. Ws. 1 or 2 to the effect that the temple is a public temple. P.W. 1 has clearly stated that the temple was established by his predecessors though he is not in a position to produce any document or give a date when it was dedicated. He has further made it clear that persons other than members of the family do not visit the temple. He has also stated that the members of the family would number about 150 and that they are spread over seven villages. The learned Counsel for the appellants relied on the statement of P.W. 1 that the temple is like any other temple in Kanyakumari district and there is "Balipeedam". In our opinion, this statement alone will not constitute any admission on the part of P.W. 1 that the temple is a public temple. Same is the case with the evidence of P.W. 2. The evidence of P.W. 2 was sought to be read as if P.W. 2 has stated that there were 250 persons belonging to the family in each of seven villages and that two persons from each of the villages of the said 250 persons would be taken as trustees. We are unable to draw any such inference from the evidence of P.W. 2. Further, P.W. 2 has stated that no festival as notified under Ex.B-2 to B-8 took place in the temple. The fact that P.W. 2 has admitted that both in the month of "Karthigai and Thai" celebrations are conducted in the temple cannot in any manner militate against the temple being a private one. In fact, P.W. 2 himself has clearly stated that for the said festivals strangers do not visit the temple. Much was made of the fact that P.W. 2 also mentions about "prakaram" in the temple. It is significant to note that either to P.W. 1 or to P.W. 2 no specific question has been put by the defence with regard to the physical features of the temple and no norm which has been set out in Clause (a) mentioned above has been brought out in cross-examination. Exs.B-2 to B-8 are all certain notices issued after 1966 with regard to certain festivals in the temple. The notices do not contain the names of any particular individuals who have issued the notices. In some cases the notices merely refer to the villagers of the temple while in Exs.B-2 it is stated that the notice has been issued by the committee of the temple village. We have already referred to the fact that P.W. 2 has denied that any such festivals as contemplated in Exs.B-2 to B-8 took place. Nobody has been examined on the side of the defendants to prove who printed and circulated these notices, whether festivals did take place in the temple pursuant to these notices and whether they attended the festivals. Even D.W. 4 has stated that he does not know who gave instructions to print these notices. The notices were got printed by one Mayaperumal. But he has not been examined. Though D.W. 4

stated that there are certain vouchers for the same, that has not been produced. In the absence of such evidence, we are unable to accept the veracity of Exs.B-2 to B-8. Similarly, Exs.B-9 and B-10 which are merely news items in "Dinamalar" will not be sufficient to establish that the suit temple is a public temple. Exs.B-12 dated 13-1-1938 is a gift deed executed by one Easwaraswami Nadar in favour of the temple. This document merely states that it has been executed in favour of the suit temple. No person is named as a trustee or dharmakartha of the temple. In the circumstances, there is absolutely no evidence as to who accepted this gift deed at the time of the execution. Secondly, under this document the executant states that from the properties comprised in the document certain special poojas and naivedyams should be performed by him and by his successors in interest. He has further stated that he would obtain patta in the name of the temple in his capacity as manager and that the property would continue to be in the possession of himself and his successors in interest. Therefore, the document has not conveyed possession of the property to the temple. No member of the family of the executant has been examined to prove that pursuant to Ex.B-12 poojas were being performed in the temple. No question regarding Ex.B-12 has been put to either P.W. 1 or P.W. 2. Further, Ex.B-12 has been marked through D.W. 4. D.W. 4 has no direct knowledge about Ex.B-12. Therefore, the plaintiffs cannot be said to be bound by the statement in Ex.B-12 referring to the temple as "Podu Devaswan" in Ex.B-12. Ex.B-13 is a settlement deed executed by one Easwaraswami Nadar and Bramanadaswami Nadar in favour of a "dharmam" called "Adhiswami Nadar Memorial Kanji Madam". None of the trustees of the temple is a party to the document. This document is sought to be used by the defendants for one of the recitals therein to the effect that the "dharma Kattalai" is being performed in the temple which is a public temple. No person related to the executants of this document or in any other manner directly connected with this document has been examined. The same is the case with Exs.B-14 and B-15. We are therefore satisfied that the defendants cannot derive any assistance from these documents.

6. The learned Counsel for the appellants themselves did not rely very much on the oral evidence on the side of the defendants except to state that the inspection report filed by the Inspector, H.R. & C.E., disclosed that there is a certain inscription stating that the temple belongs to the seven villagers. We have gone through the deposition of D. Ws.1 to 4. We are satisfied that there is absolutely nothing in the evidence of D. Ws.1 to 4 to show that the suit temple is a public temple. D.W. 1 is the Inspector of H.R.&C.E. Board who is said to have filed the report. It is significant to state even in the chief examination he has not spoken either to the physical features or to various other factors which would go to show that the temple is a public temple. Further, he has stated that he did not mention in the report about his having gone to the temple and received prasadam. He does not even know the date on which he visited the temple. He is not able to state that those whom he found in the temple were strangers. He has not visited any of the festivals. It is unnecessary to refer to the evidence of D.

Ws. 2 to 4 except that their evidence also does not establish the public character of the temple. The result is there is absolutely no evidence available on the record to establish the fact that the plaint temple is a public temple in the light of the norms already called out from the decisions of this Court. No person has been examined to show that strangers visit the temple as of right. There is no evidence regarding the physical features of the temple which would give an impression that the temple is a public temple. There is no evidence regarding the dedication of the temple to the public. There is no evidence regarding the origin of the temple, the manner in which the affairs are managed, the nature and extent of the gifts received by it and the rights exercised by the devotees in regard to worship therein. Merely because P. Ws. 1 and 2 have stated that they have performed poojas in the temple on special occasions it cannot be said that the temple is a public temple. There is no basis for the contention that the temple belongs to a section of the Hindu community. There is absolutely no evidence for the contention that the temple belongs to a section of the Hindu community. In the circumstances, the principle laid down by this Court in Chettimai Vinayakar Koil v. Commissioner, H.R. & C.E., ILR (1966) Mad. 11, will not be attracted. The plaintiffs have clearly stated that the temple belongs only to the family members and the members of the plaintiff's family at any particular point of time cannot be said to be uncertainable. We therefore, find no justification to interfere with the judgment and decree of the learned single Judge. In the result we dismiss all the letters patent appeals, but in the circumstances there will be no order as to costs.